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INDIAN CONSTITUTIONAL DOCUMENTS

1757—1939

VOLUME II: 1858—1917

By the same Author

RAJPUT STUDIES
PESHWA MADHAV RAO I
ANNEXATION OF BURMA
THE EASTERN FRONTIER OF BRITISH INDIA
THE CABINET MISSION IN INDIA
THE CONSTITUENT ASSEMBLY OF INDIA
THE MAKING OF THE INDIAN CONSTITUTION

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INDIAN
CONSTITUTIONAL DOCUMENTS

1. LORD PALMERSTON'S SPEECH ON THE GOVERNMENT OF INDIA BILL, 1858.

(House of Commons, February 12, 1858)

[In February, 1858, Lord Palmerston, who was then Prime Minister of England, introduced a Bill for transferring the government of India from the East India Company to the British Crown. The Bill provided that the 'Home' administration of Indian affairs would be controlled by a President with the assistance of a Council composed of eight members, who were to be nominated by the Crown. These members were to be qualified either by having been Directors of the Company or by service or residence in India. They were to hold office for eight years, two retiring by rotation annually. Other provisions of the Bill were similar to those eventually incorporated in the Act of 1858.

Palmerston's Ministry resigned soon after the passing of the second reading of the Bill by a large majority. Lord Derby formed a Ministry, and the Chancellor of the Exchequer, Disraeli, introduced a new Bill for the government of India. This Bill provided for a Council composed partly of nominees of the Crown and partly of persons elected by citizens of some large towns like Manchester, holders of East India Stock, and others. As this Bill found no support, it was laid aside, nd another Bill was introduced by the President of the Board f Control, Lord Stanley. This Bill eventually became the ct of 1858.]

. I rise to ask leave to introduce a Bill for
ring from the East India Company to the Crown
58. rnment of Her Majesty's East Indian dominions. Company praised
59. king that proposal I feel myself bound,
irst place, to say that I do not do it in
60. it of hostility to the East India Company, or
g thereby to imply any blame or censure
61. administration of India under that corpora-
believe the East India Company has done many
ings in India. I believe that its administration
en attended with great advantage to the popula-

tion under its rule. And it is not on the ground of any delinquency on the part of the Company, but on the ground of the inconvenience and injurious character of the existing arrangements, that I propose this measure to the House. It is perhaps one of the most extraordinary facts in the history of mankind that these British Islands should have acquired such an extensive dominion in a remote part of the globe as that which we exercise over the continent of India . . . . it is quite as remarkable, quite as singular, that a nation like this, in which the science of Government is perhaps better understood than in any other, in which the principle of popular representation has so long been established, should have deliberately consigned to the care of a small body of commercial men the management of such extensive territories, such vast interests, and such numerous populations . . . . But this country never designedly did any such thing. The existing state of things grew up gradually from a very small beginning. The original settlers began with a factory, the factory grew into a fort, the fort expanded to a district, and the district to a province, and then came collisions with less civilized neighbours, injuries to be resented, attacks to be repelled, and conflicts which always ended in victory and extension of territory. So, gradually, from one transaction to another, grew up that state of things in which the East India Company found itself invested with vast commercial privileges and with most important political functions. This state of things continued up to the year 1784, when there was an infusion of responsibility in respect of its political and administrative functions into the affairs of the Company by the establishment of the Board of Control. Matters went on under this new arrangement for a number of years, during which the Company continued, subject to a slight interference from the Board of Control, to discharge its political functions, and at the same time to exercise all its commercial rights. One would have imagined that in a country like this that first step would have been followed up; that before anything else was done the

Anomaly of government of India by the Company

Unpremeditated growth of Company's power

Pitt's India Act

reflective British nation would have pursued the course inaugurated in 1784, and that, as the effect of the measure then adopted was to limit to a certain degree the political functions of the Company, the next step would have been to take them away altogether, and to leave the Company in its original position as a trading association. However, it happens that in this country commercial matters often attract more attention and excite deeper interest than political affairs, and the next step was, not to meddle further with the political functions of the Company, but to take away all the commercial privileges which originally constituted the foundation of its existence. Accordingly, in the year 1833 the Company altogether ceased to be a commercial association, and became, one may say, but a phantom of its original body. It lost the commercial character for which it was originally founded, and continued to be merely a political instrument, by means of which the administration of India was carried on. Now, Sir, I venture to think that the arrangement so made was a most inconvenient and most cumbrous arrangement. The principle of our political system is that all administrative functions should be accompanied by Ministerial responsibility—responsibility to Parliament, responsibility to public opinion, responsibility to the Crown; but in this case the chief functions in the government of India are committed to a body not responsible to Parliament, not appointed by the Crown, but elected by persons who have no more connection with India than consists in the simple possession of so much India stock. I think that that of itself is a most objectionable arrangement. . . . What can be more cumbrous than the existing system of Indian administration which is called by the name of the "double government"? In the debates of 1853, when the last India Bill was passed, the right hon. gentleman the Member for Buckinghamshire (Mr. Disraeli) asked who was the Government of India, and to whom he was to look as the authority responsible for the administration of that vast empire. Why, Sir, there is no responsibility, or rather there is a conflict of responsibility.

Why the process of divesting the Company of political functions was not followed up

Company deprived of commerce and reduced to a wholly political body

Criticism of Company's system of government

'Double Government' and conflict of responsibility

The Directors possess a power paramount, as the right hon. gentleman said, to everything else, the power of recalling the Governor-General, by which any great system of policy may be at once interrupted. And they have this power, although the Governor-General must have been appointed by the Crown, and the appointment sanctioned by the Directors. The functions of Government and the responsibility have been divided between the Directors, the Board of Control, and the Governor-General in India; the Board of Control representing the Government of the day, responsible to this House, responsible to public opinion, appointed by the Crown, and exercising functions delegated by it; the Court of Directors, elected by the gentlemen and ladies who happen to be holders of India stock, many of whom are totally ignorant of everything relating to Indian interests, and perhaps knowing nothing about Calcutta, Bombay, or Madras, except what they learn from the candidates for the Directorship as to the Presidency to which the cadetship is to belong which is promised in return for their votes. The Directors are undoubtedly, in general, men of great experience and knowledge of India, but they are elected by a body of persons who have no peculiar faculty for choosing persons qualified to govern a great Empire in the East. Then comes the Governor-General, invested with great, separate, and, independent powers, and among these three authorities it is obvious that dispatch and unity of purpose can hardly by possibility exist". . . . before a dispatch upon the most important matter can go out to India it has to oscillate between Cannon Row and the India House . . . . it is proposed by one party, altered by the other, altered again by the first, and sent back to the other . . . . The result in cases of material difference must necessarily be a middle term, satisfying the opinions of neither, unsatisfactory therefore to both, and probably less advantageous to the public service than the opinion of either would have been had it been entirely adopted. Therefore I say that this system of check and counter-check may be carried too far.

Three governing authorities: Directors, Board of Control, Governor-General

Results of divided responsibility—delay and half-hearted measures

Too many checks and counter-checks

There is no doubt that certain checks are requisite in every political machine; but you may multiply your checks and counter-checks to such an extent that the functions of the machine, which are intended only to be controlled, are paralysed for every useful purpose. Then what, let me ask, is the position in which Her Majesty's Government stand in this House? When Indian questions are discussed, it is the constant habit of those who take part in the debate, criticizing and impugning what has been done, to hold Her Majesty's Government responsible for everything that occurs. But Her Majesty's Government cannot be fairly answerable for things over which they have not a perfect control, and which they cannot entirely direct. It frequently happens, indeed, that the Government of the day are made responsible for acts which were done without their consent, and probably in some cases much to their dissatisfaction. . . . I say, then, it is most desirable that this complicated machine should be simplified and reduced in fact and form to that which it is imagined to be, but which it practically is not . . . .

Imperfect control of British Cabinet over Company's affairs

Necessity of governing India through the Crown

I say, then, that as far as regards the executive functions of the Indian Government at home, it is of the greatest importance to vest complete authority where the public have a right to think that complete responsibility should rest, and that, whereas in this country there can be but one governing body responsible to the Crown, to Parliament, and to public opinion, consisting of the constitutional advisers of the Crown for the time being, so it is in accordance with the principles and practice of our constitution, as it would be in accordance with the best interests of the nation, that India, with all its vast and important interests, should be placed under the direct authority of the Crown, to be governed in the name of the Crown by the responsible Ministers of the Crown sitting in Parliament, and responsible to Parliament and the public for every part of their public conduct, instead of being, as now, mainly administered by a set of gentlemen who, however respectable, however competent for the discharge of the functions entrusted to them, are yet a totally

Crown administration would mean responsible administration.

irresponsible body, whose views and acts are seldom known to the public, and whether known or unknown, whether approved or disapproved, unless one of the Directors happens to have a seat in the House, are out of the range of Parliamentary discussion. Again, as regards our interests in India, I may state at once that the Bill which I am about to propose to the House is confined entirely and solely to a change in the administrative organization at home, and that we do not intend to make any alteration in the existing arrangements in India. In fact, if Parliament were to adopt the measure which we are about to propose, the only difference, as far as India is concerned, would be, that the next dispatch would go out signed by the President and the Council for Indian affairs, instead of by the Court of Directors, and that the reply would be addressed to the President of the new Board, instead of to the Chairman of the body sitting in Leadenhall Street. Now, I believe there can be no doubt that, so far as the impression on the minds of the people of India is concerned, the name of the sovereign of a great empire like this must be far more respected, far more calculated to produce moral and political impressions, than the name of a Company of merchants, however respectable and able they may be. We have to deal, in that country, with Princes, some ruling independently and some in a state of modified dependence upon us, and with feudal chiefs proud of their position, cherishing traditionary recollections of a wide empire, and of great sovereigns to whom their ancestors owed allegiance. How can we expect such men to feel any great respect for a mere company of merchants? The respect they feel, the allegiance they yield, would be increased ten-fold if the one were given and the other tendered to the sovereign of a great and mighty empire.[1] I believe, in fact, that what gives force to the

No change required in existing arrangements in India

Government by the Sovereign would produce a powerful impression on the Princes and people of India.

[1] The Kings of Burma were always reluctant to negotiate on equal terms with the Governor-General. King Tharrawaddy (1837—1845) said, "I will not send an embassy to Bengal; if I send one, it shall be to the King of England. I know nothing of the Goombhanee (*i.e.*, Company) and will not acknowledge him. He is an officer who receives pay and is

Company in India is not the fame or authority of the Company itself, but the knowledge which the people have that behind the Company, and strengthening it, is the power of the British empire, and that, although the ruler may be an officer of a commercial association in name, the real power which they have to look up to is the power of the sovereign of this great country. I am, therefore, satisfied that the transfer of the government of India to the Crown would, as far as its effect upon the people of India is concerned, be equivalent to a large reinforcement of troops; that the impression which would be produced would be most advantageous, and would tend to consolidate and strengthen the moral and political influence of England in these vast regions of the world. . . .

Proposed system more effective and prompt than existing system

. . . . Will, then, any man pretend that a single Government at home will not be a much more effectual instrument for the purpose than a double government? Will any man pretend to tell me, that with a view to rapidity of discussion and execution, unity of purpose, and responsibility to the public, a government administered by the responsible advisers of the Crown would not be a far more efficient instrument for everything to be done here than the existing conflict of checks and counter-checks, the system of previous communications and subsequent communications, of objections to a dispatch and its transfer by cabs from one part of the town to another, by which delay was created, so that a dispatch, which ought to go out to-morrow, might not go out for a month, or be ready until it was too late to send it out? Why, no reasonable man will venture to get up and tell the House that the present machine can be so effective and so powerful a machine for administration at home as the machine we propose to substitute for it. Will any man acquainted with India tell me that the name of the Company—which is now pretty well seen

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not a King. Let him correspond with his equal, the Governor of Rangoon. I will receive no communication from him or in his name." *See* A. C. Banerjee, *Annexation of Burma*, pp. 30, 241—242.

Proposed system more likely to draw respect from Indian Chiefs

through by all the natives in India—can have half, or the tenth part of the powerful influence the name of the Crown would carry with it? I declare it is nonsense to say that the Indian chiefs would not feel ten times more respect for the Rajah of England than for the name of any unknown Company. Well, then, I say, if we look to England, the machine we propose to substitute is a much more powerful machine, and if we look to India it is a machine infinitely more influential than the existing one.

No danger of India being made plaything of party passions

. . . However, we shall be told by some that . . . if we transfer the government to the Ministers responsible to Parliament, we shall have Indian affairs made the subject and plaything of party passions in this House, and that great mischief would arise therefrom . . . . I do not think so ill of this House as to imagine that it would be disposed, for factious purposes, or for the momentary triumph of party, to trifle with the great interests of the country as connected with the administration of our Indian affairs. . . . I own, with all respect for the Court of Directors, that I cannot bring myself to think that Parliament is less capable of wisely administering the great affairs of State in connection with India than the Court of Directors in Leadenhall Street. I am not afraid to trust Parliament with an insight into Indian affairs. I believe, on the contrary, that if things have not gone so fast in India as they might have done—if the progress of improvement has been somewhat slower than might have been expected, that effect has arisen from the circumstance that the public of England at large were wholly ignorant of Indian affairs, and had turned away from them, being daunted by the complications they imagined them to be involved in; and because Parliament has never had face to face . . . . men personally and entirely responsible for the administration of Indian affairs. No doubt a good deal has been done in the way of substantial improvement of late years, but that which has been done I venture to say has been entirely the result of debates in this and the other House of Parliament. Therefore, so far from being

Parliament not less competent than Directors

Slowness of progress in India due to ignorance of British public

Parliamentary debates led to progress in India

alarmed at the consequences which may arrive from bringing Indian affairs under the cognizance of Parliament, I believe that a great benefit to India, and through India to the British nation, will result therefrom. . . .

. . . . Sir, I trust that Parliament will feel that great power is not given to nations without corresponding duties to be performed. We have, by an almost miraculous train of events, been entrusted with the care of the destinies of 150 to 160 millions of men—with the government, directly or indirectly, of a vast empire larger in extent than the whole face of Europe, putting the Russian empire out of the question. That is a task which involves great responsibility. Do not imagine that it is the intention of Providence that England should possess that vast empire, and that we should have in our hand the destinies of that vast multitude of men, simply that we may send out to India the sons of gentlemen or of the middle classes to make a decent fortune to live on. That power has been entrusted to us for other and better purposes; and, . . . I think it is the duty of this nation to use it in such a manner as to promote, as far as they can, the instruction, the enlightenment, and the civilization of those great populations which are now subject to our rule. . . . We ought to . . . . remember that we have a great duty to fulfil in India, and I am sure that that duty will be best discharged if we commit its performance to the hands of men who will be accountable to Parliament for their conduct, and who feel themselves bound to acquaint the public of this country, step by step, with arrangements which they make. . . .

England's responsibility for India

Parliament and British public should be kept in touch with Indian affairs.

2. THE GOVERNMENT OF INDIA ACT, 1858.

(21 and 22 Vict., C. 106)

An Act for the Better Government of India, August 2, 1858.

Whereas by the Government of India Act, 1853, the territories in the possession and under the Govern-

Preamble

ment of the East India Company were continued under such Government, in trust for Her Majesty, until Parliament should otherwise provide, subject to the provisions of that Act, and of other Acts of Parliament, and the property and rights in the said Act referred to are held by the said Company in trust for Her Majesty for the purpose of the said Government:

And whereas it is expedient that the said territories should be governed by and in the name of Her Majesty, Be it enacted. . . .

Company deprived of governing powers

" 1. The Government of the territories now in the possession or under the Government of the East India Company, and all powers in relation to Government vested in, or exercised by, the said Company in trust for Her Majesty, shall cease to be vested in, or exercised by, the said Company;

Territories vested in the Queen

and all territories in the possession or under the government of the said Company, and all rights vested in, or which if this Act had not been passed might have been exercised by the said Company in relation to any territories, shall become vested in Her Majesty, and be exercised in her name; and for the purposes of this Act India shall mean the territories vested in Her Majesty as aforesaid, and all territories which may become vested in Her Majesty by virtue of any such rights as aforesaid.

Legal meaning of 'India'

'India' to be governed by and in the name of the Queen

2. India shall be governed by and in the name of Her Majesty, and all rights in relation to any territories which might have been exercised by the said Company if this Act had not been passed shall and may be exercised by and in the name of Her Majesty as rights incidental to the government of India; and all the territorial and other revenues of or arising in India, and all tributes and other payments in respect of any territories which would have been receivable by or in the name of the said Company if this Act had not been passed, shall be received for and in the name of Her Majesty, and shall be applied and disposed of for the purposes of the Government of India alone, subject to the provisions of this Act.

Secretary of State vested with powers exercised by the Company

3. Save as herein otherwise provided, one of Her Majesty's Principal Secretaries of State shall have and perform all such or the like powers and duties in anywise relating to the Government or revenues of India, and all such or the like powers over all officers appointed or continued under this Act, as might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of the said Company, either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India in relation to such government or revenues, and the officers and servants of the said Company respectively, and all such powers as might have been exercised by the said Commissioners alone;

and any warrant or writing under Her Majesty's Royal Sign Manual, which by the Act of the session holden in the seventeenth and eighteenth years of Her Majesty, chapter seventy-seven, or otherwise, is required to be countersigned by the President of the Commissioners for the Affairs of India, shall in lieu of being so countersigned be countersigned by one of Her Majesty's Principal Secretaries of State.

*

Salary of Secretary of State and Under-Secretaries to be paid out of Indian revenues

6. In case Her Majesty be pleased to appoint a fifth Principal Secretary of State, there shall be paid out of the revenues of India to such Principal Secretary of State and to his Under-Secretaries respectively the like yearly salaries as may for the time being be paid to any other of such Secretaries of State and his Under-Secretaries respectively.

Council of India

7. For the purposes of this Act a Council shall be established, to consist of fifteen members, and to be styled the Council of India; and henceforth the Council in India now bearing that name shall be styled the Council of the Governor-General of India.

Composition of Council of India

8. Within fourteen days after the passing of this Act the Court of Directors of the East India Company shall, from among the persons then being Directors of the said Company or having been theretofore such Directors, elect seven persons to be with the persons to

be appointed by Her Majesty as hereinafter mentioned the first Members of the Council under this Act. . . .

Appointment of members of Council of India

9. Every vacancy happening from time to time among the Members of the Council appointed by Her Majesty, not being Members so appointed by reason of the refusal or neglect of the Court of Directors or the refusal to accept office hereinbefore mentioned, shall be filled up by Her Majesty, by Warrant under her Royal Sign Manual, and every other vacancy shall be filled up by the Council by election made at a meeting to be held for that purpose.

Qualifications required for appointment to Council of India

10. The major part of the persons to be elected by the Court of Directors, and the major part of the persons to be first appointed by Her Majesty after the passing of this Act, to be members of the Council, shall be persons who shall have served or resided in India for ten years at the least, and (excepting in the case of late and present Directors and Officers on the Home establishment of the East India Company who shall have so served or resided), shall not have last left India more than ten years next preceding the date of their appointment; and no person other than a person so qualified shall be appointed or elected to fill any vacancy in the Council unless at the time of the appointment or election nine at the least of the continuing members of the Council be persons qualified as aforesaid.

Tenure of members of Council of India

11. Every member of the Council appointed or elected under this Act shall hold his office during good behaviour; provided that it shall be lawful for Her Majesty to remove any such member from his office upon an address of both Houses of Parliament.

Members of Council of India not to sit in Parliament

12. No member of the Council appointed or elected under this Act shall be capable of sitting or voting in Parliament.

13. There shall be paid to each member of the Council the yearly salary of one thousand two hundred pounds out of the revenues of India.

Resignation of membership of Council of India

14. Any member of the Council may, by writing under his hand, which shall be recorded in the minutes of the Council, resign his office, and it shall be lawful

for Her Majesty, by Warrant under her Royal Sign Manual, countersigned by the Chancellor of the Exchequer, to grant to any person who, having held the office of Member of the Council for the period of ten years or upwards, shall so resign by reason of infirmity disabling him from a due execution of the duties of the office, a retiring pension during life of five hundred pounds: provided, that if at any time hereafter it would appear to Parliament expedient to reduce the number or otherwise deal with the constitution of the said Council, no member of Council who has not served in his office for a period of ten years shall be entitled to claim any compensation for the loss of his office or for any alteration in the terms and conditions under which the same is held.

Pension for members of Council of India

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19. The Council shall, under the direction of the Secretary of State, and subject to the provisions of this Act, conduct the business transacted in the United Kingdom in relation to the government of India and the correspondence with India, but every order or communication sent to India shall be signed by one of the Principal Secretaries of State; and, save as expressly provided by this Act, every order in the United Kingdom in relation to the government of India under this Act shall be signed by such Secretary of State; and all despatches from Governments and Presidencies in India, and other despatches from India, which if this Act had not been passed should have been addressed to the Court of Directors or to their Secret Committee, shall be addressed to such Secretary of State.

Business of Council of India

Secretary of State to be channel of communications between England and India

20. It shall be lawful for the Secretary of State to divide the Council into Committees for the more convenient transaction of business, and from time to time to rearrange such Committees, and to direct what departments of the business in relation to the Government of India under this Act shall be under such Committees respectively, and generally to direct the manner in which all such business shall be transacted.

Committees of Council of India

21. The Secretary of State shall be the President of the Council, with power to vote; and it shall be

President and Vice-President of Council of India

lawful for such Secretary of State in Council to appoint from time to time any member of such Council to be Vice-President thereof; and any such Vice-President may at any time be removed by the Secretary of State.

Procedure for meetings of Council of India

22. All powers by this Act required to be exercised by the Secretary of State in Council, and all powers of the Council shall and may be exercised at meetings of such Council, at which not less than five members shall be present; and at every meeting the Secretary of State, or in his absence the Vice-President, if present, shall preside; and in the absence of the Secretary of State and Vice-President, one of the members of the Council present shall be chosen by the members present to preside at the meeting: and such Council may act notwithstanding any vacancy therein: meetings of the Council shall be convened and held when and as the Secretary of State shall from time to time direct: provided that one such meeting at least be held in every week.

Special position of Secretary of State in relation to Council of India

23. At any meeting of the Council at which the Secretary of State is present, if there be a difference of opinion on any question other than the question of the election of a Member of Council, or other than any question with regard to which a majority of the votes at a meeting is hereinafter declared to be necessary, the determination of the Secretary of State shall be final; and in case of an equality of votes at any meeting of the Council, the Secretary of State, if present, and in his absence the Vice-President, or presiding member, shall have a casting vote; and all acts done at any meeting of the Council in the absence of the Secretary of State, except the election of a Member of the Council, shall require the sanction or approval in writing of the Secretary of State; and in case of difference of opinion on any question decided at any meeting, the Secretary of State may require that his opinion and the reasons for the same be entered in the minutes of the proceedings, and any Member of the Council who may have been present at the meeting may require that his opinion, and any reasons for the same

that he may have stated at the meeting, be entered in like manner.

Procedure relating to despatches to India

24. Every order or communication proposed to be sent to India, and every order proposed to be made in the United Kingdom, by the Secretary of State under this Act, shall, unless the same has been submitted to a meeting of the Council, be placed in the Council room for the perusal of all members of the Council during seven days before the sending or making thereof, except in the cases hereinafter provided; and it shall be lawful for any member of the Council to record in a minute book to be kept for that purpose his opinion with respect to each such order or communication, and a copy of every opinion so recorded shall be sent forthwith to the Secretary of State.

Secretary of State may override Council of India.

25. If a majority of the Council record as aforesaid their opinions against any act proposed to be done the Secretary of State shall, if he do not defer to the opinions of the majority, record his reasons for acting in opposition thereto.

Urgent communications to India

26. Provided that where it appears to the Secretary of State that the despatch of any communication or the making of any order, not being an order for which a majority of the votes at a meeting is hereby made necessary, is urgently required, the communication may be sent or order given notwithstanding the same may not have been submitted to a meeting of the Council or deposited for seven days as aforesaid, the urgent reasons for sending or making the same being recorded by the Secretary of State, and notice thereof being given to every member of the Council, except in the cases hereinafter mentioned.

Communications to Governments and officers in India

27. Provided also, that any order, not being an order for which a majority of votes at a meeting is hereby made necessary, which might, if this Act had not been passed, have been sent by the Commissioners for the Affairs of India, through the Secret Committee of the Court of Directors to Governments or Presidencies in India, or to the Officers or servants of the said Company, may, after the commencement of this

Act, be sent to such Governments or Presidencies, or to any officer or servant in India, by the Secretary of State without having been submitted to a meeting, or deposited for the perusal of the members of the Council, and without the reasons being recorded, or notice thereof given as aforesaid.

'Secret' despatches from India may not be communicated to Council of India.

28. Any despatches to Great Britain which might, if this Act had not been passed, have been addressed to the Secret Committee of the Court of Directors, may be marked "secret" by the authority sending the same; and such despatches shall not be communicated to the Members of the Council, unless the Secretary of State shall so think fit and direct.

Appointment of Governor-General and Governors

29. The appointments of Governor-General of India, fourth ordinary member of the Council of the Governor-General of India, and Governors of Presidencies in India, now made by the Court of Directors with the approbation of Her Majesty, and the appointments of Advocate-General for the several Presidencies now made with the approbation of the Commissioners for the Affairs of India, shall be made by Her Majesty by warrant under her Royal Sign Manual; the appointments of the ordinary members of the Council of the Governor-General of India, except the fourth ordinary member, and the appointments of the Members of Council of the several Presidencies, shall be made by the Secretary of State in Council, with the concurrence of a majority of members present at a meeting; the appointments of the Lieutenant-Governors of provinces or territories shall be made by the Governor-General of India, subject to the approbation of Her Majesty; and all such appointments shall be subject to the qualifications now by law affecting such offices respectively.

Appointment of Lieutenant-Governors

30. All appointments to offices, commands and employments in India, and all promotions, which by law or under any regulations, usage or custom, are now made by any authority in India, shall continue to be made in India by the like authority, and subject to the qualifications, conditions, and restrictions now affect-

ing such appointments respectively; but the Secretary of State in Council, with the concurrence of a majority of Members present at a meeting, shall have the like power to make regulations for the division and distribution of patronage and power of nomination among the several authorities in India, and the like power of restoring to their stations, offices, or employments, officers and servants suspended or removed by any authority in India, as might have been exercised by the said Court of Directors, with the approbation of the Commissioners for the Affairs of India, as if this Act had not been passed. Patronage

32. With all convenient speed after the passing of this Act Regulations shall be made by the Secretary of State in Council, with the advice and assistance of the Commissioners for the time being, acting in execution of Her Majesty's Order in Council of twenty-first May one thousand eight hundred and fifty-five for regulating the admission of persons to the Civil Service of the Crown, for admitting all persons being natural-born subjects of Her Majesty (and of such age and qualification as may be prescribed in this behalf) who may be desirous of becoming candidates for appointment to the Civil Service of India to be examined as candidates accordingly, and for prescribing the branches of knowledge in which such candidates shall be examined, and generally for regulating and conducting such examinations, under the superintendence of the said last mentioned Commissioners or of the persons for the time being entrusted with the carrying out of such regulations as may be, from time to time, established by Her Majesty for examination, certificate, or other test of fitness in relation to appointments to junior situations in the Civil Service of the Crown; and the candidates who may be certified by the said Commissioners or other persons as aforesaid, to be entitled under such regulations shall be recommended for appointment according to the order of their proficiency as shown by such examinations; and such persons only as shall have been so certified as aforesaid shall be appointed Indian Civil Service

or admitted to the Civil Service of India by the Secretary of State in Council:

Provided always, that all regulations to be made by the said Secretary of State in Council under this Act shall be laid before Parliament within fourteen days after the making thereof, if Parliament be sitting, and if Parliament be not sitting then, within fourteen days after the next meeting thereof.

Appointments to military and naval services to be made by the Queen

33. All appointments to cadetships, naval and military, and all admissions to service not herein otherwise provided for, shall be vested in Her Majesty; and the names of persons to be from time to time recommended for such cadetships and service shall be submitted to Her Majesty by the Secretary of State.

* * * *

Control of Secretary of State over Indian Services

37. Save as hereinbefore provided, all powers of making regulations in relation to appointments and admissions to service and other matters connected therewith, and of altering or revoking such regulations, which, if this Act had not been passed, might have been exercised by the Court of Directors or Commissioners for the Affairs of India, may be exercised by the Secretary of State in Council; and all regulations in force at the time of the commencement of this Act in relation to the matters aforesaid shall remain in force, subject nevertheless to alteration or revocation by the Secretary of State in Council as aforesaid.

38. Any writing under the Royal Sign Manual, renewing or dismissing any person holding any office, employment, or commission, civil or military, in India, of which, if this Act had not been passed, a copy would have been required to be transmitted or delivered within eight days after being signed by Her Majesty to the Chairman or Deputy Chairman of the Court of Directors shall, in lieu thereof, be communicated within the time aforesaid to the Secretary of State in Council.

39. All lands and hereditaments, monies, stores, goods, chattel, and other real and personal estate of the said Company, subject to the debts and liabilities

affecting the same respectively, and the benefit of all contracts, covenants and engagements, and all rights to fines, penalties, and forfeitures, and all other emoluments, which the said Company shall be seized or possessed of, or entitled to, at the time of the commencement of this Act, except the capital stock of the said Company and the dividend thereon, shall become vested in Her Majesty, to be applied and disposed of, subject to the provisions of this Act, for the purposes of the government of India. Properties of the Company vested in the Crown

* * * *

41. The expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the Secretary of State in Council; and no grant or appropriation of any part of such revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council. Expenditure of revenues of India subject to control of Secretary of State in Council

* * * *

53. The Secretary of State in Council shall, within the first fourteen days during which Parliament may be sitting, next after the first day of May in every year, lay before both Houses of Parliament an account for the financial year preceding the last completed of the annual produce of the revenues of India, and such account shall be accompanied by a statement prepared from detailed reports from each Presidency and district in India in such form as shall best exhibit the moral and material progress and condition of India in each such Presidency. Accounts for India to be annually laid before Parliament by Secretary of State in Council

54. When any order is sent to India directing the actual commencement of hostilities by Her Majesty's forces in India, the fact of such order having been sent shall be communicated to both Houses of Parliament within three months after the sending of such order, if Parliament be sitting, unless such order shall have been in the meantime revoked or suspended, and, if Parliament be not sitting at the end of such three months, then within one month after the next meeting of Parliament. Control of Parliament over war in India

55. 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.

Military and naval forces of Company transferred to Crown

56. The military and naval forces of the East India Company shall be deemed to be the Indian military and naval forces of Her Majesty . . . . such forces, and all persons hereafter enlisting in or entering the same, shall continue and be subject to all Acts of Parliament, laws of the Governor-General of India in Council, and articles of war, and all other laws, regulations, and provisions relating to the East India Company's military and naval forces respectively. .

* * * *

Governor-General may exercise his powers before taking his seat in the Council.

63. In case the person who shall be entitled under any provisions for appointment to succeed to the office of Governor-General of India upon a vacancy therein, or who shall be appointed absolutely to assume the office, shall be in India (upon or after the happening of the vacancy, or upon or after the receipt of such absolute appointment, as the case may require), but shall be absent from Fort William in Bengal, or from the place where the Council of the Governor-General of India may then be, and it shall appear to him necessary to exercise the powers of Governor-General before he shall have taken his seat in Council, it shall be lawful for him to make known by proclamation his appointment and his intention to assume the said office of Governor-General; and after such proclamation, and thenceforth until he shall repair to Fort William or the place where the Council may assemble, it shall be lawful for him to exercise alone, all or any of the powers which might be exercised by the Governor-General in Council, except the power of making laws and regulations; and all acts done in the exercise of the said powers, except as aforesaid, shall be of the same force

and effect as if they had been done by the Governor-General in Council; provided that all acts done in the said Council after the date of such proclamation but before the communication thereof to such Council, shall be valid, subject nevertheless to revocation or alteration by the person who shall have so assumed the said office of Governor-General; and when the office of Governor-General is assumed under the foregoing provision, if there be at any time before the Governor-General takes his seat in Council, no Vice-President of the Council authorised to preside at meetings for making laws and regulations (as provided by Section 22 of the Government of India Act, 1853), the senior ordinary member of Council therefore sent shall preside therein, with the same powers as if a Vice-President had been appointed and were absent.

Vice-President of Governor-General's Council

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65. The Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate; and all persons and bodies politic shall and may have and take the same suits, remedies and proceedings, legal and equitable, against the Secretary of State in Council of India as they could have done against the said Company; and the property and effects hereby vested in Her Majesty for the purposes of the Government of India, or acquired for the said purposes, shall be subject and liable to the same judgements and executions as they would, while vested in the said Company, have been liable to in respect of debts and liabilities lawfully contracted and incurred by the said Company.

Secretary of State in Council may sue and be sued.

* * * *

67. All treaties made by the said Company shall be binding on Her Majesty; and all contracts, covenants, liabilities and engagements of the said Company made, incurred or entered into before the commencement of this Act, may be enforced by and against the Secretary of State in Council in like manner and in the same Courts as they might have been by and against the said Company if this Act had not been passed.

All treaties, contracts, etc. made by the Company remain binding on the Crown.

68. Neither the Secretary of State nor any member of the Council shall be personally liable in respect of any such contract, covenant, or engagement of the said Company as aforesaid, or in respect of any contract entered into under the authority of this Act, or other liability of the said Secretary of State or Secretary of State in Council in their official capacity; but all such liabilities, and all costs and damages in respect thereof, shall be satisfied and paid out of the revenue of India.

3. LORD DERBY'S SPEECH ON THE GOVERNMENT OF INDIA BILL, 1858.

(House of Lords, July 15, 1858)

India should be governed in India

My Lords, I must, in the first place, observe that I think the title of the Bill is open to the objection of being somewhat infelicitous. It is not, as it purports to be, a Bill for the better Government of India. It is a Bill which will, I hope, tend to the better Government of India; but the Government of India must, as cannot be too often repeated, be on the whole carried on in India, and this Bill does not pretend to deal with all those complicated and difficult questions which will, no doubt, within the next few years, frequently engage the anxious consideration of Parliament and of the country. It does not pretend to deal with the revenue, with the finance, with the land regulations, with the condition of the natives, and the possibility of extending their admission into the public service after this unhappy revolt shall have been suppressed. It does not profess to deal with any of these grave and extensive questions; and although such questions will no doubt engage the attention of Parliament, at future periods, and although Parliament will doubtless feel it to be both its right and its duty to lay down broad principles of action with regard to most of them, I cannot help expressing my opinion that with regard to the details of the Government of India, the less inter-

The less Parliamentary interference in Indian affairs, the better

ference there is on the part of Parliament the better prospect will there be of securing happiness and contentment of the people of India.[1]

I consider that the Government of the East India Company, both here and in India, has been marked by singular prudence and ability, and I should be very sorry if this Bill was considered—what it was represented to be at a meeting held at the India House yesterday—a Bill of Pains and Penalties against the Directors. It is nothing of the sort. I believe no men could have conducted business better under the system which they found in operation than the Directors of the East India Company have done. But the complaints against the system itself, the encumbrances connected with its machinery, the delay which unavoidably attended the most important transactions, make it quite obvious that in any remodelling which may take place, India must be put on the same footing as the other possessions of the Crown, and be administered by a Minister responsible to Parliament. I may add that, in point of fact, the transfer of authority to the Crown is more nominal than real, because, although the Court of Directors have been in a position to exercise certain powers of obstruction and delay, I believe that, with the single exception of the power of recalling the Governor-General, there was no single act which they were enabled to perform without the assent of the President of the Board of Control. Not only does the President of the Board of Control possess the power of altering or of vetoing the instructions proposed by the Court of Directors, but he has the power, and it has been sometimes exercised, of sending out instructions diametrically opposed to those which the Court intended. There is a question whether the Court might not have interposed delay, and even persisted, until compelled by a mandamus; but in point of fact they have generally been obliged to yield to the

Company's rule prudent and able

Defects of the existing system

Transfer of India to the Crown no more than a formal change

Large powers of the President of Board of Control

[1] For a different view see the speech of Sir George Cornewall Lewis in the House of Commons, February 12, 1858. (Extracts printed in Keith, *Speeches and Documents on Indian Policy*, Vol. I. pp. 342-355).

suggestions of the President of the Board of Control. We all remember that my noble Friend below me (The Earl of Ellenborough), who has on various occasions been at the head of the Board of Control, told the Committee that when he was in office the Government of India was in his hands altogether. Upon the subject, then, of the transfer of the powers of the Court of Directors to a responsible Minister of the Crown, and of carrying on all business both here and in India in the name and by the direct authority of the Crown, there was no difference of opinion between the two parties into which the House of Commons was divided. Nor was there any difference of opinion on this point—that although it was expedient that the business should be conducted by a high Ministerial officer, who should, like the holders of other offices in the Government, be appointed by the Crown and responsible to Parliament, yet, inasmuch as it is impossible to conceive that any person so appointed would have sufficient knowledge and experience to discharge duties so various and so complicated as those connected with the administration of all the different provinces of India, it was necessary for the good Government of India to associate with the Minister a Council more or less numerous by whom he might be assisted and advised. It was with regard to the constitution of that Council that there existed the main difference of opinion between Her Majesty's late Government[1] and Her Majesty's present Government. Her Majesty's late Government proposed that the Council should consist of eight members who should each hold office for six years, all nominated by the Minister of the Crown, and two of whom should retire from office each alternate year. Now, the present Government was of opinion that, although in that manner the President of the Board of Control might surround himself with many able and experienced advisers, due provision was not made for securing to the Council that character of independence which was

Whigs and Tories agree about the necessity of (1) transfer to the Crown, (2) establishment of a Council to advise Minister in charge of India.

Whigs and Tories differ about composition of Council.

Proposed composition of Council in Palmerston's Bill

Its defects

[1] Lord Palmerston's Ministry.

absolutely essential to the proper discharge of its functions. It was quite clear that when one-third of the members of the Board had been only recently appointed by the actual President of the Board, and another third would soon vacate their offices, and were hoping, perhaps, to be re-appointed by the same Minister, there would be great temptation presented to the Council to defer, more than they ought to do, to that Minister, and to refrain from freely expressing their opinions. It was, moreover, the opinion of the members of the present Government that a Council of eight members would not be sufficiently numerous, having regard to the great extent of the duties which would have to be performed, and we thought that eighteen—the present number of the Directors—were not more than were required by the business of India. The Council of India, we thought, ought not to be—as the Directors may have been before—a screen between the Minister and Parliament, but a body of men well acquainted with the affairs of India, to give the Minister advice, which, on his own responsibility, he might be at liberty either to accept or reject. I have heard it said that, according to the peculiar character of the President of the Board of Control, the Council, as proposed to be constituted, would be either his masters, his advisers, or his puppets. It must, no doubt, depend on the character and the self-reliance of the head of any great department how far he is influenced or controlled, how far he is guided, by those who fill permanent situations, and to what extent he is the master of his own department. For my part, I certainly hope and believe that the Council proposed by the Government under this Bill will be found neither the masters of the Secretary of State nor his puppets, but that they will prove that, which their qualifications prepare them to be, most valuable advisers to the Minister in all matters relating to India.[1]

Proposed composition of Council in Derby's Bill

Relations between Secretary of State and his Council

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[1] Mountstuart Elphinstone observed, "The great point of course is the Council, and I think that proposal will furnish a body of excellent advisers for an honest, able and moderate

Civil Service

The other point to which I wish to advert is the admission to the civil service of India. As the law at present stands, all persons are admitted to that service after such examinations as shall from time to time be prescribed, and under such regulations as may be laid down by the Court of Directors and the President of the Board of Control. That power we now propose to transfer to the Secretary of State. But the Bill, as it stands at present, goes further, I think, than the justice of the case warrants; it gives to the principle of competitive examination that which it has never yet received—namely, the sanction of an Act of Parliament binding the hands of the Executive in all cases, and rendering compulsory a strict adherence to the principle, not of examination, but of competitive examination. It is my intention to move the omission from the clause of the words which render it necessary to the Government to admit candidates to the civil service in the order of their proficiency in the competitive examination, leaving the law as it stands with regard to admission to the Indian Civil Service, subject to such regulations as may be issued by the Secretary of State, with the approval of the Crown, and laid before Parliament ..

Objection to competition, but not to examination

4. THE QUEEN'S PROCLAMATION, 1858.

(November 1, 1858)

[This Proclamation was drafted, at the Queen's desire, by the Prime Minister, Lord Derby.]

Whereas, for divers weighty reasons, we have resolved, by and with the advice and consent of the

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Secretary (such as Lord Stanley appears to be), and that it will supply the deficiencies of a lazy or indifferent one much better than the ordinary clerk of a Board of Control would do; but that it will afford very little protection against a rash, fanciful and self-willed chief, and none at all against one who shall combine with a ministry in a deliberate plan to appropriate the patronage of India, or to make use of that country in any other way favourable to their own power or stability."

Lords Spiritual and Temporal, and Commons, in Parliament assembled, to take upon Ourselves the government of the territories in India heretofore administered in trust for us by the Honourable East India Company :

Assumption of government of India

Now, therefore, we do by these presents notify and declare that, by the Advice and consent aforesaid, we have taken upon Ourselves the said Government

Viceroy

And we do hereby constitute and appoint Viscount Canning, to be Our first Viceroy[1] and Governor-General in and over Our said Territories and to administer the Government thereof in Our name, and generally to act in Our name, and on Our behalf, subject to such Orders and Regulations as he shall, from time to time, receive from Us through One of Our Principal Secretaries of State :

Company's Servants

And we do hereby confirm in their several Offices, Civil and Military, all Persons now employed in the Services of the Honourable East India Company, subject to Our future pleasure, and to such Laws and Regulations as may hereafter be enacted.

Treaties with Indian Princes

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.

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[1] The designation 'Viceroy' was used for the first time in the Queen's Proclamation. "The term Governor-General alone is always employed in the Acts both of the British Parliament and the Indian Legislature, in the Warrant of Appointment of the Governor-General, and in the Notification of Appointment in the 'London Gazette.' On the other hand, the double title 'Viceroy and Governor-General' or 'Governor-General and Viceroy,' which was first employed by Queen Victoria in the Royal Proclamation of 1st November, 1858,.... is used in the Warrants of Precedence and in the Statutes of the Knightly Orders. The distinction therefore is held to be that where the Governor-General is referred to as the statutory head of the Government of India he is designated as Governor-General : where he is regarded as representative of the Sovereign he is spoken of as Viceroy. The latter title however has no statutory sanction and is the result merely of usage and convention."

Territorial extension not wanted

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 the Native Princes as Our own.

* * * *

Removal of colour bar

And it is Our further will that, so far as may be, Our Subjects, of whatever Race or Creed, be freely and impartially admitted to offices in Our Service, the Duties of which they may be qualified, by their education, ability, and integrity, duly to discharge.

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5. LORD CANNING ON THE DISTRIBUTION OF BUSINESS AMONG MEMBERS OF THE EXECUTIVE COUNCIL, 1861.

(Letter to Sir Charles Wood, Secretary of State, January 26, 1861)

[Up to the time of Lord Canning "the theory that the Government of India was a Government by the entire body of the Council, and that though the Governor-General might, since 1793, overrule his colleagues, yet in 99 cases out of 100 he could not act without them, was exemplified in the disposal of business. All papers with scarcely an exception were circulated to all the Members of Council, beginning with the Governor-General. This had the unfortunate effect of placing an undue burden upon him, and of tempting him to note or to decide before he had heard the views of his expert colleagues. Further, since the papers were circulated in order of seniority the last to receive them might be the Member best qualified to advise upon the case. The practice led also to interminable delays, as the files pursued their weary way, possibly following the Governor-General on a tour of 500 miles or more into the interior. When the papers had completed the round, they came before Council, and it is not surprising to know that sometimes two days in the week and many hours on each occasion were required to dispose of them." So wrote

Lord Curzon.[1] Lord Minto wrote to his son on September 15, 1807: "The Secretaries attend at Council, each department in turn, with its mountain of bundles. The Secretary reads or often only states shortly the substance of each paper, and the order is given on the spot. The Secretaries scarcely read above their breath The Secretaries reduce all our orders into Minutes of Council, letters, instructions, etc. We hold two councils a week, Monday and Friday. We meet at 10, and sit till 3 or 4."[2]

Lord Dalhousie, "whose temper was impatient of delay .. instituted the plan of taking papers in Council after one circulation and one writing of Notes—previously they had wandered about in a circuitous movement that might continue for months or even for years."[3] Then Lord Canning sent his suggestion to Sir Charles Wood, and the result was that the Governor-General was authorised by Section 8 of the Indian Councils Act of 1861 "to make rules and orders for the more convenient transaction of business." Accordingly Lord Canning divided the departments of Government between the Members of the Council. "Thereby were laid the foundations of Cabinet Government in India ..each branch of the Administration having its official head and spokesman in the Government, who was responsible for its administration and its defence."[4]

Writing many years after his retirement from India Lord Curzon observed, "The procedure instituted by Lord Canning has been continued and improved upon since, successive Viceroys having utilised the statutory powers which they enjoy to rearrange the work of the Departments or their representatives in Council in the manner required by the needs of the time. An immense amount of administrative work of the routine type does not go before Council at all, any more than it does before the British Cabinet at home. It is discharged in his own responsibility by the Member of Council who is the head of the Department concerned. If he is convinced of its special importance, he refers it to the Viceroy either personally, or through the Secretary of Government in his Department, who sees the Viceroy once a week and takes his orders. The Viceroy can, if he please, circulate the papers and refer the case to Council, with or without his recorded opinion, and

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[1] Lord Curzon, *British Government in India*, Vol. II, p. 120.

[2] *Lord Minto in India*, p. 26.

Lord Wellesley did not care to attend the meetings of the Council. For this he was reprimanded by the Court of Directors and the Board of Control. (See Lord Curzon, *British Government in India*, Vol. II, pp. 115-116.)

[3] Lord Curzon, *British Government in India*, Vol. II, p. 121.

[4] Lord Curzon, *British Government in India*, Vol. II, p. 122.

the matter is then brought up at the next meeting. Where two or more Departments differ about a case in which they are all involved, a similar reference is invariably made. Still, as in the first Lord Minto's time, the Secretary attends, states the case, takes the orders of Council, and is responsible for seeing to their execution."[1]]

Defects of previous system

The fault of the present constitution of 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.

Introduction of departmental system

I would recognise this division by law[2], and I would carry it out more distinctly.

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 such

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[1] *British Government in India*, Vol. II, pp. 123-124.

View of Sir Charles Wood

[2] In his despatch of August 9, 1861, forwarding the Councils Act, 1861, Sir Charles Wood remarked, "I need hardly impress upon your Lordship the necessity of caution in framing the rules and orders, so as not to exceed the limit of the discretion conferred upon the Governor-General by the Section of this Act (*i.e.*, Section 8 of the Indian Councils Act). The object to be kept in view is the *more convenient transaction of business*. There is nothing in the provision of a nature to detract from the authority or responsibility of the Governor-General or the Council."

department be held to be the orders of the Governor-General in Council.

Suggestion about working of departmental system

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 the 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.

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

6. THE INDIAN COUNCILS ACT, 1861. (24 & 25 Vict., C. 67).

[The following observations of Sir George Campbell[1] on the working of the Act of 1861 are interesting:

"There is one difference between the several local governments, that some have legislative councils and some have not . . . such a local legislature is really a very great advantage under the strict reign of law now established; it enables local governments to legislate for themselves in many things, instead of having to apply to the Government of India for the necessary legislation.

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As having sat both in the Governor-General's and in the Provincial Legislative Council (of Bengal), my strong feeling was that the native and non-official members are much more useful in the latter than in the former. The native members really understood the questions that came before them and gave most material assistance; in many respects they truly represented native opinion. The difficulty was, and I fear long will be, this—it is easy enough to get represestatives of the Zemindars and higher classes, but most difficult to get representatives of the lower masses—the ryots ....

[1] *Memoirs of My Indian Career*, Vol. II, pp. 204, 208-209.

When the Provincial Legislative Councils were first set up they had very large powers, could legislate on all subjects not regulated by a few Imperial Codes, and could alter all laws passed by any authority before the Indian Councils Act. But they were not to have power to touch any general laws which Parliament or the Supreme Legislative Council in India might pass in the future. Since that time the legislative department of the Governor-General's Council have exhibited a great, sometimes I think almost too great, activity ; have not only digested the law on many subjects into codes, but have also passed many consolidating Acts The consequence is that so much ground is covered by this subsequent legislation as to leave comparatively little that the Provincial Councils can touch, and they now seem to do very little. The object of establishing the power of local regulation is almost defeated."

Regarding Section 50 of the Act of 1861 Lord Curzon[1] observes :

"Hitherto the senior Member of Council officiated pending the arrival of a successor. But now, in order to escape the situation in which a man might be called upon to act as head of the Government without possessing a first-hand knowledge of Indian administration—*i.e.*, a Law or Finance Member, who might happen at the moment to be senior Member of Council—it was decided that the senior of the two Governors of Madras and Bombay should fill the place, the senior Member of Council only occupying it (as he did after the deaths of Lord Elgin and Lord Mayo) for the few days that might elapse before the Governor could arrive . The Governor of Bengal has, since the creation of that office, been added to the qualifying list."]

An Act to make better provision for the Constitution of the Council of the Governor-General of India, and for the Local Government of the several Presidencies and Provinces of India, and for the temporary Government of India in the event of a vacancy in the office of Governor-General. (1 August, 1861)

Preamble

Whereas it is expedient that the provisions of former Acts of Parliament respecting the constitution and functions of the Council of the Governor-General of India should be consolidated and in certain respects amended, and that power should be given to the Governors in Council of the Presidencies of Fort Saint George and Bombay to make laws and regulations for the government of the said Presidencies, and that

[1] *British Government in India*, Vol. II, p. 75.

provision should be made for constituting the like authority in other parts of Her Majesty's Indian dominions: Be it therefore declared and enacted as follows:

* * *

Constitution of Governor-General's Executive Council

3. There shall be five ordinary members of the said Council of the Governor-General, three of whom shall from time to time be appointed by the Secretary of State for India in Council, with the concurrence of a majority of members present at a meeting, from among such persons as shall have been, at the time of such appointment, in the service in India of the Crown, or of the Company and the Crown, for at least ten years; and if the person so appointed shall be in the military service of the Crown, he shall not, during his continuance in office as a member of Council, hold any military command, or be employed in actual military duties; and the remaining two, one of whom shall be a barrister or a member of the Faculty of advocates in Scotland of not less than five years' standing, shall be appointed from time to time by Her Majesty by warrant under her Royal Sign Manual: and it shall be lawful for the Secretary of State in Council to appoint the Commander-in-Chief of Her Majesty's Forces in India to be an extra-ordinary member of the said Council, and such extra-ordinary member of Council shall have rank and precedence at the Council Board next after the Governor-General.

Present ordinary members of Governor-General's Executive Council to continue in office

4. The present ordinary members of the Council of the Governor-General of India shall continue to be ordinary members under and for the purposes of this Act; and it shall be lawful for Her Majesty, on the passing of this Act, to appoint by warrant as aforesaid an ordinary member of Council, to complete the number of five hereby established; and there shall be paid to such ordinary member, and to all other ordinary members who may be hereafter appointed, such amount of salary as may from time to time be fixed for members of the Council of the Governor-General by the Secretary of State in Council, with the concurrence

of a majority of members of Council present at a meeting; and all enactments of any Act of Parliament or law of India respecting the Council of the Governor-General of India and the members thereof shall be held to apply to the said Council as constituted by this Act, except so far as they are repealed by or are repugnant to any provisions of this Act.

Provisional appointment of members of Governor-General's Executive Council

5. It shall be lawful for the Secretary of State in Council, with the concurrence of a majority of members present at a meeting, and for Her Majesty, by warrant as aforesaid, respectively, to appoint any person provisionally to succeed to the office of ordinary member of the Council of the Governor-General, when the same shall become vacant by the death or resignation of the person holding the said office, or on his departure from India with intent to return to Europe, or on any event and contingency expressed in any such provisional appointment, and such appointment again to revoke; but no person so appointed to succeed provisionally to such office shall be entitled to any authority, salary, or emolument appertaining thereto until he shall be in the actual possession of such office.

Provision for conducting business during Governor-General's separation from his Executive Council

6. Whenever the said Governor-General in Council shall declare that it is expedient that the said Governor-General should visit any part of India unaccompanied by his Council, it shall be lawful for the said Governor-General in Council, previously to the departure of the said Governor-General, to nominate some member of the said Council to be President of the said Council, in whom, during the time of such visit, the powers of the said Governor-General in assemblies of the said Council shall be reposed, except that of assenting to or withholding his assent from, or reserving for the signification of Her Majesty's pleasure, any law or regulation, as hereinafter provided; and it shall be lawful in every such case for the said Governor-General in Council, by an order for that purpose to be made, to authorize the Governor-General alone to exercise all or any of the powers which might be exercised by the said Governor-General in Council in every case in

which the said Governor-General may think it expedient to exercise the same, except the power of making laws or regulations

7 Whenever the Governor-General, or such President so nominated as aforesaid, shall be obliged to absent himself from any meeting of Council (other than meetings for the purpose of making laws and regulations, as hereinafter provided), owing to indisposition or any other cause whatsoever, and shall signify his intended absence to the Council, then and in every such case the senior member for the time being who shall be present at such meeting, shall preside thereat, in such manner, and with such full powers and authorities during the time of such meeting, as such Governor General or President would have had in case he had been present at such meeting provided always, that no act of Council made at any such meeting shall be valid to any effect whatsoever unless the same shall be signed by such Governor-General or President respectively, if such Governor General or President shall at the time be resident at the place at which such meeting shall be assembled, and shall not be prevented by such indisposition from signing the same · provided always, that in case such Governor-General or President, not being so prevented as aforesaid, shall decline or refuse to sign such act of Council, he, and the several members of Council who shall have signed the same, shall mutually exchange with and communicate in writing to each other the grounds and reasons of their respective opinions, in like manner and subject to such regulations and ultimate responsibility as are by an Act of the thirty-third year of King George the Third, chapter fifty-two, sections forty-seven, forty-eight, forty-nine, fifty, fifty-one, provided and described in cases where such Governor-General shall, when present, dissent from any measure proposed or agitated in the Council.

Provision for conducting business by Executive Council during absence of Governor General or President

8. It shall be lawful for the Governor-General from time to time to make rules and orders for the more convenient transaction of business in the said Council; and any order made or act done in accordance

Provision for distribution of business

among members of Executive Council

with such rules and orders (except as hereinafter provided respecting laws and regulations) shall be deemed to be the order or act of the Governor-General in Council.

Governors and Lieutenant-Governors to act as additional Councillors when Executive Council assembles within their jurisdiction

9. The said Council shall from time to time assemble at such place or places as shall be appointed by the Governor-General in Council within the territories of India; and as often as the said Council shall assemble within either of the Presidencies of Fort Saint George or Bombay, the Governor of such Presidency shall act as an extraordinary member of Council; and as often as the said Council shall assemble within any other division, province, or territory having a Lieutenant-Governor, such Lieutenant-Governor shall act as an additional councillor at meetings of the Council, for the purpose of making laws and regulations only, in manner hereinafter provided.

Constitution of Governor-General's Legislative Council

10. For the better exercise of the power of making laws and regulations vested in the Governor-General in Council, the Governor-General shall nominate, in addition to the ordinary and extraordinary members above mentioned, and to such Lieutenant-Governor in the case aforesaid, such persons, not less than six nor more than twelve in number, as to him may seem expedient, to be members of Council for the purpose of making laws and regulations only, and such persons shall not be entitled to sit or vote at any meeting of Council, except at meetings held for such purpose: provided that not less than one-half of the persons so nominated, shall be non-official persons, that is, persons who, at the date of such nomination, shall not be in the civil or military service of the Crown in India, and that the seat in Council of any non-official member accepting office under the Crown in India shall be vacated on such acceptance.

Non-official members of Governor-General's Legislative Council

11. Every additional member of Council so nominated shall be summoned to all meetings held for the purpose of making laws and regulations, for the term of two years from the date of such nomination.

12. It shall be lawful for any such additional member of Council to resign his office to the Governor-

General and on acceptance of such resignation by the Governor-General such office shall become vacant.

13. On the event of a vacancy occuring by the death, acceptance of office, or resignation, accepted in manner aforesaid, of any such additional member of Council, it shall be lawful for the Governor-General to nominate any person as additional member of Council in his place, who shall exercise the same functions until the termination of the term for which the additional member so dying, accepting office, or resigning, was nominated: provided always, that it shall not be lawful for him by such nomination to diminish the proportion of non-official additional members hereinafter directed to be nominated. Provision for filling up vacancies in Governor-General's Legislative Council

14. No law or regulation made by the Governor-General in Council in accordance with the provisions of this Act shall be deemed invalid by reason only that the proportion of non-official additional members hereby provided was not complete at the date of its introduction to the Council or its enactment.

15. In the absence of the Governor-General and of the President, nominated as aforesaid, the senior ordinary member of the Council present shall preside at meetings of the Council for making laws and regulations; and the power of making laws and regulations vested in the Governor-General in Council shall be exercised only at meetings of the said Council at which such Governor-General or President, or some ordinary member of Council, and six or more members of the said Council (including under the term 'members of the Council' such additional members as aforesaid), shall be present; and in every case of difference of opinion at meetings of the said Council for making laws and regulations, where there shall be an equality of voices, the Governor-General, or in his absence the President, and in the absence of the Governor-General and President, such senior ordinary member of Council there presiding, shall have two votes or the casting vote. President of Governor-General's Legislative Council

Casting vote

* * * *

17. It shall be lawful for the Governor-General in

Governor-General to determine times and places of meeting of Legislative Council and to adjourn it

Council from time to time to appoint all other times and places of meeting of the Council for the purpose of making laws and regulations under the provisions of this Act, and to adjourn, or from time to time to authorize such President, or senior ordinary member of Council in his absence, to adjourn any meeting for the purpose of making laws and regulations from time to time and from place to place.

Provision for making rules for conduct of meetings of business at Governor-General's Legislative Council

18. It shall be lawful for the Governor-General in Council to make rules for the conduct of business at meetings of the Council for the purpose of making laws and regulations under the provisions of this Act, prior to the first of such meetings; but such rules may be subsequently amended at meetings for the purpose of making laws or regulations, subject to the assent of the Governor-General; and such rules shall prescribe the mode of promulgation and authentication of such laws and regulations: provided always, that it shall be lawful for the Secretary of State in Council to disallow any such rule, and to render it of no effect.

Procedure of Governor-General's Legislative Council

19. No business shall be transacted at any meeting for the purpose of making laws and regulations, except as last hereinbefore provided, other than the consideration and enactment of measures introduced into the Council for the purpose of such enactment; and it shall not be lawful for any member or additional member to make or for the Council to entertain any motion, unless such motion be for leave to introduce some measures as aforesaid into Council, or have reference to some measure actually introduced thereinto: provided always, that it shall not be lawful for any member or additional member to introduce, without the previous sanction of the Governor-General, any measure affecting,—

Restrictions on right of members of Governor-General's Legislative Council to introduce measures dealing with certain subjects

(*i*) The Public Debt or public revenues of India, or by which any charge would be imposed on such revenues:

(*ii*) The religion or religious rights and usages of any class of Her Majesty's subjects in India:

(*iii*) The discipline or maintenance of any part of Her Majesty's Military or Naval Forces :

(*iv*) The relations of the Government with foreign princes or states.

Measures passed by Governor-General's Legislative Council not to become valid unless they receive assent of Governor-General or Crown

20. When any law or regulation has been made by the Council at a meeting for the purpose of making laws and regulations as aforesaid, it shall be lawful for the Governor-General, whether he shall or shall not have been present in Council at the making thereof, to declare that he assents to the same or that he withholds his assent from the same, or that he reserves the same for the signification of the pleasure of Her Majesty thereon ; and no such law or regulation shall have validity until the Governor-General shall have declared his assent to the same, or until (in the case of a law or regulation so reserved as aforesaid) Her Majesty shall have signified her assent to the same to the Governor-General, through the Secretary of State for India in Council, and such assent shall have been duly proclaimed by the said Governor-General.

Laws passed by Governor-General's Legislative Council with Governor-General's assent may be disallowed by Crown.

21. Whenever any such law or regulation has been assented to by the Governor-General, he shall transmit to the Secretary of State for India an authentic copy thereof ; and it shall be lawful for Her Majesty to signify, through the Secretary of State for India in Council, her disallowance of such law ; and such disallowance shall make void and annul such law from or after the day on which the Governor-General shall make known, by proclamation or by signification to his Council, that he has received the notification of such disallowance by Her Majesty.

Jurisdiction of Governor-General's Legislative Council

22. The Governor-General in Council shall have power at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions herein contained, to make laws and regulations for repealing, amending, or altering any laws or regulations whatever, now in force or hereafter to be in force in the Indian territories now (or hereafter) under the dominion of Her Majesty, and to make laws and regulations for all persons, whether British or Native, foreigners or others, and for all courts of justice what-

ever, and for all places and things whatever within the said territories, and for all servants of the Government of India within the dominions of princes and states in alliance with Her Majesty; and the laws and regulations so to be made by the Governor-General in Council shall control and supersede any laws and regulations in any wise repugnant thereto which shall have been made prior thereto by the Governors of the Presidencies of Fort St. George and Bombay respectively in Council, or the Governor or Lieutenant-Governor in Council of any Presidency or other territory for which a Council may be appointed, with power to make laws and regulations, under and by virtue of this Act: provided always, that the said Governor-General in Council shall not have the power of making any laws or regulations which shall repeal or in any way affect any of the provisions of this Act:

Laws passed by Governor-General's Legislative Council to 'control and supersede' laws passed by Local Governments

Restrictions on law-making powers of Governor-General's Legislative Council

Or any of the provisions of the Acts of the third and fourth years of King William the Fourth, chapter eighty-five, and of the sixteenth and seventeenth years of Her Majesty, chapter ninety-five, and of the seventeenth and eighteenth years of Her Majesty, chapter seventy-seven, which after the passing of this Act shall remain in force:

Or any provisions of the Act of the twenty-first and twenty-second years of Her Majesty, chapter one hundred and six, entitled, "An Act for the Better Government of India"; or of the Act of the twenty-second and twenty-third years of Her Majesty, chapter forty-one, to amend the same:

Or of any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India:

Or of the Acts for punishing mutiny and desertion in Her Majesty's Army or in Her Majesty's Indian Forces respectively, but subject to the provision contained in the Act of the third and fourth years of King William the Fourth, chapter eighty-five, section seventy-three, respecting the Indian Articles of War:

Or any provisions of any Act passed in this present session of Parliament, or hereafter to be passed, in

any wise affecting Her Majesty's Indian territories, or the inhabitants thereof:

Or which may affect the authority of Parliament, or the constitution and rights of the East India Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the Crown over any part of the said territories.

Governor-General's power to make ordinances

23. Notwithstanding anything in this Act contained, it shall be lawful for the Governor-General, in cases of emergency, to make and promulgate, from time to time, ordinances for the peace and good government of the said territories or of any part thereof, subject, however, to the restrictions contained in the last preceding section; and every such ordinance shall have like force of law or regulation made by the Governor-General in Council, as by this Act provided, for the space of not more than six months from its promulgation, unless the disallowance of such ordinance by Her Majesty shall be earlier signified to the Governor-General by the Secretary of State for India in Council, or unless such ordinance shall be controlled or superseded by some law or regulation made by the Governor-General in Council at a meeting for the purpose of making laws and regulations as by this Act provided.

Validity of ordinances

24. No law or regulation made by the Governor-General in Council (subject to the power of disallowance by the Crown, as hereinbefore provided), shall be deemed invalid by reason only that it affects the prerogative of the Crown.

Legislation for Non-Regulation Provinces

25. Whereas doubts have been entertained whether the Governor-General of India, or the Governor-General of India in Council, had the power of making rules, laws, and regulations for the territories known from time to time as "Non-regulation Provinces," except at meetings for making laws and regulations in conformity with the provisions of the said Acts of the third and fourth years of King William the fourth, Chapter

eighty-five, and of the sixteenth and seventeenth years of Her Majesty, chapter ninety-five, and whether the Governor, or Governor in Council, or Lieutenant-Governor of any Presidency or part of India had such power in respect of any such territories: Be it enacted, that no rule, law, or regulation which prior to the passing of this Act shall have been made by the Governor-General or Governor-General in Council, or by any other of the authorities aforesaid, for and in respect of any such non-regulation province, shall be deemed invalid only by reason of the same not having been made in conformity with the provisions of the said Acts, or of any other Act of Parliament respecting the constitution and powers of the Council of India or of the Governor-General, or respecting the powers of such Governors, or Governors in Council, or Lieutenant-Governors as aforesaid.

Leave of absence for ordinary members of Councils

26. It shall be lawful for the Governor-General in Council, or Governor in Council of either of the Presidencies, as the case may be, to grant to an ordinary Member of Council leave of absence under medical certificate, for a period not exceeding six months; and such member, during his absence, shall retain his office, and shall, on his return and resumption of his duties, receive half his salary for the period of such absence; but if his absence shall exceed six months, his office shall be vacated.

Provision for filling up vacancies in Governor-General's Executive Council

27. If any vacancy shall happen in the office of an ordinary Member of the Council of the Governor-General, or of the Council of either of the Presidencies, when no person provisionally appointed to succeed thereto shall be then present on the spot, then and on every such occasion, such vacancy shall be supplied by the appointment of the Governor-General in Council, or the Governor in Council, as the case may be; and until a successor shall arrive the person so nominated shall execute the office to which he shall have been appointed, and shall have all the powers thereof and shall have and be entitled to the salary and other emoluments and advantages appertaining to the said office during his continuance therein, every such

temporary Member of Council foregoing all salaries and allowances by him held and enjoyed at the time of his being appointed to such office; and if any ordinary Member of the Council of the Governor-General, or of the Council of either of the Presidencies, shall, by any infirmity or otherwise, be rendered incapable of acting or of attending to act as such, or if any such member shall be absent on leave, and if any person shall have been provisionally appointed as aforesaid, then the place of such member, absent or unable to attend, shall be supplied by such person; and if no person provisionally appointed to succeed to the office shall be then on the spot, the Governor-General in Council, or Governor in Council, as the case may be, shall appoint some person to be a temporary Member of Council; and until the return of the member so absent or unable to attend, the person so provisionally appointed by the Secretary of State in Council, or so appointed by the Governor-General in Council, or Governor in Council, as the case may be, shall execute the office to which he shall have been appointed, and shall have all the powers thereof and shall receive half the salary of the Member of Council whose place he supplies, and also half the salary of his office under the Government of India, or the Government of either of the Presidencies, as the case may be, if he hold any such office, the remaining half of such last named salary being at the disposal of the Government of India, or other Government as aforesaid: provided always, that no person shall be appointed a temporary Member of the said Council who might not have been appointed as hereinbefore provided to fill the vacancy supplied by such temporary appointment.

Provision for filling up temporary vacancies in Governor-General's or Governor's Executive Council

28. It shall be lawful for the Governors of the Presidencies of Fort Saint George and Bombay, respectively, from time to time to make rules and orders for the conduct of business in their Councils, and any order made or act done in accordance with such directions (except as hereinafter provided respecting laws and regulations) shall be deemed to be the order or act of the Governor in Council.

Provision for making rules for the conduct of business in Presidency Executive Councils

Constitution of Presidency Legislative Councils

29. For the better exercise of the power of making laws and regulations hereinafter vested in the Governors of the said Presidencies in Council respectively, each of the said Governors shall, in addition to the members whereof his Council now by law consists, or may consist, termed herein ordinary members, nominate to be additional members the Advocate-General of the Presidency, or officer acting in that capacity, and such other persons, not less than four nor more than eight in number, as to him may seem expedient, to be members of Council, for the purpose of making laws and regulations only; and such members shall not be entitled to sit or vote at any meeting of Council, except at meetings held for such purpose; provided that not less than half of the persons so nominated shall be non-official persons, as hereinbefore described; and that the seat in Council of any non-official member accepting office under the Crown in India shall be vacated on such acceptance.

Non-official members

Tenure of membership

30. Every additional member of Council so nominated shall be summoned to all meetings held for the purpose of making laws and regulations for the term of two years from the date of such nomination.

Resignation of membership

31. It shall be lawful for any such additional member of Council to resign his office to the Governor of the Presidency; and on acceptance of such resignation by the Governor of the Presidency, such office shall become vacant.

Provision for filling up vacancies in Presidency Legislative Council

32. On the event of a vacancy occurring by the death, acceptance of office, or resignation accepted in manner aforesaid, of any such additional Member of Council, it shall be lawful for the Governor of the Presidency to summon any person as additional Member of Council in his place, who shall exercise the same functions until the termination of the term for which the additional member so dying, accepting office, or resigning, was nominated: Provided always, that it shall not be lawful for him by such nomination to diminish the proportion of non-official members hereinbefore directed to be nominated.

33. No law or regulation made by any such Governor in Council in accordance with the provision of this Act shall be deemed invalid by reason only that the proportion of non-official additional members hereby established was not complete at the date of its introduction to the Council or its enactment.

President of Presidency Legislative Council

34. At any meeting of the Council of either of the said Presidencies from which the Governor shall be absent, the senior civil ordinary Member of Council present shall preside; and the power of making laws and regulations hereby vested in such Governor in Council shall be exercised only at meetings of such Council at which the Governor or some ordinary Member of Council, and four or more Members of Council (including under the term 'Members of Council' such additional members as aforesaid) shall be present; and in any case of difference of opinion at meetings of any such Council for making laws and regulations, where there shall be an equality of voices, the Governor, or in his absence the senior member then presiding, shall have two votes or the casting vote.

Casting vote

* * * *

Governor to determine times and places of meeting of Presidency Legislative Council and to adjourn it

36. It shall be lawful for every such Governor to appoint all subsequent times and places of meeting of his Council for the purpose of making laws and regulations under the provisions of this Act, and to adjourn or from time to time to authorize such senior ordinary Member of Council in his absence to adjourn any meeting for making laws and regulations from time to time and from place to place.

Provision for making rules for conduct of business at meetings of Presidency Legislative Council

37. Previously to the first of such meetings of their Councils for the purpose of making laws and regulations under the provisions of this Act, the Governors of the said Presidencies in Council respectively shall make rules for the conduct of business at such meetings, subject to the sanction of the Governor-General in Council; but such rules may be subsequently amended at meetings for the purpose of making laws and regulations, subject to the assent of the Governor;

Provided always, that it shall be lawful for the Governor-General in Council to disallow any such rule, and render the same of no effect.

Procedure of Presidency Legislative Council

38. No business shall be transacted at any meeting of the Council of either of the said Presidencies for the purpose of making laws and regulations (except as last hereinbefore provided), other than the consideration and enactment of measures introduced into such Council for the purpose of such enactment; and it shall not be lawful for any member or additional member to make, or for the Council to entertain, any motion, unless such motion shall be for leave to introduce some measure as aforesaid into Council, or have reference to some measures actually introduced thereinto: Provided always that it shall not be lawful for any member or additional member to introduce, without the previous sanction of the Governor, any measure affecting the public revenues of the Presidency, or by which any charge shall be imposed on such revenues.

Presidency Legislative Council not to deal with revenues

39. When any law or regulation has been made by any such Council at a meeting for the purpose of making laws and regulations as aforesaid, it shall be lawful for the Governor, whether he shall or shall not have been present in Council at such meeting, to declare that he assents to, or withholds his assent from, the same.

Measures passed by Presidency Legislative Council not to become valid until they receive Governor-General's assent

40. The Governor shall transmit forthwith an authentic copy of every law or regulation to which he shall have so declared his assent to the Governor-General; and no such law or regulation shall have validity until the Governor-General shall have assented thereto, and such assent shall have been signified by him to and published by the Governor: Provided always, that in every case where the Governor-General shall withhold his assent from any such law or regulation, he shall signify to the Governor in writing his reason for so withholding his assent.

41. Whenever any such law or regulation shall have been assented to by the Governor-General he shall transmit to the Secretary of State for India an

authentic copy thereof; and it shall be lawful for Her Majesty to signify, through the Secretary of State for India in Council, her disallowance of such law or regulation, and such disallowance shall make void and annul such law or regulation from or after the day on which such Governor shall make known by proclamation, or by signification to the Council, that he has received the notification of such disallowance by Her Majesty. Laws passed by Presidency Legislative Council with Governor-General's assent may be disallowed by Crown.

42. The Governor of each of the said Presidencies in Council shall have power, at meetings for the purpose of making laws and regulations as aforesaid, and, subject to the provision herein contained, to make laws and regulations for the peace and good government of such Presidency and for that purpose to repeal and amend any laws and regulations made prior to the coming into operation of this Act by an authority in India, so far as they affect such Presidency: Provided always, that such Governor in Council shall not have the power of making any laws or regulations which shall in any way affect any of the provisions of this Act, or of any other Act of Parliament in force, or hereafter to be in force, in such Presidency. Restrictions on law-making powers of Legislative Council

43. It shall not be lawful for the Governor in Council of either of the aforesaid Presidencies, except with the sanction of the Governor-General, previously communicated to him, to make regulations or take into consideration any law or regulation for any of the purposes next hereinafter mentioned; that is to say,

1. Affecting the Public Debt in India, or the customs duties, or any other tax or duty now in force and imposed by the authority of the Government of India for the general purposes of such Government:

2. Regulating any of the current coins, or the issue of any bills, notes, or other paper currency:

3. Regulating the conveyance of letters by the post office or messages by the electric telegraph within the Presidency:

4. Altering in any way the Penal Code of India;

as established by Act of the Governor-General in Council, No. 42 of 1860 :

5. Affecting the religion or religious rites and usages of any class of Her Majesty's subjects in India :

6. Affecting the discipline or maintenance of any part of Her Majesty's Military or Naval Forces :

7. Regulating patents or copyright :

8. Affecting the relations of the Government with foreign princes or states :

Provided always, that no law, or provision of any law or regulation which shall have been made by any such Governor in Council, and assented to by the Governor-General as aforesaid, shall be deemed invalid only by reason of its relating to any of the purposes comprised in the above list.

Provisions regarding Bombay and Madras may be extended by Governor-General in Council to Bengal, North-Western Provinces and the Punjab.

44. The Governor-General in Council, as soon as it shall appear to him expedient, shall, by proclamation, extend the provisions of this Act touching the making of laws and regulations for the peace and good government of the Presidencies of Fort St. George and Bombay to the Bengal Division of the Presidency of Fort William, and shall specify in such proclamation the period at which such provisions shall take effect, and the number of councillors whom the Lieutenant-Governor of the said division may nominate for his assistance in making laws and regulations ; and it shall be further lawful for the Governor-General in Council, from time to time and in his discretion, by similar proclamation, to extend the same provisions to the territories known as the North-Western Provinces and the Punjab respectively.

Constitution of Lieutenant-Governor's Legislative Council

45. Whenever such proclamation as aforesaid shall have been issued regarding the said division or territories respectively, the Lieutenant-Governor thereof shall nominate, for his assistance in making laws and regulations, such number of councillors as shall be in such proclamation specified ; provided, that not less than one-third of such councillors shall in every case be non-official persons, as hereinbefore described, and that the nomination of such councillors shall be subject to the sanction of the Governor-General ; and provided

Non-official members

further, that at any meeting of any such Council from which the Lieutenant-Governor shall be absent, the member highest in official rank among those who may hold office under the Crown shall preside; and the power of making laws and regulations shall be exercised only at meetings at which the Lieutenant-Governor, or some member holding office as aforesaid, and not less than one-half of the members of Council so summoned as aforesaid, shall be present; and in any case of difference of opinion at any meetings of such Council for making laws and regulations, where there shall be an equality of voices, the Lieutenant-Governor, or such member highest in official rank as aforesaid then presiding, shall have two votes or the casting vote. President. Casting vote

46. It shall be lawful for the Governor-General, by proclamation as aforesaid, to constitute from time to time new provinces for the purposes of this Act, to which the like provisions shall be applicable; and further to appoint from time to time a Lieutenant-Governor to any province so constituted as aforesaid, and from time to time to declare and limit the extent of the authority of such Lieutenant-Governor, in like manner as is provided by the Act of the seventeenth and eighteenth years of Her Majesty, chapter seventy-seven, respecting the Lieutenant-Governors of Bengal and the North-Western Provinces. Provision for constituting new provinces and Lieutenant-Governorships

47. It shall be lawful for the Governor-General in Council, by such proclamation as aforesaid, to fix the limits of any presidency, division, province, or territory in India for the purposes of this Act, and further by proclamation to divide or alter from time to time the limits of any such presidency, division, province, or territory for the said purposes: Provided always, that any law or regulation made by the Governor or Lieutenant-Governor in Council of any presidency, division, province, or territory shall continue in force in any part thereof which may be severed therefrom by any such proclamation, until superseded by law or regulation of the Governor-General in Council, or of the Governor or Lieutenant-Governor in Council of Provision for redistribution of administrative boundaries. Provision relating to legislation in case of redistribution of administrative boundaries

the presidency, division, province, or territory to which such parts may become annexed.

48. It shall be lawful for every such Lieutenant-Governor in Council thus constituted to make laws for the peace and good government of his respective division, province, or territory; and except as otherwise hereinbefore specially provided, all the provisions in this Act contained respecting the nomination of additional members for the purpose of making laws and regulations for the Presidencies of Fort Saint George and Bombay, and limiting the power of the Governors in Council of Fort Saint George and Bombay for the purpose of making laws and regulations, and respecting the conduct of business in the meetings of such Councils for that purpose, and respecting the power of the Governor-General to declare or withhold his assent to laws or regulations made by the Governor in Council of Fort Saint George and Bombay, and respecting the power of Her Majesty to disallow the same, shall apply to laws or regulations to be so made by any such Lieutenant-Governor in Council.

Provisions relating to Presidency Legislative Councils to be applicable to Lieutenant-Governors' Legislative Councils

49. Provided always, that no proclamation to be made by the Governor-General in Council under the provisions of this Act for the purpose of constituting any Council for the presidency, division, provinces or territories hereinbefore named, or any other provinces, or for altering the boundaries of any presidency, division, province, or territory, or constituting any new province for the purpose of this Act, shall have any force or validity until the sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the Governor-General.

Governor-General's power to constitute new Legislative Councils and to re-distribute administrative boundaries subject to approval of Crown

50. If any vacancy shall happen in the office of Governor-General of India when no provisional successor shall be in India to supply such vacancy, then and in every such case the Governor of the Presidency of Fort Saint George or the Governor of the Presidency of Bombay, who shall have been first appointed to the office of Governor by Her Majesty, shall hold and execute the said office of Governor-General of India

Provision for filling up temporary vacancy in office of Governor-General

and Governor of the Presidency of Fort William in Bengal until a successor shall arrive, or until some person in India shall be duly appointed thereto, and every such acting Governor General shall, during the time of his continuing to act as such, have and exercise all rights and powers of Governor General of India, and shall be entitled to receive the emoluments and advantages appertaining to the office by him supplied, such acting Governor-General foregoing the salary and allowances appertaining to the office of Governor to which he stands appointed, and such office of Governor shall be supplied for the time during which such Governor shall act as Governor-General, in the manner directed in section sixty three of the Act of the third and fourth years of King William the Fourth, chapter eight five

Temporary Governor-General may exercise all powers before taking seat in Council, except power of legislation

51 If, on such vacancy occurring, it shall appear to the Governor, who by virtue of this Act shall hold and execute the said office of Governor-General, necessary to exercise the powers thereof before he shall have taken his seat in Council, it shall be lawful for him to make known by proclamation his appointment, and his intention to assume the said office of Governor-General, and after such proclamation, and thenceforth until he shall repair to the place where the Council may assemble, it shall be lawful for him to exercise alone all or any of the powers which might be exercised by the Governor-General in Council, except the power of making laws and regulations; and all acts done in the exercise of the said powers, except as aforesaid, shall be of the same force and effect as if they had been done by the Governor-General in Council; provided that all acts done in the said Council after the date of such proclamation, but before the communication thereof to such Council, shall be valid, subject nevertheless to revocation or alteration by such Governor who shall have so assumed the said office of Governor General; and from the date of the vacancy occuring until such Governor shall have assumed the said office of Governor-General, the provisions of section sixty-two of the Act of the third

and fourth years of King William the Fourth, chapter eighty-five, shall be, and the same are declared to be, applicable to the case.

Rights of Crown and Secretary of State left intact

52. Nothing in this Act contained shall be held to derogate from or interfere with (except as hereinbefore expressly provided) the rights vested in Her Majesty, or the powers of the Secretary of State for India in Council, in relation to the government of Her Majesty's dominions in India, under any law in force at the date of the passing of this Act; and all things which shall be done by Her Majesty, or by the Secretary of State as aforesaid, in relation to such government, shall have the same force and validity as if this Act had not been passed.

7. SIR CHARLES WOOD'S SPEECH ON THE INDIAN COUNCILS BILL, 1861.

(House of Commons, June 6, 1861).

[On May 19, 1862, Sir Charles Wood wrote to Lord Elgin, "You have a Council which occasionally makes laws, and when it makes laws certain other people sit with your ordinary Councillors. But your Council is one and the same Council; and we took very great pains throughout the Act to avoid any word which could favour the action of the separate existence of a legislative council. It had been improperly so constituted by Dalhousie, and we took great pains to undo his mistake." A few days earlier the Secretary of State had reminded the Governor-General, " you have no legislative council." Probably Lord Elgin did not agree with this view. His biographer says, " the final impression left by a study of Elgin's letters to all his official correspondents is that he welcomed the idea of the additional, and especially of the non-official, legislative councillors, and that, had he lived, the legislative council would have found encouragement, and seen development, at his hands. Wood had made light of the whole affair, and refused to allow the use of terms like 'session' and 'adjournment' in dealing with it. But the constitutional good sense of Elgin saw that, after all, important people had been summoned to the meetings in question, and that it was impossible to ignore what was an actual fact."

Sir Charles Wood was an autocratic Secretary of State. He wrote to Lord Elgin on April 9, 1862, "The Home Government is the absolute power, and strong as its disposition may be to support the Government in India (as it ought), there

are limits to that. In details, and urgent matters, the Government of India ought to do everything, but in matters of *principle* it ought to be sure of the support of the Home Government; and it is foolish if it does not ensure that before it acts." This was written with reference to the conduct of Lord Canning[1]; but Lord Elgin disagreed with Sir Charles Wood's theory. He wrote to the Secretary of State on March 5, 1863, "Between the Secretary of State, who, necessarily, as 'The Times' says, represents the Great Mogul, and the little Moguls, the local Governors[2], who hold the doctrine that the interference of the Supreme Government is not only a nuisance but indefensible in principle, because it militates against the practice of local self-government, the question of whether there be any legitimate sphere of action for the Government of India, and if there be, what that sphere of action is, naturally suggests itself for consideration."[3]]

I rise to move for leave to bring in a Bill of the greatest possible importance to our Indian Empire. It modifies to a great extent the Executive Government, and—what is of still greater importance—it alters the means and manner of legislation. I can assure the House that I never felt more responsibility than in venturing to submit to it a proposal of so important and grave a character. It is hardly necessary for me to mention that the power of legislating for 150,000,000 of people, and nearly 50,000,000 whose welfare it indirectly affects, is a matter of the gravest importance, and I am quite sure that to those who have ever studied India the inherent difficulties of the question will be no less apparent. We have to legislate for different races, with different languages, religions, manners, and customs, ranging from the bigoted Mahomedan, who considers that we have usurped his legitimate position as the ruler of India, to the timid Hindoo, who, though bowing to every conqueror, is bigotedly attached to his caste, his religion, his laws, and his customs, which have descended to him uninterruptedly for countless generations. But, added to that, we have English

Difficulties of legislating for India

[1] "The later acts of Lord Canning had provoked the Home Government into a vigorous assertion of its supremacy, and repeated protests against publishing measures without any reference home." (J. L. Morison, *Life of Lord Elgin*, p. 290).

[2] The reference is to Sir Bartle Frere, Governor of Bombay.

[3] See Morison, *Life of Lord Elgin*, pp. 290-292, 294-295.

Position of 'English settlers in India'

settlers in India differing in almost every respect from the Native population, active, energetic, enterprising, with all the pride of race and conquest, presuming on their superior powers, and looking down in many respects, and, I am afraid, violating in others, the feelings and prejudices of the Native population with whom, nevertheless, they must be subject to laws passed by the legislative body in India.

I have always thought that the gravest question in modern times is the relation between civilized and less civilized nations, or between civilized portions and less civilized portions of nations, when they come in contact. The difficulty is seen in America, in Africa, in New Zealand, but nowhere in the widely extended dominions of Her Majesty has it reached such a magnitude as in India. And in this particular case the difficulty is aggravated by the circumstance that the English, who form a portion of those who are to be subjected to this legislation, are not a permanent body. They go there for a time. Officials, when their term of service has expired, and persons engaged in commercial or agricultural pursuits, when they have made a fortune, return to this country, and though the English element in India is permanent as belonging to a nation, it is most transitory when we come to consider the individuals who compose it. Such are the circumstances under which we are to legislate, and I regret to say that the recent mutiny has aggravated these difficulties. The unlimited confidence which a few years ago was felt by the European population in the Natives of India has given way to feelings of distrust. Formerly there was, at all events, no feeling of antagonism between the higher portion of official persons and the great mass of the population. The latter looked up to the Government as to a protector, and if any feeling of antagonism or jealousy existed, it existed only between them and those members of the service or the English settlers who were brought into antagonistic contact with them. When I heard some time ago that the feeling of antagonism was extending itself lower among the Natives and higher

Effect of the Mutiny

among the officers, I deeply regretted it, as the most alarming symptom of altered circumstances, which must obviously tend to increase the dangers of our position. I do not wish to dwell on this matter, but it would be folly to shut our eyes to the increasing difficulties of our position in India, and it is an additional reason why we should make the earliest endeavour to put all our institutions on the soundest possible foundations.

Europeans ignorant of feelings and opinions of Indians

It is notoriously difficult for any European to make himself intimately acquainted with either the feelings or opinions of the Native population . . . Many of the greatest mistakes into which we have been led have arisen from the circumstance that we have been, not unnaturally, perhaps, for arranging everything according to English ideas. In Bengal we converted the collectors of taxes into the permanent landowners of the country, and left the ryots to their mercy. In Madras, Sir Thomas Munro, from the most benevolent motives, and to avoid the evils of the Bengal settlement, introduced the ryotwary system. It is now asserted that a more impoverished population than that of Madras does not exist. When I was at the Board of Control it was said that the system of the North-Western Provinces was perfect. In consequence of that opinion it was introduced into the newly acquired province of Oudh. We fancied that we were benefiting the population, and relieving them from the oppression of their chiefs, but in the rebellion the ryots of Oudh took part against us and joined their chiefs in the rebellion. Subsequent to the rebellion the Indian Government, profiting by the circumstance, reverted to the old system in Oudh, and happily with the greatest success. . . .

Administrative mistakes due to importation of English ideas into Indian affairs

Necessity of caution in legislating for India

The House can hardly be aware of the extraordinary and inherent difficulties in devising a system applicable to the whole of India. It behoves us to be most careful, as a rash step may lead to most dangerous consequences. It is easy to go forward. It is difficult to go back, and I confess I am disposed to err on the side of caution and to profit by the warning of one

of the ablest Indian officers, Mountstuart Elphinstone, who said, "Legislation for India should be well considered, gradual, and slow."

The measure which I propose to introduce will effect some changes in the Executive Government of India. . . .

Addition of a jurist to Governor-General's Council

There can be no doubt that the Council of the Governor-General has suffered serious inconvenience from the absence of any Member thoroughly acquainted with the laws and principles of jurisprudence; and Lord Canning, in one of his despatches, points out how desirable it is that a gentleman of the legal profession, a jurist rather than a technical lawyer, should be added to the Council. I propose, therefore, to take powers to send out an additional member of Council. Although it is not so specified, it is intended that he should be a lawyer, and I must endeavour to find a man of high character and attainments, competent to assist the Governor-General and his Council in framing laws.

History of legislation in India

The main change proposed is, however, in the mode in which laws and regulations are enacted. The history of legislative power in India is very short. In 1773, the Governor-General in Council was empowered to make regulations for the government of India, and in 1793, those regulations were collected into a code by Lord Cornwallis. Similar regulations were applied in 1799 and 1801 to Madras and Bombay, and in 1803 they were extended to the North-West Provinces. The territory of Delhi, however, which was nominally under the sovereignty of the Great Mogul, was administered by officers of the Government of India and with such good effect that in 1815, when Lord Hastings acquired certain provinces, he determined that they should be administered in the same way by Commissioners appointed by the Government. The same system has been applied to the Punjab, Sind, Pegu, and the various acquisitions made in India since that date. The laws and regulations under which they are administered are framed either by the Governor-General in Council or by the Lieutenant-Governors or Commissioners, as the case may be, and approved by

Distinction between Regulation and Non-Regulation Provinces

the Governor-General. This difficult mode of passing ordinances for the two classes of provinces constitutes the distinction between the regulation and the non-regulation provinces, the former being those subject to the old regulations, and the latter those which are administered in the somewhat irregular manner which, as I have stated, commenced in 1815. There is much difference of opinion as to the leagality of the regulations adopted under the latter system, and Sir Barnes Peacock[1] has declared that they are illegal unless passed by the Legislative Council. The Act of 1833 added to the Council of the Governor-General a member whose presence was necessary for the passing of all legislative measures, and put the whole of the then territory of India under that body, at the same time withdrawing from Madras and Bombay the power of making regulations. Thus the whole legislative power and authority of India were centralized in the Governor-General and Council, with this additional member. So matters stood in 1853, but great complaints had emanated from other parts of India of the centralization of power at Calcutta. The practice was then introduced of placing in the Governor-General's Council members from different parts of India. The tenor of the evidence given before the Committee of 1852-53 was to point out that the Executive Council alone, even with the assistance of the legislative member, was incompetent to perform the increased duties which were created by the extension of territory. . . .

Act of 1833: centralisation of legislation

Act of 1853: concession to provinces

In consequence of the general evidence to that effect, I proposed, in 1853, a measure adding to the Council of the Governor-General, when sitting to make laws and regulations, members from the different provinces of India, together with the Chief Justice and another Judge of the Supreme Court of Bengal. My intention was, in accordance with the opinions I have cited, to give to the Council the assistance of local knowledge and legal experience in framing laws.

[1] Law Member of the Governor-General's Council; later Chief Justice of Bengal.

Defect of Legislative Council created in 1853

The Council, however, quite contrary to my intention, has become a sort of debating society, or petty parliament. My own view of its duties is expressed in a letter I wrote to Lord Dalhousie in 1853, in which I said: "I expect the non-official members of your enlarged Legislative Council to be constantly employed as a Committee of Council in working at Calcutta, on the revision of your laws and regulations." It was certainly a great mistake that a body of twelve members should have been established with all the forms and functions of a parliament. They have standing orders nearly as numerous as we have; and their effect has been, as, Lord Canning stated in one of his despatches, to impede business, cause delay, and to induce a Council, which ought to be regarded as a body for doing practical work, to assume the debating functions of a parliament . . . . the objects of the change in the position of the Governor-General's Council, when sitting for legislative purposes, have been most completely fulfilled . . . . but I think that the general opinion, both in India and England, condemned the action of the Council when it attempted to discharge functions other than those which I have mentioned—when it constituted itself a body for the redress of grievances, and engaged in discussions which led to no practical result. So much has this struck those most competent to form an opinion, that I find that the first Vice-President, Sir Laurence Peel, expresses a very decided opinion against it, and says of the Council, in a short memorandum:

True function of Legislative Council created in 1853

"It has no jurisdiction in the nature of that of a grand inquest of the nation. Its functions are purely legislative, and are limited even in that respect. It is not an Anglo-Indian House of Commons for the redress of grievances, to refuse supplies, and so forth."

These obvious objections were pointed out to me by the Government of India last year, and it was my intention to have introduced a measure upon the subject in the course of that Session. I felt, however, so much difficulty in deciding in what shape the measure should be framed, that I deferred its proposal

until the present year; and Lord Canning who was very anxious that such a measure should be passed, consented to defer his departure from India in order that he, with his great experience of that country, might introduce the change. The present constitution of the Council for legislative purposes having failed, we have naturally to consider what should be substituted and in doing so we must advert to the two extreme notions with regard to legislation which prevail in India. The notion of legislation which is entertained by a Native is that of the chief or sovereign, who makes what laws he pleases. He has little or no idea of any distinction between the executive and legislative functions of Government. A Native chief will assemble his nobles around him in the Durbar, where they freely and frankly express their opinions; but having informed himself by their communications, he determines by his own will what shall be done. (Among the various proposals which have been made for the government of India is one that the power of legislation should rest entirely on the Executive, but that there should be a consultative body; that is, that the Governor-General should assemble, from time to time, a considerable number of persons, whose opinions he should hear, but by whose opinions he should not be bound; and that he should himself consider and decide what measures should be adopted. In the last Session of Parliament Lord Ellenborough developed a scheme approaching this in character in the House of Lords; but . . . . Lord Canning considers this impossible and all the Members of his Government, as well as the Members of the India Council, concur in the opinion that, in the present state of feeling in India, it is quite impossible to revert to a state of things in which the Executive Government alone legislated for the country. (The opposite extreme is the desire which is natural to Englishmen wherever they be that they should have a representative body to make the laws by which they are to be governed. I am sure, however, that everyone who considers the condition of India will see that it is utterly impossible

Should legislation be entrusted solely to the Executive?

Expert opinion opposed to legislation by the Executive alone

Establishment of a representative legislature 'physically impossible' in India

to constitute such a body in that country. You cannot possibly assemble at any one place in India persons who shall be the real representatives of the various classes of the Native population of that empire. It is quite true that when you diminish the area over which legislation is to extend you diminish the difficulty of such a plan. In Ceylon, which is not more extensive than a large collectorate in India, you have a legislative body consisting partly of Englishmen and partly of Natives, and I do not know that that Government has worked unsuccessfully; but with the extended area with which we have to deal in India, it would be physically impossible to constitute such a body. The Natives who are resident in the town no more represent the resident Native population than a highly educated native of London, at the present day, represents a highland chieftain or a feudal baron of half a dozen centuries ago. To talk of a Native representation is, therefore, to talk of that which is simply and utterly impossible. Then comes the question to what extent we can have a representation of the English settlers in India. No doubt, it would not be difficult to obtain a representation of their interests, but I must say that of all governing or legislative bodies, none is so dangerous or so mischievous as one which represents a dominant race ruling over an extended Native population. All experience teaches us that where a dominant race rules another, the mildest form of Government is a despotism. It was so in the case of the democratic republics of Greece and the more aristocratic or autocratic sway of Rome; and it has been so, I believe, at all times and among all nations in every part of the world.

Comparison between India and Ceylon

Inexpediency of granting representation to 'English settlers in India'

I cannot, therefore, consent to create a powerful body of such a character. It must be remembered, also, that the Natives do not distinguish very clearly between the acts of the Government itself and the acts of those who apparently constitute it, namely, the members of the Legislative Council; and in one of Lord Canning's despatches he points out the mischief which have on that account arisen from

publicity.[1] He says that if publicity is to continue, care must be taken to prevent the Natives confounding the measures which are adopted with injudicious speeches which may be made in the Legislative Council.

Lord Canning's suggestions accepted by Wood

The despatches of Lord Canning contain pretty full details of the scheme which he would recommend. Those despatches have been long under the consideration of the Council of India, and with their concurrence I have framed a measure which embodies the leading suggestions of Lord Canning. I propose that when the Governor-General's Council meets for the purpose of making laws and regulations, the Governor-General should summon, in addition to the ordinary members of the Council, not less than six nor more than twelve additional members, of whom one-half at least shall not hold office under Government. These additional members may be either Europeans, persons of European extraction, or Natives. Lord Canning strongly recommends that the Council should hold its meetings in different parts of India, for the purpose of obtaining at times the assistance of those Native chiefs and noblemen whose attendance at Calcutta would be impossible or irksome to themselves. I do not propose that the judges ex-officio shall have seats in the Legislature; but I do not preclude the Governor-General from summoning one of their number if he chooses.[2] They were useful members of a body meeting as a committee

Admission of Indians into Legislative Council

Exclusion of judges from Legislative Council

[1] The reference is to the publicity of the debates in the Legislative Council.

[2] Sir George Campbell, a distinguished civil servant who held many high posts in India during the third quarter of the nineteenth century, remarks about Sir Barnes Peacock, who came to India as Law Member of the Governor-General's Council in 1852, "When he became Chief Justice of the Supreme Court in 1859, he was for a time also retained as a Member of the Legislative Council under the then constitution of that body. But in his independent position, the ex-representative of the Government proved to have a strength and will of his own very troublesome to the Government, and the next Act of Parliament, revising the constitution of the Councils and excluding the judges, was popularly said to be an Act to abolish Sir Barnes Peacock." (*Memoirs of My Indian Career*, Vol. II, p. 99).

for the purpose of discussing and framing laws, but I think it is inexpedient and incompatible with their functions that they should belong to a body partaking in any degree of a popular character. I propose that the persons nominated should attend all meetings held within a year. If you compel their attendance for a longer period you render it very unlikely that any Natives, except those resident upon the spot, will attend the meetings of the Council. This also is recommended by Lord Canning. Hon. Gentlemen will have noticed the great success which has attended the association with us of the Talookdars of Oudh and of the Sirdars in the Punjab in the duties of administering the revenue and Lord Canning has borne testimony to the admirable manner in which they have performed their duties. I believe greater advantages will result from admitting the Native chiefs to co-operate with us for legislative purposes; they will no longer feel, as they have hitherto done, that they are excluded from the management of affairs in their own country, and nothing, I am persuaded, will tend more to conciliate to our rule the minds of Natives of high rank. I have no intention of doing any thing to make this Council a debating society. I wish, to quote an expression of Sir Laurence Peel, to render them a body for making laws. The Council of the Governor-General, with these additional members, will have power to pass laws and regulations affecting the whole of India and will have a supreme and concurrent power with the minor legislative bodies which I propose to establish in the Presidencies and in other parts of India. I come now to the power of making laws which I propose to give the Governors and Councils of the other Presidencies. Lord Canning strongly feels that, although great benefits have resulted from the introduction of members into his Council who possess a knowledge of localities the interests of which differ widely in different parts of the country, the change has not been sufficient, in the first place, to overcome the feeling which the other Presidencies entertain against being overriden, as they call it, by the Bengal Council, or, on the other hand, to overcome

Value of Indian co-operation in law-making

Function of Legislative Council confined to law-making

Necessity of creating local legislatures in different parts of India

the disadvantages of having a body legislating for these Presidencies without acquaintance with local wants and necessities. This must obviously be possessed to a much greater extent by those residing on and nearer the spot. And therefore, I propose to restore, I may say, to the Presidencies of Madras and Bombay the power of passing laws and enactments on local subjects within their own territories, and that the Governor of the Presidency, in the same manner as the Governor-General, when his Council meets to make laws, shall summon a certain number of additional members, to be, as before, either European or Native, and one-half of whom at least shall not be office-holders. It is obviously necessary that these bodies should not be empowered to legislate on subjects which I may call of Indian rather than of local importance. The Indian debt, the Customs of the Country, the army of India and other matters, into the details of which it is not necessary that I should enter, belong to a class of subjects which the local legislatures will be prohibited from entering upon without the sanction of the Governor-General. I propose that Councils rather differently constituted should be established at Bengal, and, if the Governor-General thinks right, as he obviously does from his despatches, that he shall be empowered hereafter—but not without the sanction of the Secretary of State—to create a Council for the North-West Provinces, or the Punjab, or any other part of India which he may think desirable. It has been represented that the province of Pegu might, perhaps, be constituted into a separate Government with a Council. I somewhat doubt whether it is at present ripe for such a change; but when it has acquired sufficient importance, no doubt the district will be better administered in that way than it is at present. By this means, while we shall attain a general uniformity of legislation, with a sufficient diversity for the differences of each part of India, we shall, I hope, adapt the system to the wants of particular localities. It is quite clear that the public works may be better dealt with by local bodies than by a central authority;

Constitution and functions of Legislative Councils in Madras and Bombay

Creation of Legislative Council in other provinces

Question of Pegu

Question of the army

but as each district might be disposed to repudiate liability to maintain its share of the army, on the ground that it would not be first exposed to danger, and as it is highly desirable that the distribution of troops should be in the hands of the central authority, I think that the army, among others, is a subject which should be left to the general Council.) The Bill also gives power to the Governor-General in cases of emergency to pass an ordinance having the force of law for a limited period. (Questions might arise about the Arms Act, or the press, as to which it would be very injudicious that delay should occur; and we, therefore, propose to empower the Governor-General on his own authority to pass an ordinance having the force of law, to continue for a period of six months, unless disallowed by the Secretary of State or superseded by an Act of the Legislature.)

Ordinance-making power of Governor-General

8. THE INDIAN HIGH COURTS ACT, 1861. (24 & 25 Vict., C. 104)

AN ACT FOR ESTABLISHING HIGH COURTS OF JUDICATURE IN INDIA. (6th August, 1861).

[The general defects in the judicial system of British India were primarily due to the division of jurisdiction between the King's and the Company's Courts. Sir Charles Grey, Chief Justice of Bengal, pointed out in 1822 the "utter want of connection between the Supreme Court and the provincial courts and the two sorts of legal process which were employed in them." Sir Erskine Perry, Chief Justice of Bombay, referred later to "the strange anomaly in the jurisprudential condition of British India which consists in the three capital cities having systems of law different from those of the countries of which they are the capitals." "The amalgamation of the Supreme and Sadr Courts and their jurisdictions was clearly essential."[1]

The letters patent or charters relating to the High Courts of Calcutta,[2] Madras and Bombay were issued on December 28, 1865, and on their establishment the Supreme Courts and the *Sadar Adalats* ceased to exist. The original jurisdiction of the High Courts was derived from the Supreme Courts, and the appellate jurisdiction was derived from the *Sadar Adalats*.

[1] *Cambridge History of India*, Vol. VI, pp. 379-380.

[2] The charter of the High Court of Calcutta is printed in P. Mukherjee, *Indian Constitutional Documents*, Vol. I, pp. 396-411.

Section 16 of the Act of 1861 provided for the establishment of another High Court. Under this section a High Court was established at Allahabad in 1866. Ilbert says, "It is probable that the power was thereby exhausted." The Indian High Courts Act of 1911 amended the Act of 1861 and provided that "The powers of His Majesty under Section 16 of the Indian High Courts Act, 1861, may be exercised from time to time, and a High Court may be established under that Section in any portion or territories within His Majesty's dominions in India." High Courts were established at Patna, Rangoon and Nagpur under the Act of 1911.

The Indian High Courts Act, 1865, authorised the Governor-General in Council "by order, from time to time, to transfer any territory or place, from the jurisdiction of one to the jurisdiction of any other of the High Courts".]

Provision for establishing High Courts in Calcutta, Madras and Bombay

1. It shall be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, and by like Letters Patent to erect and establish like High Courts at Madras and Bombay for those Presidencies respectively

* * * *

Abolition of Supreme Court, *Sadar Dewani Adalat* and *Sadar Nizamat Adalat*

8. Upon the Establishment of such High Court as aforesaid in the Presidency of Fort William in Bengal the Supreme Court and the Court of Sudder Dewanny Adawlut and Sudder Nizamut Adawlut at Calcutta in the same Presidency shall be abolished :

And upon the Establishment of such High Court in the Presidency of Madras the Supreme Court and the Court of Sudder Adawlut and Foujdary Adawlut in the same Presidency shall be abolished :

And upon the Establishment of such High Court in the Presidency of Bombay the Supreme Court and the Court of Sudder Dewanny Adawlut and Sudder Foujdary Adawlut in the same Presidency shall be abolished :

And the Records and Documents of the several Courts so abolished in each Presidency shall become and be Records and Documents of the High Court established in the same Presidency.

Jurisdiction of High Courts

9. Each of the High Courts to be established under this Act shall have and exercise all such Civil, Criminal, Admiralty and Vice-Admiralty, Testamentary, Intestate, and Matrimonial Jurisdiction, original and appellate, and all such Powers and Authority for and in relation to the Administration of Justice in the Presidency for which it is established, as Her Majesty may by such Letters Patent as aforesaid grant and direct, subject, however, to such Directions and Limitations as to the exercise of original Civil and Criminal Jurisdiction beyond the limits of the Presidency Towns as may be prescribed thereby; and save as by such Letters Patent may be otherwise directed, and subject and without Prejudice to the legislative powers in relation to the Matters aforesaid of the Governor-General of India in Council, the High Court to be established in each Presidency shall have and exercise *all Jurisdiction and every Power and Authority whatsoever* in any manner vested in any of the Courts in the same Presidency abolished under this Act at the time of the abolition of such last-mentioned Courts.

10. Until the Crown shall otherwise provide under the Powers of this Act, all Jurisdiction now exercised by the Supreme Courts of Calcutta, Madras, and Bombay respectively over inhabitants of such parts of India as may not be comprised within the local limits of the Letters Patent to be issued under this Act establishing High Courts at Fort William, Madras, and Bombay, shall be exercised by such High Courts respectively.

All laws relating to Supreme Courts applicable to High Courts

11. Upon the establishment of the said High Courts in the said Presidencies respectively all Provisions then in force in India of Acts of Parliament, or of any orders of Her Majesty in Council, or Charters, or of any Acts of the Legislature of India, which at the time or respective times of the establishment of such High Courts are respectively applicable to the Supreme Courts, at Fort William in Bengal, Madras, and Bombay respectively, or to the Judges of those Courts, shall be taken to be applicable to the said High Courts, and to the Judges thereof respectively, so far as may be con-

sistent with the provisions of this Act, and the Letters Patent to be issued in pursuance thereof, and subject to the legislative powers in relation to the matters aforesaid, of the Governor-General of India in Council

* * * * *

High Courts invested with power of superintendence over subordinate courts

15. Each of the High Courts established under this Act shall have superintendence over all Courts which may be subject to its appellate Jurisdiction, and shall have power to call for Returns, and to direct the transfer of any Suit or Appeal from any such Court to any other Court of equal or superior Jurisdiction, and shall have Power to make and issue general rules for regulating the practice and proceedings of such Courts

Provision for creating new High *Courts*

16. It shall be lawful for Her Majesty, if at any time hereafter Her Majesty see fit so to do, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature in and for any portion of the Territories within Her Majesty's Dominions in India, not included within the limits of the local Jurisdiction of another High Court.

9. THE ROYAL TITLES ACT, 1876. (36 Vict., C. 10)

AN ACT TO ENABLE HER MOST GRACIOUS MAJESTY TO MAKE AN ADDITION TO THE ROYAL STYLE AND TITLES APPERTAINING TO THE IMPERIAL CROWN OF THE UNITED KINGDOM AND ITS DEPENDENCIES. (17TH APRIL, 1876).

[It is interesting to note that as early as 1842 Lord Ellenborough contemplated the transfer of the Imperial title from the Mughal 'King' to the Queen of England. In a letter to Lord Wellesley, which was never sent, he wrote: "I entertain the desire rather than the immediate design of inducing the Delhi family to leave the palace there, and ultimately to depose the Imperial title, with the view of placing it by the voluntary offer of the princes and chiefs of India upon the head of the Queen." To the Queen he wrote, " Lord Ellenborough cannot but feel that the anomalous and unintelligible position of the local government of India excites practical difficulties in our relations with native chiefs, who in an empire like ours have no natural place, and must

be continually in apprehension of design to invade their rights and to appropriate their territories. All these difficulties would be removed were Your Majesty to become the nominal head of the Empire. The princes and chiefs of India would be proud of their position as the feudatories of an empress; and some judicious measures calculated to gratify the feelings of a sensitive race, as well as to inspire just confidence in the intentions of their sovereign, would make the hereditary leaders of this great people cordially co-operate with the British Government in measures for the improvement of their subjects and of their dominions."[1]

The assumption of direct rule by the Crown did not involve any change in the royal title. "Disraeli had insisted at the time on the vital importance of acting upon the Indian imagination by establishing personal contact between the sovereign and the people; but it was not thought, after consideration, that the morrow of the Mutiny was an auspicious moment for Her Majesty to assume a new Indian title. The idea, however, had persisted both in Disraeli's mind and in the Queen's. Very shortly after assuming office (in 1874) he referred to it in a letter to her. The Queen thought the present a suitable time for carrying the project through, and impressed her view upon her Minister. Disraeli, with the reopened Eastern question upon his shoulders, and the Suez Canal transaction as yet unsanctioned by Parliament, would gladly have postponed this particular undertaking to a later day; but could not resist Her Majesty's pressure to accomplish, as a pendant to the Prince of Wales's visit, what he considered to be in itself eminently desirable."[2]

In 1876 Disraeli's Government introduced the Royal Titles Bill, which was 'met at every stage by the devices of faction.' Disraeli had neglected the 'customary and courteous precaution' of consulting the leaders of Opposition before introducing his Bill. When the Bill was introduced Disraeli did not say what the new title would be; the new title was revealed in the debate on the second reading. The second reading was carried by a very large majority, in spite of Gladstone's vehement opposition. "The measure was disliked by London society, and it had a bad press, *The Times* taking the lead in criticism and ridicule." The third reading was passed by a large majority, but the objectors pursued the Bill even in the House of Lords. When the Bill was finally passed "the world understood", in the words of Disraeli's biographer, "that a new pledge had been given of the determination of the British Crown to cherish India; and her Princes and peoples understood that their Sovereign had assumed towards

[1] See H. M. Durand, *Life of Sir Henry Durand*, pp. 84-85.
[2] Buckle, *Life of Disraeli*, Vol. V, pp. 456-457.

them a nearer and more personal relation." At a great *Durbar* held at Delhi on January 1, 1877, Queen Victoria was proclaimed 'Queen-Empress of India'. "Queen and Minister knew what Parliament and English society had not sufficient imagination to realise, that by the measure of the last session (*i.e.*, the Royal Titles Act), translated into act at that day's Durbar, the British *raj* in India had received a significant accession of internal and external strength; that a new and durable link had been forged between the crowned democracy of the West and the immemorial Empire of the Middle East."[1]

Sir Verney Lovett says, "It is certain that no measure ever passed by Parliament has better fulfilled its purpose than the Royal Titles Act The crown worn by Queen Victoria and her successors has been far more than a mere symbol of unity. It has been a strong power and a reconciler in India."[2]

The Imperial title was abolished after the attainment by India and Pakistan of Dominion Status in terms of the Indian Independence Act of 1947.]

* * * *

And whereas by the Act for the better Government of India passed in the session of the twenty-first and twenty-second years of the reign of Her present Majesty, Chapter one hundred and six, it was enacted that the Government of India, theretofore vested in the East India Company in trust for Her Majesty, should become vested in Her Majesty, and that India should thenceforth be governed by and in the name of Her Majesty, and it is expedient that there should be a recognition of the transfer of Government so made by means of an addition to be made to the style and titles of Her Majesty: **Preamble**

Be it therefore enacted . .

It shall be lawful for Her most Gracious Majesty, with a view to such recognition as aforesaid of the transfer of the Government of India by Her Royal Proclamation, under the Great Seal of the United Kingdom, to make such addition to the style and titles at present appertaining to the Imperial Crown of the United Kingdom and its Dependencies as to Her Majesty may seem meet. **Queen authorised to add to her title**

[1] See Buckle, *Life of Disraeli*, Vol. V, pp. 462-480, 485-487.
[2] *The Cambridge History of India*, Vol. VI, p. 225.

10. DISRAELI'S SPEECH ON THE ROYAL TITLES BILL, 1876.

(House of Commons, March 9, 1876)

Objections to the use of the Imperial title:

It has been objected that the title of Emperor or Empress denotes military dominion; that it has never or rarely been adopted but by those who have obtained dominion by the sword, retained it by the sword, and governed it by the sword; and, to use the words of a Right Hon'ble Gentleman (Mr. Lowe) who took part in the recent debate—"Sentiment clothes the title of Emperor with bad associations." Now, the House must at once feel what vague and shadowy arguments—if they can be called arguments—are these: "Sentiment clothes the title of Emperor with bad associations." I very much doubt whether sentiment does clothe the title of Emperor with bad associations. I can remember, and many Hon'ble Gentlemen can remember, the immortal passage of the greatest of modern historians,[1] where he gives his opinion that the happiness of mankind was never so completely assured, or for so long a time maintained, as in the age of the Antonines—and the Antonines were Emperors. The Right Hon'ble Gentleman may be of opinion that an Imperial title is a modern invention, and its associations to him may be derived from a limited experience of which he may be proud. But when so large a principle is laid down by one distinguished for his historical knowledge, that "sentiment clothes the title of Emperor with bad associations", I may be allowed to vindicate what I believe to be the truth upon this matter. Then a second objection was urged. It was said—"This is a clumsy periphrasis in which you are involving the country if you have not only Royal but Imperial Majesties." Now, the Right Hon. Gentleman who made the remark ought to have recollected that there would be no clumsy periphrasis of the kind. The majesty of England requires for its support no such epithet. The Queen is not "Her Royal Majesty". The Queen is described properly as "Her Majesty".

(1) 'Bad associations' of the title

(2) It involves a 'clumsy periphrasis'.

1 Gibbon

Therefore, the "clumsy periphrasis" of "Royal and Imperial Majesty" could never occur.

(3) It diminishes 'the supremacy of the Queenly title'.

There is, however, a stronger and more important objection which has been brought to the title of Empress, which has hitherto been merely assumed in argument. This greater objection I will place briefly before the House. It has been said that we diminish the supremacy of the Queenly title by investing Her Majesty, though only locally, with an Imperial dignity. Now, Sir, there appears to me to be a great fallacy in that position. I deny at once that you diminish the supremacy of the Queenly title by investing Her Majesty, though only locally, with an Imperial dignity. I deny that any Imperial dignity is superior to the Queenly title, and I defy any one to prove the reverse

Disraeli's reply

I doubt whether there is any precedent of an Emperor ranking superior to a crowned head, unless that crowned head was his avowed feudatory. I will take the most remarkable instance of Imperial sway in modern history. When the Holy Roman Empire existed, and the German Emperor was crowned at Rome and called Caesar, no doubt the Princes of Germany, who were his feudatories, acknowledged his supremacy, whatever might be his title. But in those days there were great Kings—there were Kings of France, Kings of Spain, and Kings of England—they never acknowledged the supremacy of the Head of the Holy Roman Empire[1]; and the origin, I have no doubt, of the expression of the Act of Henry VIII, where the Crown of England is described as an Imperial Crown, was the determination of that eminent Monarch, that at least there should be no mistake upon the subject between himself and the Emperor Charles V.

Case of the Holy Roman Empire

These may be considered antiquarian illustrations and I will not dwell upon them, but will take more recent cases at a time when the intercourse of nations and of courts was regulated by the same system of diplomacy which now prevails. Upon this question, then, I say there can be no mistake, for it has been

[1] See Bryce, *The Holy Roman Empire*, Chap. XII.

settled by the assent, and the solemn assent, of Europe. In the middle of the last century a remarkable instance occurred which brought to a crisis this controversy, if it were a point of controversy. When Peter the Great emerged from his anomalous condition as a powerful Sovereign—hardly recognised by his brother Sovereigns —he changed the style and title of his office from that of Czar to Emperor. That addition was acknowledged by England, and by England alone. The rulers of Russia as Emperors remained unrecognised by the great comity of nations; and after Peter the Great they still continued to bear the titles of Czar and Czarina, for more than one female Sovereign flourished in Russia about the middle of the century. In 1745, Elizabeth, Czarina of Russia, announced to her allies and to her brother Sovereigns that she intended in future to take the title of Empress, instead of Czarina. Considerable excitement and commotion were caused at all the Courts and in all the Governments of Europe in consequence of this announcement, but the new title was recognised on condition that Her Majesty should at the same time write a letter, called in diplomatic language a 'Reversal', acknowledging that she thereby made no difference in the etiquette and precedence of the European Courts and would only rank upon terms of equality with the other Crowned Heads of Europe. Upon these terms, France, Spain, Austria and Hungary admitted the Empress of Russia into their equal society. For the next twenty years under Peter II there were discussions on the subject; but he also gave a Reversal disclaiming superiority to other Crowned Heads in taking the title of Emperor. When Catherine II came to the throne, she objected to write this Reversal as being inconsistent with the dignity of a crowned Sovereign, and she herself issued an edict to her own subjects, announcing, on her accession, her rank, style, and title, and distinctly informing her subjects that, though she took that style and title she only wished to rank with the other Sovereigns of Europe. I should say that the whole of the diplomatic proceedings of the world from

Case of Russia:

(1) Peter the Great

(2) Elizabeth

(3) Peter II

(4) Catherine II

that time have acknowledged that result, and there can be no question upon the subject. There was an attempt at the Congress of Vienna to introduce the subject of the classification of Sovereigns, but the difficulties of the subject were acknowledged by Prince Metternich, by Lord Castlereagh, and by the eminent statesmen of the time; the subject was dropped, the equality of Crowned Heads was again acknowledged, and the mode of precedence of their Representatives at the different Courts was settled by an alphabetical arrangement, or by the date of their arrival and letters of credit to that Court at once and for ever. The question of equality between those Sovereigns who styled themselves Emperors and those who were Crowned Heads of ancient Kingdoms, without reference to population, revenue, or extent of territory, was established, and permanently adopted.

Failure of the Congress of Vienna (1815) to classify Sovereigns

Now, Sir, the Hon. Gentleman the Member for Glasgow (Mr. Anderson) said the other day—"If Empress means nothing more than Queen, why should you have Empress? If it means something else, then I am against adopting it." Well, I have proved to you it does not mean anything else. Then, why should you adopt it? Well, that is one of those questions which, if pursued in the same spirit, and applied to all the elements of society, might resolve itself into its original elements. The amplification of titles is no new idea; it has marked all ages, and has been in accordance with the manners and customs of all countries. The amplification of titles is founded upon a great respect for local influences, for the memory of distinguished deeds, and passages of interest in the history of countries. It is only by the amplification of titles that you can often touch and satisfy the imagination of nations; and that is an element which Governments must not despise. Well, then it is said that if this title of Empress is adopted, it would be un-English. But why un-English? I should like to know why the title is un-English. A gentleman, the other day, referring to this question now exciting Parliament and the country, recalled to the recollection

Why should the Queen adopt the Imperial title?

'Amplification of titles' would 'touch and satisfy the imagination of nations'.

Is the word "Empress" un-English?

of the public the dedication[1] of one of the most beautiful productions of the English Muse to the Sovereign of this country; and, speaking of the age distinguished by an Elizabeth, by a Shakespeare, and by a Bacon, he asked whether the use of the word "Empress," applied by one who was second in his power of expression and in his poetic resources only to Shakespeare himself, in the dedication of an immortal work to Queen Elizabeth was not, at least, an act which proved that the word and the feeling were not un-English..... That example clearly shows that the objection to this assumed adoption by Her Majesty of the title of "Empress" as un-English could hardly exist in an age when the word was used with so much honour—in an age of "words which wise Bacon and brave Raleigh spake?" I think it is obvious from these remarks, made upon the assumption that the title which Her Majesty would be pleased to adopt by her Proclamation would be "Empress", that the title would be one to which there could be no objection. I am empowered, therefore, to say that the title would be "Empress", and that Her Majesty would be "Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith and Empress of India".

Title to be assumed by the Queen

Now, I know it may be said—it was said at a recent debate and urged strongly by the Right Hon. Gentleman the Member for Bradford (Mr. W. E. Forster)—that in this addition to Her Majesty's style, and it this addition alone, we are treating without consideration the Colonies. I cannot in any way concur in that opinion. No one honours more than myself the Colonial Empire of England; no one is more anxious to maintain it. No one regrets more than I do that favourable opportunities have been lost of identifying the Colonies with the Royal race of England. But we have to deal now with another subject, and one essentially different from the Colonial condition. The condition of India and the condition of the

The new title implies no neglect of Colonies.

[1] Spenser described Elizabeth as 'Empress' in his dedication to her of his great work *Faerie Queen*.

Colonies have no similarity. The condition of Colonial society is of a fluctuating character. Its political and social elements change. There is no similarity between the circumstances of our Colonial fellow-subjects and those of our fellow-subjects in India. Colonists are English; they come, they go, they are careful to make fortunes, to invest their money in England; their interests in this country are immense, ramified, complicated, and they have constant opportunities of improving and enjoying the relations which exist between themselves and their countrymen in the metropolis. Their relations to the Sovereign are ample; they satisfy them, the Colonists are proud of those relations, they are interested in the titles of the Queen, they look forward to return when they leave England, they do return—in short, they are Englishmen.

Difference between Colonies and India

Colonists are Englishmen.

Now let me say one word before I move the second reading of this Bill upon the effect which it may have on India. It is not without consideration, it is not without the utmost care, it is not until after the deepest thought that we have felt it our duty to introduce this Bill into Parliament. It is desired in India. It is anxiously expected. The Princes and nations of India—unless we are deceived, and we have omitted no means by which we could obtain information and form opinions—look to it with the utmost interest. They know exactly what it means, though there may be some Hon. Members in this House who do not. They know in India what this Bill means, and they know that what it means is what they wish. I do myself most earnestly impress upon the House to remove prejudice from their minds and to pass the second reading of this Bill without a division. Let not our divisions be misconstrued. Let the people of India feel that there is a sympathetic chord between us and them; and do not let Europe suppose for a moment that there are any in this House who are not deeply conscious of the importance of our Indian Empire. I trust, therefore, that the House will give to this Bill a second reading without a division.

The Imperial title of the Queen is wanted by Indians.

It will be an act, to my mind, that will add splendour even to her Throne, and security even to her Empire.

11. LORD RIPON ON RELATIONS BETWEEN THE GOVERNMENT OF INDIA AND THE SECRETARY OF STATE.[1]

I. Letter to Lord Aberdare, May 24, 1881.

. There has been a marked change in the relations between the India Office and the Govt. of India since I knew the former in days gone by.[2] In those times it was considered a great mistake to attempt to govern India from London. It was held the business of the Secretary of State to lay down the general principles upon which India was to be administered, and then so long as those principles were observed to leave a large freedom to the Governor-General and to accord him a cordial support. Now-a-days, owing to a variety of causes, and among them to the telegraph and the increased facilities of communication of all kinds with England,[3] a different system to a great extent prevails, and the interference of the India Office has largely increased. The result of a year's experience does not lead me to think that the change is advantageous . The evils of the new system are aggravated just now by the fact that Hartington is immensely overworked with other than Indian matters, and that the subordinates of the India Office have therefore, I suspect, a good deal of their own way

Increasing interference of India Office

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[1] Lord Hartington and Lord Kimberley were successively at the head of the India Office when Lord Ripon served as Viceroy of India.

[2] Lord Ripon was Secretary of State for India for five months in 1866. "He had, however, a good deal to do with the India Office during the whole period of the Palmerston administration. From the time he joined it in 1859 he was in correspondence with Mansfield, Frere, and Ellis on all sorts of Indian problems, and this led him to pay frequent visits to the India Office to discuss with Sir Charles Wood the information and opinions thus confided to him." (Lucien Wolf, *Life of Lord Ripon*, Vol. I, pp. 216-217).

[3] See Dodwell, *A Sketch of the History of India*, Chap. I.

II. Letter to W. E. Forster,[1] May 26, 1881.

. .Of course the chance of succeeding in any of the objects on which I am now working depends upon the amount of support which I receive from Hartington, and after a year's experience I do not feel that I know what I may expect from that quarter. Hartington is, I imagine, greatly overworked with Parliamentary and general business, and I suspect that a good many things are practically settled by the India Office Officials, in whom my confidence is not unlimited I need not say that if the Govt. have not entire confidence in me the smallest hint would suffice to take me back to England

Secretary of State has no time to consider all matters.

III. Lord Hartington to Lord Ripon, December 11, 1882.

.I have long felt that the business of the India Office was more than I could contend with, and I much doubt whether, when very large questions have to be dealt with, it is not more than any man, with much House of Commons work and much to do in the Cabinet with subjects of general policy, can attempt to manage; and I have long felt that many of the subjects at which you have worked so hard and in which you have taken so much interest have been neglected and postponed in a way which was not fair to you, your colleagues, or India. Obstructive as you may have considered us sometimes at the India Office, there is only one opinion there as to the great zeal and ability of the present Government of India.

Difficulties of Secretary of State

12. LORD RIPON ON LOCAL SELF-GOVERNMENT, 1882.

(Memorandum to the Secretary of State, December 25, 1882).

[Lord Ripon had at one time meditated the possibility of introducing an elective element into the Imperial and Provincial Legislative Councils. This idea he abandoned later

[1] Member of Gladstone's Cabinet.

on for the policy of local self-government, which, in his view, offered a far wider educative scope. He wrote to Lord Hartington on July 13, 1882, "From an early period after my arrival here I turned my attention to the subject of Local Self-government." He was supported and assisted by Baring, to whom he wrote on November 7, 1881, "The credit is yours I feel convinced that you have laid the foundations of a system of Municipal Self-government which will confer increasing benefits." He wrote to Tom Hughes on June 12, 1882, "I am inclined to think that election by caste or occupations would in many cases be more consonant with the feelings of the people than direct election, and more likely to lead to the right sort of men coming forward as candidates.

As regards the extent of the suffrage... I do not think India is yet fit for a low suffrage; I should therefore, generally speaking, keep it moderately high at present. What I want to secure by the extension of Local Self-government is not a representation of the people of an European Democratic type, but the gradual training of the best, most intelligent, and most influential men in the community to take an interest and an active part in the management of their local affairs If the Boards are to be of any use for the purpose of training the natives to manage their own affairs, they must not be overshadowed by the constant presence of the *Burra Sahib* ; they must be left gradually more and more to run alone, although watched from without by the Executive Authorities and checked if they run out of the right course. Unless a certain freedom of action is allowed them, the best men are not likely to wish to be upon them, and they will be filled with a less reliable sort of persons, or will be, as they so often are now, mere shams."[1]

As regards the immediate success of Lord Ripon's scheme an extract may be quoted from the *Decennial Report of the Moral and Material Progress of India* for the ten years ending 1891-92: "The extension of the system of local administration, so far as the two main classes of corporations are concerned, has been regarded by the Government, not only as a measure of relief, whereby the higher executive officials might be enabled to divert their attention from the ever-increasing amount of detail to the wider interests entrusted to their charge, but as a means, also, of political education. .. the strides made in the last ten years in the desired direction have been great; the powers and responsibilities of the corporations in question have been much increased, and, in all the more settled parts of the country, the State control has been gradually restricted to just the extent necessary for the due guidance of bodies constituted on principles so novel to the

[1] See Lucien Wolf, *Life of Ripon*, Vol. II, Chapter XIX.

masses concerned. The elective system has been thoroughly established The results, speaking generally, have been fairly successful. "]

Factors creating new spirit in India

No one who watches the signs of the times in this country with even moderate care can doubt that we have entered upon a period of change : the spread of education, the existing and increasing influence of a free Press, the substitution of legal for discretionary administration, the progress of railways, telegraphs, etc., the easier communication with Europe, and the more ready influx of European ideas, are now beginning to produce a marked effect upon the people ; new ideas are springing up ; new aspirations are being called forth ; the power of public opinion is growing and strengthening from day to day ; and a movement has begun which will advance with greater rapidity and force every year. Such a condition of affairs is one in which the task of Government, and especially practically despotic Government, is beset with difficulties of no light kind ; to move too fast is dangerous, but to lag behind is more dangerous still ; and the problem is how to deal with this new-born spirit of progress, raw and superficial as in many respects it is, so as to direct it into a right course, and to derive from it all the benefits which its development is capable of ultimately conferring upon the country, and at the same time to prevent it from becoming, through blind indifference or stupid repression, a source of serious political danger. Considerations such as these give great importance to measures which, though small in themselves, are calculated to provide a legitimate outlet for the ambitions and aspirations which we have ourselves created by the education, civilization, and material progress which we have been the means of introducing into the country ; such measures will not only have an immediate effect in promoting gradually and safely the political education of the people, which is in itself a great object of public policy, but will also pave the way for further advances in the same direction, as that education becomes fuller and more widespread. It is only what ought to be expected by

Problem of government becoming more difficult

Measures of self-government should be introduced.

every thoughtful man that after 50 years of a free Press and 30 years of expanding education, with European ideas flowing into the country on every side, and old, indigenous customs, habits, and prejudices breaking down all around, as caste is breaking down through the instrumentality of railways and other similar influences, changes should be taking place in the thoughts, the desires, and the aims of the intelligent and educated men of the country which no wise and cautious Government can afford to disregard, and to which they must gradually adapt their system of administration if they do not wish to see it broken to pieces by forces which they have themselves called into being, but which they have failed to guide and to control. And even if there were no such necessity as the present circumstances of the country create for meeting the needs and providing for the aspirations of a time of change and progress, it would always be an aim worthy of the English Government in India to train the people over whom it rules more and more as time goes on to take an intelligent share in the administration of their own affairs. Among the political objects attainable in India, I see at present none higher. The credit of having set that object before the Government of India belongs to a Conservative, not a Liberal statesman[1]; but it surely behoves the friends of liberal principles in the wide, not in any narrow party sense of the words, not to let Lord Mayo's policy become unfruitful in their hands, nor to allow it to be stifled beneath the stolid indifference or the covert hostility of men who cannot understand its meaning or appreciate its wisdom[2]. There are, of

Indians should be trained to participate in government of their country.

Lord Mayo's policy should be continued.

[1] Lord Mayo's Resolution of 1870 runs as follows: "Local interest, supervision and care are necessary to success in the management of funds devoted to education, medical aid, charity and local public works. The operation of this Resolution in its full meaning and integrity will afford opportunities for the development of Self-Government, for strengthening Municipal Institutions and for the association of Natives and Europeans to a greater extent than heretofore in the administration of local affairs."

Lord Mayo's Resolution

[2] Lord Ripon wrote to Gladstone on October 5, 1882, "India is governed by a Bureaucracy which, though I sincerely

course, always two policies lying before the choice of the Government of India. The one is the policy of those who have established a free Press[1], who have promoted education[2], who have admitted natives more and more largely to the public service in various forms[3], and who have favoured the extension of self-government; the other is, that of those who hate the freedom of the Press,[4] who dread the progress of education, and who watch with jealousy and alarm everything which tends, in however limited a degree, to give the Natives of India a larger share in the management of their own affairs. Between these two policies we must choose; the one means progress, the other means

Two policies open to British Government in India

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believe it to be the best that the world has ever seen, has still the faults and dangers which belong to every institution of that kind; among these faults is conspicuously a jealousy of allowing non-officials to interfere in any way whatever with any portion, however restricted, of the administration of the country."

Lord Ripon's relations with the Bureaucracy were not very cordial. Lord Northbrook wrote to Lord Curzon when Lord Dufferin died, "I almost think the greatest of the many services he rendered to his country was the quiet way in which he managed to restore the confidence between the Indian Civil Service and the Government of India, which had been seriously shaken at the end of Ripon's administration—and Dufferin did this without crowing over Ripon."—Lord Curzon, *British Government in India*, Vol. II, p. 247.

[1] Lord Ripon repealed the Vernacular Press Act passed by Lord Lytton. See Lucien Wolf, *Life of Ripon*, Vol. II, pp. 108-114.

[2] For Lord Ripon's education policy, see Lucien Wolf, *Life of Ripon*, Vol. II, pp. 114-115.

[3] For Lord Ripon's policy regarding recruitment of Indians to the Civil Service, see Lucien Wolf, *Life of Ripon*, Vol. II, pp. 115-118.

[4] In a Minute dated May 16, 1835, Sir Charles Metcalfe observed, "His Lordship (Lord William Bentinck) . sees further danger in the spread of knowledge and the operations of the Press. I do not, for my own part, anticipate danger as a certain consequence from these causes. I see so much danger in the ignorance, fanaticism and barbarism of our subjects that I rest on the spread of knowledge some hope of greater strength and security. Then will he better be able to appreciate the good and evil of our rule.. . It is our duty to extend knowledge whatever may be the result; and spread it would even if we impeded it."

repression. Lord Lytton chose the latter. I have chosen the former, and I am content to rest my vindication upon a comparison of the results.

13. AIMS AND OBJECTS OF THE INDIAN NATIONAL CONGRESS, 1885.

(Presidential Address of Mr. W. C. Bonnerjee, First Session, Bombay, 1885).

[Towards the middle of the nineteenth century leaders of public opinion in India felt the necessity of establishing political organisations for the purpose of attracting the attention of the British Government to the grievances of the people. The British Indian Association was started in Bengal in 1851 and remained 'an active power in the land for nearly half a century'. In Bombay the leading political body was the Bombay Association, and in Maharashtra (in the Bombay Presidency) the *Poona Sarvajanik Sabha* was the principal organ of public work. In Madras the *Madras Mahajan Sabha* was established in 1881. In Bengal the Indian Association was founded in 1876. The Bombay Presidency Association was started on January 1, 1885.

The idea of establishing the Indian National Congress was conceived by Mr. A. O. Hume. Mr. W. C. Bonnerjee wrote: "Mr. A. O. Hume, C.B., had in 1884, conceived the idea that it would be of great advantage to the country if leading Indian politicians could be brought together once a year to discuss social matters and be upon friendly footing with one another. He did not desire that politics should form part of their discussion, for, there were recognised political bodies in Calcutta, Bombay, Madras and other parts of India, and he thought that these bodies might suffer in importance if when Indian politicians from different parts of the country came together, they discussed politics. His idea further was that the Governor of the Province where the politicians met should be asked to preside over their deliberations, and that thereby great cordiality should be established between the official classes and the non-official Indian politicians. Full of these ideas he saw the noble Marquis when he went to Simla early in 1885, after Lord Dufferin had in the December previous assumed the Viceroyalty of India. Lord Dufferin took great interest in the matter and after considering over it for some time he sent for Mr. Hume and told him that, in his opinion, Mr. Hume's project would not be of much use. He said there was no body of persons in this country who performed the functions which Her Majesty's Opposition did in England. The newspapers, even if they really represented the views of

the people, were not reliable and as the English were necessarily ignorant of what was thought of them and their policy in Native circles, it would be very desirable in their interests as well as the interests of the ruled that Indian politicians should meet yearly and point out to the Government in what respects the administration was defective and how it could be improved, and he added that an assembly such as he proposed should not be presided over by the Local Governor, for in his presence the people might not like to speak out their minds. Mr. Hume was convinced by Lord Dufferin's arguments and when he placed the two schemes, his own and Lord Dufferin's, before leading politicians in Calcutta, Bombay, Madras, and other parts of the country, the latter unanimously accepted Lord Dufferin's scheme and proceeded to give effect to it."

It was decided that a "Conference of the Indian National Union" would be held at Poona in December, 1885. The meeting could not take place at Poona owing to an outbreak of cholera there, and the "Conference"—then called the "Congress"—was moved to Bombay. The first session of the Indian National Congress met in the Hall of the Gokuldas Tejpal Sanskrit College, Bombay, on December 28, 1885, under the presidency of Mr. W. C. Bonnerjee, an eminent Bengali lawyer.[1]]

the objects of the Congress could for the most part be classed under the following heads :—

Objects of the Congress

(*a*) The promotion of personal intimacy and friendship amongst all the more earnest workers in our country's cause in the various parts of the Empire.

(*b*) The eradication, by direct friendly personal intercourse, of all possible race, creed, or provincial prejudices amongst all lovers of our country, and the fuller development and consolidation of those sentiments of national unity that had their origin in their beloved Lord Ripon's ever memorable reign.

(*c*) The authoritative record, after this has been carefully elicited by the fullest discussion, of the matured opinions of the educated classes in India on some of the more important and pressing of the social questions of the day.

(*d*) The determination of the lines upon, and methods by which, during the next twelve months it is

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[1] See P. Sitaramayya, *History of the Indian National Congress*, Vol. I, pp. 9-19.

desirable for native politicians to labour in the public interests.

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there were no more thoroughly loyal and consistent well-wishers of the British Government than were himself and the friends around him. In meeting to discuss, in an orderly and peaceable manner, questions of vital importance affecting their well-being, they were following the only course by which the constitution of England enabled them to represent their views to the ruling authority. Much had been done by Great Britain for the benefit of India, and the whole country was truly grateful to her for it. She had given them order, she had given them railways, and above all, she had given them the inestimable blessing of Western education. But a great deal still remained to be done. The more progress the people made in education and material prosperity, the greater would be the insight into political matters and the keener their desire for political advancement. He thought that their desire to be governed according to the ideas of government prevalent in Europe was in no way incompatible with their thorough loyalty to the British Government. All that they desired was that the basis of the government should be widened and that the people should have their proper and legitimate share in it. The discussions that would take place in this Congress would, he believed, be as advantageous to the ruling authorities as, he was sure, it would be to the people at large.

Gratitude to England

Demand for political progress not incompatible with loyalty

14. INDIAN NATIONAL CONGRESS ON THE LEGISLATIVE COUNCILS.

[On December 24, 1884, an address drafted by Mr. (later Sir) Surendra Nath Banerjee[1] was presented to Lord Dufferin by the Indian Association, in which it was stated: " the reconstitution of the Provincial Legislative Councils is one of those reforms which public opinion seems to demand with increasing urgency ... the Provincial Legislative Assemblies, as at present constituted, without the right of interpellation or any share in financial management, with their official majorities,

[1] See S. N. Banerjee, *A Nation in Making*, p. 89.

for the most part, and the non-official members owing their appointment entirely to nomination, admit of little room for the successful expression of popular opinion, and fail to command that degree of confidence which is so needful for their efficient working. Even in the neighbouring Crown Colony of Ceylon, the Legislative Council is based upon a more popular model."]

I. Resolution of the Congress, Bombay, 1885.

Reform and expansion of Legislative Councils demanded

That this Congress considers the reform and expansion of the Supreme and existing Local Legislative Councils, by the admission of a considerable proportion of elected members, and the creation of similar Councils for the North-Western Provinces[1] and Oudh and also for the Punjab, essential; and holds that all Budgets should be referred to these Councils for consideration, their members being moreover empowered to interpellate the Executive in regard to all branches of the administration; and that a Standing Committee of the House of Commons should be constituted to receive and consider any formal protests that may be recorded by majorities of such Councils against the exercise by the Executive of the power, which would be vested in it, of overruling the decisions of such majorities.[2]

II. Presidential Address of Dadabhai Naroji, Calcutta, 1886.

Demand for introduction of elective element in legislature

Another resolution is the improvement and enlargement of the Legislative Councils, and the introduction into them of an elective element . If this representation is introduced, the greatest benefit will be conferred upon the Government itself, because at present whatever Acts they pass that do not quite please us, we, whether rightly or wrongly, grumble and grumble against the Government, and the Government, and the Government only. It is true that we have some of our own people in Councils. But we have no right to demand any explanation, even from them; they are not our representatives, and the Government

Nominated Indians do not represent the people.

[1] Now called United Provinces of Agra and Oudh.

[2] Similar resolutions were passed by the Congress in 1886, 1887, 1888, 1889, 1890, 1891.

cannot relieve themselves from any dissatisfaction we may feel against any law we don't like.] If our own representatives make a mistake and get a law passed, which we do not want, the Government at any rate will escape the greater portion of the consequent unpopularity. They will say—here are your own representatives; we believed that they represented your wishes, and we passed the law. On the other hand, with all the intelligence, all the superior knowledge of the English officials, let them come as angels from heaven, it is impossible for them to enter into the feelings of the people, and feel as they feel, and enter into their minds. It is not any disparagement of them, but in the nature of things it cannot be otherwise. If you have, therefore, your representatives to represent your feelings, you will then have an opportunity of getting something which is congenial and satisfactory to yourself; and what will be satisfactory to you must also be satisfactory to and good for the Government itself.

Utility of the representative system

British officers cannot understand Indians.

III. Presidential Address of Mr. George Yule, Allahabad, 1888.

In the absence of a representative body in India, the House of Commons was to play the role of one on our behalf. It was to regard the work as a great and solemn trust committed to it by an all-wise and inscrutable Providence, the duties of which it would faithfully and fully discharge. Such was the style of language employed both in and out of Parliament at the time I alluded to. And now what is the actual state of the case? It is summed up in a single sentence. There is no check. The Bill[1] under which our affairs are administered appears, like many other Bills, to be open to more than one interpretation. The interpretation put upon it at the time, and what was probably the intention of Parliament, was this: the Government in India was to have the right of the initiative, the Council in London the right of review and the Secretary of State, subject to the ultimate judgment of

Can House of Commons compensate for representative legislature in India?

Relations between authorities in India and England

[1] Government of India Act, 1858.

the House of Commons, the right of veto. And this was partically the relation of the parties until 1870. In that year, the Duke of Argyle was Secretary of State; and in a controversy on this subject with Lord Mayo, who was then Viceroy, he laid down quite another doctrine. He held that the Government in India had no independent power at all, and that the prerogative of the Secretary of State was not limited to a veto of the measures passed in India. "The Government in India", he maintained, "were merely Executive Officers of the Home Government, who hold the ultimate power of requiring the Governor-General to introduce a measure and of requiring also all the Official Members of the Council to vote for it". This power-absorbing Despatch is dated the 24th November, 1870. The supposed powers and privileges of the Council in London have been similarly dealt with, and the Council is now regarded merely as an adjunct of the Office of the Secretary of State to furnish him with information or advice when he chooses to ask for it. The present position, then, is this: the Government in India has no power; the Council in London has no power; the House of Commons has the power, but it refuses or neglects to exercise it.[1]

Duke of Argyle's view about the powers of the Secretary of State

Government of India and India Council deprived of independent authority

"The 650 odd members who were to be the palladium of India's rights and liberties have thrown "the great and solemn trust of an inscrutable Providence" back upon the hands of Providence to be looked after as Providence itself thinks best. The affairs of India, especially in the Financial Department, have passed with no kind of check whatever into the hands of the Secretary of State. I do not blame the present members of the House of Commons for thus abdicating the functions that their predecessors of thirty years ago assumed. The truth is that they have not time enough to attend to the details of the trust; and on more important matters, they can have only one side of every question—the official side—presented to them; and they know from experience that that is not always the whole of the case. As they are not in

House of Commons has no time to deal effectively with Indian problems.

[1] See Dodwell, *A Sketch of the History of India*, Chap. I.

Only official view presented to House of Commons

a position to judge rightly, they do not attempt to judge at all; and they may fairly come to the conclusion that, if it is not worth our while to demand and agitate for some voice in our own affairs, it is not worth their while to trouble themselves at all about us.

* * * *

the change we do advocate is one of extreme moderation, and far within the limits that the circumstances of the country, in my own opinion, would justify. We don't seek to begin, as has been asserted, at the point England has reached after many generations of constitutional government. We don't want the strong meat of full age, but we want to be weaned. We say there are numbers of us, who have had the feeding bottle long enough. We desire no sudden snapping of existing ties; we ask only for the loosening of the bonds.

India's demands are moderate.

* * * *

. ... We want the Legislative Council to be expanded to an extent that will admit of the representation of the various interests in the country, as far as that may be practicable. We want half the Councils to be elected, the other half to be in the appointment of Government, and we are willing that the right of veto should be with the Executive. We also want the right of interpellation. These are the substance of our wants. We propose that the constituencies should consist of Members of Municipalities, Chambers of Commerce, Trades Associations—associations like the British Indian Association,—and, generally, all persons possessing such qualifications, educational and pecuniary, as may be deemed necessary.

Specific demands of Congress

IV. Presidential Address of Sir William Wedderburn, Bombay, 1889.

.. .... in the matter of Parliamentary control, things have gone from bad to worse, until they are now about as bad as can be. It is now more than a hundred years ago since Edmund Burke pointed out the crying

need for a strong impartial control in England over Indian affairs And Mr Fox's India Bill[1] would have provided an organised machinery for exercising this control But unhappily, owing to party struggles unconnected with India, this bill fell through, "India's Magna Carta", as Burke called it, and never since has a similar attempt been made But although no remedy was then applied, things were not so bad until the passing of the Government of India Act in 1858, which transferred the government from the Company to the Crown It is from that Act that I date our principal misfortunes Till then we had two important safeguards The first was the wholesome jealousy felt by Parliament towards the East India Company as a privileged Corporation The other was the necessity for the renewal of the Company's charter at the end of every 20 years At each of those renewals the *Company's official administration had to justify its* existence; there was a searching inquiry into grievances and there never was a renewal without the grant to the public of important reforms and concessions suited to the progressive condition of Indian affairs Now unfortunately both those safeguards are lost The official administrators, who used to be viewed with jealousy, have now been admitted into the innermost sanctum of authority; and, as Council to the Secretary of State, form a secret Court of appeal for the hearing of all Indian complaints They first decide all matters in India, and then retire to the India Council at Westminster to sit in appeal on their own decisions Such a method of control is a mockery, a sham and a delusion This evil is very far-reaching, for when a decision is passed at the India Office the Secretary of State becomes committed to it, so that if an independent member tries to take up the case in the House of Commons, he finds himself confronted, not by a discredited Company, but by the full power of the Treasury Bench. But the loss of the periodical inquiry, once at least in 20 years, is perhaps a still more serious disaster. There is now no day of

Misfortunes of India traced to transfer of government to the Crown

Criticism of India Council

No Parliamentary enquiry into Indian affairs

[1] See *Indian Constitutional Documents*, Vol I, pp 63 65

reckoning. And Indian reformers find all their efforts exhausted in the vain attempt to obtain a Parliamentary inquiry, such as was before provided without demand and without effort.

Complaints sent for decision to officials against whom they are made

I think, gentlemen, I have shown that the last state of our control is worse than the first. On the one hand, we have been deprived of our periodical inquiry into grievances, while on the other hand, all complaints are calmly referred for disposal to the very official against whom the complaints are made. I should like, by way of illustration, to give a couple of instances to show how this system works in practice. The first case I will take is that which was well-known, at the time, as the Break of Gauge controversy. In that matter General Strachey, as Public Works Member of the Viceroy's Council, held his own against the whole united public opinion of India, European and Native, official and unofficial; and the railway gauge was fixed in the way he wished it. Later on, the question came in appeal to the Secretary of State. But by that time General Strachey had retired from his position in India, and had been appointed to the India Council where he was the official adviser of the Secretary of State in matters relative to railways and public works. When, therefore, the public fancied they were appealing from the Government of India to the Secretary of State, they were really enjoying an appeal from General Strachey to himself. This instance shows how the system of the India Council is even worse in fact than in theory. One might perhaps suppose that there being 15 members of the Council, one's grievance might come before those not personally affected. But such is not the case. Each member is considered as an expert, as regards his particular province or department, and is allowed to ride his own hobby, provided he allows his colleagues also to ride their own hobbies in the way they choose.

The "Break of Gauge" controversy

15. LORD DUFFERIN ON POLITICAL ASPIRATIONS OF INDIANS, 1888.

(Speech at St. Andrew's Dinner given by Scotchmen in Calcutta, November 30, 1888).

In the earlier stages of England's connection with India, and even after the force of circumstances had transmuted the East India Company of merchants into an Imperial Executive, the ignorance and the disorganization of the peninsula consequent upon the anarchy which followed the collapse of the Mahomedan regime necessitated the maintenance of a strong uncompromising despotism, with the view of bringing order out of chaos, and a systematized administration out of the confusion and lawlessness which were then universally prevalent. But such principles of government, however necessary, have never been congenial to the instincts or habits of the English people. As soon as the circumstances of the case permitted, successive statesmen, both at home and in India itself, employed themselves from time to time in softening the severity of the system under which our dominion was originally established, and strenuous efforts were repeatedly made, not only to extend to Her Majesty's subjects in India the same civil rights and privileges which are enjoyed by Her Majesty's subjects at home, but to admit them, as far as was possible, to a share in the management of their own affairs. The proof of this is plainly written in our recent history. It is seen in our legal codes, which secure to all Her Majesty's subjects, without distinction of race or creed or class, equality before the law. It is found in the establishment of local legislative councils a quarter of a century ago, wherein a certain number of leading natives were associated with the Government in enacting measures suitable to local wants. It lies at the basis of the great principle of decentralized finance, which has prepared the way for the establishment of increased local responsibility. It received a most important development in the municipal legislation of Lord Northbrook's administration. It took a still fuller and more perfect expression during the administration of my distin-

Era of "strong uncompromising despotism"

Gradual liberalisation of Indian administration

Examples of British liberalism towards India

guished predecessor, in the Municipal and Local Boards Acts; and it has acquired a further illustration in the recommendation of the Public Service Commission, recently sent home by the Government of India, in accordance with which more than a hundred offices hitherto reserved to the Covenanted Service would be thrown open to the Provincial Service, and thus placed within the reach of our native fellow-subjects in India. And now, gentlemen, some intelligent, loyal, patriotic, and well-meaning men are desirious, of taking, I will not say a further step in advance, but a very big jump into the unknown—by the application to India of democratic methods of government, and the adoption of a parliamentary system, which England herself has only reached by slow degrees and through the discipline of many centuries of preparation. The ideal authoritatively suggested, as I understand, is the creation of a representative body or bodies in which the official element shall be in a minority, who shall have what is called the power of the purse, and who, through this instrumentality, shall be able to bring the British executive into subjection to their will.[1] The organization of battalions of native militia and volunteers for the internal and external defence of the country is the next arrangement suggested, and the first practical result to be obtained would be the reduction of the British army to one-half its present numbers. Well, gentlemen, I am afraid that the people of England will not readily be brought to the acceptance of this

Demand for introduction of Parliamentary system in India

Demand for gradual Indianisation of the army

[1] Mr. George Yule observed in his Presidential Address, Indian National Congress, Allahabad, 1888, " . if there be one thing more than another that we have tried to make clear, it is that the British Executive should continue to be paramount in the Councils the utmost we want is that half of the Councils be elected; the other half to be wholly in the nomination of the Government. These may be all officials or not, just as the Government pleases, and the Government should have the right to veto all adverse votes. Such an arrangement guarantees the supremacy of the Executive under all circumstances, aye, even if their own side vote against them. But is it to be assumed that the elected members are all to vote adversely? Is it to be supposed that any measure of the Executive will be such as to be condemned by every section of the community?"

programme, or to allow such an assembly, or a number of such assemblies, either to interfere with its armies, or to fetter and circumscribe the liberty of action either of the provincial Governments or of the Supreme Executive. In the first place, the scheme is eminently unconstitutional; for the essence of constitutional government is that responsibility and power should be committed to the same hands. The idea of irresponsible councils, whose members could arrest the march of Indian legislation, or nullify the policy of the British executive in India, without being liable to be called to account for their acts in a way in which an opposition can be called to account in a constitutional country, must be regarded as an impracticable anomaly. Indeed, so obviously impossible would be the application of any such system in the circumstances of the case, that I do not believe it has been seriously advocated by any native statesman of the slightest weight or importance. I have come into contact, during the last four years, with, I imagine, almost all the distinguished persons in India. I have talked with most of them upon these matters, and I have never heard a suggestion from one of them in the sense I have mentioned. But if no native statesman of weight or importance, capable of appreciating the true interests of England and of India, is found to defend this programme, who are those who do? Who and what are the persons who seek to assume such great powers—to tempt the fate of Phaeton, and to sit in the chariot of the Sun? Well, they are gentlemen of whom I desire to speak with the greatest courtesy and kindness, for they are, most of them, the product of the system of education which we ourselves have carried on during the last thirty years. But thirty years is a very short time in which to educate a self-governing nation from its primordial elements. At all events, let us measure the extent of educated assistance upon which we could call at this moment; let us examine the degree of proficiency which the educated classes of India have attained, and the relation of their numbers to the rest of the population. Out of the whole population of British India, which may be put

These demands not acceptable to people of England

These demands are 'eminently unconstitutional'.

These demands are not supported by 'native statesmen of the slightest weight or importance'.

These demands come from educated gentlemen.

at 200 millions in round numbers, not more than five or six per cent. can read and write, while less than one per cent. has any knowledge of English. Thus, the overwhelming mass of the people, perhaps one hundred and ninety out of the two hundred millions, are still steeped in ignorance, and of the ten or twelve millions who have acquired education, three-fourths have attained to merely the most elementary knowledge. In our recent review of the progress of education, it was pointed out that ninety-four and a half per cent. of those attending our schools and colleges were in the primary stage, while the progress made in English education can be measured by the fact that the number of students who have graduated at the universities since their establishment in 1857—that is, during the course of the last thirty-one years—is under eight thousand. During the last twenty-five years probably not more than half a million students have passed out of our schools with a good knowledge of English, and perhaps a million more with a smattering of it. Consequently, it may be said that, out of a population of 200 millions, there are only a very few thousands who may be considered to possess adequate qualifications, so far as education and an acquaintance with Western ideas or even Eastern learning are concerned, for taking an intelligent view of those intricate and complicated economic and political questions affecting the destinies of so many millions of men which are almost daily being presented for the consideration of the Government of India. I would ask, then, how any reasonable man could imagine that the British Government would be content to allow this microscopic minority to control their administration of that majestic and multiform empire for whose safety and welfare they are responsible in the eyes of God and before the face of civilization? It has been stated that this minority represents a large and growing class. I am glad to think that it represents a growing class, and I feel very sure that, as time goes on, it is not only the class that will grow, but also the information and experience of its members. At present, however, it

Educated gentlemen form a 'microscopic minority' in the Indian population.

That 'microscopic minority' cannot be allowed to control administration.

appears to me a groundless contention that it represents the people of India. If they had been really representatives of the people of India—that is to say, of the voiceless millions—instead of seeking to circumscribe the incidence of the income tax, as they desired to do, they would probably have received a mandate to decuple it. Indeed, is it not evident that large sections of the community are already becoming alarmed at the thought of such self-constituted bodies interposing between themselves and the august impartiality of English rule? These persons ought to know that in the present condition of India there can be no real or effective representation of the people, with their enormous numbers, their multifarious interests, and their tesselated nationalities. They ought to see that all the strength, power, and intelligence of the British Government are applied to the prevention of one race, of one interest, of one class, of one religion, dominating another; and they ought to feel that in their peculiar position there can be no greater blessing to the country than the existence of an external, dispassionate, and immutable authority, whose watchword is Justice, and who alone possesses both the power and the will to weld the rights and status of each separate element of the empire into a peaceful, co-ordinated and harmonious unity. When the Congress was first started, I watched its operation with interest and curiosity, and I hoped that in certain fields of useful activity it might render valuable assistance to the Government. I was aware that there were many social topics connected with the habits and customs of the people which were of unquestionable utility, but with which it was either undesirable for the Government to interfere, or which it was beyond their power to influence or control. For instance, where is there a population whose rise in the scale of social comfort and prosperity is more checked and impeded by excessive and useless expenditure on the occasion of marriages and other similar ceremonies than that of India? Or in what country is the peasant more hampered in the pursuit of his agricultural industry,

This 'microscopic minority' does not represent India.

Representation of the people not possible

British rule is a necessity for India.

Congress was expected to help Government by turning its attention to 'social topics.'

than is the Hindu or Mahomedan ryot, by chronic indebtedness to the money-lenders? Where is there a more crying need for sanitary reform than amongst those who insist on bathing in the tanks from which they obtain their drinking-water, and where millions of men, women, and children die yearly, or what is even worse, become the victims of chronic debility, disease, and racial deterioration, from preventible causes? What system could be named more calculated to cause greater searchings of the heart than some of the domestic arrangements so ruthlessly insisted upon by Hindu society? Above all, what land is exposed to such imminent danger by the overflow of the population of large districts and territories whose inhabitants are yearly multiplying beyond the number which the soil is capable of sustaining? .. ..

Well, gentlemen, as I have already observed, when the Congress was first started, it seemed to me that such a body, if they directed their attention with patriotic zeal to the consideration of these and cognate subjects, as similar Congresses do in England, might prove of assistance to the Government and of great use to their fellow-citizens; and I cannot help expressing my regret that they should seem to consider such momentous topics, concerning as they do the welfare of millions of their fellow-subjects, as beneath their notice, and that they should have concerned themselves instead with matters in regard to which their assistance is likely to be less profitable to us. It is a still greater matter of regret to me that the members of the Congress should have become answerable for the distribution—as their officials have boasted—amongst thousands and thousands of ignorant and credulous men of publications animated by a very questionable spirit, and whose manifest aim is to excite the hatred of the people against the public servants of the Crown in this country. Such proceedings as these no Government could regard with indifference, nor can they fail to inspire it with misgivings, at all events with regard to the wisdom of those who have so offended. Nor is the silly threat of one of the chief officers—the principal

Congress not interested in 'social topics'

Congress exciting hatred against British officials

secretary, I believe—of the Congress, that he and his Congress friends hold in their hands the keys not only of a popular insurrection but of a military revolt, calculated to restore our confidence in their discretion, even when accompanied by the assurance that they do not intend for the present to put these keys into the locks. But, gentlemen, though I have thought it my duty in these plain terms to point out what I consider the misapprehension of the Congress party as to the proper direction in which their energies should be employed, I do not at all wish to imply that I view with any thing but favour and sympathy the desire of the educated classes of India to be more largely associated with us in the conduct of the affairs of their country. Such an ambition is not only very natural, but very worthy, provided due regard be had to the circumstances of the country, and to the conditions under which the British administration in India discharges its duties. In the speech which I delivered at Calcutta on the occasion of Her Majesty's Jubilee, I used the following expression :—"Wide and broad, indeed, are the new fields in which the Government of India is called upon to labour, but no longer, as of aforetime, need it labour alone. Within the period we are reviewing, education has done its work, and we are surrounded on all sides by native gentlemen of great attainments and intelligence, from whose hearty, loyal, and honest co-operation we may hope to derive the greatest benefit. In fact, to an administration so peculiarly situated as ours, their advice, assistance, and solidarity are essential to the successful exercise of its functions. Nor do I regard with any other feelings than those of approval and good-will their natural ambition to be more extensively associated with their English rulers in the administration of their own domestic affairs; and glad and happy should I be if, during my sojourn amongst them, circumstances permitted me to extend and to place upon a wider and more logical footing the political status which was so wisely given a generation ago by that great statesman

Sympathy for the political aspirations of educated classes

Co-operation of educated classes essential to success of British rule

Lord Halifax,[1] to such Indian gentlemen as by their influence, their acquirements, and the confidence they inspired in their fellow-countrymen, were marked out as useful adjuncts to our Legislative Councils." To every word which I then spoke I continue to adhere; but surely the sensible men of the country cannot imagine that even the most moderate constitutional changes can be effected in such a system as ours by a stroke of the pen, or without the most anxious deliberations, as well as careful discussions in Parliament. If ever a political organization has existed where caution is necessary in dealing with those problems which affect the adjustment of the administrative machine, and where haste and precipitancy are liable to produce deplorable results, it is that which holds together our complex Indian Empire; and the man who stretches forth his hand towards the ark, even with the best intentions, may well dread lest his arm should shrivel up to the shoulder. But growth and development are the rule of the world's history, and from the proofs I have already given of the way in which English statesmanship has perpetually striven gradually to adapt our methods of government in India to the expanding intelligence and capacities of the educated classes amongst out Indian subjects, it may be confidently expected that the legitimate and reasonable aspirations of the responsible heads of native society, whether Hindu or Mahomedan, will in due time receive legitimate satisfaction. The more we enlarge the surface of our contact with the educated and intelligent public opinion of India, the better; and although I hold it absolutely necessary, not merely for the maintenance of our own power, but for the good government of the country, and for the general content of all classes, and especially of the people at large, that England should never abdicate her supreme control of public affairs, or delegate to a minority or to a class the duty of providing for the welfare of the diversified communities over which she rules, I am not the less convinced that we could, with advantage, draw more largely than we

Necessity of caution in introducing constitutional changes

Political progress will come 'in due time'.

England should not withdraw from India, or surrender her power to a minority or to a 'class'.

[1] Sir Charles Wood.

have hitherto done on native intelligence and native assistance in the discharge of our duties. I have had ample opportunities of gauging and appreciating to its full extent the measure of good sense, of practical wisdom, and of experience which is possessed by the leading men of India, both among the great nobles on the one hand, and amongst the leisured and professional classes on the other, and I have now submitted officially to the home authorities some personal suggestions in harmony with the foregoing views.

16. LORD DUFFERIN ON THE INDIAN LEGISLATURES.

I. Observations recorded in 1886.

. . . . Now I think it is desirable that the Government should make up its mind as soon as possible in regard to the policy it is determined to pursue, for evidently India is not a country in which the machinery of European democratic agitation can be applied with impunity. My own inclination would be to examine carefully and seriously the demands which are the outcome of these various movements; to give quickly and with a good grace whatever it may be possible or desirable to accord; to announce that these concessions must be accepted as a final settlement of the Indian system for the next ten or fifteen years; and to forbid mass meetings and incendiary speechifying. Putting aside the demands of the extremists . . . the objects even of the more advanced party are neither very dangerous nor very extravagant . . . . But it must always be remembered that though common sense and a certain knowledge of affairs and of the world may limit the programme of the leaders to what they think they have a chance of getting, the ideal in the minds of the major part of their followers is an India in which the British Army shall ward off invasion from without and preserve them from tyranny and usurpation of the native princes within, while they themselves shall have free scope to administer their domestic affairs untramelled by the interference of white men, except

'European democratic agitation' not to be allowed in India

Political ideal of Indian 'extremists'

perhaps in the person of a Viceroy and a limited number of high officials.

Undoubtedly the most vital and important of the notions started by the reformers is the change they propose in the Legislative Councils. I confess that soon after my arrival in the country it occurred to me that improvement might be possible in this direction, and personally I should feel it both a relief and an assistance if in the settlement of many Indian administrative questions affecting the interests of millions of Her Majesty's subjects, I could rely to a larger extent than at present upon the experience and counsels of Indian coadjutors. Amongst the natives I have met there are a considerable number who are both able and sensible, and upon whose loyal co-operation one could undoubtedly rely. The fact of their supporting the Government would popularize many of its acts which now have the appearance of being driven through the legislature by force; and if they in their turn had a native party behind them, the Government of India would cease to stand up, as it does now, an isolated rock in the middle of a tempestuous sea, around whose base the breakers dash themselves simultaneously from all the four quarters of the heavens.

Necessity of reforming Legislative Councils

Value of Indian co-operation

* * * *

In spite of the serious array of arguments which I have adduced against the change, my instincts rather propel me in the opposite direction, at all events so far as to try the experiment of liberalizing, if not the supreme, at least the subordinate Legislative Councils. Now that we have educated these people, their desire to take a larger part in the management of their own domestic affairs seems to be a legitimate and reasonable aspiration, and I think there should be enough statesmanship amongst us to contrive the means of permitting them to do so without unduly compromising our Imperial supremacy.

Provincial Legislative Councils should be 'liberalized'.

II. Minute,[1] November, 1888.

Having regard to the relation in numbers, in condition, in status, and in qualifications for government of what may be called the Europeanized or educated section of the Indian people, as compared with the masses that constitute the bulk of the nation, I am convinced that we should be falling into a great error if, miscalculating the force and value of the Congress movement and the influence of its supporters and advocates, whether in the press or elsewhere, we were to relax in the slightest degree our grasp of the supreme administration of the country. On the other hand, as long as we hold firmly to this principle, and remain fully alive to our own Imperial responsibilities, I believe that both with safety and advantage we can give full play to the legitimate and praiseworthy ambition of the loyal, patriotic, and educated classes in India, who are desirous of taking a larger share than hitherto in the transaction of the public business of their respective provinces. . . .

'Imperial responsibilities' not to be weakened

Indians should have a larger share in administration.

Fortunately, whilst the Government of India has been occupying itself in framing proposals for reconsti-

[1] This Minute was sent to the Secretary of State along with a despatch on reforms from the Government of India.

Mr. (later Sir) Pherozeshah Mehta observed in his Presidential Address, Indian National Congress, Calcutta, 1890, "In mentioning Lord Dufferin I will frankly say that we have not sufficiently recognised the great debt of gratitude which we owe to him partly through misappreciation of the course he adopted to neutralize opposition against the measures he recommended He sought an occasion when he could launch his proposals without provoking disagreement, endeavouring rather to conciliate it. The epoch-making St. Andrew's Dinner of 1888 offered him the needful opportunity. He knew Scotchmen and their matter-of-fact character He drew before his hosts a vivid and alarming picture of imaginary Congress proposals But while his excited and valiant hosts rushed off, crying Scotchmen to the rescue, to tilt at windmills, he quietly threw in a sympathetic recognition of our just and legitimate aspirations and proceeded to record a minute in which he substantially backed up the veritable Congress proposals."

Sir Surendra Nath Banerjee (*A Nation in Making*, pp. 92-93) says, "His (Lord Dufferin's) confidential despatch, which I was the first to publish in the *Bengalee* in March, 1889, formed the basis of the Parliamentary Statute of 1892."

Decentralization of financial system will provide to Provincial Councils extended scope for work.

tuting its Provincial Legislative Councils, it has also, at the suggestion and with the approval of the Secretary of State, been perfecting very important arrangements for the still further decentralization of our financial system, and for handing over to the Provincial Governments a more complete and independent control of the provincial revenues. At the same time certain powers of supplementing and increasing the local funds by provincial taxation is to be attributed to them. Thus the Provincial Councils will be admitted to a very large and important field of provincial administration, and ample scope and opportunities will be given to its members, both native and English (amongst whom an adequate number of representatives of the British mercantile interests should be certainly included), to display their statesmanship and their ability to provide for the wants and interests of the extensive *communities over which their influence and jurisdiction* will extend.

Discussion of Budget should be allowed to Viceroy's Legislative Council.

In two respects I should desire procedure in the Governor-General's Council to be amended. Under the existing law it is only when a new tax is to be imposed that the Finance Member is required to submit his financial proposals to the Legislative Council, or that any opportunity is given to the members of that body to make observations in regard to them. When there is no new taxation the Finance Member merely publishes his budget in the form of a pamphlet. For my part, I think that a yearly financial discussion in the Viceroy's Legislative Council would prove a very useful and desirable arrangement, and a very convenient preliminary to the subsequent debate which takes place on Indian finances in the House of Commons later in the year. I do not by this mean that votes should be taken in regard to the various items of the budget, or that the heads of expenditure should be submitted in detail to the examination of the Council, but simply that an opportunity should be given for a full, free, and thorough criticism and examination of the financial policy of the Government . . . .

The second change in the procedure of the

Asking of questions should be allowed in Viceroy's Legislative Council.

Supreme Legislative Council which I am inclined to recommend is, that, under proper restrictions to be laid down by the Viceroy, its members should be permitted to ask questions in reference to current matters of domestic, as distinguished from those of Imperial interest, that may have attracted public attention . . . . Under existing circumstances the Government of India has no adequate medium through which it can explain its policy, correct a wrong impression, or controvert a false statement, and, though up to the present time the consequences of the evils I have indicated may not have become very serious or widespread, they contain the germs of incalculable danger. Consequently it would prove as great an advantage to the Administration as it would frequently be a satisfaction to the members of the Council and the public at large, if reasonable opportunities were afforded of communicating to those interested the exact facts in regard to any questionable matter.

III. Observations on Liberalization of Administration.

Time ripe for further liberalization of policy

It now appears to my colleagues and to myself that the time has come for us to take another step in the development of the same liberal policy, and to give, to quote my own words, 'a still wider share in the administration of public affairs to such Indian gentlemen as by their influence, their acquirements, and the confidence they inspire in their fellow-countrymen are marked out as fitted to assist with their counsels the responsible rulers of the country'. But it is necessary that there should be no mistake as to the nature of our aims, or of the real direction in which we propose to move. Our scheme may be briefly described as a plan for the enlargement of our Provincial Councils, for the enhancement of their status, the multiplication of their functions, the partial introduction into them of the elective principle, and the liberalization of their general character as political institutions. From this it might be concluded that we were contemplating an approach, at all events as far

Outlines of the plan regarding Provincial Councils

Parliamentary and constitutional government not to be introduced

as the provinces are concerned, to English parliamentary government, and an English constitutional system. Such a conclusion would be very wide of the mark; and it would be wrong to leave either the India Office or the Indian public under so erroneous an impression. India is an integral portion, and it may be said one of the most important portions, of the mighty British Empire. Its destinies have been confided to the guidance of an alien race, whose function it is to arbitrate between a multitude of conflicting or antagonistic interests, and its government is conducted in the name of a monarch whose throne is in England. The executive that represents her *imperium* in India is an executive directly responsible, not to any local authority, but to the Sovereign and to the British Parliament. Nor could its members divest themselves of this responsibility as long as Great Britain remains the paramount administrative power in India. But it is of the essence of constitutional government, as Englishmen understand the term, that no administration should remain at the head of affairs which does not possess the necessary powers to carry out whatever measures or policy it may consider to be 'for the public interest'. The moment these powers are withheld, either by the Sovereign or Parliament, a constitutional executive resigns its functions and gives way to those whose superior influence with the constituencies has enabled them to overrule its decisions, and who consequently become answerable for whatever line of procedure may be adopted in lieu of that recommended by their predecessors. In India this shifting of responsibility from one set of persons to another is, under existing circumstances, impossible; for if any measure introduced into a legislative council is vetoed by an adverse majority, the Governor cannot call upon the dissentients to take the place of his own official advisers, who are nominated by the Queen-Empress on the advice of the Secretary of State. Consequently the vote of the Opposition in an Indian Council would not be given under the heavy sense of responsibility which attaches to the vote of a dissenting majority in a constitutional

Why constitutional government cannot be introduced in India

country; while no responsible executive could be required to carry on the government unless free to inaugurate whatever measures it considers necessary for the good and safety of the State. It is, therefore, obvious, for this and many other reasons, that, no matter to what degree the liberalization of the Councils may now take place, it will be necessary to leave in the hands of each Provincial Government the ultimate decision upon all important questions, and the paramount control of its own policy. It is in this view that we have arranged that the nominated members in the Council should outnumber the elected members, at the same time that the Governor has been empowered to overrule his Council whenever he feels himself called upon by circumstances to do so.

Ultimate control to remain with Provincial Government

But, though it is out of the question either for the supreme or for the subordinate Governments of India to divest themselves of any essential portion of the Imperial authority which is necessary to their very existence as the ruling power, paramount over a variety of nationalities, most of whom are in a very backward state of civilization and enlightenment, there is no reason why they should not desire to associate with themselves in Council in very considerable numbers such of the natives of India as may be enabled by their acquirements . . . . Nor can it be doubted that these gentlemen, when endowed with ample and unrestricted powers of criticism, suggestion, remonstrance, and inquiry, will be in a position to exercise a very powerful and useful influence over the conduct of provincial and local public business which alone it is proposed to entrust to them. As inhabitants of the country, as intimately associated with its urban and rural interests, as being in continual contact with large masses of their fellow-countrymen, as the acknowledged representatives of legally constituted bodies, or chosen from amongst influential classes, they will always speak with a great weight of authority; and as their utterances will take place in public, their opinions will be sure to receive at the hands of the press whatever amount of support their intrinsic weight or value may justify. By this

Qualified Indians to be given a chance to influence administration

Government will be able to keep in more intimate touch with the 'wishes and feelings' of the governed.

means the field of public discusssion will be considerably enlarged, and the various administrations concerned will be able to shape their course with the advantage of a far more distinct knowledge of the wishes and feelings of the communities with whose interests they may be required to deal than has hitherto been the case—for those wishes and feelings will be expressed, not, as at present, through self-constituted, self-nominated, and therefore untrustworthy, channels, but by the mouths of those who will be the legally constituted representatives of various interests and classes, and who will feel themselves, in whatever they do or say, responsible to enlightened and increasing sections of their own countrymen.

17. THE INDIAN COUNCILS ACT,[1] 1892.

(55 and 56 Vict., C. 14)

An Act to Amend the Indian Councils Act, 1861.

Increase of number of members in Governor-General's Legislative Council and also in Legislative Councils of Bombay and Madras

1. (1) The number of additional members of Council nominated by the Governor-General under the provisions of Section 10 of the Indian Councils Act, 1861, shall be such as to him may seem from time to time expedient, but shall not be less than ten nor more than sixteen; and the number of additional members of Council nominated by the Governors of the Presidencies of Fort St. George and Bombay respectively under the provisions of Section 29 of the Indian Councils Act, 1861, shall (besides the Advocate-General of the Presidency or officer acting in that capacity) be such as to the said Governors respectively may seem from time to time expedient, but shall not be less than eight nor more than twenty.

(2) It shall be lawful for the Governor-General in Council by proclamation from time to time to increase

[1] This Act was mainly based on the deliberations of a committee (appointed by Lord Dufferin), in the work of which Sir George Chesney, Sir Charles Aitchison and Mr. Westland took a prominent part.

the number of Councillors whom the Lieutenant-Governors of the Bengal Division of the Presidency of Fort William and of the North-Western Provinces and Oudh respectively may nominate for their assistance in making laws and regulations: provided always, that not more than twenty shall be nominated for the Bengal Division, and not more than fifteen for the North-Western Provinces and Oudh.. Increase of number of members in Legislative Councils of Bengal and N. W. P. and Oudh

(3) Any person resident in India may be nominated an additional member of Council under Sections 10 and 29 of the Indian Councils Act, 1861, and this Act, or a member of the Council of the Lieutenant-Governor of any province to which the provisions of the Indian Councils Act, 1861, touching the making of laws and regulations, have been or are hereafter extended or made applicable. Qualifications of members of Legislative Councils

(4) The Governor-General in Council may from time to time, with the approval of the Secretary of State in Council, make regulations as to the conditions under which such nominations, or any of them, shall be made by the Governor-General, Governors, and Lieutenant-Governors respectively, and prescribe the manner in which such regulations shall be carried into effect. Governor-General to make regulations regarding nomination of members

2. Notwithstanding any provision in the Indian Councils Act, 1861, the Governor-General of India in Council may from time to time make rules authorising, at any meeting of the Governor-General's Council for the purpose of making laws and regulations, the discussion of Annual Financial Statement of the Governor-General in Council and the asking of questions, but under such conditions and restrictions as to subject or otherwise as shall be in the said rules prescribed or declared: and notwithstanding any provisions in the Indian Councils Act, 1861, the Governors in Council of Fort St. George and Bombay respectively, and the Lieutenant-Governor of any province to which the provisions of the Indian Councils Act, 1861, touching the making of laws and regulations, have been or are hereafter extended or made applicable, may from time to time make rules for authorising, at any meeting of their Modification of procedure regarding business in Legislative Councils: provision regarding discussion of budgets and 'asking of questions'

respective Councils for the purpose of making laws and regulations, the discussion of the Annual Financial Statement of their respective local Governments, and the asking of questions, but under such conditions and restrictions, as to subject or otherwise, as shall in the said rules applicable to such Councils respectively be prescribed or declared. But no member at any such meeting of any Council shall have power to submit or propose any resolution, or to divide the Council in respect of any such financial discussion, or the answer to any question asked under the authority of this Act, or the rules made under this Act: provided that any rule made under this Act by a Governor in Council, or by a Lieutenant-Governor, shall be submitted for and shall be subject to the sanction of the Governor-General in Council, and any rule made under this Act by the Governor-General in Council shall be submitted for and shall be subject to the sanction of the Secretary of State in Council: provided also that rules made under this Act shall not be subject to alteration or amendment at meetings for the purpose of making laws and regulations.

Meaning of "Indian territories under Her Majesty"

3. It is hereby declared that in the twenty-second section of the Indian Councils Act, 1861, it was and is intended that the words "Indian territories now under the dominion of Her Majesty" should be read and construed as if the words "or hereafter" were and had at the time of the passing of the said Act been inserted next after the word "now"; and further, that the Government of India Act, 1833, and the Government of India Act, 1853, respectively, shall be read and construed as if at the date of the enactment thereof respectively, it was intended and had been enacted that the said Acts respectively should extend to and include the territories acquired after the dates thereof respectively by the East India Company, and should not be confined to the territories at the dates of the said enactments respectively in the possession and under the government of the said Company.

4. Sections 13 and 32 of the Indian Councils Act, 1861, are hereby repealed, and it is enacted that—

(1) If any additional member of Council, or any member of the Council of a Lieutenant-Governor, appointed under the said Act or this Act, shall be absent from India or unable to attend to the duties of his office for a period of two consecutive months, it shall be lawful for the Governor-General, the Governor, or the Lieutenant-Governor, to whose Council such additional member or member may have been nominated (as the case may be), to declare, by a notification published in the Government Gazette, that the seat in Council of such person has become vacant :

Vacancies in Legislative Councils

(2) In the event of a vacancy occurring by the absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, of any such additional member or member of the Council of a Lieutenant-Governor, it shall be lawful for the Governor-General, for the Governor, or for the Lieutenant-Governor, as the case may be, to nominate any person as additional member or member, as the case may be, in his place ; and every member so nominated shall be summoned to all meetings held for the purpose of making laws and regulations for the term of two years from the date of such nomination : provided always that it shall not be lawful by such nomination, or by any other nomination made under this Act, to diminish the proportion of non-official members directed by the Indian Councils Act, 1861, to be nominated.

How vacancies are to be filled up

5. The local legislature of any province in India may from time to time, by Acts passed under and subject to the provisions of the Indian Councils Act, 1861, and with the previous sanction of the Governor-General, but not otherwise, repeal or amend as to that province any law or regulation made either before or after the passing of this Act by any authority in India other than that local legislature : provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the Governor-General in pursuance of the Indian Councils Act, 1861, shall not be deemed invalid by reason only of its requiring

Power of Provincial Legislatures to repeal or amend laws

the previous sanction of the Governor-General under this section.

6. In this Act the expression "local legislature" means :

Definitions of "Local Legislature" and "Province"

(1) The Governor-in-Council for the purpose of making laws and regulations of the respective provinces of Fort St. George and Bombay ; and

(2) The Council for the purpose of making laws and regulations of the Lieutenant-Governor of any province to which the provisions of the Indian Councils Act, 1861, touching the making of laws or regulations have been or are hereafter extended or made applicable :

The expression "Province" means any presidency, division, province, or territory over which the powers of any local legislature for the time being extend.

7. Nothing in this Act shall detract from or diminish the powers of the Governor-General in Council at meetings for the purpose of making laws and regulations.

18. CURZON'S[1] SPEECH ON THE INDIAN COUNCILS BILL, 1892.

(House of Commons, March 28, 1892).

Objects of the Bill

The object of this Bill was to widen the basis and expand the functions of the Government of India, to give further opportunities than at present existed to the non-official and native element in Indian society to take part in the work of government, and in that way to lend official recognition to that remarkable development both in political interest and capacity which had been visible among the higher classes of Indian society since the government was taken over by the Crown in 1858. In form this Bill was one to amend the Indian Councils Act of 1861 . . . .

[1] He was then Under-Secretary of State for India.

The Act of 1861 constituted three Legislative Councils in India—the Supreme Council of the Viceroy and the Provincial Councils of Madras and Bombay. . . . . Since the passing of the Act of 1861 Legislative Councils had also been called into existence in Bengal and in the North-Western Provinces . . . . This system had undoubtedly worked well. It had justified itself and the anticipation of its promoters. Operating to a very large extent through the agency of sub-committees, composed of experts, it had proved to be an efficient instrument for the evolution of law. The publicity which had attended its proceedings had had a good effect, a number of native gentlemen of capacity and public spirit had been persuaded to come forward and lend their services, and undoubtedly the standard of merit in these Councils had been high.

Success of the system introduced in 1861

At the same time these Councils had been subject to restrictions and limitations which were intentionally, and he thought wisely, imposed upon them. In the first place, they were in no sense of the term Parliamentary bodies. They were deliberative bodies with a comparatively narrow scope, inasmuch as they were assembled for the discussion of the immediate legislation which lay before them and were not permitted to travel outside that very circumscribed area. Under these circumstances it had been felt that there was wanting to the Government an opportunity for replying to hostile criticism or attack,[1] and at the same time that there was also wanting to the non-official element—to those who might legitimately call themselves the guardians of the public interest—an opportunity of asking for information, of stating their grievances, and of becoming acquainted with the policy of the Government. These feelings had been expressed in many memorials that had been addressed,

'Restrictions and limitations' imposed on Councils by Act of 1861

Necessity of relaxing those 'restrictions and limitations'

[1] Referring to this statement Lord Ronaldshay says, "He (*i.e.*, Lord Curzon) now reaped the advantage of this wise provision, and throughout the period of his Viceroyalty he made full use of the annual discussion on the Budget for expounding the policy of his Government."—*The Life of Lord Curzon*, Vol. II, p. 106.

over a large number of years, to the Government of India by important public bodies and associations throughout the country. Lord Dufferin, in February, 1887, the occasion being the celebration of the Queen's Jubilee, spoke of the desirability of reconstituting the Supreme Legislative Council of the Viceroy on a broader basis and of enlarging its functions; and in November of the following year he sent home a despatch[1] in which he recommended, in the first place, an early financial discussion in the Supreme Legislative Council of the Budget of the year. Lord Dufferin said in that despatch that he did not mean that votes should be taken in regard to the various items of the Budget, or that the heads of expenditure should be submitted in detail to the Council, but simply that the opportunity should be given for a full, free, and thorough criticism and examination of the financial policy of the Government. In the same despatch Lord Dufferin suggested that questions should be asked in the Supreme Legislative Council on matters dealing with native as opposed to Imperial interest.

Views and recommendations of Lord Dufferin

In 1888 Lord Dufferin left India, and early in the following year he was succeeded by the eminent statesman who now holds the office of Viceroy. Since his accession to the Viceroyalty Lord Lansdowne had signified his approbation of the annual discussion of the Budget in the manner suggested, and also of the right of addressing questions to the Government on matters of public interest. Both these propositions were treated of in a despatch by the Secretary of State[2] in August, 1889, and he dealt with them in relation to the Legislative Council of the Viceroy and also to the Provincial Councils. In the same despatch the noble Lord signified his desire for the enlargement of the representation of the public in India by an addition to the number of members of the Council and by some extension of the present system of nomination. Inasmuch as this could not be carried into effect without legislation, the noble Lord had enclosed in the despatch

Lord Dufferin's views supported by Lord Lansdowne

Response of Secretary of State

[1] See Document No. 16.
[2] Lord Cross.

a draft Bill, upon which he invited the opinions of the Central and the Provincial Governments of India. These and other criticisms and suggestions were found to be eminently favourable to the contemplated measure, and from these germs sprang the Indian Councils Bill

A few words as to the Parliamentary history of the measure. It had been in no ordinary degree the victim of Parliamentary vicissitudes, and up to the present its career had been one of mingled success and disappointment. It was introduced for the first time in the House of Lords in 1890, and a most important discussion—a model of what such a discussion should be—took place on the second reading. In Committee a number of important and valuable amendments were made by noble Lords who had had experience in the government of India. So amended, the Bill passed and came down to the House of Commons, where it did not succeed in getting beyond the first reading. In 1891 it was introduced in the House of Commons and fell a victim to hardship of fortune or the immoderate interest displayed by the Opposition in other topics of Parliamentary interest. In the present year the Bill was again introduced into the House of Lords in its amended form of 1890, and it had passed through its various stages without alteration, but supported by expressions of strong approval from several noble Lords. The delay in passing the Bill had naturally been a source of regret to the Government at home, and regret had been equally felt in India, where there was a good deal of disappointment at the tardy arrival of a long-promised reform and at the apparent willingness of this House to postpone the consideration of a non-controversial and constitutional change for India for the perennial and unprofitable discussion of constitutional changes of a highly controversial character for other parts of the United Kingdom nearer home,[1] which, from an Indian point of view, were infinitesimally small and comparatively unimpor-

The Bill in House of Lords

The Bill in House of Commons

The Bill in House of Lords

Disappointment caused by delay in passing the Bill

[1] The reference is to the Irish Home Rule Movement.

tant. This disappointment in India had been legitimate, and undoubtedly it had been felt by the present Viceroy, who, having inauguarated his term of office by signifying his hearty approval of this Bill, had naturally looked forward to being able to carry it into execution before his term of office expired. These feelings were shared by members of the House In July of last year the British Committee of the Indian National Congress, who might be supposed to represent the more extreme views on this subject, addressed a letter to the Secretary of State, in which they expressed their deep regret at the withdrawal of the Bill, which would cause such bitter disappointment in India. In the present year Lord Kimberley, who had been Secretary of State for India, had spoken in the same sense, adding :

Lord Kimberley's view

"I echo most sincerely the hope that this measure will be pressed by Her Majesty's Government and will pass into law. It is really a misfortune that a measure of this kind should be hung up Session after Session. However important to us may be our domestic legislation, let us not forget that we have an immense responsibility in the government of that great Empire in India, and that it is not well for us to palter long with questions of this kind. And I am the more desirous that this measure should be dealt with because I have observed with great pleasure that in India the tone has much moderated in dealing with this subject, and that very sensible views have been expressed at meetings held in India ; and there is now a reasonable promise that there will be an agreement as to a tentative and commencing measure upon this subject. We must not look for it all at once ; but if we can make a beginning I believe we shall lay the foundation for what may be a real benefit and a real security to our Indian Empire."

Public opinion in India

It was a legitimate inference from these expressions of opinion that the Bill would be welcomed on both sides of the House, and that even those who held advanced views would facilitate its passing. The changes which it was proposed to make by

the Bill were, broadly speaking, three in number. The first was the concession of the privilege of financial criticism in both the Supreme and the Provincial Councils; the second was the concession of the privilege of interpellation; the third was the addition to the number of members in both classes of Councils. First as regarded financial discussion, under the existing law this was possible only when the Finance Minister proposed a new tax. At other times the Budget in India was circulated in the form of a pamphlet, and no discussion could take place upon it. During the 30 years since the Councils Act of 1861 there had been 16 occasions upon which new legislation had been called for and such discussion had taken place and there had been 14 on which there had been no discussion at all. By this Bill power would be given to discuss the Budget annually in both the Supreme and the Provincial Councils. It was not contemplated, as the extracts read from the despatch of Lord Dufferin would show, to vote the Budget in India item by item, as was done in that House, and to subject it to all the obstacles and delays Parliamentary ingenuity could suggest; but it was proposed to give opportunity to the members of the Councils to indulge in a full and free criticism of the financial policy of the Government, and he thought that all parties would be in favour of such a discussion. The Government would gain, because they would have the opportunity of explaining their financial policy, of removing misapprehension, and of answering criticism and attack; and they would profit by criticism delivered on a public occasion with a due sense of responsibility and by the most competent representatives of unofficial India. The native community would gain, because they would have the opportunity of reviewing the financial situation independently of the mere accident of legislation being required for any particular year, and also because criticism upon the financial policy of the Government, which now found vent in anonymous and even scurrilous papers in India, would be uttered by responsible persons in a public position. Lastly,

Changes introduced by the Bill: (1) Privilege of financial criticism, (2) Privilege of interpellation, (3) Increase in number of members

Utility of financial criticism

the interests of finance would gain by this increased publicity and the stimulus of a vigorous and instructive scrutiny. These discussions could have no other result than to promote sound economical administration in India. It was now 20 years since Lord Mayo, that wise and enlightened Viceroy, first proposed the submission of Provincial Budgets to Provincial Councils. At that time he was overruled by the Government at home, which he believed was one of the Governments of the right hon. gentleman opposite.[1]; at any rate he hoped both sides of the House would now co-operate in making a change which spoke for itself. The second change introduced by the Bill was the concession of the right of interpellation or of asking questions. It was proposed to give to members of both Councils, the Supreme and the Provincial Councils, this right of asking questions on matters of public interest. But both this privilege and the one to which he had previously alluded would be subject, under the terms of the Act, to such conditions and restrictions as might be prescribed in rules made by the Governor-General or the Provincial Governors. The merits of the proposal, he thought, were obvious. It was desirable, in the first place, in the interests of the Government, which at the present moment was without the means of making known its policy or of answering criticisms or animadversions or of silencing calumny. And it was also desirable in the interests of the public of India who, in the absence of official information, were apt to be misled, to form erroneous apprehensions, and to entertain unjust ideas. The third proposal was to add to the number of members upon the Councils. The Supreme Legislative Council consisted at present, in addition to its ex-officio members, who number 7, of a minimum of 6 and a maximum of 12 nominated members; under the Bill the minimum would be raised to 10 and the maximum to 16. The Madras and Bombay Councils consisted, in addition to their 4 ex-officio members, of a minimum of 4 and a maximum of 8 nominated members, of whom half

Lord Mayo's view

Utility of interpellation

Increase in number of members of Supreme and Provincial Councils

were non-official, under the Bill the minimum would be 8 and the maximum 20 The Council of Bengal consisted at present of 12 nominated members, of whom one third were non official, under the bill the number would be increased to 20 The Council of the North-Western Provinces at present consisted of 9 nominated members, of whom also one-third must be non official, under the Bill they would be raised to 15 The object of these additions was easily stated and would be as easily understood It was simply, by extending the area of selection in each case, to add to the strength and representative character of the Councils

* * * *

Every year most fortunately the number of native gentlemen who were both qualified and willing to take part in the work of government was increasing, and every year the advantage of their co-operation in government increased in the same ratio. More especially in the case of the Provincial Councils had it been thought that more effectual means were wanted to reinforce in those Councils unofficial and native opinion The Government believed that the moderate extension of the numbers which they proposed would have the effect which they contemplated, and at the same time would be compatible with efficiency. Coming to the concluding question, the mode in which those additional members were to be appointed, he noticed that the hon member for North Manchester had on the paper an amendment declaring that no reform of the Indian Councils which did not embody the elective principle would prove satisfactory But the Bill, he had to point out, did not exclude some such principle, be the method election, or selection, or delegation, or whatever particular phrase they liked to employ.

Increasing capacity and desire of Indians to take part in government

Question of introducing elective principle

Lord Kimberley himself had elsewhere, in an earlier stage of this Bill, expressed himself with reference to this clause[1] as follows :

[1] Sub section 4, Clause 1

Lord Kimberley's view on elective principle

"I am bound to say that I express my own satisfaction because I regard this as, to a certain extent, an admission of the elective principle."..... ."I myself believe that under this clause it would be possible for the Governor-General to make arrangements by which certain persons may be presented to him, having been chosen by election, if the Governor-General should find that such a system can be established."

Mr. Maclean: Does the Government accept that view of Lord Kimberley?

Mr. Curzon: Undoubtedly, Sir, the opinions expressed by Lord Kimberley are also shared by the Secretary of State. Under this Act it would be in the power of the Viceroy to invite representative bodies in India to elect or select or delegate representatives of themselves and of their opinions to be nominated to those Houses, and thus by slow degrees, by tentative measures—and measures like this could not be otherwise than tentative—they should perhaps approximate to the ideal which the hon. member of Manchester had in view. He might mention as indicating and nothing more—the character of the bodies and associations to which he alluded, such bodies as the association of the Zemindars of Bengal, the Chambers of Commerce of India, the municipalities of the great cities, the Universities, and perhaps the various great religious denominations in that country. He could not conceive anything more unfortunate than that this House should draw up and send out to India a hard and fast elective scheme within the four walls of which the Government of that country should find itself confined, and which, if at some future period it proved inadequate or unsuitable, it would be impossible to alter without coming back to this House, and experiencing all the obstacles and delays of Parliamentary government in this House. He was well aware the proposal of the Government might not altogether suit those hon. gentlemen on the other side whose ideas of political progress had been formed in the breathless atmosphere of our life in the West and who were perhaps unable to accommodate their mood to the slower movement of life in the East.

Probable electorates

No rigid scheme of election possible

The hon. member opposite, for instance, was anxious to have the elective principle more clearly defined and more systematically enforced. He had put an amendment on the paper in which he asked the House to express the opinion that no reform of the Indian Councils which does not embody the elective principle will prove satisfactory to the Indian people or will be compatible with good government of India. The amendment was vitiated by a two-fold fallacy. It affected to speak on behalf of the Indian people, and it ignored the primary conditions of Indian life. When the hon. member presumed to be the mouthpiece of the people of India we must, with all respect, decline to accept his credentials on that point. No system of representation ever devised, no system of representation that the ingenuity of the hon. member could suggest, no system of representation which would bear 24 hours' test of operation, could possibly represent the people of India. The people of India were voiceless millions, who could neither read nor write their native tongue, who had no knowledge whatever of English, and who were not perhaps universally aware that the English were in their country as rulers. The people of India were ryots and peasants, and the plans and policies of the Congress party in India would leave this amorphous residuum absolutely untouched. He did not desire to speak in any other than respectful terms of the Congress party, which contained a number of intelligent, capable and public-spirited men. They undoubtedly represented that part of the Indian population which had profited by the educational advantages we had placed at their doors; but constitutencies the Congress party represented could not be described otherwise than as a minute and microscopic minority of the population. According to the last census the population of British India was 221 millions, and of that total it was calculated that not more than three or four per cent. could read or write in any of their native tongues, and only one-fourth or one-third per cent. could read or write in English. It appeared to him that we could as little judge of the feelings and political aspirations

Criticism of demand for elective principle

No system of representation suitable to India can be devised.

Congress does not represent India.

Illiteracy and absence of political consciousness in India

of the people of india,—if, indeed they had any aspirations outide the more material needs of their existence —from the plans and policies of the Congress party as we could judge of the physical configuration of a country which was wrapped in the mists of the early morn, though all its topmost peaks might happen to be touched by the sun. To propose an elaborate system of representation for people in this stage of development might be at least premature and unwise; and even with such a scheme to speak of the representation of the people of India would be a misuse of terms. The Government assumed the responsibility of stating that in their opinion the time had not come when representative institutions, as we understood the term, could be extended to India. The idea of representation was alien to the Indian mind. We had ourselves only arrived at it by slow degrees, and it was only in the last 25 years[1] that we had in this country entered into the full enjoyment of that system. While it was impossible so to remodel the Indian Councils as to give them the character of representative chambers, he would be sorry to deny the importance of criticism by gentlemen representing the native society in India. At present the sole vent available for that opinion was in the native Press and in organized meetings, such as the Indian National Congress. Everybody agreed that this knowledge and activity might be better utilized, and the Government believed that sub-section 4 of Clause I would provide means by which representatives of the most important sections of native society would be appointed to the Councils. The Bill was, perhaps, not a great or an heroic measure, but at the same time it marked a decisive step, and a step in advance. As such it had been welcomed by every living Viceroy of India. It was foreshadowed by Lord Dufferin, it was earnestly asked for by Lord Lansdowne, and it had received the emphatic approval of Lord Northbrook not less than of Lord Ripon. There were two main objects which the House was entitled to

Idea of representation alien to India

Criticism of Government measures by competent Indians welcomed

Bill approved by all living Viceroys

[1] Since the Reform Act of 1867.

require in new legislation for India—that it would in no sense impair the efficiency of government and that it should also promote the interests of India. It was because he believed the measure would promote both these ends that he commended the Bill to the sympathetic attention of the House.

19. GLADSTONE'S SPEECH ON THE INDIAN COUNCILS BILL, 1892.

(House of Commons)

[Sir Surendra Nath Banerjee says that Gladstone's speech on the Bill of 1892 was probably due to his interview with the Congress Deputation to England, which included Sir Pherozeshah Mehta, Mr. Monomohan Ghose, Mr. R. N. Mudholkar, Sir Surendra Nath Banerjee, and others[1].]

As far as controversy is concerned, I hope that this debate may be compressed within narrow limits. My hon. friend the member for Manchester has asked the House by his amendment to declare that, in its opinion, no reform of the Indian Councils can be satisfactory which does not embody the elective principle. Looking at the Bill and the amendment, I have to ask myself whether there is between them such a difference of opinion and principle as to make me desirous of going to an issue on that difference. Undoubtedly, looking at the Bill standing by itself, I am disposed to agree with my hon. friend that its language is insufficient and unsatisfactory in as far as it is ambiguous. But the Under-Secretary[2] has introduced the Bill in a comprehensive and lucid speech, and if I were to criticize any portion of that speech it would be that portion of it in which the hon. gentleman addressed himself to the amendment before the House, because it appeared to be his object to put upon the amendment the most hostile construction it would bear. I, however, desire to put upon the speeches I have heard, and upon the Bill itself, the least controversial construction of which they are fairly susceptible. While the language of the Bill cannot be said to

Remarks on amendment regarding introduction of elective principle

[1] *A Nation in Making*, p. 143.
[2] Mr. G. N. Curzon.

Remarks on Sub-section 4, Clause I

embody the elective principle, it is very peculiar language, unless it is intended to pave the way for the adoption of that principle. I believe it was suggested by a nobleman in the House of Lords, who is friendly to the elective principle in India, that, unless it had been intended to leave room for some peculiarities not yet introduced into the Indian system in the appointment of the members of the Councils under this Bill, it would have been a very singular form of speech to provide not simply that the Governor-General might nominate, but that he might make regulations as to the conditions under which such nominations should be made either by himself or by the Government in Council. It is plain that those who have adopted that language have in view something beyond mere nomination. Then I come to the speech of the Under-Secretary, which distinctly embodied something which I confess appears to me to be not very different from the assertions of my honourable friend, except in the important point that the Under-Secretary proposes to leave everything to the discretion, judgment and responsibility of the Governor-General and the authorities in India. With that limitation the speech of the Under-Secretary appears to me to embody the elective principle in the only sense in which we should expect it to be embodied. My construction of the Under-Secretary's speech is that it implies that a serious effort should be made to consider carefully those elements which, in the present condition of India, might furnish material for the introduction into the Councils of the elective principle. If that serious effort is to be made, by whom is it to be made? I do not think that it can be made by the House of Commons except through the medium of empowering provisions. It is our business to give to those representing Her Majesty's Government in India ample information as to what we believe to be sound principles of government. It is the function of this House to comment upon any case in which we think the authorities in India have failed to give due effect to those principles; but in the discharge of their high adminis-

Remarks on Curzon's speech

Parliament should lay down principles, leaving details to Government of India.

trative functions, or as to the choice of means, there is no doubt that that should be left in their hands. It is evident that the great question—and it is one of great and profound interest—before the House is that of the introduction of the elective element into the government of India. That question overshadows and absorbs everything else. It is a question of vital importance; but it is at the same time of great difficulty. No more difficult office has ever been entrusted to a Governor-General than that of administering a Bill such as that which is now before the House in a manner that shall be honourable and wise. I am not disposed to ask of the Governor-General, or of the Secretary of State, that they shall at once produce large and imposing results. What I wish is that their steps shall be of a genuine nature and that whatever scope they give to the elective principle shall be real.

True representatives of India should be discovered.

There are, of course, dangers in their way. There is the danger of subserviency. There is the danger of having persons who represent cliques, classes, or interests, and who may claim the honour of representing the people of India. . . . What we want is to get at the real heart and mind, the most upright sentiments, and the most enlightened thoughts of the people of India, but it is not an easy matter to do that. I think, however, that upon this point we are justified in being a little more sanguine than the Under-Secretary has been in his speech. The honourable member, however, did not venture to indicate where the materials for the elective element in India are to be found. Undoubtedly, as far as my own prepossessions go, I should look presumptively with the greatest amount of expectation and hope to the municipal bodies of India, and to the local authorities, in which the elective element is already included in that country. . . . . Her Majesty's Government ought to understand that it will be regarded as a most grave disappointment if, after all the assurance we have received that an attempt will be made to bring into operation this

powerful engine of government,[1] there should not be some such result as we anticipate from their action. I do not speak of its amount, I speak more of its quality. In an Asiatic country like India, with its ancient civilization, with its institutions so peculiar, with such a diversity of races, religions, and pursuits, with such an enormous extent of country, and such a multitude of human beings as probably, except in the case of China, were never before under a single Government, I can understand that there should be difficulties in carrying what we desire to see accomplished; but great as the difficulties are, the task is a noble task, and will require the utmost prudence and care in conducting it to a successful termination. But after the assurance we have had from persons of the highest capacity, and the greatest responsibility, I believe we are justified in looking forward, not merely to a nominal, but to a real living representation of the people of India. The great nation to which we belong has undoubtedly had to do most difficult tasks in the government and in the foundation of the institutions of extraneous territories. But all the other parts of the British Empire have presented to us a simple problem in comparison with the great problem presented to us by India. Its magnitude, its technicality, is such that the task of Great Britain in this respect is far greater than that which any other country has attempted, and far greater than that which it has itself attempted beyond the sea in any of the dependencies of the Empire. I rejoice to think that a great and real advance has been made, both before and especially since the direct transfer of the Indian Government to the immediate superintendence of the Executive at home and to the authority of the Imperial Legislature. The progress thus made has been made by the constant application to the government of India of the minds of able men acting under a strong sense of duty, and also a strong sense of political responsibility. All these things induce us to look

Difficulties of securing true representatives of India

Progress of India under British rule

[1] Principle of election.

forward cheerfully to a great future for India, and to expect that real success will attend the genuine application to the government of that vast and almost immeasurable community. If this attempt be successful, it will be the accomplishment of a task to which it would be difficult to find a parallel in history. . . . I certainly could not take part in any division hostile, or apparently hostile, to the Bill . . . . It would be well that the people of India should understand that united views on this question substantially prevail in this House. My persuasion is that those views are united, and that they are such as tend to the development of an enlightened and not only a liberal but a free system of government. . . . .

House of Commons united in support of the Bill

20. LORD LANSDOWNE ON INDIAN COUNCILS ACT OF 1892.

I. Speech, Imperial Legislative Council, February 2, 1892.

The rules for the discussion of the Financial Statement are of the briefest and simplest character. They merely lay down that—

Rules for discussion of Budgets in Supreme and Local Legislatures

(*i*) the statement shall be explained in Council every year and a printed copy given to each Member; that

(*ii*) after the explanation has been made, each Member shall be at liberty to offer any observations he may wish to make on the Statement; and that

(*iii*) the Financial Member shall have the right of reply, and the discussion shall be closed by the President[1] making such observations, if any, as he may consider necessary.

The rules for the discussion of the Financial Statement in the Local Legislatures are framed upon the same lines, and I need not further refer to them.

The privilege thus conferred upon the Legislative Councils is, I venture to think, one of great impor-

[1] The Governor-General.

Anomaly of previous system

tance. I have, more than once, expressed in this room my strong opinion that the present practice, under which the Council has been allowed an opportunity of criticising the financial policy of the Government of India only upon those occasions when financial legislation was resorted to, could not be defended. The right to criticise the financial administration of a Government is one of which it is impossible to over-estimate the value, and I have never concealed my opinion that it was improper as well as illogical that the right should be frequently denied merely upon the technical ground that no Bill upon which a financial debate could be originated happened to be before the Council. The right to discuss, and to criticise, is one which should be either altogether withheld, or altogether conceded. The present arrangement, under which it has been exercised one year and held in abeyance the next, is altogether indefensible. These financial discussions will now take place with regularity, and not upon sufferance, and I feel no doubt that both the public and the Government of India will gain, the one by the wider knowledge and insight into public affairs which it will obtain, the other by the increased opportunity which will be given to it of explaining its position, and defending its policy.

Utility of discussion of Budgets

Rules regarding interpellations in Supreme Council

I will now pass to that portion of the new regulations which has reference to the asking of questions under Section 2 of the Councils Act of last year. The main point which we found ourselves called upon to consider had reference to the conditions and restrictions under which the newly conferred right should be exercised. We propose that at least six days' notice shall ordinarily be given in writing to the Secretary in the Legislative Department of any questions which an Hon'ble Member intends to ask; but that the President may, if he thinks fit, allow a question to be asked with shorter notice, or may require a longer notice, should the circumstances demand it.

Restrictions regarding nature of questions

We have laid down that questions must be so framed as to be merely requests for information, and must not be put in an argumentative or hypothetical

form, or in defamatory language. No discussion will be permitted in respect of an answer given to a question. These two restrictions are substantially identical with those under which questions may be put to Her Majesty's Government in the British House of Commons. A question, of which notice has been given by one Member, may, if he so desires, be asked by another Member on his behalf.

Should there be specified subjects on which questions should be inadmissible?

There remains one point of the utmost importance. We had to consider whether it was desirable to specify certain subjects with regard to which questions should be inadmissible. It is obvious that there are some matters with regard to which no Government can allow itself to be publicly interpellated, such matters, for example, as military preparations at a time when hostilities are in progress or in contemplation, or matters of financial policy involving the premature disclosure of information affecting the market. The conclusion to which we came was that it was better, at all events in the early days of the new procedure, not to commit ourselves to any such specification of subjects. The impropriety of a question may be due quite as much to the time and circumstances under which it is asked as to the subject-matter, and although we believe that experience may possibly enable us to lay down rules of the kind suggested, we are of opinion that, for the present, it will be desirable to content ourselves with taking power for the President to disallow a question upon the ground that it cannot be answered consistently with public interests. The reformed Councils will, I have no doubt, show a proper appreciation of the limits within which the right of interpellation can be exercised without injury to public interests, and I have every hope that it will very rarely be found necessary to resort to the veto of the President. I may add that in this case also the rule adopted is similar to that in force in the House of Commons.

President's power to disallow particular questions

Rules regarding interpellations in Local Councils

The rules as to questions asked in the Local Legislatures are conceived in the same spirit, but they contain two special and important restrictions. Under the first of these, Members of Council are precluded from

asking questions with regard to matters or branches of the administration other than those under the control of the Local Government. The second restriction is this, that in matters which are, or have been, the subject of controversy between the Governor-General in Council, or the Secretary of State, and the Local Government, no question shall be asked except as to matters of fact, while the answer must be confined to a statement of the facts. The necessity of both these restrictions is, I think, so obvious that I need not take up the time of the Council by defending them.

. . . . even if the changes which we have been able to introduce were to stop short with those which I have now explained, ... a very material advance will have been made in the direction of increasing the usefulness of the Legislative Councils. Their functions have, until now, with the solitary exception to be found in those occasional discussions of the Budget which I have just mentioned, been strictly and narrowly limited to those of assisting the Government of India in the work of legislation. They have been absolutely precluded from asking for information, or inquiring into matters of public interest. In advising Her Majesty's Government to allow us to exceed these limits, we feel that we have taken a very serious and far-reaching step. We have taken it under a deep sense of the responsibility which we have assumed; we are fully aware that we are effecting a radical change in the character of these Legislatures; but we are profoundly convinced that the time has come when it is desirable to bring them into closer touch with the rest of the community, and that the reform which we are about to introduce is one which will be for the advantage of the Government as well as of the people of this country.

'Radical change' in the character of the Legislatures

II. Speech, Imperial Legislative Council, March 16, 1893.

Remarks on number of members in different Provincial Councils

These maximum numbers were fixed after much consultation with Her Majesty's Government, and with the Local Governments concerned. It is, I think, clear that no one can take upon himself to lay down confidently that, in the case of Legislative Bodies like these,

any one particular number is exactly appropriate. Our communications with the Local Governments, to which I have just referred, disclosed a certain amount of variety of opinion, although the divergence was within comparatively narrow limits. I may, however, say that when the question was first taken up—and Hon'ble Members will recollect that this Bill has been before Parliament for at least three Sessions—we found a complete consensus of opinion on the part of all the Local Governments consulted in favour of the view that the Councils might, with advantage, be enlarged, and that it was desirable to increase their authority, and to give them a constitution under which they would be able to afford to the Provincial Governments a larger measure of assistance and support.

There was another point upon which the consensus of opinion of the Local Governments was equally noticeable. It was felt by all of them that what was desirable was to improve the present Councils rather than to attempt to put in their place bodies comprising a large number of persons, and possessing the attributes of Parliamentary assemblies of the European type. It is a little remarkable that, although the measure was, as I said just now, during three successive Sessions before Parliament, no serious attempt was, to the best of my belief, made to substitute largely increased numbers for those which are mentioned in the present Act and in the Bills introduced in preceding Sessions.

'Parliamentary assemblies of the European type' not wanted

Another provision of the Act which requires to be specifically considered, in addition to those which have reference to the numbers of the Additional Members, is the provision which has reference to the manner in which they are to be nominated.

the responsibility for these nominations remains with the Governor-General and the heads of the Local Governments concerned, and the Secretary of State,[1] in forwarding the Act to us officially, was careful to point out that "the ultimate nominating authority still rests with those to whom it was

Procedure regarding nomination of members of Provincial Councils

[1] Lord Cross.

entrusted by the statute of 1861, and that the responsibility attaching to the careful exercise of this authority by no means diminishes as the number of non-official Members increases, and as the scope of their attributes is enlarged."

Ultimate authority vested in Governor-General and heads of Local Governments

It was, however, clearly understood, throughout the discussion of the measure, that, subject to this ultimate responsibility, the authority upon whom the duty of making the nomination was thus cast should be encouraged to avail himself, as far as the circumstances permitted, of the advice and assistance of any public bodies whose character and position rendered it likely that they could be consulted with advantage. I will read to the Council the words in which this part of the subject was dealt with by the Secretary of State. Writing on the 30th June, 1892, he says:

Secretary of State on tentative introduction of elective principle

"It appears to me probable, nevertheless, that the diffusion in the more advanced Provinces of education and enlightened public spirit, and the recent organisation of Local Self-Government, may have provided, in some instances, ways and means of which the Governments may appropriately avail themselves in determining the character that shall be given to the representation of the views of different races, classes and localities. Where Corporations have been established with definite powers upon a recognised administrative basis, or where Associations have been formed upon a substantial community of legitimate interests, professional, commercial, or territorial, your Excellency and the Local Governors may find convenience, or advantage, in consulting, from time to time, such bodies, and in entertaining at your discretion an expression of their views and recommendations with regard to the selection of Members in whose qualifications they may be disposed to confide."

Lord Lansdowne's views on introduction of elective principle

. . . the Government of India, ever since I have had the honour of being connected with it, while it has insisted upon the ultimate responsibility of the Government for these nominations, has constantly urged that any Bill which might be passed should

render it possible for the Governor-General, and for the heads of the Local Governments, to have recourse to the advice of what, for the want of any more convenient expression, I will describe as 'suitable constituencies.'

I will venture to quote to the Council one extract from a Despatch sent home by us as long ago as the 24th December, 1889, in which we placed on record our opinion that it would be "well that the measure about to be laid before Parliament should not absolutely preclude us from resort to some form of election where the local conditions are such as to justfy a belief that it might be safely and advantageously adopted.'

We went on to say that "we should have been glad if the Bill had reserved to us authority to make rules from time to time for the appointment of Additional Members by nomination or otherwise, and we should have considered it sufficient if the consent of your Lordship in Council had been made a condition precedent to the validity of such rules. Such an enactment would have provided for the gradual and tentative introduction of a carefully guarded mode of electing Additional Members."

False charge against Government of India

I am glad to have had the opportunity of referring to what we said upon this occasion, because I have seen it not unfrequently stated that the Government of India had strenuously opposed the introduction of anything approaching to the elective principle into the Bill, and that we had accepted it reluctantly and under pressure.

Size of Council precludes introduction of Western type of representation.

These, then, are the conditions under which we are called upon to frame Regulations for the appointment of Additional Members. I think the first observation which it would occur to any one to make would be that, given Legislative Bodies of the dimensions prescribed for us, or of any dimensions approaching to those laid down in the Act, it would be altogether hopeless to attempt the introducion of a representative system in the sense in which the words are understood

in Western communities. How, for instance, would it be possible in a province like that of Bengal, with a population of 70 millions, to allot the handful of seats at our disposal so as to divide the country, either in respect of geographical areas, or in respect of the different communities which inhabit it, in such a manner as to distribute the representation equitably, or to make it really effectual? And I am bound to admit that to the best of my belief even those who are credited with opinions of the most advanced type upon Indian political questions have carefully guarded themselves against being supposed to claim for the people of India any system of representation closely imitating the Parliamentary system of Western Europe.

We are met, moreover, with this difficulty that, in many parts of India, any system of election is entirely foreign to the feelings and habits of the people, and that, were we to have recourse to such a system, the really representative men would probably not come forward under it.

Upon a careful review of the whole matter, and of the contents of the Act, as well as of the circumstances under which it had been introduced and passed into law, it appeared to us that the mandate under which we were called upon to act might be summarised in the four following propositions :—

Interpretation of the basic principles of the Act of 1892

(1) It is not expected of us that we shall attempt to create in India a complete or symmetrical system of representation.

(2) It is expected of us that we shall make a *bona fide* endeavour to render the Legislative Councils more representative of the different sections of the Indian community than they are at present.

(3) For this purpose we are at liberty to make use of the machinery of election wherever there is a fair prospect that it will produce satisfactory results.

(4) Although we may to this extent apply the elective principle, it is to be clearly under-

> stood that the ultimate selection of all Additional Members rests with the Government, and not with the electors. The function of the latter will be that of recommendation only, but of recommendation entitled to the greatest weight, and not likely to be disregarded except in cases of the clearest necessity.

Position of electors

It is in this light that the question has been considered and discussed by us with the Local Governments. We do not believe that the seats placed at our disposal can be distributed according to strict numerical proportion, or upon a symmetrical and uniform system. We do not believe, to use Mr. Gladstone's words, that, under the Act, "large and imposing results" are to be at once obtained, but we do believe that by having resort to sources other than the unassisted nomination of the Government, we shall be able to obtain for these Councils the services of Members who will be in the truest sense representative, but who will represent types and classes[1] rather than areas and numbers.

Wanted—"representatives of types and classes rather than areas and numbers"

We believe that it should not be beyond our power to secure in this manner for the Government the advice and assistance of men connected with different parts of the country, thoroughly aware of the interests and wishes of their countrymen, and able to judge of the extent to which those interests are likely

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[1] A deputation representing the Central Mahommedan Association waited on Lord Lansdowne on January 22, 1894, and presented a farewell address, in which it was stated, "the most important administrative reform with which Your Excellency's name will ever be associated, and which will also secure for it a permanent place in the grateful remembrance of the people, has been the extension of the Legislative Councils on a wider representative basis,—a measure the full benefit of which, though yet derived almost exclusively by one community, will, we hope, in time, lead to a fair representation of our people also in the Councils." In his reply Lord Lansdowne said, "You have expressed a hope that your people may not be denied a fair share of representation upon the enlarged Councils. As to that, I may tell you that it has, from the first, been our intention to secure them a reasonable number of seats." (*Speeches of Lord Lansdowne*, Vol. II, pp. 646-649).

Value of the new system

to be affected by any measures of legislation which may be proposed. If we can obtain men of this description, not by selecting them ourselves, but by allowing the great sections of the community a voice in the matter, we believe that the persons selected will bring to our deliberations a very much greater weight of authority than they would have possessed, had we been content to rely upon nomination alone.

* * *

It is, however, further provided that the Lieutenant-Governor may nominate to such of the remaining seats as shall not be filled by officials, in such manner as shall, in his opinion, secure a fair representation of the different classes of the community, and that one seat shall ordinarily be held by a representative of the great landholders of the Province. It was in our belief absolutely necessary that a part of the seats at our disposal should be reserved in this manner, and filled up by nomination pure and simple. Only by such a reservation was it possible to provide for the representation of those sections of the community which, although sufficiently important to claim a voice in our deliberations, happen to be in a minority, and therefore unable to secure by means of their votes the return of a Member acceptable to themselves. Members thus nominated, although not owing their nomination to the suffrages of their fellow-citizens, will, we hope, be regarded as distinctly representative of the class from which they are taken.

Nomination of members to represent classes which are not numerically strong

* * *

Difficulty of introducing system of representation in Viceroy's Legislative Council

The Government of India has, from the first, held that the reform of the Viceroy's Council must, to some extent, be dependent upon, and subsequent to that of the Local Councils. It seemed to us that, if the difficulty of obtaining an effectual system of representation was great in the case of the Local Councils, it must, *a fortiori*, be greater still in the case of a Council entrusted with the duty of legislating for the whole of India, and, in our belief, the strongest argument in favour of dealing, in the first instance, with the

Local Legislatures was that we were likely to find in them, when they had been strengthened and reformed, the most convenient electoral bodies for the purpose of choosing a part at all events of the Additional Members who will be appointed to the Legislative Council of the Viceroy.

* * * *

We have made a proposal of this kind to the Secretary of State. The maximum number of Additional Members who can be nominated to the Governor-General's Council is sixteen. Of these at least eight must, under the Act, be non-officials. We have recommended that there shall be ten non-officials. We have suggested that four of these might be selected and recommended to us by the Local Legislatures of the four Provinces having local Councils, that one at least would be required to represent the interests of Commerce, and that one might perhaps be chosen from the Calcutta Bar. We propose that the discretion of the Viceroy with regard to the sources from which the remaining four might be obtained should be interfered with as little as possible. There may be found in those Provinces which do not possess Legislative Councils certain classes and sections of the community so far accustomed to collective action in the promotion of their common interests that they would be qualified to unite in submitting a recommendation in respect of any seat which the Governor-General may desire to fill up from a particular Province, and we have been in communication with the Governments of these Provinces upon this subject. It is, however, clear that whatever arrangement may be made with this object should be as elastic as possible. We might, for example, find from time to time that the consideration of some particular measure requires the presence in this Council of a Member specially conversant with the subject, or with the territories which the contemplated legislation will affect, and this contingency must certainly be provided for in the case of those Provinces which have no Local Legislatures, and for which such legislation as is required must be undertaken in the

Method of selecting non-official members of Viceroy's Legislative Council

Necessity of adopting an 'elastic' method

Council of the Governor-General. We do not, therefore, in the case of the Provinces see any necessity for such detailed Rules for the submision of recommendations as have been proposed for the Local Councils. We shall, however, endeavour as far as possible, in the event of a Member being required for this Council from any of the four Provinces not having local Councils, to give that Member, by resorting as far as possible to the system of recommendation, a more representative character than would attach to him if he were arbitrarily selected by the head of the Government.

* * * * *

It is not unlikely that our proposals will disappoint the expectations of those who would gladly see us travel further and faster along the path of reform. We claim, however, for the changes which we have been instrumental in procuring that they will, beyond all question, greatly increase the usefulness and the authority of these Legislative bodies. We are able to show that the number of Additional Members has been materially increased; that we have considerably widened the functions of the Councils by the admission of the right of Interpellation and the discussion of the Financial Statement; and, finally, that we shall no longer rely on nomination, pure and simple, for the selection of Additional Members. These are all substantial steps in advance. . . . .

'Substantial steps in advance'

21. INDIAN NATIONAL CONGRESS ON THE INDIAN COUNCILS ACT OF 1892.

[On the working of the Act of 1892 Mr. C. Y. Chintamani observes: " strictly limited as were the opportunities of members, not a few of them did make themselves useful, while some of them highly distinguished themselves by their Parliamentary ability. The greatest of them by common consent were Sir Pherozeshah Mehta and Mr. Gokhale. Among others who deserve mention even at this distance of time were Surendra Nath Banerjee (whose work on the Calcutta Municipal Bill cannot be forgotten by those who witnessed it) and Ananda Mohan Bose in Bengal, Messrs. C. Vijiaraghavachariar and N. Subbarau Pantulu in Madras, Sir Chimanlal Setalvad and Sir Gokuldas Parekh in Bombay, and Pandit Madan Mohan Malaviya in the United Provinces. It would be a mistake to

belittle the value of the work of these and other members because it did not always or often bear fruit. For it is certain that if the majority of them had been failures, if they had betrayed a lack of capacity or of a sense of responsibility, if they had not acted in the best interests of the people, there would have been no Morley-Minto Councils in after years ".[1]]

I. Presidential Address of Mr. Pherozeshah Mehta, Calcutta, 1890.

. . . . Lord Cross's Indian Councils Bill promptly saw the light of day in the House of Lords. It was at once the official recognition of the *raison-d-etre* of the Congress, and the first fruit of its labours. In itself, however, it was a most halting and unsatisfactory measure. In framing it, the Prime Minister[2] and the Indian Secretary of State seem to have been pervaded with a conception of the Indian people as a sort of Oliver Twist, always asking for more, to whom it would be, therefore, a piece of prudent policy to begin with offering as little as possible. "The Government Bill may be aptly described as a most superb steam-engine in which the necessary material to generate steam was carefully excluded, substituting in its place coloured shams to look like it." The rights of interpellation and of the discussion of the Budget were granted, but the living forces of the elective principle, which alone could properly work them, were not breathed into the organization of the enlarged Councils. The omission of the elective principle from the Bill was boldly justified by Lord Salisbury on the ground that "the principle of election or government by representation was not an Eastern idea, and that it did not fit Eastern traditions or Eastern minds." I wish to speak of his Lordship with all the respect to which his high talents and great intellectual attainments justly entitle him; but it is not a little surprising as well as disappointing to find the Prime Minister of England, a statesman who, as Lord Cranborne, was once Secretary of State for India, displaying such

'A most halting and unsatisfactory measure'

'Elective principle' not introduced

Criticism of Lord Salisbury's view

[1] *Indian Politics Since the Mutiny*, p. 26.
[2] Lord Salisbury.

profound ignorance of the history of the Indian people and the genius of the Indian mind. . . .

* * * *

The disdainful attitude of Lord Salisbury as to our aptitude for representative institutions need, however, bring no despair to our minds. His late chief, Lord Beaconsfield, once said of him on a memorable occasion that he was a man who never measured his phrases or his sweeping assertions. . . .

* * * * *

Faith in British statesmanship

I have no fears but that English statesmanship will ultimately respond to the call. I have unbounded faith in the living and fertilizing principles of English culture and English civilization. It may be that, at times, the prospect may look dark and gloomy. Anglo-Indian opposition may look fierce and uncompromising. But my faith is large, even in Anglo-Indians. . . .

II. Presidential Address of Mr. W. C. Bonnerjee, Allahabad, 1892.

Success of the Act depends upon rules to be framed.

We all know that the Act in terms does not profess to give us much, but it is capable, I believe, of infinite expansion under the rules that are to be framed. If those rules are framed in the spirit in which the present Prime Minister[1] of England understood the Act was framed, and what he said was assented to by the then Under-Secretary of State for India,[2] namely, that the people of India were to have real, living representation in their Legislative Council,—if those rules are framed in the spirit of true statesmanship such as one would have confidently expected from Sir Thomas Munro, Mountstuart Elphinstone, Lord William Bentinck, and a host of other distinguished Anglo-Indian statesmen who have made British India what she is—I have no doubt we shall all be glad to put away the first plank in our Congress platform,

[1] Gladstone.
[2] Curzon.

namely, the reform and reconstitution of the Legislative Councils. The spirits that seem to be abroad just now in this country, however, do not seem to me to give a very hopeful augury as to these rules. I am afraid that some of our rulers have been possessed with the idea that we have been progressing too fast. It is a great pity that this should be so. But if these rules do not come up to our expectations, gentlemen, we must go on with our agitation and not stop until we get what we all think and we all believe and, what is more, what our rulers themselves have taught us to believe, we have a right to get.

If rules should prove unsatisfactory, agitation should be continued.

III. Presidential Address of Mr. Alfred Webb, Madras, 1894.

The administrative mutilation of the manifest intentions of Parliament in framing the Indian Councils Act is much to be deplored. I see that complaints have been made in every Province where the enlarged Councils are established, that the distribution of seats for representation of the people is most unsatisfactory, and that, while some interests are overrepresented, other important interests are not represented at all. This is not in accordance with the expressed views of British statesmen on both sides of the House when the Bill was discussed. Mr. Gladstone said : "I believe I am justified in looking forward, not merely to a nominal, but to a real living representation of the people of India." Lord Salisbury was no less emphatic : "If we are to do it, and if it has to be done, let us do it systematically . taking care that the machinery to be provided shall effect the purpose of giving representation, not to accidentally constituted bodies, not to small sections of the people here and there, but to the living strength and vital forces of the whole community of India." How little have these anticipations been realised! We have here a striking instance of the extent to which administration can defeat the intentions of legislation.

Manipulation of distribution of seats

Gladstone and Salisbury quoted

IV. Presidential Address of Mr. S. N. Banerjee[1], Poona, 1895.

Are we satisfied with it and with the manner in which it is being worked? I am afraid we must answer the question in the negative. We regard the measure in the light of a cautious experiment which is being tried by the Government. Caution is an element of statesmanship. But caution carried to an excess—caution which is but another name for timidity —is a mistake, and may even amount to a blunder. We have no objection to the Government exercising due caution before it takes "a big jump into the unknown." Weighted with the sense of its great responsibility, the Government must look around before it makes an important departure from the lines of its ancient policy. But what we complain of is that the experiment might have been tried under conditions more favourable to its success, more consonant to the declarations which were made in Parliament by statesmen on both sides of the House at the time of the enactment of the measure. Mr. Gladstone looked forward to a living representation of the Indian people. Lord Salisbury was anxious that the machinery provided should give representation not to small sections of the people but to the living strength and the vital forces of the whole community. Have these anticipations been realized by the light of accomplished facts? In Bengal seven elected members represent the living strength and the vital forces of a whole community of 70 millions of people. The Councils have been enlarged, but in no sense so as to provide even a tolerably moderate representation of the people. In the United Kingdom a population of 40 millions is represented by 670 members. In Bengal, a population of 70 millions is represented by only seven elected members, or, if you like, by 10 members if you take the nominated non-official members to represent the people, or by 20 members if you take the whole Council to

Excessive caution is a mistake.

Anticipations of Gladstone and Salisbury not realized by the working of the Act

Provincial Councils too small in size to represent Provincial populations

[1] See *A Nation in Making*, pp. 123-125.

represent the Province. The result is that, the election taking place under a system of rotation, whole divisions are left unrepresented in the Council. Out of the 6 Divisions in Bengal at the present moment the Presidency Division, which is the most important, and the Chota Nagpur and Orissa Divisions, are left out in the representation. I am aware that this is a faulty arrangement which might be rectified by lumping up the Divisions, as is done elsewhere, so as to enable the whole Province to take part in the elections. But is it possible under any conceivable arrangement, by any form of administrative manipulation, to secure, in the words of Mr. Gladstone, the living representation of the Indian people, or, in the words of Lord Salisbury, the representation of the whole community, and not of small sections of the people, without materially adding to the strength of the elective element in the Councils? But we are confronted with a difficulty on the very threshold. Under Section 1 of the Indian Councils Act of 1892, the maximum number of additional members for the Governor-General's Council is fixed at 16, and the maximum number of additional members for the Legislative Councils of Madras and Bombay is fixed at 20, and as regards Bengal and the North-Western Provinces the position seems to be still more unsatisfactory. The number of members for the Bengal Council is not to exceed 20, and that for the North-Western Provinces is not to exceed 15. I am well aware of the difficulties of the Government. They must have a standing majority in the Councils. They will say: "It is all very well for you to raise these objections. Your counsel is a counsel of perfection, we admit. But there are practical difficulties in the way, which we, as practical administrators, must take note of. We must have a standing majority in the Councils. If we add to the elective element we must add to the number of nominated members. The requisite number of officials may not be available at the Presidency towns, or, if available, their appointment to the Councils may lead to serious administrative inconvenience and may involve additional expense—a matter

Case of Bengal

Anticipated reply of the Government

which is not to be overlooked in these days of poverty and impecuniosity."

Criticism of the anticipated reply of Government : Government need not have a majority composed of officials.

We fully admit the force of these objections. But the difficulties are really not insuperable. They admit of easy solution. The Government need not appoint official members to the Councils to secure a majority. There are plenty of people who, though non-officials, would, in this respect, serve them better than officials. The experience of public bodies, where officials and non-officials meet for the transaction of public business, entirely confirms this view of the matter. In the Calcutta Municipality the proportion of elected members is two-thirds of the entire body. The Government is in a hopeless minority. The Chairman is an official and is appointed by the Government. He is the organ of the Government. Though in a minority, I have never known a Chairman fail to carry through any Resolution upon which he has set his heart. Whenever he wants it he has a majority. The experience of the District Boards in Bengal entirely bears out the same view. One-half of the members are elected, the other half are nominated. The nominated members are not necessarily officials. The Chairman is the Magistrate of the District. He holds the balance of power. He is the dictator of the situation. He rules the District Board. In the Councils the position of the Government will be still more favourable. The President will be the head of the Local Government, his prestige will be great, his personality will carry immense influence; and if the number of members be materially increased as we suggest, though only one-half of them should be nominated and among the nominated members there should be non-officials, the Government will still have a standing majority.

Some illustrative cases

Government need not be afraid of increasing number of Legislative Councillors.

I say once again that if the Indian Councils Act is to be given effect to, in the spirit in which it was conceived by the distinguished statesmen who took part in its enactment, if it is to give to the people of India a living representation of the whole community and not of small sections of the people, the number of elected members must be sensibly increased; at any

rate discretion should be given to the Government of India to increase the number, subject to such rules as the Government may think fit to make in that behalf. This can be easily done by a small modification of Section 1 of the Statute of 1892. Such a measure would strengthen the popular element in the Councils; but the Government would also share in the benefits which it would confer. A larger number of elected representatives in the Councils would place the Government in touch with the real opinion of the country. The voice that would be heard in the Councils would not be the voice of this party, or of that party, of this clique or of that, but the living voice of the Indian people.

Modification of Sec. 1 of the Act required

Such modification will bring Government in touch with 'real opinion' of India.

I am well aware of the objections that will be urged against my proposal. It will be said: "You got the Councils Act amended only the other day. It is too early to think of amending it again." To that I have an obvious reply to give: It is never too early to raise the cry for reform. We must cry betimes, cry late, cry incessantly, fill the air with our importunate clamour, and then only can we hope to move the Government to take any action. In making the present demand we are encouraged by the unquestionable success which has so far attended the experiment which is being tried. Sir Charles Elliott,[1] speaking from his place as President of the Bengal Legislative Council, thus bore testimony to the distinct accession of strength to the Council which the addition of the elective element has secured:—

Is it too early to demand expansion of Councils?

Sir Charles Elliott on the value of the elective element in the Bengal Council

"I am quite satisfied in my own mind that the extension of the Council has materially added to its strength, and to its popularity and to its power of doing good for the country."

The Councils have been reconstituted, and their functions have been enlarged. The most important addition to the functions of the Councils consists in conferring upon members the right of interpellation. We are truly grateful to the Government for this right.

Value of the right of interpellation

[1] Lieutenant-Governor of Bengal, 1890-95. See Buckland, *Bengal Under the Lieutenant-Governors*, Vol. II.

It is an inestimable boon. No Government which did not feel strong in the strength of conscious rectitude would venture to confer such a boon upon a foreign dependency. .

It was the feeling of conscious rectitude that in the main led the Executive Council of the Government of India to recommend that this right should be conferred upon Members of Council. Sir Charles Elliott has let us into the secrets of his "prison house." He told us the other day from his place as President of the Bengal Legislative Council, that Sir George Chesney argued in the Executive Council that the Government had nothing to conceal. Lord Dufferin urged that it would often help the Government to dispel false reports and to clear up misconceptions which were embarrassing to the administration. Lord Dufferin never showed greater prescience.

Lord Dufferin's view

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It is, indeed, the unanimous testimony of officials and non-officials that the right has been exercised in a manner that is creditable to the members and conducive to the public interest. The writer on Indian affairs in the *Times*, a discriminating judge in these matters, thus observes :—

The *Times* on the exercise by Indians of the right of interpellation (i) in Imperial Council,

"The practical operation of the system indicates that the Viceregal forecast of its working, from Lord Ripon onwards, was the correct one. The questions asked in the Supreme and Provincial Legislatures during the past two years cover the whole area of Indian administration and of the economic interest of the people. With scarcely an exception, they have tended to a better understanding between the rulers and the ruled ; and in important instances they have furnished a valuable opportunity of placing the actual facts before the public."

With regard to the exercise of the right in the Bengal Council, the same writer thus bears equally satisfactory testimony :—

(ii) in Bengal Council

"In a forward Province like Bengal with Calcutta as its capital, and a native Press extremely active, if not

always accurately informed, the practice of interpellation has proved even more useful. The Bengal Government has to deal with the chronic unrest arising out of the desire of the educated classes to enjoy an ever-increasing share of the higher posts of the Administration. The present Governor of Bengal has recognized the necessity of dealing with such aspirations in a spirit of fairness, and, indeed, of generosity. Sir Charles Elliott has opened up the higher offices of his Government to natives of India to an extent never dreamt of by his predecessors. "

From non-official let us pass on to official testimony, and the testimony which I am going to quote is that of no less exalted an official than Sir Charles Elliott. This was what he said from his place as President of the Bengal Legislative Council :—

Sir Charles Elliott on interpellation

"I think you will agree with me that the results have not altogether met the anticipations which we formed. Somehow or other—it is difficult to say how—a sort of idea has grown up in the public mind that an interpellation must necessarily be hostile, and that an Hon'ble member who puts an interpellation may be presumed to have a desire to heckle the Government or to expose its shortcomings in some way or another. I think it is most unfortunate that such a feeling should have grown up. It has been due to criticisms which have been passed on the style of questions put not so much in this Council, as in the Councils of other provinces, and I think in many cases these criticisms, whether applied to other provinces or applied to this province, have not been altogether reasonable or sympathetic. I certainly feel that I have nothing very much to complain of as regards the spirit with which interpellations have been put here, but I think that we might put interpellations upon a better footing if it were thoroughly understood that the Government desire to deal with all the members of this Council as its trusted Councillors whom it wishes to associate with itself in its policy, and to whom it wishes to impart the information which it possesses."

Restrictions on the right of interpellation should be removed and practice of House of Commons should be followed.

Having regard to the testimony of the high authorities I have quoted, might we not ask for the removal of those restrictions which seem to me to defeat the purposes of a beneficient legislation? In the House of Commons "sometimes when an answer has been given, further questions are addressed to the Minister on the same subject," apparently with a view to offer an explanation or remove a misconception. In the House of Lords greater latitude is allowed in putting questions. One of the objects which the Government had in view in conferring the right of interpellation was to afford opportunities for clearing up misconceptions with regard to the measures of Government and the conduct of officials. Looking at the matter from this standpoint, it seems to me that the object which the Government had in view would be best served by adopting the practice of the House of Commons—a practice which has been sanctioned by the wisdom of ages.

Restrictions on discussion of Budget in Councils should be removed.

Under the Indian Councils Act of 1892 not only have the Councils been partially reconstituted, but their functions have been enlarged—the discussion of the Budget has been allowed, whether it is proposed to levy any new tax or not. This right, however, is to be exercised subject to an important reservation. "Members may discuss the Budget—may make any observations they please—but they cannot move any Resolution in respect of any item in the Budget or divide the Council thereupon." This seems to me to be altogether a needless restriction, having regard to the fact that the Government has a standing majority in the Councils. If the non-official members were united to a man they could not carry any Resolution, if the Government was firmly resolved to oppose it. I venture to submit that if there is one class of questions more than another in respect of which the representatives of the people should exercise any control, it is financial questions. "No taxation without representation" is the theory of modern civilised government. We do not ask the Government to embody this principle in the administration of the country. We

know that politics is a practical art, and it cannot deal with principles in the abstract. Every political principle must be tested by reference to the actual circumstances under which it is sought to apply it; but when, as in this case, the acceptance of our recommendation can lead to no practical inconvenience but, on the contrary, is calculated still further to extend the immediate objects of the Indian Councils Act of 1892, and to add to the popularity of the administration, we feel that we stand on sure ground, and that we may appeal with confidence to the Government to adopt it.

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The question of the Budget naturally leads me to consider how our laws are made. A private member may, indeed, introduce a Bill subject to leave being granted by Government. Practically, however, the work of legislation is left in the hands of the Government. It must be so in this as in all other countries. So far as the local Councils are concerned, if it is proposed to introduce a Bill, it is prepared by the Local Government in the Legislative Department. It is then submitted to the Government of India, and the sanction of the Government having been obtained, it is introduced into the Council. In the Governor-General's Council before a Bill is introduced it is submitted for the sanction of the Secretary of State. The result is that, whether a Bill is introduced into a local Legislative Council with the assent of the Government of India, or into the Supreme Legislative Council with the assent of the Secretary of State, the sanction of superior authority in each case operates in the nature of a mandate upon the somewhat susceptible minds of official members. They vote in solid phalanx. The amendments of non-official members have absolutely no chance. There is the mandate, express or implied. The Bill must be passed as assented to by the Government of India or the Secretary of State. Legislation under these circumstances becomes a foregone conclusion—the debate a mere formal ceremony—some people will call it a farce.

Procedure of law-making

Official members act according to mandate from superior authority.

Debate is 'a farce.'

Official mandate theory

But the theory of a mandate was never so broadly stated as it was last year by His Excellency the Viceroy and some of his official colleagues, on the occasion of the debate on the Excise Bill. Sir Henry Brackenbury, the Military Member, observed with the bluntness of a soldier that in the matter of voting "they were bound to obey orders given by proper and constituted authority." His Excellency the Viceroy would not accord to members absolute freedom "to speak and vote in the Council for the measure they think best." The right must be exercised subject to an important qualification—they must recognise the responsibility under which they exercise their rights in the Council. His Excellency went on to observe that even Members of Parliament are not free to act as they please, but are distinctly subject to the mandate from higher authority, to vote not in accordance with the dictates of one's conscience, but rather in obedience to superior authority. This elicited a strong protest in Council from Sir Griffith Evans, Mr. Pherozeshah Mehta and others, and I am sure you, too, will record your protest against a principle which, if accepted, would be fatal to the independence of non-official Members of Council. Whether or not Members of Parliament act under any mandate received from their constituents is a matter which we need not discuss here. Members of Parliament are well able to take care of themselves and their consciences. The mandate theory is an old theory—it does not appear before us even in a new garb. After the lapse of a century, it is presented to us in the nakedness of its original simplicity. It formed the subject of an emphatic protest from Edmund Burke, one of the greatest names in English politics His colleagues in the representation of Bristol had raised the question, and Burke replied in a letter which has found a permanent place in the political literature of England. I will read an extract from his letter to the electors of Bristol, which might fittingly be laid before those who take a different view of the subject:

Protest against official mandate theory

Burke's view on mandate theory

"Authoritative instructions, mandates issued, which the member is bound blindly and implicitly to obey,

to vote, and to argue for, though contrary to the clearest conviction of his judgment and conscience—these are things utterly unknown to the laws of the land, and which arise from a fundamental mistake of the whole order and tenor of our constitution."

Yet Burke was a Conservative. He called himself a Whig but he was truly a Conservative statesman Lord Elgin is a Radical and a Home Ruler. It would almost seem that in this matter the Conservatism of the last century was really more sound and progressive than the Liberalism of the present. It is remarkable that only a year before this exposition of the mandate theory, a very different exposition had been heard of the same theory in the Council Chamber of the Bengal Legislative Council. It was on the eve of the enlargement of the Council. Popular constituencies were about to be formed. Mandates might be issued by these constituencies upon their representatives. To be forewarned is to be forearmed. Sir Charles Elliott took time by the forelock, as he always did when he was in office, and warned would-be representatives against the contingency of mandate being issued by their constitutents. Thus he observed from his place in the Bengal Council on the 25th February, 1893 :

Sir Charles Elliott on mandate theory

"We are now on the eve of an important reconstruction of this Council the details of which are at present unknown. But we are aware that there will be a considerable extension and expansion of the principle of representation, and I think it very important that it should be understood to what extent and of what character the representation ought to be. I do not venture to forecast what orders we may receive from the Secretary of State or from the Government of India on this subject, but I wish most emphatically to record my agreement with what has fallen from the Advocate-General, that, however much a Member of this Council may be a representative of any Corporation, or of any interest, or of any body or Association existing in these provinces, he will, on his appointment as a Member of this Council, act according

to his lights and according to his conscience. His position ought not to be that of a delegate, and he ought not to be called upon to record his vote in accordance with the views of constitutents whom he represents, unless he heartily and personally agrees with them."

Whose authority are we to accept, that of the Viceroy or his late lieutenant? It is seldom that we find Sir Charles Elliott on the popular side. When he is with us, we may be quite sure that we have exceptionally good reasons for thinking that we are in the right.

Duke of Argyle on mandate theory

Somehow or other, Secretaries of State, and before them the Board of Control, have been wedded to this mandate theory. They have claimed this right from time to time. The Duke of Argyle in a Despatch, dated the 24th November, 1870, maintained:

"The Government of India were mere Executive Officers of the Home Government who had the ultimate power of requiring the Governor-General to introduce a measure and of requiring also all the official Members of the Council to vote for it."

Sir Barnes Peacock on mandate theory

The theory has, however, been always strenuously resisted by the independent Members of Council, and by none more strenuously than by Sir Barnes Peacock, perhaps the greatest English lawyer who ever set foot on Indian soil. He said:

"He had always understood and he still held, that the office of a Member of Council was a high and honourable one; but if he believed that the constitution of this Council was such that its Members were bound to legislate in any manner that either the Board of Control or the Honourable Court of Directors might order, he should say that instead of being a high and honourable office it was one which no man who had a regard for his own honour and independence could consent to hold; for his own part he would state freely and without hesitation that he would

rather resign his office than hold it on that tenure He believed that the trust and duty committed to every Member of the Legislative Council was to act according to his own judgement and conscience."

V. Presidential Address of Mr. R. C. Dutt, Lucknow, 1899.

Object of Act of 1892

The object of allowing District and Municipal bodies to elect members of these (*i.e.*, Provincial Legislative) Councils was to allow the views of the people to be represented, and I think every responsible administrator in India will admit that this wise step has improved and strengthened the legislative machinery of the Government. Even when the views of the elected members are rejected—and they are often rejected—even then the expression of their views is a gain to the cause of Administration. The time has now come when a fuller scope may be given to this expression of our views and the representation of our opinions. Half a dozen members, elected under somewhat complicated rules, can scarcely give expression to the views of the people of a Province with a population of thirty or forty millions or more. Is it too much to hope that in the not very remote future the Government will find it possible to permit every district to be represented by its own member? "I do not object to the number of official and nominated members being also increased; I do not object to the head of the Government reserving the power of vetoing a measure, even against the views of the majority of the Council, in urgent cases. With these safeguards, I would suggest an expansion of the Provincial Councils on the basis of each district being represented by its member, so that there may be an adequate expression of the people's opinions and views on every question. We do not wish for the absolute control of the administration of the country, but we do demand an adequate means of placing our views before the Government before it decides on questions affecting our welfare."

Provincial Councils should be expanded.

Executive should retain ultimate authority.

22. INDIAN NATIONAL CONGRESS ON PARTIAL INDIANISATION OF EXECUTIVE COUNCIL.

I. Presidential Address of Mr. A. M. Bose, Madras, 1898.

Further reform of Legislative Councils required

I will not dwell on the necessity, which recent events have only served to emphasize, of the further need of reform in our Legislative Councils. The subject has often been before us. But let me draw your attention to the question of the constitution of our Executive Councils, and ask the Government on your behalf whether the time has not fully come for remodelling them, and admitting adequate Indian representation in those bodies. It is these bodies that shape and guide the whole of the administrative policy of the Government, and decide questions of supreme importance to the happiness and well-being of the people—questions often of far greater moment than those that come before the Legislative Councils. At present, out of the two hundred millions and more of India's people, not one solitary individual finds a place in any of those Councils; and as we know, the Legislative Bodies exercise no sort of control, direct or indirect, over them. Their deliberations are in secret chambers, and not even the faintest echo of suggestion, information, or criticism can reach them from a public more ignorant of their proceedings than of the movements of the double stars or the composition of the Milky Way in the far off heavens. Is it, Ladies and Gentlemen, necessary to point out, is it necessary to argue the point, that the most honest, and impartial and fair-minded of tribunals cannot decide justly or do right unless every information is placed, every interest represented and every side of the question discussed before it? Is this not the explanation of the mistakes—I need not refer to the policy of these two years—which have admittedly been made in the past and which, as I have shewn, were subsequently rectified when further light was sought from independent public opinion under pressure from England?

Partial Indianisation of Executive Councils required

Uncontrolled by the legislature, uninfluenced by public opinion, Executive Councils work in secret.

Exclusion of Indians from Executive Councils responsible for many mistakes in administration

We are fully aware of the need for the expansion and reform of our Legislative Councils. There is need, grave need, Brother Delegates, for the expansion and reform of our Executive Councils also, and it may be, of their formation where they do not exist, with adequate Indian representation in them.

II. Presidential Address of Mr. R. C. Dutt, Lucknow, 1899.

at least one Member of the Executive Council should be an Indian Gentleman with experience in administrative work, and representing the views of his countrymen. It is usual for a Member of an Executive Council to have a portfolio, *i.e.*, to have one department of work assigned to him; and the work which I would assign to the Indian Member is Land Revenue, Industries and Agriculture. There is no department of work in which an Indian Member can make himself more useful, or make his services more valuable to the voiceless millions of cultivators and artisans. The addition of one Indian Member will not weaken Provincial Administration; it will strengthen such Administration, make it more sympathetic, and bring it into somewhat closer touch with the people.

There should be at least one Indian Member in Provincial Executive Council.

And, Gentlemen, am I aspiring too high when I hope for similar seats for Indian Members in the cloudy heights of Imperial Simla? Am I urging anything unreasonable when I propose that the Viceroy, who has the benefit of consulting experienced English administrators, in his Executive Council, should also have the advantage of hearing the views and opinions of a few Indian Members in the same Council before he decides on questions affecting the interests of the people of India? Am I urging anything unwise when I propose that the Viceroy, when he considers measures affecting the condition of the indebted cultivators, the operations of plague and famine relief, the rules of Land Revenue Settlements, the questions affecting Hindu and Mahomedan customs and manners, should have by him, in his own Executive

There should be three Indian Members in Viceroy's Executive Council.

Council, a few Indian Gentlemen who represent the views, the opinions and the feelings of the people? An Executive Council cannot be much enlarged without loss of efficiency: but surely the Viceroy's Council could make room for three Indian Gentlemen, one to represent Bengal and Assam, another to represent the North-West and the Punjab, and the third to represent Bombay, Madras and the Central Provinces. The selection should rest, of course, with the Viceroy himself, for anything like election into an Executive Council would be absurd; and the three Indian Members should be entrusted with the departments of Agriculture, Industries and Land Revenue of their respective Provinces. I myself think that the administration of the country would be vastly improved by such representation of Indian opinions in our highest Councils, and that the Government of India and the Government of the Provinces would be brought in closer touch with the people.

Value of Indian representation in Indian Councils

23. MONT-FORD REPORT ON EVOLUTION OF INDIAN LEGISLATURES (1861-1892).

60. We have now reached the critical point of the story at which representatives of Indian opinion were for the first time admitted to the legislature of the country, and need make no apology for quoting a well-known passage from a minute written by Sir Bartle Frere in 1860:—

Sir Bartle Frere on the necessity of admitting 'the native element' into the Legislature

"The addition of the native element has, I think, become necessary owing to our diminished opportunities of learning through indirect channels what the natives think of our measures, and how the native community will be affected by them . . . . no one will, I think, object to the only obvious means of regaining in part the advantages which we have lost, unless he is prepared for the perilous experiment of continuing to legislate for millions of people, with few means of knowing except by a rebellion, whether the laws suit them or not."

61. Lord Canning decided that though any return

to the system which existed before Lord Dalhousie was impossible, a partial return to the still earlier system which prevailed before 1834 was advisable. Once the principle of having local Governments represented in the Indian legislature was admitted, the Governments of Madras and Bombay could not reasonably be expected to be content with the meagre share which they then had in legislation concerning their own Presidencies. Rejecting the idea of increasing in his existing Council the number of members drawn from the two subordinate Presidencies, Lord Canning proposed that the single Council should be broken up into three distinct Councils—the Legislative Council of the Governor-General at Calcutta and local Councils in Madras and Bombay. The Lieutenant-Governorships of Bengal, the North-Western Provinces, and the Punjab should also be equipped with separate legislatures. To each Council he proposed that three non-official members, European or Indian, should be admitted; that all measures of local character not affecting the revenue should fall within the competence of the local Councils; that the latter should concern themselves with legislation only; and that business should be so conducted as to allow even Indians unacquainted with English to participate in it. These proposals are remarkable as constituting the first decisive step in the direction of decentralization, and also in that of associating Indians or indeed non-officials at all with the business of legislation.

Lord Canning's policy

Beginning of decentralisation of legislation

Proposed composition and functions of local Councils

62. Various events contributed to precipitate the passing of the Indian Councils Act of 1861. Differences arose between the Supreme Government and the Government of Madras about the income-tax Bill; serious doubts were expressed about the validity of the laws introduced into certain backward areas which were known as non-regulation provinces without enactment by the Legislative Council; and finally the Governor-General's Legislative Council presented an address asking that certain correspondence between the Secretary of State and the Government of India should be communicated to it. The situation had

Events leading up to the changes of 1861

become strained, and justified Sir Charles Wood's complaint that, contrary to the intention of its founders, the Council had become a sort of debating society or petty Parliament[1]. . . .

No demarcation of jurisdictions of Imperial and local Councils

63. . . . . we lay stress on the fact that there was no attempt to demarcate the jurisdictions of the central and local legislatures as in federal constitutions. The Governor-General's Council could legislate for the whole of India; and the provincial Council for the whole of the province, with the reservation that before doing so in respect of certain matters the Governor General's sanction had to be obtained . . . .

* * * * *

Effect of Act of 1861

65. The Act of 1861 thus closes a chapter. Its main interest has lain in the gradual construction and consolidation of the mechanical framework of Government. The three separate Presidencies have now come into a common system; much of the intervening spaces has been brought under British rule; the legislative and administrative authority of the Governor-General in Council has been asserted over all the provinces and extended to all their inhabitants; and the principle of recognizing local needs and welcoming local knowledge has been admitted, so that local Councils have been created or re-created, and a few non-official and even Indian members have been introduced for the purposes of advice. But, partly at least out of anxiety to prevent the authority of the executive from being impaired (as in Warren Hastings' days) by any other rival institution without administrative responsibility, it has been expressly declared that the Councils are a mere legislative committee of the Government and are not the germ of responsible institutions. We think it worth noting how the innate tendency of even a few official Englishmen, assembled in a simulacrum of a legislature, to convert it into a parliamentary body positively contributed to retard the introduction of

Why Councils were confined to legislation only

[1] Document No. 7.

parliamentary ideas for the benefit of the people of India as a whole.

66. But at the next stage we find a decided advance. Whereas in 1861 men said "we had better hear what a few Indians of our own choosing have to say about our laws," they said in 1889 "our laws have positively benefited by Indian advice and criticism; let us have more of it, and if possible let the people choose the men they send to advise us." The measure which eventually took shape as the Act of 1892 was initiated by discussions in Lord Dufferin's time in which Sir George Chesney, Sir Charles Aitchison, and Mr. Westland took prominent part . . . .

Events leading up to Act of 1892

67. We are impressed with the bold approach which the members of Lord Dufferin's Committee were prepared to make even thirty years ago towards the position in which we now find ourselves. They recommended for example that the Councils should see papers freely and originate advice or suggestions; that debates on such advice and suggestions should be permitted; and that the estimates connected with local finance should be referred to a standing committee and debated if necessary in Council. They also were concerned to bring into public affairs the gentry and nobility of the country; and for this purpose they devised a Council which should consist of two orders or divisions both containing some official members. They made the radical suggestion that election should be introduced as far as possible—in the first division directly, on a high property qualification, and in the second division indirectly, by local bodies and the universities. They advised that care should be taken to secure the fair representation of all classes; that power should be reserved to Government to pass measures in certain cases against the votes of a majority in Council; and that Councils should be of moderate size and not more than two-fifths elected . . . .

Recommendations of Lord Dufferin's Committee

Powers of Councils

Two divisions of Council

Election

* * * * *

69. Lord Dufferin left India shortly these words[1]

[1] See pp. 101-103.

were written, and the Secretary of State's reply was addressed to his successor. Lord Cross rejected the cardinal recommendation that for the popular element in Councils recourse should be had as far as possible to the principle of election, and said that he thought "it would be unwise to introduce a fundamental change of this description without much more positive evidence in its favour than was forthcoming." The system was unfamiliar to Oriental ideas, and had only been tried on a small scale in local bodies. But Lord Lansdowne's Government stood to their guns. They urged that they should not be precluded from resort to some form of election where conditions justified belief in it; and they asked for power to make rules for the appointment of additional members by nomination or otherwise. They had their way. There are few more unobtrusive provisions in the statute book than the once famous "Kimberley clause" (due really to Lord Northbrook) which is the basis of section 74 (4) of the Government of India Act, 1915. That clause, while purporting merely to empower the Governor-General in Council with the sanction of the Secretary of State in Council to make regulations as to the conditions of nomination of the additional members, in reality effected a revolution in the constitution.

Secretary of State's opposition to election

Views of Lansdowne's Government accepted

"Kimberly Clause"

* * * * *

What happened was exactly what might have been anticipated by any one familiar with British political development. Her Majesty's Government in transmitting the Act of 1892 explained that the intentions of Parliament were that—

"Where corporations have been established with definite powers upon a recognized administrative basis, or where associations have been formed upon a substantial community of legitimate interests, professional, commercial, or territorial, the Governor-General and the local Governors might find convenience and advantage in consulting from time to time such bodies, and in entertaining at their discretion an expression

Instructions of British Government to Government of India

of their views and recommendations with regard to the selection of members in whose qualifications they might be disposed to confide.

Technically, the function of the nominating bodies was to be that of recommendation only but the political sense of the Government of India told them that it was impracticable either to insist on selection from a panel of names preferred, or to reject individual nominations at discretion. They also declined, otherwise than by laying down certain general qualifications, to fetter the discretion of the recommending bodies. In consultation with local Governments they drew up regulations which Lord Kimberley accepted. These provided for an official majority, but restricted it so far as was thought possible, and they also left the majority of the non-official seats to be filled by recommendation. The term "election" was sedulously eschewed; but inasmuch as the nominations by recommending bodies came to be accepted as a matter of course the fact of election to an appreciable proportion of the non-official seats was firmly established. Regulations framed by Government of India

* * * * *

70 Rather more than five years later, Lord George Hamilton ordered the working of these regulations to be reviewed with the object of seeing how far they had secured the representation of all important classes. Inquiry showed both in Madras and Bombay that the district boards and municipalities, which constituted the nominating authorities for rural areas, tended to nominate lawyers far too exclusively but neither Government was disposed to press for any change. In Bengal, however, one seat was transferred from the rural municipalities to the large landowners who had not hitherto been given a right of nomination. The general idea was that the machinery for representation at that time corresponded to the needs of the country; and so for another ten years the elective element in the provincial Councils consisted of at the utmost eight members, returned by a few large cities, by groups of municipalities and district boards, by Working of provincial regulations

Elective element in provincial Councils

large zamindars, by chambers of commerce, and by universities.

Distribution of non-official seats in Imperial Council

71. The same principle of election disguised as recommendation was also adopted in 1892 for the Legislative Council of the Governor-General. But the reformers of that period felt bound to work within the statutory maximum limit of 16 additional members, which made it impossible, if an official majority was to be kept, to admit more than 10 non-officials. Four of these seats they allotted to recommendation by the non-official members of the four provincial Councils, and one to the Calcutta Chamber of Commerce. Abandoning as hopeless the idea of securing representation of the vast residuary area and population of the country by any *quasi*-elective machinery, they fell back for the filling of the five remaining non-official seats upon the process of nomination by the Governor-General.

24. INDIAN NATIONAL CONGRESS AND THE MUSLIMS.[1]

[The first session of the Congress was attended by only 2 Muslims, the second by 33 and the sixth by 156 (22 per cent. of the delegates). "The bogey of Muslim opposition to the Congress was set up quite in the early years of the Congress and it is curious to note that Sheikh Raza Hussein Khan produced at the fourth session (1888, Allahabad) a *Fatwa* supporting the Congress from Shams-ul-Ulma, the leader of the Sunni community of Lucknow, and declared that 'it is not the Muslims, but their official masters who are opposed to the Congress'."[2] The third and twelfth sessions of the Congress (1887, 1896) were presided over by Muslims.]

I. Presidential Address of Mr. Badruddin Tyabji, Madras, 1887.

. . . . it has been urged in derogation of our character, as a representative national gathering, that one great and important community—the Mussulman

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[1] See Presidential address of Maulana Mohammad Ali, Cocanada, 1923, in *Indian Constitutional Documents*, Vol. III.

[2] P. Sitaramayya, *History of the Indian National Congress*, Vol. I, pp. 19, 67.

community—has kept aloof from the proceedings of the two last Congresses. Now, gentlemen, in the first place, this is only partially true and applies only to one particular part of India, and has, moreover, been due to certain special, local, and temporary causes, and, in the second place, no such reproach can, I think, with any show of justice be urged against this present Congress, and, gentlemen, ... one great motive which has induced me in the present state of my health to undertake the grave responsibilities of presiding over your deliberations, has been an earnest desire on my part to prove, as far as in my power lies, that I, at least, not merely in my individual capacity, but as representing the *Anjuman-i-Islam* of Bombay, do not consider that there is anything whatever in the position or the relations of the different communities of India, —be they Hindus, Mussulmans, Parsees, or Christians —which should induce the leaders of any one community to stand aloof from the others in their efforts to obtain those great general reforms which are for the common benefit of us all and which, I feel assured, have only to be earnestly and unanimously pressed upon Government to be granted to us.

Causes of Muslims' alleged aloofness from Congress

Muslims should co-operate with other communities for common benefit of all.

Gentlemen, it is undoubtedly true that each one of our great Indian communities has its own peculiar social, moral, educational and even political difficulties to surmount; but so far as general political questions affecting the whole of India—such as those which alone are discussed by this Congress—are concerned, I for one am utterly at a loss to understand why Mussulmans should not work shoulder to shoulder with their fellow countrymen of other races and creeds, for the common benefit of all. Gentlemen, this is the principle on which we, in the Bombay Presidency, have always acted, and from the number, the character, position and the attainments of Mussulman delegates from the Bengal Presidency and from the Presidency of Madras, as well as from the North-West Provinces[1]

Muslim co-operation with the third Congress

[1] Now called United Provinces of Agra and Oudh.

and the Punjab, I have not the smallest doubt that this is also the view held, with but few though perhaps important exceptions, by the leaders of the Mussulman communities throughout the whole of India.

II. Presidential Address of Mr. Pherozeshah Mehta, Calcutta, 1890.

. . . . our right to the designation of a national body has been vindicated. It is so admirably set forth in an article which appeared in a Conservative Review —*The National*—from the pen of a Conservative . . . . that I cannot resist the temptation of borrowing from it. "The supposed rivalry", says the writer, "between Mussalmans and Hindus is a convenient decoy to distract attention and to defer the day of reform. I do not wish to affirm that there is no antagonism between the adherents of the two faiths; but I do most positively assert that the antagonism has been grossly exaggerated. Every municipal improvement and charitable work finds members of the two faiths working together and subscribing funds to carry it out. Every political paper in the country finds supporters from believers in both creeds. Just the same is witnessed in the proceedings of the Congress. The members of the Congress meet together as men, on the common basis of nationality, being citizens of one country, subjects of one power, amenable to one code of laws, taxed by one authority, influenced for weal or woe by one system of administration, urged by like impulses to secure like rights and to be relieved of like burdens. If these are not sufficient causes to weld a people together into one common alliance of nationality, it is difficult to conceive what would be sufficient. It is for this reason the organisation has been called the Indian National Congress; not because . . . . it claims a non-existent unity of race, but because it deals with rights and interests which are national in character, and matters in which all the inhabitants of the Indian Peninsula are equally concerned."

Views of a Conservative writer on Hindu-Muslim differences

Congress as a 'national body'

Bonds of union among Hindus and Muslims

III. Presidential Address of Mr. R. M. Sayani, Calcutta, 1896.

Ignorance of Muslims about Congress

It is imagined by some persons that all or almost all the Mussalmans of India are against the Congress movement. That is not true. Indeed, by far the largest part do not know what the Congress movement is. Education of any sort or kind is conspicuous by its absence amongst them and their habitual apathy has kept them from understanding the movement at all. In fact they are blissfully ignorant. What the causes of such ignorance are, will be presently inquired into. It will be sufficient here to state that one infinitely small class of persons who have received liberal education through the medium of English language and another equally infinitely small class of persons who have received no education whatever through the medium of English language but who have acquired a smattering of what they are pleased to consider education through the Hindustani language, have considered it a fashionable thing to abuse the Congress and the Congressmen as such. There being thus two different classes of malcontents, if they may be so called, the grounds of their opposition are naturally different, nay, even inconsistent with each other. There is a third class, also a small one at present, who have recently risen from their apathy and are honestly endeavouring to educate themselves in the right direction and are destined soon to come to the front, and, it may safely be surmised, will become as enthusiastic supporters of the Congress movement as any; but with this last mentioned class we have no immediate concern, and this address will confine itself to the two classes first mentioned. Before going, however, through the grounds of opposition on the part of these two classes it is desirable to revert to the causes of ignorance and apathy aforesaid. An advocate of the views of the first two classes might well be supposed, if he ever cared to put his views systematically, to place the case for the Mahomedans in the following way :—

Two classes of Muslim malcontents against Congress

Before the advent of the British in India, the Mussalmans were the rulers of the country. The

Former political predominance of Muslims

Mussalmans had therefore all the advantages appertaining to the ruling class. The sovereigns and the chiefs were their co-religionists, and so were the great landlords and the great officials. The court language was their own. Every place of trust and responsibility, or carrying influence and high emoluments, was by birth right theirs. The Hindus did occupy some positions but the Hindu holders of positions were but the tenants-at-will of the Mussalmans. The Mussalmans had complete access to the sovereigns and to the chiefs. They could, and did, often eat at the same table with them. They could also, and often did, intermarry. The Hindus stood in awe of them. Enjoyment and influence and all the good things of the world were theirs. Into the best-regulated kingdoms, however, as into the best-regulated societies and families, misfortunes would intrude and misfortunes did intrude into this happy Mussalman rule. By a stroke of misfortune, the Mussalmans had to abdicate their position and descend to the level of their Hindu fellow-countrymen. The Hindus, who had before stood in awe of their Mussalman masters, were thus raised a step by the fall of their said masters and with their former awe dropped their courtesy also. The Mussalmans, who are a very sensitive race, naturally resented this treatment and would have nothing to do either with the rulers or with their fellow-subjects. Meanwhile the noble policy of the new rulers of the country introduced English education into the country. The learning of an entirely unknown and foreign language, of course, required hard application and industry. The Hindus were accustomed to this, as even under the Mussalman rule they had practically to master a foreign tongue, and so easily took to the new education. But the Mussalmans had not yet become accustomed to this sort of thing, and were, moreover, not then in a mood to learn, much less to learn anything that required hard work and application, especially as they had to work harder than their former subjects, the Hindus. Moreover, they resented competing with the Hindus, whom they had till recently regarded as their inferiors.

Result of loss of political power

Boycott of Western education by Muslims

The result was that so far as education was concerned the Mussalmans who were superior to the Hindus now actually became their inferior. Of course, they grumbled and groaned, but the irony of fate was inexorable. The stern realities of life were stranger than fiction. The Mussalmans were gradually ousted from their lands, their offices ; in fact, everything was lost save their honour. The Hindus, from a subservient state, came into the lands, offices and other worldly advantages of their former masters. Their exultation knew no bounds and they trod upon the heels of their former masters. The Mussalmans would have nothing to do with anything in which they might have to come into contact with the Hindus. They were soon reduced to a state of utter poverty. Ignorance and apathy siezed hold of them while the fall of their former greatness rankled in their hearts. This represents the train of thought which pre-occupies the mind of many who would otherwise be well disposed towards this movement. All will admit that though they might object to particular statements, on the whole there is an element of truth which explains the Mahomedan depression.

'Depression' of Muslims

Sir W. W. Hunter says :

"Almost everywhere it was found that the Hindu population seized with avidity on the opportunities afforded by State education for bettering themselves in life ; while the Mahomedan community, excepting in certain localities, failed as a whole to do so. State education thus put the finishing stroke to the influence of the Mahomedans, as the former ruling race in India. That position they had inherited from the time of the Moghul Empire, and during the first period of the Company's administration they still held an undue proportion of official posts. In the last century Mussalman Collectors gathered the Company's land-tax in Bengal, Mussalman Foujdars and Ghatwals officered its Police. A great Mussalman department, with its head-quarters in the Nawab Nazim's palace at Murshidabad, and a network of Mussalman officials over every district in Lower Bengal, administered the

Hunter's view

Muslim officials during early British rule

criminal law. Mussalman jailors kept ward over the prison population of Northern India; Kazis or Mahomedan Doctors of Law presided in the civil and domestic courts. When the Company first attempted to administer justice by means of trained English officers in its Bengal possessions, the Mahomedan Law Doctors still sat with them as their authoritative advisers on points of Law. The code of Islam remained for many purposes the law of the land, and the ministerial subordinate offices of Government continued to be the almost hereditary property of the Mussalmans. But with the introduction of English education, the Hindus began to pour into every grade of official life; and the state system of education in 1854[1] completed the revolution." Teaching disappeared everywhere, even in the mosques. After the Mahomedan conquest of India the mosques had become "the centres of educational activity and were supported by imperial or local grants of land." But the mosques now ceased teaching, even in Lower Bengal, the province which, "a hundred years previously, was officered by a few Englishmen, a sprinkling of Hindus and a multitude of Mahomedans." The Mussalmans lost all ground . "It became apparent that Western instruction was producing not only redistribution of employments but also an upheaval of races."

Muslims replaced by Hindus after introduction of Western education

The Government of India, that is, the English gentlemen both in England and in India, directly concerned in carrying on the administration of India, became alarmed at the state of things. The English people, generally, were grieved at this mistaken, yet noble, race of Indian Mussalmans thus going fast to ruin. Despatch after despatch were sent to India to do something for the Mussalmans. Special facilities were ordered. Some Mussalmans were after all found willing to receive liberal education, and these in their turn organised themselves into a body to educate others, and thus arose the educated class of Mussalmans.

Special favours to Muslims from British rules

[1] The reference is to Sir Charles Wood's Education Despatch of 1854.

The Mussalmans are noted for their gratitude. Some persons seem to have put it into their heads that Government as a body disapproved of their subjects criticising the measures of the administration. Hence that educated class, honestly, though mistakenly, opposes the Congress movement. As to the second class, their interest lies in keeping the Mussalmans ignorant, so as to turn such ignorance and the consequent credulity to their own advantage.

Why Muslims oppose Congress

The following appear to be the objections of the Mussalmans to the Congress :—

1. That it is against their religion to join the Congress as by joining the Congress they will be joining the Hindus who are not Mussalmans.

2. That it is against their religion to join the Congress as by joining the Congress they will be joining a movement opposed to Government, a thing which is opposed to their religion, which directs obedience and loyalty to Government, albeit Government may not be treating them properly.

Alleged Muslim objections to the Congress:

3. That it is against their religion to learn the English language.

Religion

4. That the success of the Congress would weaken the British rule, and might eventually end in the overthrow of the British power and the substitution of Hindu rule.

5. That Government is against the Congress movement; that in addition to the duty of loyalty, the Mussalmans owe the duty of gratitude to Government for giving them a liberal education; therefore by joining the Congress, the Mussalmans would be guilty of the sin of ingratitude towards Government.

Loyalty and gratitude

6. That the Congress does not adequately represent all the races of India.

7. That the motives of the persons constituting the Congress are not honest.

Dishonest, unrepresentative and unpractical character of Congress

8. That the aims and objects of the Congress are not practical.

9. That the Congress is not important enough to deal satisfactorily with the subjects it takes up.

Western methods of government not applicable to India and to Muslims

10. That the modes of government prevailing in the West, namely, examination, representation, and election, are not adapted to India.[1]

11. That such modes are not adapted to Mussalmans.

12. That the result of the application of Western methods to India would be to place all offices under Government in the power of the Hindus, and the Mussalmans would be completely ousted from Government employment.

Nomination—not examination or election—to be basis of public appointments and political influence

13. That Government employment should be conferred not on the test of examination, but by selection on the ground of race, position of the family, and the other social and local considerations.

14. That public distinctions, such as seats on the Legislative Councils, Municipal Boards, and other public bodies, should be conferred not by the test of election, but by nomination based on the ground of race, and social influence and importance.

15. That inasmuch as the Congress is a representative body, and inasmuch as the Hindus form the majority of the population, the Congress will necessarily be swamped by the Hindus, and the resolutions of the

[1] The following observations of Sir Syed Ahmad Khan (speech in Imperial Legislative Council on Central Provinces Local Self-Government Bill, 1883) are significant: "I am convinced that no part of India has yet arrived at the stage when the system of representation can be adopted, in its fullest scope, even in regard to local affairs in a country like India, where caste distinctions still flourish, where there is no fusion of the various races, where religious distinctions are still violent, where education in its modern sense has not made an equal or proportionate progress among all the sections of the population, I am convinced that the introduction of the principle of election, pure and simple, for representation of various interests on the local boards and the district councils, would be attended with evils of greater significance than purely economic considerations The larger community would totally override the interests of the smaller community, and the ignorant public would hold Government responsible for introducing measures which might make the differences of race and creed more violent than ever."

Congress will, to all intents and purposes, be the resolutions of the Hindus, and the Mussalmans' voice will be drowned, and therefore, if the Mussalmans join the Congress they will not only not be heard, but will be actually assisting in supporting Hindus to pass resolutions against the interest of the Mussalmans, and to give colour to such resolutions as the resolutions of Hindus and Mussalmans combined and thus aiding in passing resolutions against themselves and misleading Government into believing that the Mussalmans are in favour of such resolutions.

Congress dominated by Hindu majority

16. That Mussalman boys have to learn the language appertaining to their religion before joining schools; they are, therefore, at a disadvantage in the start for English education as compared with the Hindus. That the result is, that the Hindus pass the examination, and as Government employment is given upon the test of examination, the Mussalmans are necessarily ousted from Government employment, and it follows that the test of examination is not a fair test.

17. That as employments are given on the test of examination the result is the Hindus get such employment, and even in districts where the majority of the population are Mussalmans, the Hindus form the subordinate officialdom. That the Hindus, being hostile to the Mussalmans, lord it over them, and the Mussalmans are naturally grieved to be lorded over by the Hindus. That in many cases these Hindus are from the lower strata of society, and in that case they tyrannise the more and thus aggravate the harsh treatment of the Mussalmans. That the result is that Mussalmans, and amongst them Mussalmans descended from royal and noble families, are mortified at being not only ruled over, but even molested by and tyrannised over, in all manner of ways by Hindus, and Hindus of the lowest orders.

Hindus 'lord it over Muslims.'

I now proceed to answer these objections:

Sayani's reply to Muslim complaints:

1. Mussalmans in the past—Mussalmans not in name only, but orthodox, true Mussalmans—constantly travelled in foreign lands and mixed with all the nations

of the world. The Mussalmans in India are the descendants of Mussalmans who thus travelled to and settled in India, and of the Hindus whom such Mussalmans converted to Islam. All the Mussalmans in India have always lived side by side with the Hindus and mixed with them and even co-operated with them, both during the period of the Mussalman rule as also since then. In fact, both the Mussalmans and the Hindus, as also older races residing in this country, are all equally the inhabitants of one and the same country, and are thus bound to each other by ties of a common nativity. They are all sharers in the benefits and advantages, as also in the ills, consequent on common residence; and so far as natural and climatic conditions are concerned all the inhabitants, irrespective of all other considerations, are subject to common joys and common sorrows and must necessarily co-operate with each other, as humanity is imperfect and dependent on co-operation. Again, both the Mussalmans and the Hindus are subjects of the same sovereign and living under the protection of the same laws and are equally affected by the same administration. The object of the Congress is to give expression to the political demands of the subjects and to pray that their political greivances may be redressed and their political disabilities may be removed; that the political burdens of the country may be lightened and its political conditions may be ameliorated; that the political status of millions of human beings who are their fellow countrymen may be improved, and their general conditions may be rendered more tolerable. It is a most meritorious work, a work of the highest charity. No nobler or more charitable work could possibly be conceived. The only question is whether there should be two separate organisations, Mussalman and Non-Mussalman, both simultaneously doing the same work, separate in name, but identical in nature and interest, or whether there should be a joint organisation. Obviously the latter is preferable, especially as the Congress has no concern whatever with the religion or the religious convictions of any of its members.

'Ties of a common nativity' among Hindus and Muslims

Objects of Congress

Congress has no concern with religion.

2. It is not true that the Congress movement is a movement in opposition to Government. It is a movement for the purpose of expressing the grievances of the subjects to Government in a legal and constitutional manner, and for the purpose of asking Government to fulfil promises made by Government of its free will and pleasure; in fact, it is the duty of all truly loyal subjects—subjects desirous of seeing the Government maintained in its power—to inform Government of their own wants and wishes as it is also the duty of Government to ascertain the wants and wishes of subjects and, indeed, those subjects who will not keep the Government well informed of their own wants and wishes cannot be called true friends of Government. We are all aware that the English nation, our common fellow-subjects, always makes it a point to inform Government of its own wants and wishes, so that Government may be able to fulfil such wants and wishes. In the case of India, moreover, promises have been made from time to time by Government to concede certain privileges; indeed, we have the plighted word of our most gracious sovereign herself confirming those promises. It is our duty, therefore to remind Government of such promises and to ask it to fulfil them.

Congress movement is not a movement in opposition to Government.

3. Language is but the medium of expression. Orthodox and true Mussalmans in their time learnt the Greek, the Latin, and other languages. There is, therefore, nothing against learning any language. In fact, many Mussalmans of India, indeed, most of them, learn and speak languages other than the language of their religion. The objection, therefore, against learning the English language, which is moreover the language of our rulers, is so absurd on the face of it, that it need not be further adverted to.

Muslims should not object to learning English.

4. The object of the Congress has already been stated. The success of the Congress, as has also been stated, instead of weakening Government, will only contribute towards the greater premanency of British rule in India. The Mussalmans, therefore, need not be

Success of Congress 'will only contribute towards the greater permanency of British rule in India.'

frightened by phantoms created by their own imagination.

5. It is the duty of all good boys, who have by the liberal policy of their fathers been enabled to receive a liberal education, to repay the kindness of their fathers, by assisting their fathers in the management of their affairs with the aid of such education and by contributing to the maintenance and welfare of the family by all honest means in their power. Similarly, it is the duty of those subjects who have received a liberal education with the aid of Government, to repay the kindness of Government by assisting Government in the proper discharge of its high functions, by informing Government of the shoals and rocks lying ahead in its path and thus enabling Government to steer clear of such shoals and rocks and thus unintentionally of course, but nevertheless contribute to its grounding ashore. True gratitude lies in true good wishes and true good assistance, and not in false modesty and indolence.

All 'races' should join Congress to make it more representative.

6. If the Congress does not, as is alleged, adequately represent all the races, surely the fault lies, not on the shoulders of the Congress leaders who invite all the races, but on the shoulders of those races themselves who turn a deaf ear to such invitation, and prefer not to respond to it. It is the duty of such races, in response to such invitation, to attend the Congress and not blame the Congress when, in fact, they ought to blame themselves.

7. All public bodies, assembled in public meetings, desirous of giving every publicity to their proceedings and even keeping a public record of their transactions, ought to be judged by their sayings and doings. It is not right or proper to attribute to such bodies improper motives unless such motives can be fairly and reasonably inferred from their sayings or doings or both. In fact, no person having any sense of self-respect ought to attribute improper motives unless he is prepared to prove the same and it is to be hoped, for the honour of the Mussalmans, to cease from making reckless

charges which they are not prepared to substantiate. As to the ends and objects of the Congress not being practical it is a well-known fact that public attention has been drawn to the demands of the Congress and not only the classes but even the masses have already been awakened to a sense of their political grievances and disabilities. Government has also been pleased to take into its favourable consideration the demands of the Congress and has partially conceded the expansion of the Legislative Councils and introduced the elements of election therein. Indeed, if the Congress movement is continued with the same ability, prudence and sagacity that have characterised it in the past, and specially if those who have hitherto contented themselves with simply throwing out objections begin in right earnest to take part in the movement, the movement is certain to bear fruit in the very near future and to end in practical results.

Congress movement is yielding practical results.

8. As to the Congress not being important enough to deal with the subjects it takes up, it will not be denied that the Congress contains in its ranks some of the most educated, most wealthy and most influential men of the day, some of whom have occupied—and occupied honourably—public offices of trust and importance, and most of whom are leaders of their respective centres. In fact, in the Congress camp one comes across legislators, Municipal Councillors, rich Zamindars, extensive merchants, renowned lawyers, eminent doctors, experienced publicists, indeed representatives of every industry and every profession in the land. In fact, it will be hard—nay, impossible—to name any other non-official public body equally important with the Congress.

Congress composed of leading men

10. As to the modes of Government prevailing in the West not being adapted to India, the position stands as follows: In a primary state of society, whilst a particular small nation, confined to a narrow strip of territory, is governed by a single ruler who generally belongs to the nation and is residing in the territory as the nation is not a numerous one and the territory not a large one, the ruler is necessarily in daily

Appointment to public offices through ruler's personal nomination suits a 'small nation confined to a narrow strip of territory.'

and constant touch with his subjects. The affairs of the State are of a very limited nature and do not occupy much time of the ruler. Moreover, there are not special or local circumstances of sufficient importance to be taken into consideration. The affairs of the State are of a simple nature. The offices are not many and do not require special merits for their proper performance. Whenever, therefore, the ruler has to appoint to a post the ruler himself is qualified to do so. He does not find it necessary to resort to any complicated method for the performance of this part of his duty. Hence the posts are filled without compelling the candidates to undergo the troubles of going through any definite or complicated course of instruction or examination. As the nation, however, increases in numbers, as the territory is enlarged and the needs of the society become more numerous and more complicated, the number of the posts to be filled becomes greater and the qualifications required for the proper performance of the posts grow higher and are of diverse character. The touch of the ruler with each one of the ruled gets less and less, and the ruler cannot possibly keep himself personally abreast of a knowledge of the increased and complicated needs of the people. He becomes, in fact, less qualified to properly fill up all the posts and he is compelled to delegate this part of his duty to others. In course of time, he discovers that it is not a very satisfactory thing to nominate to posts by means of deputies and that some definite methods of selection must be substituted. The considerations which formerly guided him when he alone had personally to nominate, are of such a vague character when placed in the hands of his deputies, that he finds that it is not only not useful but even mischievous to resort to them as, instead of such considerations being in fact given weight to, they simply open a wide door to undue influence and even bribery and he finds it necessary to discard them and is compelled to limit himself to selection by a public examination of candidates, after they have gone through a course of instruction laid down for the purpose. Thus it happens that all

other qualifications such as of family, standing and position and others, come to be dispensed with, and the test of public examinations, that is, of personal merit alone, as tested by such examinations, is substituted. It may be conceded at once that it is not a perfect or infallible test. It is a choice of evils. In order, however, to guard so far as possible against the evil of dispensing with the other considerations a certain proportion of the posts is reserved to be filled up by the original method of nomination and the examination test is resorted to for filling up initial posts alone, and promotion is guided by seniority and merit combined. The circumstances above set forth are not peculiar to any particular country or climate but are equally applicable to all, and it is not correct to say that the above method is a peculiarly Western method and not applicable or adapted to India. In fact, in China which is peculiarly an Eastern country the same method has been of universal application for many centuries past. Moreover, the present rulers of India happen to be foreigners and in their case, therefore, the considerations, which have led to the method of examination being adopted, apply with even greater force. The above considerations also apply to the method of election and representation, though not with the same force or to the same extent. Hence, election and also nomination in the case of Local Boards, Municipal Corporations, Legislative Councils, and the like. It has been suggested by the Honourable Haji Mohammad Ismail Khan, of the North-West Provinces, that the Congress should pass a resolution "recognising the absolute necessity of equality of number of Hindu and Mahomedan elected members in Legislative Councils, District Boards, and Municipalities " and "wishing all Hindus and Mahomedans to elect accordingly." It is a good suggestion, but so long as Mussalmans do not join the Congress movement in the same numbers and with the same enthusiasm as the Hindus do, the Congress cannot in fairness be asked to carry out such a suggestion in the manner and to the extent indicated in the suggestion.

Why 'test of personal merit' should replace test of nomination

Arguments in favour of examination apply also to election to local bodies and legislatures.

11. As to the modes of government prevailing in the West not being adapted to Mussalmans, the observations in answer to objection no. 10 also apply to this objection. The Mussalmans may be reminded that our Holy Prophet did not name a successor. He left it to the believers to elect one for themselves. The Caliph or the successor was originally freely chosen by the free *suffrages* of the believers and was responsible to them for his acts. In later times this practice was altered, and the Caliphs were made hereditary; but this was done by the confidence and the consent of the believers. But even to this day the sanction of the believers, in the shape of *Biat,* is deemed necessary. "The Government of Islam," says Mr. Ahmed Riza, "is, therefore, in the hands of an elective monarch, limited in the exercise of his powers by prescriptive religious traditions. According to Mussalman Law, if the Caliph departs from these traditions the body of the learned (*Ulema*) is armed with the right of remonstrating, and is even able to depose him. Amongst these traditions, there is one which makes it obligatory on the Caliph not to do, or even to resolve on, any act without first seeking the advice of the chiefs of the tribes and the doctors of the law—a principle very characteristic of Representative Government. According to Mussalman Law, the Caliph is bound to be just, to respect the liberties of the people, to love his subjects, *to consider their needs, and listen to their grievances.*"....."It is clear that Islam knew how to determine and regulate the rights and duties of the sovereign even before England essayed the task." Election and representation as also universal brotherhood are the characteristics of Islam and ought not to be objected to by Mussalmans. All Mussalmans are equal, and if they want any employment, they must like the rest pass public examinations. If they want any position of rank they must endeavour to be fit for such position and resort to election, like the rest. Of course, if they can gain such position by nomination, they must thank their good fortune, but if they cannot, they have no right to grumble. They may contend, however, that so far

In Islam political authority is derived from consent of the people.

Muslims should not object to examination and election.

as examinations are concerned, they are at a disadvantage, as compared with the Hindus. If that is so, it is no doubt a misfortune. But surely they must rely on merciful Providence and put their own shoulders to the wheel and by the grace of God they are bound to succeed in their efforts; nay, even more; if they have more difficulties to overcome than the Hindus, so much the more creditable will be their success to them and so much the more will they be qualified, not only for the initial posts, but for higher promotion. In fact, even in India, we find that when Mussalmans do really take to liberal education, they generally equal, if not even surpass, the other races, and that Mussalmans are good not only in matters requiring muscle and valour, but also mental powers and intellectual vigour, and the Mussalman community of India can produce distinguished and deeply learned scholars. . The Mussalmans may further contend that in elections they will be swamped. All that may be said here is that they are mistaken in thinking so. They have simply to try, and they will find that they will have no reason to complain. Assuming, however, that they are unsuccessful, notwithstanding their honest endeavours and notwithstanding their fitfulness, why, then Government will, for its own safety, be compelled to come to their help.

Objections 12, 13, 14 and 16 have already been answered.

15. It does not follow that, because the Hindus form the majority of the Congress, the resolutions of the Congress will be the resolutions of the Hindus. It is a standing rule of the Congress solemnly passed and recorded that if any proposal is disapproved of by the bulk of either the Hindus or the Mussalmans, the same shall not be carried. Again, the Congress is not a meeting of share-holders in a Joint Stock Company or any other body formed for the gain of profit or for private interests, and a numerical majority does not and cannot influence its decisions—decisions, by the bye, which cannot affect anybody as they are simply expression of opinions, and as such must necessarily depend

In spite of Hindu majority in Congress, its resolutions are not 'resolutions of the Hindus.'

on their intrinsic sense and reasonableness to carry any weight with the Government for whose benefit they are passed. Again, so long as the Congress leaders happen to be men of education and enlightenment, men of approved conduct and wide experience, men, in fact, who have a reputation to lose, the Congress will never be allowed to run its course for the benefit of sectional, private or party purposes. Again, if the Mussalmans attend Congress meetings, surely the Congress shall be bound to hear and to give careful consideration to Mussalman views, and arguments founded on facts and reasons are bound to prevail. Assuming, however, that the Congress is reduced to a rabble meeting, which is not probable, why, then it will lose its position and nobody will pay any attention to its resolutions.

Congress not serving 'sectional, private or party purposes'

The Mussalmans, however, instead of raising puerile and imaginary objections from a distance, should attend Congress meetings and see for themselves what is going on in such meetings; indeed, they will find that even when one member puts forward cogent reasons in opposition to the proposal, such proposal is eventually dropped.

17. If the complaint in regard to the conduct referred to in the objection be correct, it may be mentioned that such conduct is not peculiar to any particular race.

Alleged maltreatment of Muslims by low-born Hindu officials

It is in the nature of things that persons of low origin, born or brought up in the atmosphere of low morals, should on finding themselves suddenly clothed with the authority of the *Sircar*, get their heads turned and be led into playing the tyrant. The less the education they have received, and the smaller the emoluments their posts carry, the greater their supercilliousness, the more marked their contempt for others. Cringing to superior authority and lording it over the people who have anything to do officially with them, are the distinguishing traits of these pests of society. Persons of high birth and culture, who have seen better days and better society, may sometimes be naturally inclined to give to these supercillious tyrants a sound

thrashing so as make them remember it to the end of their days and prevent them from reverting to their evil ways. But persons of high birth and culture naturally recoil from doing anything which may savour of vulgarism, and hence their silent sufferings. Government has been ever ready and willing to check highhandedness and insulting conduct on the part of their native subordinate officials. Europeans, both official and non-official, lovers of manliness and justice as they are, strongly disapprove their hauteur. But no Government, however watchful, and however anxious it may be, can possibly completely eradicate the evil, the true remedies for the removal of which are as follows: The standard of education required of candidates for subordinate official posts should be gradually raised higher and higher so as to compel the candidates to have better education, better culture, in order to make them forget the evil surroundings of their previous life and to take to a better appreciation of the moral laws of nature. At the same time education should be disseminated all over the land and the standard of education of the masses should be gradually and steadily raised, so that the masses, armed with the weapon of education, may not have meekly to submit to petty tyrannies but may know how to protect themselves against them and to bring the offenders to a proper sense of their puniness, and the impropriety of their conduct by means of union and the agitation of their grievances, and in legally proveable cases by bringing the culprits to their well-deserved punishments.

Spread of education will remove high-handedness of petty officials.

25. IS INDIA A NATION?

I. Presidential Address of Mr. P. Ananda Charlu, Indian National Congress, Nagpur, 1891.

To detract from the worth and significance of the well-knit, ever-expanding phalanx known as the Indian National Congress a desultory controversy was raised round the word 'nationality,'—a controversy at once learned and unlearned, ingenious and stupid,

Controversy regarding Nationality

etymological and ethnological. Now a common religion was put forward as the differentia ; now a proved or proveable common extraction ; and now the presence of the privileges of commensurability and inter-conjugal kingship. These ill-considered and ill-intentioned hypotheses have, one and all, fallen to the ground, and no wonder ; for the evident circumstance was lost sight of, that words might have diverse acceptations—each most appropriate for one purpose, and, in a like degree, inappropriate for other purposes. In my view the word 'nationality' should be taken to have the same meaning as the Sanskrit *Prajah,* which is the correlative of the term *Rajah*—the ruling power. Though, like the term *Prajah,* it may have various significations, it has but one obvious unmistakable meaning in political language, *viz.,* the aggregate of those that are

In what sense can we speak of an Indian nation ?

"citizens of one country, subordinate to one power, subject to one supreme Legislature, taxed by one authority, influenced for weal or woe by one system of administration, urged by like impulses to secure like rights and to be relieved of like burdens." It is in reality a potential class. In the first place, it has for its central stock—like the trunk of a tree—the people who have for ages and generations settled and domiciled in a country, with more or less ethnic identity at bottom, and more or less unified by being continually subjected to identical environments and to the inevitable process of assimilation. In the next place, it gets added to, from time to time, by the accession of other peoples—like scions engrafted on the central stem, or like creepers attaching thereto—who settle in the country in a like manner, and come under the many unifying influences already referred to, though still exhibiting marks of separateness and distinctness. Affirm this standard and you have an Indian nation. Deny it and you have a nation nowhere on the face of the earth.

Tests of Nationality

A common language, a common religion, inter-dining and inter-marriage are, without doubt, potent auxiliaries. These help, no doubt, by affording facilities for co-operation and by rendering easy the

attainment of common objects. But, for all that they are (at best) inseparable accidents, and it betrays a grievous obliquity of judgment to esteem them as constituting the very essence of what is understood by the term 'nation.' We began, proceeded and have persevered upto this day on the tacit assumption that such is the correct doctrine, and let us continue to exert ourselves on that principle at least as a working definition; because, by pursuing such a course, and within the short period of seven years, we have accomplished the great and palpable fact that the Hindu and Mahomedan populations of this country—long separated from one another—long divided by parochial differences—long kept apart and estranged from one another by sectional and sectarian jealousies—have at last recognised one another as members of a single brotherhood, despite the many differences that still linger. This is a magnificent product of the Congress as a mighty nationaliser.[1]

Congress—'a mighty nationaliser'

II. Presidential Address of Sir Henry Cotton, Indian National Congress, Bombay, 1904.

What is the real meaning of the movement which has brought you together to-day and animates your thoughts and action? It is the consciousness that your organisation is a national one, and that you are working together in the formation of a national move-

"National movement with common sentiments of interest and patriotism"

[1] Sir Richard Garth, a former Conservative Member of Parliament, Chief Justice of Bengal, said in reply to an attack on the Indian National Congress:

"I will tell you what they have done. They have dared to think for themselves; and not only for themselves, but for millions of poor ignorant people who compose our Indian Empire. They have been content to sacrifice their own interests, and to brave the displeasure of Government in order to lend a helping hand to those poor people. They have had the courage and the patriotism to denounce abuses which have disgraced our Indian rule for years past; which have been condemned by public opinion in India and in England, and to which the Indian Government appear to cling with a tenacity which seems utterly inexplicable. They have dared to propose reforms which, despite the resistance of the Government, have been approved by Parliament, and to endeavour to stay that fearful amount of extravagance

Sir Richard Garth on the valuable work done by the Congress

ment with common sentiments of interest and patriotism. The different races, the numberless castes, classes and creeds of India are welded together in your ranks

The unmistakable yearning for nationality finds its utterance through a newspaper Press which has now become a potent factor in your politics. The growth of a national spirit is the touchstone of your organisation. This assemblage of delegates to an Indian National Congress is the decisive evidence of a national movement. The growth of an Indian nation is the great political revolution that is working before our eyes.

'Great political evolution"

26. SIR HENRY FOWLER[1] ON THE POSITION OF THE EXECUTIVE COUNCIL.[2]

I. Letter to Lord Elgin.

'Official mandate theory

So long as any matter of administration or policy is undecided every member of the Government of India is at liberty to express his own opinion; but when a certain line of policy has been adopted under the directions of the Cabinet, it is the clear duty of every member of the Government of India to consider, not what that policy ought to be, but how effect may be best given to the policy that has been decided upon; and, if any member of that Government is unable to do this, there is only one alternative open to him.

II. Letter to Lord Elgin.

Duty of members of Viceroy's Executive Council

The Cabinet have very carefully considered the whole question of the Members of the Executive Council, and they are of opinion that the English precedent applies, and, therefore, that Members of the

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which has been going on in India for years past, and has been the means, as some of our best and wisest Councillors consider, of bringing our Eastern Empire to the verge of bankruptcy."

[1] Later Lord Wolverhampton. Secretary of State for India, 1894—1895.

[2] See E. H. Fowler, *The Life of H. H. Fowler*, pp. 315-317.

Executive Council must, as Members of the Government here do, vote together in support of Government measures. If they are unable to do this, then the English precedent also applies, and the objecting Member resigns, before he either abstains from voting for, or votes against, the measure. No English statesman, no subordinate Member of any English Government, would hesitate as to taking this course, and therefore, the painful alternative of dismissal never arises .I should be very sorry to think that you have in your Council any man who would dispute the supreme authority of the Cabinet on a constitutional question, and by withholding his resignation necessitate his dismissal. However, my duty is clear; and, with the cordial support of my colleagues, I shall immediately advise the Queen to dismiss any Member of the Council who so far forgets what is due to his own position and to the position of the Viceroy as to continue a Member of a Government whose policy he is unable to support.

Analogy of British Cabinet

Dismissal of recalcitrant Members

27. SIR JOHN STRACHEY[1] ON THE COUNCIL OF THE SECRETARY OF STATE FOR INDIA.[2]

The position of the Council differs essentially from that formerly held by the Court of Directors of the East India Company, for unlike that body, which possessed and exercised large independent powers, it has no initiative authority. Questions of the greatest importance, notorious to all the world, may be pending but the Council can give no opinion on them until they are laid before it by the Secretary of State.

Difference between India Council and Court of Directors

Every order proposed to be made by the Secretary of State must, before it is issued, either be submitted

[1] Joined Bengal Civil Service in 1842, became Chief Commissioner of Oudh in 1866, became Lieutenant-Governor of the North-Western Provinces in 1874, became Finance Member in Governor-General's Executive Council in 1876, and served as Member of the Secretary of State's Council in 1885—1895.

[2] Sir John Strachey, *India, Its Administration and Progress* (Revised by Holderness), 1911.

Procedure of work in India Council

to a meeting of the Council, or be placed in the Council-room for seven days for the perusal of the members, unless the Secretary of State considers the matter urgent, in which case, recording his reasons, he may make the order. If there is a difference of opinion between him and the Council his decision prevails, but there is one limitation on the powers thus given to him. He cannot order expenditure without the consent of a majority of the Council.[1]

Imperfect control of India Council over finance

The powers thus given to the Council in controlling expenditure are, however, far from being as great as at first sight they seem to be, for they can only be exercised in regard to the ordinary business of the administration. Orders involving large expenditure may be given by the Secretary of State without either the consent or the knowledge of the Council. In dealing with questions affecting the relations of the Government with foreign powers, making war or peace, prescribing the policy to be followed towards native states, and generally in matters in which secrecy is necessary, the Secretary of State acts on his own authority also. Before the transfer of the Government to the Crown, the Board of Control was empowered to send to India any orders on these subjects through the Secret Committee, which consisted of not more than three members of the Court of Directors, and those powers were transferred to the Secretary of State. Despatches from India on similar matters may be marked 'secret' in India, and they are not communicated to the members of the Council unless the Secretary of State so directs. Such questions as an Afghan war, negotiations with Russia and the Amir of Kabul regarding the affairs of Afghanistan, or the annexation of Burma, do not come before the Council. Its members have not only no power of interference, but they have no recognised means of obtaining information in regard to such subjects other than those of the general public.

Exclusive control of Secretary of State over foreign policy

Some illustrative cases

Apart from questions of this character, most of

[1] Government of India Act, 1858, Sec. 41.

the ordinary business passes through the Council, and, consisting as it does of men possessing special experience of Indian affairs, its advice is naturally, in the great majority of cases, followed by the Secretary of State.[1]

Distribution of business

The business is distributed among the various departments, each of which is in charge of a permanent secretary, and the Secretary of State appoints, for consideration of the questions coming before each department, a committee consisting of four or five members of the Council. They are chosen according to their presumed knowledge of the subjects likely to be referred to them. The recommendations of the committees are laid before the Secretary of State, and, if he so directs, before the Council.

28. SIR JOHN STRACHEY ON THE RELATIONS BETWEEN THE 'HOME GOVERNMENT' AND THE GOVERNMENT OF INDIA.[2]

Is control of Whitehall increasing?

It has often been said that one result of the transfer of the Government of India to the Crown has been to increase very greatly the interference of the Home Government, and to weaken the authority of the

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[1] Lord Ronaldshay says about Lord Curzon, "There had from the first been occasions on which he had been annoyed at the attitude of the Secretary of State's Council towards his policy, and more particularly towards the more important of his measures of reform. It sometimes seemed to him that his proposals met with a much more rigorous scrutiny at their hands than they had been wont to devote to those of previous Viceroys." Lord George Hamilton, Secretary of State, wrote to Lady Curzon on June 20, 1902, "George (*i.e.*, Lord Curzon) has had his way more than any Viceroy of modern times, and when you consider the magnitude of his reforms, the inevitable personal antagonisms that such changes arouse, it is marvellous that the instances in which he has been checked and overruled have been so few . The Council here are the final authority in all Indian matters. They are most distinguished, experienced men, and they cannot be expected to acquiesce in everything suggested to them without comment." See Lord Ronaldshay, *The Life of Lord Curzon*, Vol. II, pp. 235-244.

Lord Curzon on India Council

Lord George Hamilton on India Council

[2] Sir John Strachey, *India, Its Administration and Progress* (Revised by Holderness), 1911. See Dodwell, *A Sketch of the History of India*, Chapter I.

Government in India itself.[1] Having myself been a member of the Government of India for nearly nine years, under five Viceroys, from Lord Lawrence to Lord Ripon, and afterwards a member for ten years of the Council of Secretary of State, this is a point on which I feel that I have authority to speak. The increased facilities of communication, the establishment of telegraphs, the greater interest in India taken by the British public and by Parliament, the growth of the business of the Home Government in consequence of the large investments of British capital in India, and other causes, have made the relations between the two countries far more intimate than was formerly necessary or possible, and have made more frequent the cases in which final orders cannot be passed in India; but it is an error to suppose that the Secretary of State is constantly interfering in the ordinary work of Indian administration. The description of the Home Government given by J. S. Mill in the time of the East India Company is as applicable now as when he wrote.

Factors leading to closer connection between India and Whitehall

"It is not," he said, "so much an executive as a deliberative body. The executive government of India is, and must be, seated in India itself. The principal function of the Home Government is not to direct the details of administration, but to scrutinise and revise the past acts of the Indian Governments; to lay down principles and issue general instructions for their future guidance, and to give or refuse sanction to great

Mill on 'Home Government'

[1] "Nowadays, the Viceroy, a man at the end of a telegraph wire, can to some extent be kept within bounds by the Home Government. When Wellesley was in India it was a year before he could get a reply to a despatch, and events moved too quickly to await instructions. The Governor-General in those days was, of necessity, an autocrat. He had to act on his own initiative; he had to settle things for himself. He was not indeed the final court of appeal: application could be made to Leadenhall Street, but in small matters it was absurd to appeal, and in larger matters more often than not, when the Directors' pronouncement arrived, it could not be made effective. A war could not be undone, a treaty could not be broken."—*The Wellesley Papers*, by the editor of *The Windham Papers*, Vol. I, pp. 184-185.

Freedom of Governor-General in the days of Lord Wellesley

political measures which are referred home for approval."

Normal functions of Secretary of State

The action of the Secretary of State is mainly confined to answering references made to him by the Government of India, and, apart from great political and financial questions, the number and nature of those references mainly depend on the character of the Governor-General for the time being. Some men in that position like to minimise personal responsibilities, and to ask for the orders of the Home Government before taking action. Others prefer to act on their own judgment and on that of their councillors. The Secretary of State in ordinary times initiates little[1].

Government of India 'practically almost independent' regarding internal affairs

So long as the Government of India is content to carry on the administration without largely increasing the cost of existing establishments, and without increasing new and heavy charges, it is practically almost independent, so far as its action in the internal affairs of India is concerned. Even in matters connected with the public expenditure, in regard to which special responsibilities which cannot be avoided have been placed by Parliament on the Secretary of State in Council, the financial powers of the Governor-General in Council and of the Local Governments have been largely extended since the transfer of the Government to the Crown.

Pressure upon Whitehall

So far as the Secretary of State is a free agent, the foregoing observations require no qualification. He has no disposition to interfere needlessly in the details of administration in India. Pressure, however, not easy to resist, is sometimes brought to bear upon him.

The growth of interest in the good government of India among the people of this country, and among their representatives in Parliament, is earnestly to be

[1] Lord Curzon's disagreement with the Secretaries of State covered a wide field: foreign policy, internal administration, constitution of the Government of India. For details, see Ronaldshay, *The Life of Lord Curzon*, Vol II, pp 45-50, 89-101, 204-208, 221-224, 235-244, 272-280, 287-289, 342-343, 349-359, 367-368, 373-412.

desired, but if such interest is to be practically useful it must be intelligent and prudent, and be kept apart from the slippery domain of party politics. It cannot be said that these conditions have always been fulfilled. More than one instance could be quoted in which serious injury to India has been caused or threatened by the interference of the House of Commons in matters in regard to which the great majority of its members are profoundly ignorant, but out of which some temporary political advantage was apparently to be gained, or which possessed some special interest for the always numerous body of doctrinaires and fanatics

'Ignorant action' of House of Commons

it may be feared that among the difficulties and perils of the future that are in store for our Indian dominion, not the least serious may be those that spring from the ignorant action of the British House of Commons.

Although by far the greater part of the administrative improvement of the last thirty years has been due to the Governments in India, credit for some of it must be given to the Government at home. A body constituted like the Home Government of India is slow to move and sometimes obstructive, and its general policy has been conservative and cautious

Share of 'Home' Government in introducing 'administrative improvements'

One of the weakest points in our government is the incessant process of change in the *personnel* of the administration, and the constant waste of mature experience. Neither the Viceroy nor any member of his Council, nor any Governor or Lieutenant-Governor, usually holds his office for more than five years This renders it difficult to maintain at all times a wise continuity of policy, and in this respect the India Office sometimes exercises a useful influence. The advisers of the Secretary of State, although their knowledge is apt to get rusty,[1] often know more about

India Office preserves continuity.

[1] This was written before the enactment of the Council of India Act, 1907 (7 Edw. VII. C. 35), when persons could be appointed to the Council who had been for ten years absent from India, and the ordinary term of office was ten years. The Act of 1907 lessened the risk noted by Sir John Strachey, for it made persons ineligible for appointment to the Council

India than most of the officers of the Government in India itself; they preserve the traditions of administration and the lessons of experience.

29. SIR JOHN STRACHEY ON THE GOVERNOR-GENERAL'S EXECUTIVE COUNCIL[1].

Appointment of Governor-General and Executive Councillors

The Governor-General and the 'ordinary' members of his Council are appointed by the Crown. No limit of time is specified for the tenure of their office, but custom, not often disregarded, has fixed it at five years. The term 'Viceroy' has been commonly applied to the Governor-General since the transfer of the government to the Crown, but it is not recognised by law. It was first used in the Queen's Proclamation of 1858, which referred to Lord Canning as the 'first Viceroy and Governor-General.'

Constitution of Executive Council

There are six 'ordinary' members of Council[2]. The Council, as at present (1910) constituted, consists of three Indian civilians, a native of India having the legal qualification, and two members who before appointment to the Council held posts in the English civil service.

Extraordinary Members of Executive Council

The Commander-in-Chief in India may also be, and in practice always is, an 'extraordinary' member of the Council. He holds charge of the Army department. The Governors of Madras and Bombay become 'extraordinary' members if the Council meets within their presidencies. Whenever it is declared by the Governor-General in Council to be expedient that the Governor-General should visit any part of India without his Council, he may nominate one of the members of his Council to be President of the Council. The President, during the absence of the Governor-General, exercises the powers which the Governor-General may exercise at meetings

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who had left India for more than five years, and it limited the ordinary term of office to seven years.

[1] Sir John Strachey, *India, Its Administration and Progress* (Revised by Holderness), 1911.

[2] Their portfolios were: (1) Home, (2) Land Revenue and Agriculture, (3) Education, (4) Law, (5) Finance, (6) Commerce and Industry.

Procedure of Executive Council in absence of Governor-General

of the Council, except that of assenting to or withholding assent to laws; and the Governor-General, *when so absent, may himself exercise all or any of the* powers which he might exercise as Governor-General in Council, except the power of making laws. The Council may assemble at any place in India which the Governor-General in Council appoints.

Analogy between Executive Council and Cabinet

The Governor-General's Council, as described above, is commonly designated the 'Executive Council,' to distinguish it from the 'Legislative Council.' It is in effect a cabinet of ministers who, with the Governor-General at their head, conduct the executive administration of the country. The Legislative Council of the Governor-General is an expansion of this Council

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How work is done by Governor General in Council

We may now speak of the manner in which the executive business of the Governor-General in Council is transacted. Although after the Act of 1793[1] the power of the Governor-General to overrule his Council was not open to question, the fundamental idea, on which previous legislation had been based, still remained, that the government was to be carried on by the Governor-General in concert with the whole Council. All public business of every kind, however trivial, was supposed to come before all the members of the Council. Questions were ordinarily decided by the majority, the Governor-General having a casting vote if the votes were equal. If the Governor-General determined to overrule the majority, it was provided that he and the members of Council should "mutually exchange with and communicate in writing to each other the grounds and reasons of their respective opinions." They were then to meet a second time, and if both parties retained their first opinions, their minutes were to be entered on the consultations, and

Governor-General's power to over-rule the majority

[1] The power of the Governor-General to overrule his Council was recognised by the Act of 1786 (26 Geo. III, c. 16).

the orders of the Governor-General were to be carried out.[1]

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'Cumbrous' system under the E. I. Company

The truth is that a more cumbrous, I might say a more impossible, system of administration for a great empire could hardly have been invented than that which prevailed under the government of the East India Company, when every case was supposed to be laid before the Governor-General and the whole Council, and to be decided by them collectively. The only reason that enabled such a system to last so long was that in matters requiring prompt and vigorous action it was not really acted upon.

In the latter years of the East India Company, and for a few years after the transfer of the government to the Crown, the Governor-General was frequently separated from the Council. His presence was often required in Northern India by reasons of political necessity. He was authorised to exercise, while absent from the Council, all the powers of the Governor-General in Council, except the power of legislation. The Council remained in Calcutta under the presidency of the senior member, who exercised, during the Governor-General's absence, all the powers of the Governor-General in Council, except the power of giving assent to laws. There was a double Government, with a division of authority and responsibility fatal to good administration. Sir Henry Maine has described, from his own observation as a member of Council, the manner in which the system actually worked:

'Double Government'

Sir Henry Maine's view

"A division of business was made between the Governor-General in the upper provinces and the President in Council at Calcutta. Everything which was of importance was referred directly to the Governor-General, and there was either a rule or an understanding that if any matter which came before the

[1] In his *Essay on Representative Government* (published in 1861) John Stuart Mill described this system as "one of the most successful instances of the adaptation of means to ends which political history. .. has yet to show."

President in Council assumed, contrary to expectation, the least importance, it should be sent on to the Governor-General Except in regard to matters belonging to the Foreign department, of which it was usual for the Governor-General himself to undertake the primary management, the severance of the Governor-General from the Council dislocated the whole machinery of Government. I was myself in Calcutta, as a member of Council during the absence of Lord Elgin in the upper provinces, in the summer of 1863. I believe it to be impossible for any human arrangement to have worked more perversely. Lord Elgin was distinguished by remarkable caution—though I doubt whether his caution was practically greater than that which any man comparatively fresh from England would display under similarly vast responsibilities—and all or most important matters were transferred by him over a distance of 1500 miles for the opinions of his Council. The result was that a great deal of work was done twice over, and a great deal not done at all."[1]

Evils of 'Double Government'

Increasing duties of Government of India

In earlier times, when there were no railways or telegraphs, and hardly any roads, the duties of the Government were very different from what they are now. Kingdoms were annexed and conquered, and stirring events were constantly going on, but the ordinary business of administration was comparatively small. But in the years immediately preceding the mutinies of 1857 rapid changes were in progress in all branches of the administration, and when the great reign of Lord Dalhousie was over he declared it to be morally and physically impossible that the Governor-General should efficiently discharge all the duties imposed upon him.

The events of 1857 made the burden still heavier. The insertion by Parliament of a few words in the Indian Councils Act of 1861[2] gave to Lord Canning

[1] *Memorandum on the Administration of Bengal*, December 2, 1867.

[2] Section 8. See Document Nos. 5, 6.

and his successors the means of reforming a system of government which had become intolerable. It empowered the Governor-General to make from time to time rules and orders for the more convenient transaction of business in his Council, and provided that any order made or act done in accordance with such rules and orders should be deemed to be the order or act of the Governor-General in Council. These provisions made it possible to bring legally to an end the system under with the whole Council was supposed to take part collectively in the disposal of all the business of the Government.

Sec. 8 of Indian Councils Act, 1861

Rules were made by Lord Canning, assigning to each member of the Council the charge of a separate department of the administration, and the Council was virtually converted into a Cabinet, of which the Governor-General was the head. When this change was made it became obvious that the separation, for long periods of time, of the Governor-General from his Council was incompatible with efficient administration. The reform of procedure was completed by Lord Lawrence. Since his time the old plan of double government . has been abandoned. It is now never adopted except as an occasional measure of merely temporary convenience.

Conversion of Executive Council into Cabinet

Although the separation of departments in India is less complete than in England, and the authority of a member of Council much less extensive and exclusive than that of an English Secretary of State, the members of Council are now virtually Cabinet ministers, each of whom has charge of one of the great departments of the Government. Their ordinary duties are rather those of administrators than of councillors. The Governor-General regulates the manner in which the public business shall be distributed among them .. While the member of Council takes the place of the English Secretary of State, there is in each department a Secretary holding a position analogous to that of a permanent under-secretary in England. It is the duty of this Sectretary to place every case before the Governor-General or member in charge of his department, in a

How the Departmental system works

Duties of Departmental Secretary

form in which it is ready for decision. He submits with it a statement of his own opinion. In minor cases the member of Council passes orders which are final. If the matter be one of greater importance, or one in which it is proposed to overrule a Local Government, he sends on the papers, with his own orders, to the Governor-General for his approval. If the Governor-General concurs, and thinks further discussion unnecessary, the orders are issued. If he does not concur, he directs that the case shall be brought before the Council, as in England an important case might come before the Cabinet. The duty rests upon the Secretary, apart from his responsibility towards the member of Council in charge of the department, of bringing personally to the knowledge of the Governor-General every matter of special importance. All orders of the Government are issued in the name of the Governor-General in Council.

Although, when a question comes before the whole Council, it is usually decided in accordance with the opinion of the majority, power is reserved by law to the Governor-General to act on his own opinion alone, wherever the safety, tranquillity, or interests of the British possessions in India may, in his judgment, be essentially affected.[1] Recourse to this power is very seldom necessary. The only occasion in recent times on which it has been exercised in a matter of importance occurred in March, 1879, when Lord Lytton, in opposition to the opinion of a majority of his Council, partially abolished the Indian import duty on English cotton goods. . . .

Governor-General's special power to act on his own opinion alone

Another consequence has followed from the changes that I have described. The abandonment by Lord Lawrence of the system of double government and the establishment of the departmental responsibility of the members of Council, rendered it necessary that when the Governor-General left Calcutta for Northern India he should be accompanied by the Council. Lord Lawrence made Simla the ordinary summer headquarters of the Government. . . .

Why Simla became summer headquarters of the Government

[1] 33 Vict., c. 3, sec. 5.

30. LORD CURZON ON RED TAPISM[1].

I. Letter to the Secretary of State, January 26, 1899.

Your Despatch of August the 5th arrives. It goes to the Foreign Department. Thereupon clerk No. 1 paraphrases and comments upon it over 41 folio pages of print of his own composition, dealing solely with the Khyber suggestions in it. Then comes clerk No. 2 with 21 more pages upon clerk No. 1. Then we get to the region of Assistant Secretaries, Deputy Secretaries, and Secretaries. All these gentlemen state their worthless views at equal length. Finally we get to the top of the scale, and we find the Viceroy and the Military Member, with a proper regard for their dignity, expanding themselves over a proportionate space of print. Then these papers wander about from Department to Department, and amid the various Members of Council. Each has his say, and the result is a sort of literary Bedlam. I am grappling with this vile system in my own Department, but it has seated itself like the Old Man of the Sea upon the shoulders of the Indian Government, and every man accepts, while deploring, the burden.

Clerks

Secretaries

Viceroy

Members of Council

II. Letter to the Secretary of State, May 17, 1899.

Thousands of pages, occupying hundreds of hours of valuable time, are written every year by score upon score of officers, to the obfuscation of their own intellects and the detriment of their official work, and are then sent up to the Local Governments to be annotated, criticised and reported on by other officers who are similarly neglecting their duty in deference to this absurd tyranny; while finally this conglomeration of unassimilated matter comes up here to us again to be noted on in the Departments of the Government of India.

Officers

Local Governments

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[1] Lord Curzon declared in a speech on March 27, 1901, "The real tyranny that is to be feared in India is not the tyranny of executive authority, but that of the pen."

31. LORD CURZON'S PARTRIARCHAL CONCEPTION OF GOVERNMENT.[1]

I. Reply to Address of Welcome from the Bombay Corporation, November, 1900.

British justice

. . . . it is by native confidence in British justice that the loyalty of the Indian peoples is assured and the man who either by force or by fraud shakes that confidence is dealing a blow at British dominion in India.[2] If to justice we can add that form of mercy which is best expressed by the word *consideration*, and which is capable of showing itself in almost every act and incident of life, we have, I think, a key that will open most Indian hearts.

II. Farewell Address in Bombay, November, 1905.

A hundred times in India have I said to myself, Oh that to every Englishman in this country, as he ends his work, might be truthfully applied the phrase, 'Thou hast loved righteousness and hated iniquity'. No man has, I believe, ever served India faithfully of whom that could not be said. All other triumphs are tinsel and sham. Perhaps there are few of us who make anything but a poor approximation to that ideal. But let it be our ideal all the same—to fight for the right, to abhor the imperfect, the unjust or the mean, to swerve neither to the right hand, nor to the left, to care nothing for flattery or applause or odium or abuse—it is so easy to have any of them in India—never to let your enthusiasm be soured or your courage

Ideals of Englishmen in India

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[1] See Ronaldshay, *The Life of Lord Curzon*, Vol. II, pp. 81-82, 417-424.

Writing about two decades after his retirement from India, Lord Curzon observed, "Benevolent despotism . . . as a form of Government is now held in India or anywhere else to be out of date; and the craving for political autonomy, with only the most imperfect realisation of the responsibilities that it entails, has created a new ideal which will carry India very wide and very far." (*British Government in India*, Vol. II, p. 136).

[2] For Lord Curzon's attempt to restrain the lawlessness of British soldiers in India, see Ronaldshay, *The Life of Lord Curzon*, Vol. II, pp. 71-73, 244-249.

grow dim, but to remember that the Almighty has placed your hand on the greatest of his ploughs, in whose furrow the nations of the future are germinating and taking shape, to drive the blade a little forward in your time, and to feel that somewhere among these millions you have left a little justice or dignity, a spring of patriotism, a dawn of intellectual happiness or prosperity, a sense of manliness or moral enlightenment or a stirring of duty where it did not exist before—that is enough, that is the Englishman's justification in India. It is good enough for his watch-word while he is here, for his epitaph when he is gone. I have worked for no other aim. Let India be my judge.

'Englishman's justification in India'

32. LORD CURZON ON VICEREGAL DUTIES, 1905.

(Farewell Speech in Bombay, November, 1905).

The Viceroy very soon finds out that the purely Viceregal aspect of his duties is the very least portion of them, and the Court life, in which he is commonly depicted by ignorant people as revelling, occupies only the place of a compulsory background in his everyday existence. He soon discovers that he is the responsible head of what is by far the most perfected and considerable of highly organised Governments in the world; for the Government of China, which is supposed to rule over a larger number of human beings, can certainly not be accused of a high level of either organisation or perfection. So much is the Viceroy the head of that Government that almost every act of his subordinates is attributed to him by public opinion, and if he is of an active and enterprising nature, a sparrow can scarcely twitter its tail at Peshawar without a response being detected to masterful orders from Simla or Calcutta.

Viceroy's 'court life'

Viceroy—head of Indian administration

You want English Ministries therefore to send you their very best men, and then you want to get out of them, not the correct performance of ceremonial duties, but the very best work of which their energies or

England should send her best men as Viceroys.

experiences or abilities may render them capable. Anything that can deter them from such a conception of their duties or confine them to the sterile pursuit of routine is, in my view, greatly to be deplored.

Viceroy—head of Indian Foreign Office

However, I am only at the beginning of my enumeration of the Viceroy's tale of bricks. He is the head, not merely of the whole Government, but also of the most arduous Department of Government, *viz.*, the Foreign office. There he is in the exact position of an ordinary Member of Council, with the difference that the work of the Foreign Department is unusually responsible, and that it embraces three spheres of action so entirely different and requiring such an opposite equipment of principles and knowledge as the conduct of relations with the whole of the Native States of India, the management of the Frontier provinces and handling of the Frontier tribes, and the offering of advice to His Majesty's Government on practically the entire foreign policy of Asia, which mainly or wholly concerns Great Britain and its relation to India.

Scope of Indian Foreign Office

Viceroy's control over other departments of Government of India

But the Viceroy, though he is directly responsible for this one Department, is scarcely less responsible for the remainder. He exercises over them a control which is, in my judgment, the secret of efficient administration. It is the counterpart of what used to exist in England, but has died out since the days of Sir Robert Peel—with consequences which cannot be too greatly deplored. I earnestly hope that the Viceroy in India may never cease to be head of the Government in the fullest sense of the term. It is not one-man rule, which may or may not be a good thing—that depends on the man. But it is one-man supervision, which is the very best form of Government, presuming the man to be competent. The alternative in India is a bureaucracy, which is the most mechanical and lifeless of all forms of administration.

'One-man supervision' *vs.* Bureaucracy

Viceroy—President of Imperial Legislative Council

To continue, the Viceroy is also the President of the Legislative Council, where he has to defend the policy of Government in speeches which are apt to be

denounced as empty if they indulge in platitudes, and as undignified if they do not. He must have a financial policy, an agricultural policy, a famine policy, a plague policy, a railway policy, an educational policy, an industrial policy, a military policy. Everybody in the country who has a fad or a grievance—and how many are there without either?—hunts him out. Every public servant who wants an increase of pay, allowance or pension—a not inconsiderable band—appeals to him as the eye of justice; everyone who thinks he deserves recognition, appeals to him as the fountain of honour. When he goes on tour he has to try to know nearly as much about local needs as the people who have lived there all their lives, and he has to refuse vain requests in a manner to make the people who asked them feel happier than they were before. When he meets the merchants he must know all about tea, sugar, indigo, jute, cotton, salt and oil. He is not thought much of unless he can throw in some knowledge of shipping and customs. In some places electricity, steel and iron, and coal are required. For telegraphs he is supposed to have a special partiality; and he is liable to be attacked about the metric system. He must be equally prepared to discourse about labour in South Africa or labour in Assam. The connecting link between him and the Municipalities is supplied by water and drains. He must be prepared to speak about everything and often about nothing. He is expected to preserve temples, to keep the currency steady, to satisfy 3rd class passengers, to patronise race meetings, to make Bombay and Calcutta each think that it is the capital city of India, and to purify the Police. He corresponds with all his Lieutenants in every province and it is his duty to keep in touch with every Local Administration. If he does not reform every thing that is wrong, he is told that he is doing too little; if he reforms anything at all, that he is doing too much.

Multifarious demands on Viceroy's time, interest, energy and knowledge

Viceroy required 'to speak about everything and often about nothing'

33. INDIAN NATIONAL CONGRESS ON LORD CURZON'S ADMINISTRATION, 1905.

(Presidential Address of Mr. G. K. Gokhale, Benares, 1905).

. . . . Gentlemen, how true it is that to every thing there is an end! Thus even the Viceroyalty of Lord Curzon has come to a close! For seven long years all eyes had constantly to turn to one masterful figure in the land,—now in admiration, now in astonishment, more often in anger and in pain, till at last it has become difficult to realise that a change has really come. For a parallel to such an administration we must, I think, go back to the times of Aurangzeb in the history of our own country. There we find the same attempt at a rule excessively centralized and intensely personal, the same strenuous purpose, the same overpowering consciousness of duty, the same marvellous capacity for work, the same sense of loneliness, the same persistence in a policy of distrust and repression, resulting in bitter exasperation all around. I think even the most devoted admirer of Lord Curzon cannot claim that he has strengthened the foundations of British rule in India. In some respects, his Lordship will always be recognised as one of the greatest Englishmen that ever came out to this country. His wonderful intellectual gifts, his brilliant powers of expression, his phenomenal energy, his boundless enthusiasm for work,—these will ever be a theme of just and unstinted praise. But the gods are jealous, and amidst such lavish endowments, they withheld from him a sympathetic imagination, without which no man can ever understand an alien people; and it is a sad truth that to the end of his administration Lord Curzon did not really understand the people of India. This was at the root of his many inconsistencies and made him a perpetual puzzle to most men. And thus the man, who professed in all sincerity, before he assumed the reins of office, his great anxiety to show the utmost deference to the feelings and even the prejudices of those over whom he was sent to rule,

Comparison between Lord Curzon and Aurangzeb

Curzon's lack of 'sympathetic imagination'

Inconsistencies of Curzon

ended by denouncing in unmeasured terms not only the present generation of Indians but also their remote ancestors and even the ideals of their race, which they cherish above everything else; he who, in the early part of his administration, publicly warned the official classes that "official wisdom is not so transcendant as to be superior to the stimulus and guidance" of public opinion, and who declared that in the present state of India "the opinion of the educated classes is one which it is not statesmanship to ignore or to despise," ended by trampling more systematically upon that opinion than any of his predecessors, and claiming for his own judgment and that of his official colleagues a virtual character of infallibility.

'Infallibility' of officers

The fact is that Lord Curzon came to India with certain fixed ideas. To him India was a country where the Englishman was to monopolise for all time all power and talk all the while of duty. The Indian's only business was to be governed and it was a sacrilege on his part to have any other aspiration. In his scheme of things there was no room for the educated classes of the country; and having failed to amuse them for any length of time by an empty show of taking them into confidence, he proceeded in the end to repress them. Even in his last farewell speech at the Byculla Club in Bombay, India exists only as a scene of the Englishman's labours, with the toiling millions of the country—eighty per cent. of the population—in the background. The remaining twenty per cent., for aught they are worth, might as well be gently swept into the sea! Had Lord Curzon been less self-centred, had he had more humility in his nature, he might perhaps have discovered his mistake before it was too late. This would probably have enabled him to avoid giving so much offence and causing so much pain as he unhappily did during the last two years, but I doubt if the main current of his administration would even then have flowed in another channel. Lord Curzon's highest ideal of statesmanship is efficiency of administration. He does not believe in what Mr. Gladstone used to call the principle

'Fixed ideas' of Curzon

Curzon's suspicion of and hostility to educated classes

Curzon's belief in 'efficiency' and lack of sympathy with 'popular aspirations'

of liberty as a factor of human progress. He has no sympathy with popular aspirations, and when he finds them among a subject people, he thinks he is rendering their country a service by trying to put them down. Thus in his Byculla Club speech he actually stated that he had not offered political concessions to the people of India because he "did not regard it as wisdom or statesmanship in the interests of India itself to do so"! Taking Lord Curzon at his highest, we find him engaged in a Herculean attempt to strengthen the Englishman's monopoly of power in India and stem the tide of popular agitation and discontent by rousing the members of the bureaucracy to a sense of duty similar to his own and raising the standard of administrative efficiency all round. The attempt has failed, as it was bound to fail. Never was discontent in India more acute and widespread than when the late Viceroy laid down the reins of office; and as regards the bureaucratic monopoly of power, I think we are sensibly nearer the time when it will be successfully assailed.

Curzon's failure

Was Curzon a benefactor of the masses?

One claim Lord Curzon advanced in his farewell speech at Bombay, which it is necessary to examine a little. He told his hearers, as he had done once before, ". . . . that even if he had incurred the hostility of educated Indians, the masses would be grateful to him for what he had done for them. This attempt to distinguish between the interests of the educated classes and those of the bulk of their countrymen is a favourite device with those who seek to repress the legitimate aspirations of our people. It is significant that Lord Curzon had never resorted to it till he had finally broken with the educated classes. We know, of course, that the distinction is unreal and ridiculous and we know also that most of those who use it as a convenient means to disparage the educated classes cannot themselves really believe in it. Lord Curzon mentions the reduction of the salt duty, the writing off of famine arrears, the increased grants to primary education and to irrigation, the attempt at Police reform as measures on which he bases his claim. The sugges-

tion here is that he adopted these measures for the good of the masses in spite of the opposition—at any rate, the indifference—of the educated classes, when the plain fact is that it was the Congress that had been urging these measures year after year on the attention of Government and that it was only after years of persistent agitation that it was able to move the Government in the desired direction. . . .

Congress and the masses

34. INDIAN NATIONAL CONGRESS AND THE IDEAL OF COLONIAL SELF-GOVERNMENT.

I. Presidential Address of Sir Henry Cotton, Bombay, 1904.

. . . . The ideal of an Indian patriot is the establishment of a federation of free and separate states, the United States of India, placed on a fraternal footing with the self-governing colonies, each with its own local autonomy, cemented together under the aegis of Great Britain. That is a forecast of a future, dim and distant though it be . . . .

"United States of India . . . on a fraternal footing with self-governing Colonies"

II. Presidential Address of Mr. G. K. Gokhale, Benares, 1905.

. . . . The goal of the Congress is that India should be governed in the interests of the Indians themselves, and that in course of time a form of Government should be attained in this country similar to what exists in the self-governing Colonies of the British Empire. For better, for worse, our destinies are now linked with those of England and the Congress freely recognises that whatever advance we seek must be within the Empire itself. That advance, moreover, can only be gradual, as at each stage of the progress it may be necessary for us to pass through a brief course of apprenticeship before we are enabled to go to the next one ; for it is a reasonable proposition that the sense of responsibility, required for the proper exercise of the political institutions of the West, can be acquired by an Eastern people through practical training and

"Form of Government" similiar to that existing in self-governing Colonies

Progress towards self-government must be gradual.

experiment only. To admit this is not to express any agreement with those who usually oppose all attempts at reform on the plea that the people are not ready for it. "It is liberty alone," says Mr. Gladstone in words of profound wisdom, "which fits men for liberty" . . . .

* * * *

Reform of Legislative Councils

In my humble opinion our immediate demands should be :—

(1) A reform of our Legislative Councils, raising the proportion of elected members to one-half, requiring the Budgets to be formally passed by the Councils and empowering the members to bring forward amendments, with safeguards for bringing the debates to a close in a reasonable time. The Presidents of the Councils should have the power of veto. . . . .

Partial Indianisation of India Council

(2) The appointment of at least three Indians to the Secretary of State's Council, to be returned one each by the three older provinces.

Creation of Advisory Boards in districts

(3) The creation of Advisory Boards in all districts throughout India, whom the heads of districts should be bound to consult in important matters of administration concerning the public before taking action. For the present their functions should be only advisory, the Collectors or District Magistrates being at liberty to set aside their advice at their discretion. Half the members of a Board should be elected representatives of the different *Talukas* or Sub-Divisions of the District and the other half should consist of the principal District Officers and such non-official gentlemen as the head of the district may appoint. These Boards must not be confounded with what are known as District Local Boards. . . . .

Reform of Judiciary

(4) The recruitment of the Judicial Branch of the Indian Civil Service from the legal profession in India.

(5) The separation of Judicial and Executive functions.

(6) A reduction of Military expenditure. Army

(7) A large extension of primary education. Education

(8) Facilities for industrial and technical education.

(9) An experimental measure to deal with the indebtedness of the peasantry over a selected area. Rural indebtedness

35. ORIGIN OF SEPARATE ELECTORATE.[1]

(Lady Minto's Journal, October 1, 1906).

[It is difficult to accept Prof. Coupland's statement, " there is no evidence to suggest that the deputation (of 1906) was in any sense engineered."[2] On May 28, 1906, Lord Minto wrote to Lord Morley, " As to Congress there is much that is absolutely disloyal in the movement and that there is danger for the future I have no doubt I have been thinking a good deal lately of a possible counterpoise to Congress aims."[3] On August 10, 1906, Mr. Archbold, Principal of Aligarh College, wrote to Nawab Mohsin-ul-Mulk, Secretary, Aligarh College, "Colonel Dunlop Smith, Private Secretary of His Excellency the Viceroy, informs me that His Excellency is agreeable to receive the Muslim deputation. He advises that a formal letter requesting a permission to wait on His Excellency be sent to him. In this connection I would like to make a few suggestions. The formal letter should be sent with the signatures of some representative Mussalmans. The deputation should consist of the representatives of all the Provinces. The third point to be considered is the text of the address. I would here suggest that we begin with a solemn expression of loyalty. The Government decision to take a step in the direction of self-government should be appreciated. But our apprehension should be expressed that the principle of election, if introduced, would prove detrimental to the interest of the Muslim minority. It should respectfully be suggested that nomination or representation by religion be introduced to meet Muslim opinion But in all these views I must be in the background. They must come from you I can prepare for you the draft of the address or revise it. If it is prepared in Bombay I can go through it, as you are aware I know how to phrase these things in proper language. Please remember that if we want to organise a

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[1] See Countess of Minto, *India, Minto and Morley*, pp. 45-48.

See also Document No. 53.

[2] See Coupland, *The Constitutional Problem in India*, Part I, Chapter III.

[3] *India, Minto and Morley*, pp. 28-29.

powerful movement in the short time at our disposal, we must expedite matters." In his Presidential address at Cocanada Congress (1923) Maulana Muhammad Ali rightly characterised this deputation as a "command performance."[1] Maulana Shibli observed in the *Muslim Gazette* of Lucknow, "The object of the Simla deputation was, and it was frankly expressed, to get a share for the Muslims in the political rights obtained by the Hindus Day and night its (Muslim League's) constant refrain is that the Muslims are oppressed by the Hindus and so they must be given safeguards. We do not underestimate the importance of the Simla deputation. It was the biggest show staged on the communal platform."

The All-India Muslim League was formed on December 30, 1906, exactly 90 days after the Viceroy's reception of the Simla deputation. The objects of the League were defined as follows:

"(*a*) To promote among the Mussalmans of India feelings of loyalty to the British Government and to remove any misconception that may arise as to the intention of the Government with regard to any of its measures.

(*b*) To protect and advance the political rights and interests of the Mussalmans of India and to respectfully represent their needs and aspirations to the Government.

(*c*) To prevent the rise, among the Mussalmans of India, of any feeling of hostility towards other communities without prejudice to the other afore-mentioned objects of the League."]

'An epoch in Indian history'

This has been a very eventful day; as someone said to me, "an epoch in Indian history." We are aware of the feeling of unrest that exists throughout India, and the dissatisfaction that prevails amongst people of all classes and creeds. The Mahommedan population, which numbers sixty-two millions, who have always been intensely loyal, resent not having proper representation, and consider themselves slighted in many ways, preference having been given to the Hindus. The agitators have been most anxious to foster this feeling and have naturally done their utmost to secure the co-operation of this vast community. The younger generation were wavering, inclined to throw in their lot with the advanced agitators of the Congress, and a howl went up that the loyal Mahom-

Loyalty and discontent of the Muslims

[1] See *Indian Constitutional Documents*, Vol. III.

medans were not to be supported, and that the agitators were to obtain their demands through agitation. The Mahommedans decided, before taking action, that they would bring an Address before the Viceroy, mentioning their grievances.

The meeting was fixed for to-day, and about seventy delegates from all parts of India arrived.

Story of Aga Khan's deputation

The Aga Khan is the spiritual head of the Khoja Moslem community. He claims to be descended from Ali and is their Ruler by divine right, but without a territory. This Prince was selected to read the very long but excellent Address stating all their grievances and aspirations. Minto then read his answer, which he had thought out most carefully. It was impossible to promise them too much for fear of offending other communities, but as he spoke, in very clear distinct tones, murmurs of satisfaction passed through the audience :

Lord Minto's reply to Aga Khan's statement of 'grievances and aspirations'

"To the document with which you have presented me are attached the signatures of nobles, ministers of various states, great landowners, lawyers, merchants, and of many others of His Majesty's Mahommedan subjects . . . . I am grateful to you for the opportunity you are affording me of expressing my appreciation of the just aims of the followers of Islam and their determination to share in the political history of our Empire.

As your Viceroy I am proud of the recognition you express of the benefits conferred by British rule on the diverse races of many creeds who go to form the population of this huge continent. You yourselves, the descendants of a conquering and ruling race, have told me to-day of your gratitude for the personal freedom, the liberty of worship, the general peace, and the hopeful future which British administration has secured for India. . . . .

But you go on to tell me that sincere as your belief is in the justice and fair dealing of your rulers, and unwilling as you are to embarrass them at the present

Restlessness among 'younger generation' of Muslims

moment, you cannot but be aware that "recent events" have stirred up feelings amongst the younger generation of Mahommedans which might "pass beyond the control of temperate counsel and sober guidance"

'Political atmosphere full of change'

You have addressed me, gentlemen, at a time when the political atmosphere is full of change. We all feel it. It would be foolish to attempt to deny its existence. Hopes and ambitions new to India are making themselves felt; we cannot ignore them. We should be wrong to wish to do so. But to what is all this unrest due? Not to the discontent of misgoverned millions. I defy anyone honestly to assert that: not to any uprising of a disaffected people: it is due to that educational growth in which only a very small portion of the population has as yet shared, of which British rule first sowed the seed, and the fruits of which British rule is now doing its best to foster and to direct. . . . .

Unrest due to spread of Western education

'Representative institutions of the European type are entirely new' to India.

You need not ask my pardon for telling me that "representative institutions of the European type are entirely new to the people of India", or that their introduction here requires the most earnest thought and care. I should be very far from welcoming all the political machinery of the Western world among the hereditary traditions and instincts of Eastern races.....

Political future of Muslims

And now, gentlemen, I come to your own position in respect to the political future; the position of the Mahommedan community for whom you speak. . . . .

Muslim demand for separate representation

Your address, as I understand it, is a claim that, in any system of representation, whether it affects Municipality, a District Board, or a Legislative Council, in which it is proposed to introduce or increase an electoral organization, the Mahommedan community should be represented as a community. You point out that in many cases electoral bodies, as now constituted, cannot be expected to return a Mahommedan candidate, and that if by chance they did so, it could only be at the sacrifice of such a candidate's views to those of a majority opposed to his own community,

whom he would in no way represent, and you justly claim that your position should be estimated not merely on your numerical strength but in respect to the political importance of your community and the service it has rendered to the Empire.

Lord Minto agrees to Muslim demand in principle.

I am entirely in accord with you. Please do not misunderstand me: I make no attempt to indicate by what means the representation of communities can be obtained, but I am as firmly convinced as I believe you to be, that any electoral representation in India would be doomed to mischievous failure which aimed at granting a personal enfranchisement, regardless of the beliefs and traditions of the communities composing the population of this continent. The great mass of the people of India have no knowledge of representative institutions.

I agree with you, gentlemen, that the initial rungs in the ladder of self-government are to be found in the Municipal and District Boards. . . . .

Viceroy's assurance to the Muslims

In the meantime I can only say to you that the Mahommedan community may rest assured that their political rights and interests as a community will be safeguarded by any administrative re-organization with which I am concerned, and that you, and the people of India, may rely on the British *Raj* to respect, as it has been its pride to do, the religious beliefs and the national traditions of the myriads composing the population of His Majesty's Indian Empire. . . . ."

In the afternoon a tea-party was given for the Deputation in the garden of Viceregal Lodge, which was also attended by Members of Council. We talked to many of the Delegates, as most of them speak English, and it was touching to hear their appreciation of the sympathy and understanding shown them. . . . .

This evening I have received the following letter from an official:

"I must send Your Excellency a line to say that a very, very big thing has happened to-day. A work

An official's view on the importance of Aga Khan's deputation

of statesmanship that will affect India and Indian history for many a long year. It is nothing less than the pulling back of sixty-two millions of people from joining the ranks of the seditious opposition."

Very much the same view was taken at Whitehall. Mr. Morley, after receiving an account of the proceedings, wrote :

Morley's view on the importance of Aga Khan's deputation

Morley to Minto. Oct. 26. "All that you tell me of your Mahommedans is full of interest, and I only regret that I could not have moved about unseen at your garden party. The whole thing has been as good as it could be, and it stamps your position and personal authority decisively. Among other good effects of your deliverance is this, that it has completely deranged the plans and tactics of the critical faction here, that is to say it has prevented them from any longer representing the Indian Government as the ordinary case of a bureaucracy versus the people. I hope that even my stoutest Radical friends will now see that the problem is not quite so simple as this."

36. GOVERNMENT OF INDIA CIRCULAR ON REFORMS, 1907.

(Circular to Local Governments, August 24, 1907)

Act of 1892

2. It is now 20 years since Lord Dufferin's Government initiated the discussions which resulted in the passing of the Councils Act of 1892. The reforms then introduced, comprising the enlargement of the Legislative Councils, the recognition of the elective principle, the admission of interpellations and the free discussion of the Budget, were held to be justified by the spread of English education, by the increased employment of natives of India in the actual administration of the country and by the indubitable proof which they had given of their intellectual fitness for such employment. The extent of the advance that has since taken place in the development of the educated classes can hardly be judged by statistical tests. But it may be mentioned that within the last twenty years

the number of scholars studying English has risen from 298,000 to 505,000; whilst the number of students passing the annual Matriculation Examination of the Indian Universities has increased from 4,286 in 1886 to 8,211 in 1905, and the number of Bachelors of Arts from 708 in the former year to 1,570 in the latter. During this period higher education has penetrated to circles which a generation ago had hardly been affected by its influence. The ruling chiefs and the landholding and commercial classes possessing a material stake in the country, and representing the most powerful and stable elements of Indian society, have now become qualified to take a more prominent part in public life, and to render a larger measure of assistance to the Executive Government. They no longer stand aloof from the new social and political conditions which affect the course of Indian affairs; they have profited greatly by the educational advantages offered to them under British rule; and they are anxious to be afforded an opportunity of expressing their views on matters of practical administration. No scheme of constitutional reform would meet the real requirements of the present time which did not make adequate provision for representing the landed aristocracy of India, the mercantile and industrial classes, and the great body of moderate men who, under existing conditions, have no sufficient inducement to enter political life, and find but little scope for the exercise of their legitimate influence. For the present at any rate the needs and sentiments of the masses of the people must find expression through those, whether officials or non-officials, who are acquainted with their daily life and are qualified to speak with authority on their behalf. Nor does the scheme now put forward contemplate any surrender or weakening of paramount British power in India upon which depend the safety and welfare of the vast populations there committed to it.....

Growth of English education

Representation of masses not possible

3. The Governor-General in Council has been much struck by the difficulty encountered by the Governments in India in making their measures and motives

Proper publicity of Government measures not possible through Legislative Councils

generally understood and in correcting erroneous and often mischievous statements of fact or purpose imputed to them. When the right of interpellation was granted by the Indian Councils Act of 1892 to the Legislative Councils, it was hoped that by that means correct information on public affairs might be more widely diffused. The Legislative Councils, however, are called together only when there is legislation to be undertaken; their meetings are too infrequent to offer the means of confidential and intimate consultation between Government and its subjects; the strict procedure by which they are restrained naturally tends to formality.

* * * *

Landholders inadequately represented

9. When the Councils were thus enlarged and the elective principle was introduced, it was recognised that the territorial representation was unsuited to India, but an endeavour was made to constitute the electorates so that all the more important classes and interests should, as far as possible, be represented. In the case of provincial Councils it is admitted that the results have not justified the expectations formed. The District Boards in particular have conspicuously failed to fulfil the expectation that they would represent the landed interest. Out of 54 members elected by them to the provincial Councils, only 10 have been landholders, while 36 have been barristers and pleaders. Similarly, out of 43 members elected by the District Municipalities, 40 have been barristers or pleaders and only two landholders. Something has been done by nomination to remedy these defects; but of the 338 non-official members who have been appointed, whether by election or by nomination, to the provincial Councils since election was introduced in 1893, as many as 123 or 36 per cent. have been lawyers, and only 77 or 22 per cent. landowners. It is thus apparent that the elective system has given to the legal profession a prominence in the provincial Councils to which it is not entitled, while it has signally failed to represent other important elements of the community. These shortcomings are reflected in the Legislative Council of the

Prominence of lawyers in legislature

Governor-General where, of the non-official members nominated or elected since 1893, 27 or 40 per cent. have been lawyers or school masters while the landholders have numbered only 16 or 23·5 per cent. and the mercantile community has been represented by 17 or 25 per cent. The Government of India are far from denying that the professional classes are entitled to a share of representation proportioned not merely to their numbers, which are small, but to their influence, which is large and tends continually to increase. But they are not prepared to allow them a virtual monopoly of the power exercised by the Councils and they believe that the soundest solution of the problem is to be found in supplying the requisite counterpoise to their excessive influence by creating an additional electorate recruited from the landed and monied classes.

'Landed and monied classes' should be given proper representation.'

10. It is the desire of the Governor-General in Council that the Legislative Councils in India should now be enlarged to the fullest extent compatible with the necessary authority of the Government. He desires, moreover, that these bodies should be so constituted in respect of non-official members as to give due and ample representation to the different classes and interests of the community. In carrying out this system, which the Government of India agree with Lord Lansdowne's Government in regarding as the only one in any way applicable to Indian conditions, they consider it essential that the Government should always be able to reckon on a numerical majority, and that this majority should be strong enough to be independent of the minor fluctuations that may be caused by the occasional absence of an official member. The principle of a standing majority is accepted by the Government as an entirely legitimate and necessary consequence of the nature of the paramount power in India, and so far as they know it has never been disputed by any section of Indian opinion that does not dispute the legitimacy of the paramount power itself. That is not an open question, and if two men are not able to wield one sceptre, it is idle to dissemble that fact in

Councils should be enlarged.

There should be 'due and ample representation' of 'different classes and interests.'

Government must have 'a standing majority.'

constructing political machinery. The question then arises: what number of official members of the requisite standing and experience can, without detriment to the public service, be spared from their regular duties for attendance in Legislative Councils? The enlargement of the Councils is certain to add considerably to protraction of debate, thus entailing larger calls upon the time of their members. The necessity of maintaining an official majority thus implies the necessity of limiting the number of non-official members; and the problem which faces the Government of India now, as it faced Lord Lansdowne's Government fifteen years ago, is how to provide for the due representation, within the narrow limits thus imposed, of the vast diversity of classes, races, and interests in the Indian Empire.

Problem confronting Government

* * * *

Representation of Muslims

16. The last point that remains for consideration under this head relates to the representation of special interests and minorities and in particular, of the Mahomedan community. In this connection I am to invite attention to the observations made by His Excellency the Viceroy in reply to the address presented to him by a large and representative deputation on the 1st October, 1906. The Government of India concur with the presenters of the address that neither in the Provincial nor in the Imperial Legislative Councils has the Mahomedan community hitherto received a measure of representation commensurate with its numbers and political and historical importance, and they desire to lay stress upon His Excellency's observation that "any electoral representation in India would be doomed to mischievous failure which aimed at granting a personal enfranchisement regardless of the beliefs and traditions of the communities composing the population of this continent." Under the system of election hitherto in force Hindus largely predominate in all or almost all the electorates with the result that comparatively few Mahomedan members have been elected. These have been supplemented by nominations made by Government. But the total representa-

tion thus effected has not been commensurate with the weight to which the Mahomedan community is entitled; and it has, moreover, been strongly urged that even the system of nomination has frequently failed to secure the appointment of Mahomedans of the class by whom the community desires to be represented.

17. The Government of India suggest, therefore, for the consideration of the Local Governments, the adoption of the following measures :—Firstly, in addition to the small number of Mahomedans who may be able to secure election in the ordinary manner, it seems desirable in each of the Councils to assign a certain number of seats to be filled exclusively by Mahomedans. Secondly, for the purpose of filling the latter or a proportion of them, a special Mahomedan electorate might be constituted.

37. LORD MINTO ON REPRESENTATIVE GOVERNMENT FOR INDIA,[1] 1907.

No one believes more firmly than I do that the safety and welfare of India depends on the permanence of British administration, but I equally believe that the permanence of that administration depends upon a sound appreciation of the changing conditions which surround it. I am no advocate of 'representative government for India' in the Western sense of the term. It could never be akin to the instincts of the many races composing the population of the Indian Empire. It would be a Western importation unnatural to Eastern tastes. From time immemorial in India the power of the State has rested in the hands of absolute rulers. Neither under Hindu Kings nor Mahommedan Emperors had the people any voice in the affairs of State. Sir Courtenay Ilbert observes in the opening sentences of his work on the Government of India : "British authority in India may be traced historically to a two-fold source : it is derived partly

Representative Government of Western type not suitable to India

Ilbert's view on two sources of British authority in India

[1] See Countess of Minto, *India, Morley and Minto*, pp. 109-111.

from the British Crown, partly from the Great Moghul and other Natives Rulers of India. These are the two sources of our authority and they involve important consequences. As heirs to a long series of India Rulers we are bound to reserve to ourselves the ultimate control over all executive action and the final decision in matters of legislation; as trustees of British principles and traditions we are equally bound to consult the wishes of the people and to provide machinery by which their views may be expressed as far as they are articulate."

Transfer of power from British to Indian hands not possible

To say this is not to advocate the introduction of popular representation. The Government of India must remain autocratic; the sovereignty must be vested in British hands and cannot be delegated to any kind of representative assembly. No such assembly could claim to speak on behalf of the Indian people so long as the uneducated masses, forming nearly ninety per cent. of the adult male population, are absolutely incapable of understanding what 'representative government' means and of taking any effective part in any system of election.

Fusion of two principles: autocracy and constitutionalism

Yet possibly the dual origin of which Sir Courtenay Ilbert speaks may suggest a solution of the problem consonant both with English ideas and with Indian history and tradition. He shows how the British Government in India is the embodiment of two principles: the principle of autocracy derived from the Moghul Emperors and Hindu Rulers, whose methods they adopted, and the principle of constitutionalism derived from the British Crown and Parliament. Can we fuse these two principles into a definite system of government, into what may be called a 'constitutional autocracy' and thus give to our administration a definite and permanent shape? There is all the difference in the world between the arbitrary autocracy of the Asiatic despotism and the constitutional autocracy which binds itself to govern by rule, which admits and invites to its councils representatives of all the interests which are capable of being represented, and which merely reserves to itself, in the form of a narrow

'Constitutional' autocracy

majority, the predominant and absolute power which it can only abdicate at the risk of bringing back the chaos to which our rule put an end.

38. LORD MORLEY AS SECRETARY OF STATE FOR INDIA.

[Lady Minto says, " as time went on Lord Morley became more autocratic and exacting. A constant stream of telegrams and despatches, demanding minute information on every detail, flowed in day by day, till at last Minto exclaimed, 'I used to imagine that the Secretary of State only aimed at directing great principles of Indian policy, and that the administration of the country rested with the Government of India, but there is interference in everything, and its only result is intense worry for the Viceroy, as, do what he will, the Secretary of State *cannot* administer India'."

Speaking of Morley, Sir Arthur Godley, Permanent Under-Secretary at the India Office, told Minto, "He is a fearful autocrat for a democrat, which he fancies himself to be."

There was a controversy between Morley and Minto as to the right of the Secretary of State to correspond direct with high officials in India, without the correspondence going through the Viceroy. Minto asserted that such procedure would create an impossible situation.[1]

"General J. H. Morgan says that no more autocratic Secretary for India ever reigned at Whitehall[2], none ever consulted his Council less, and none ever admonished a Viceroy more. It must be remembered that Morley was subjected to considerable pressure from the left wing of his own party. But there is ample evidence to support General Morgan's views, both in a letter[3] from Lord Minto to Lord Stamfordham dated 5 July, 1910, and in Morley's own *Recollections*. Yet it is evident that at one time Morley was anxious not to depress but to elevate the position of the Council of India
Morley was left with Councillors, none of whom individually carried weight in Parliament. Regarding some of these as reactionary, he opened his doors wide to irresponsible advisers; and finding no particular difficulty in getting his own way, absorbed in the fascination of his task, gathered more and more power into his own hands, much to the vexation of a long-suffering Viceroy."[4]

The Mesopotamia debates[5] in Parliament in 1917 revealed the fact that under Morley and his successors Indian

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[1] *India, Minto and Morley,* pp. 3, 136, 199.
[2] *John, Viscount Morley, an Appreciation,* p. 32.
[3] Buchan, *Memoir of Lord Minto,* p. 311.
[4] *The Cambridge History of India,* Vol. VI, pp. 217-218.
[5] See Document No. 57

affairs had been managed largely through private telegrams from the Secretary of State to the Viceroy—telegrams which were not brought to the notice of the India Council or the Executive Council.]

I. Observations of Mr. J. A. Spender.[1]

'First-class Secretary of State'

I cannot pretend to bring an expert judgement to bear, but I should say that he was a first-class Secretary of State. Unlike most literary men, he was both methodical and industrious; whether at home or in office you could seldom ask him for a paper or reference without his instantly being able to find it, and he brought the same conscientious care to the small things as to the great. I used often to go home from my visits to the India Office with bundles of papers and memoranda given me for 'evening meditation,' and sometimes I was invited to make comments or suggestions, which very hesitatingly I did. It was impossible not to be struck with the thoroughness with which he laid out the ground, the patience with which he sorted the inordinate quantities of raw material handed out to him, his carefulness to inform himself about facts, the fine, spacious, historical background against which he set and saw the daily problem. The Morley touch was in everything that he wrote or minuted, and a fine and sensitive touch it was. But he was undoubtedly autocratic in his ways and thoughts, and liked you to understand that he knew how to keep Viceroy and Council in their respective places.

Morley's thoroughness

'Autocratic in ways and thoughts'

II. Observations of Lord Curzon.[2]

Combination of Radicalism and despotism

In the time of Lord Morley and Lord Minto, it was found that the private and secret correspondence by wire, between the Secretary of State and the Viceroy, without the knowledge of their respective Councils, and uncommunicated to them, had been carried to a point which amounted to a usurpation of the powers of the latter and was inconsistent with the constitutional

[1] *Life, Journalism and Politics*, Vol. I, pp. 147-148.
[2] *British Government in India*, Vol. II, p. 117.

basis of Indian Government. Lord Morley combined with an austere but flexible Radicalism and an irresistible personal charm, the most despotic of tempers, and was an impassioned apostle of personal rule. He was apt in Parliament to speak of himself and the Viceroy as though the Government of India was conducted by a sort of private arrangement between these great Twin Brethren, upon whom no sort of check ought to be placed by irresponsible and incompetent outsiders.

39. GOVERNMENT OF INDIA REFORM DESPATCH, 1908.

(Despatch to the Secretary of State, October 1, 1908).

18. *Principle of representation*—We have carefully considered the proposals of the Local Governments on the subject and the large body of the non-official opinions submitted. In our judgment these papers bear out to the fullest extent the conclusion that representation by classes and interests is the only method of embodying the elective principle in the constitution of the Indian Legislative Councils. A great array of authorities may be cited in support of this opinion. Twenty years ago, in the course of the discussions leading up to the report of Sir George Chesney's Committee Mr. (now Lord) Macdonell, then Home Secretary to Lord Dufferin's Government, said in a note which was forwarded to the India Office : "The process of modifying the existing constitution of the councils should proceed on a clear recognition and firm grasp of the fact that India is a congeries of races, nationalities and creeds, widely differing *inter se* in a variety of ways." On the same occasion Sir George Chesney expressed similar views, and Sir Charles Aitchison observed that "the division of the people into creeds, castes and sects with varying and conflicting interests" rendered representation in the European sense an obvious impossibility. A passage in Lord Dufferin's Minute annexed to the Government of India's Despatch of the 6th November, 1888, describes the population of India as "composed of a large number of distinct nationali-

"Representation by classes and interests"

"India is a congeries of races, nationalities and creeds."

ties, professing various religions, practising diverse rites, speaking different languages, while many of them are still further separated from one another by discordant prejudices, by conflicting social usages, and even antagonistic material interests." This opinion is not confined to Englishmen, but is shared by competent Indian observers at the present day. In a recent address to a modern political association on the duty of the patriotic Indians, His Highness the Aga Khan has given emphatic expression to similar sentiments. "In India," he says, "no such union as is essential to the creation of a strong, independent, homogeneous state is possible without centuries of consolidation. Even if we assume that the forces tending to unification are quickened by the machinery of modern civilisation, generations must pass before India is a nation. In very truth we can detect signs of the advent of that unity which is the first essential to the creation of a modern state."

"Generations must pass before India is a nation."

19. These views receive striking independent confirmation from the debate in the Parliament on the Indian Councils Bill which became law in 1892. In the Upper House Lord Ripon referred to the extreme difficulty of "selecting men who represented the various classes of the community and the various sections of opinion, as well as the various localities of India." Lord Kimberley said, "The notion of a Parliamentary representation of so vast a country—almost as vast as Europe—containing so large a number of different races is one of the wildest imaginations that ever entered the minds of men". He went on to emphasise the necessity of ascertaining the feelings of "a most important body..... the Mahomedans of India. If you were to be guided entirely by the Hindu popular opinion you would find yourself in great difficulty." Lord Northbrook considered that provision should be made "for the representation of different classes of people—people of different races and different religions." In a later stage of the discussion Lord Kimberley agreed with Lord Northbrook, and observed, "It has been found in this country not very easy to protect the

Lord Kimberley on Muslims

interests of the minorities by any contrivance that can be devised; but there must be found some mode in India of seeing that minorities such as the important body of Mahomedans, who are frequently in a minority in parts of that country, are fully represented." In the House of Commons the weightiest utterance was that of Mr. Gladstone who referred to the difficulty of introducing the elective principle "in an Asiatic country like India with its ancient civilisation, with institutions so peculiar, with such diversities of races, religions, and pursuits". He also drew attention to "the danger of having persons who represent particular cliques or classes or interests and who may claim the honour of representing the people of India," thus anticipating the observation, now made by the Bombay Government, that "the educated classes, although a very small minority, appear to claim to represent the interests of all sections of the people and are inclined to oppose any measures which appear likely to lessen their influence." Mr. Samuel Smith spoke of "the endless shades of caste, race and religion in India"; Sir William Plowden and Sir Richard Temple followed in the same strain; and the latter observed that "in fixing the ratio of members, the interests to be represented, and the classes which constitute the bulk of the people, ought to be the determining factors rather than the population."

Gladstone on difficulty of introducing the elective principle

Views of Bombay Government on educated classes

20. To the principle thus affirmed by both Houses of Parliament Lord Lansdowne's Government endeavoured to give as wide a scope as was then possible, in the regulations framed by them for the constitution of the Provincial Legislative Councils. In the letters addressed by them to Local Governments on the 15th August, 1892, they enumerated the interests which seemed to be of sufficient importance to require representation and indicated the manner in which the seats to be filled by recommendation should be allotted so as to secure the object in view. The question of the direct representation of those interests on the Imperial Legislative Council did not at that time arise, as it was believed that the non-official members of the Provincial Legislative Councils, as reconstituted under the regu-

Regulations under Act of 1892

lations then about to be made, would form a sufficiently wide electorate for the Supreme Council. This electorate, however, while it has worked advantageously in the case of one class, can hardly be said to have afforded proportionate representation to the other interests concerned. Of the non-official members elected to the Imperial Council since 1893, 45 per cent. have belonged to the professional middle class; the landholders have obtained 27 per cent. of the seats, and the Mahomedans only 12 per cent.; while the Indian mercantile community, a large and increasingly important body, have had no representative at all. The advance of English education, and the demand of influential classes and interests for representation on a more ample scale, now render it necessary to examine the whole subject in the light of the experience of the last fifteen years and to treat it on more liberal and comprehensive lines than we have hitherto been able to follow. With the enlargement of the Imperial Council it ceases to be possible to rely exclusively on a single source of recruitment. New constituencies must be formed, and in framing them we have to consider what section of the population can properly claim representation for British India as a whole.....

Composition of Imperial Council since 1893

* * * *

30. *Representation of Mahomedans*—All Local Governments approve of the proposals for the special representation of Mahomedans which were made in our letter of 24th August, 1907. These proposals are, as a rule, adversely criticised by the Hindus, who regard them as an attempt to set one religion against the other, and thus to create a counterpoise to the influence of the educated middle class. Some Hindus, however, recognise the expediency of giving special representation to the Mahomedan community, and the Bombay Presidency Association, while they object strongly to the creation of a special Mahomedan electorate, make provision in their scheme of a Council for the election of two members by the Mahomedan community. Notwithstanding their formal protest against the principle of religious representation, the Association doubtless

Special representation of Muslims supported by all Local Governments and opposed by Hindus

realise that the Indian Mahomedans are much more than a religious body. They form, in fact, an absolutely separate community, distinct by marriage, food and custom, and claiming in many cases to belong to a different race from the Hindus.

Distribution of seats allotted to Muslims

The first question is, how many seats should be allotted to the Mahomedan community. After carefully considering the demands of the Mahomedans themselves and views expressed by the Hindus, we think that the claims of the former will be adequately met if four elective seats are assigned to them and provision is made for a fifth seat being filled by nomination until suitable machinery for election can be devised. The four elective seats should be permanantly assigned to the four provinces which have the largest Mahomedan population, namely, Bengal, Eastern Bengal and Assam, the Punjab and the United provinces. The fifth seat should be given alternately to Bombay and Madras, where the Mahomedan population is smaller, and for this it will be necessary to have recourse to nomination until satisfactory electorates can be formed. The question of a Mahomedan electorate presents much the same difficulties as the formation of a landholding electorate. In most provinces the Mahomedans are in favour of election and regard nomination as an inferior method of obtaining admission to the Legislative Council. The Governments of Madras and the United Provinces propose electorates, based partly upon property and partly upon literary qualifications, which appear to us to be well devised, but the former Government has since expressed a preference for nomination. The Mahomedans of Bombay are said to be widely scattered over the Presidency and at present unorganised for common purposes, so that a special electorate cannot be created. In course of time, it may be possible to arrange for election by a central association, but for the present their proportionate representation can be secured only by careful nomination. The Government of Bengal proposes a scheme of a similar character which includes graduates of five years' standing and holders of recognised titles; both of these

Difficulty of creating Muslim electorates

Election *vs.* nomination

are doubtful features. The Government of Eastern Bengal and Assam suggests that the Mahomedan representatives should be elected by the Provincial Mahomedan Association. The Lieutenant-Governor of the Punjab considers it impossible to form a Mahomedan electorate, and proposes that the Mahomedan representative should be nominated by the Lieutenant-Governor. We would deal with the question in the same way as we have proposed to deal with the representation of the landholders. Our view is that in Provinces where election by a regular Mahomedan electorate is feasible that method should be adopted; that Mahomedan associations should be made use of where electorates cannot be formed; and that nomination by Government should be resorted to where neither of the first two methods is practicable. It will be for the Local Government to determine, in consultation with the leaders of the Mahomedan community, which plan should be adopted.

Views of Government of India

40. LORD MORLEY ON REFORMS, 1908.

(House of Lords, December 17, 1908).

[Coupland says about Lord Morley, "His ideas of Indian Government had nothing to do with democracy."[1] The same statement applies to Lord Minto. Their correspondence (published by Lady Minto) makes it clear. Some illustrative extracts[2] may be quoted.

Morley wrote to Minto on June 6, 1906, "Not one whit more than you do I think it desirable, or even conceivable, to adapt English political institutions to the nations who inhabit India. Assuredly not in your day or mine". On May 13, 1909, Minto wrote to Morley, "Don't think me mad enough to imagine Colonial Government possible in India We hold our position here by the sword." In his speech to the reformed Imperial Legislative Council on January 25, 1910, Minto said: "We (*i.e.*, the Government of India) have distinctly maintained that Representative Government, in its Western sense, is totally inapplicable to the Indian Empire and would be uncongenial to the traditions of Eastern populations; that Indian conditions do not admit of popular representation; that the safety and welfare of this country must depend on

[1] *The Constitutional Problem in India*, Part I, p. 34.
[2] See *India, Minto and Morley*, pp. 30, 305, 371.

the supremacy of British administration, and that supremacy can, in no circumstances, be delegated to any kind of representative assembly."]

'Well-guarded expansion of principles' recognised in 1861 and 1892

I do not think I need go through all the contents of the despatch of the Governor-General and my reply,[1] containing the plan of His Majesty's Government, which will be in your Lordship's hands very shortly. I think your Lordships will find in them a well-guarded expansion of principles that were recognised in 1861, and are still more directly and closely connected with us now by the action of Lord Lansdowne in 1892. I have his words, and they are really as true a key to the papers in our hands as they were to the policy of the noble Marquess at that date. He said :

Views of Lord Lansdowne

"We hope, however, that we have succeeded in giving to our proposals a form sufficiently definite to secure a satisfactory advance in the representation of the people in our Legislative Councils, and to give effect to the principle of selection as far as possible on the advice of such sections of the community as are likely to be capable of assisting us in that manner."

Then you will find that another Governor-General in Council in India, whom I greatly rejoice to see still among us, my noble friend the Marquess of Ripon, said in 1882 :

Views of Lord Ripon

"It is not primarily with a view to the improvement of administration that this measure is put forward ; it is chiefly desirable as an instrument of political and popular education."

The doctrines announced by the noble Marquess opposite[2] and by my noble friend,[3] are the standpoint from which we approached the situation and framed our proposals.

I will not trouble the House by going through the history of the course of the proceedings .. .though some points of difference arose, though the Govern-

[1] See P. Mukherjee, *Indian Constitutional Documents*, pp. 271-326.
[2] Lord Landsdowne.
[3] Lord Ripon.

Substantial agreement between Government of India and Secretary of State

ment of India agreed to drop certain points of their scheme—the Advisory Council,[1] for example—on the whole there was remarkable agreement between the Government of India and myself as to the best way of dealing with these proceedings as to Legislative Councils

Proposed changes in Legislative Councils :

This is a list of the powers which we shall have to acquire from Parliament when we bring in a Bill. This is the first power we shall come to Parliament for. At present the maximum and minimum number of Legislative Councils are fixed by statute. We shall come to Parliament to authorise an increase in the numbers of those Councils, both the Viceroy's Council and the Provincial Councils. Secondly, the members are now nominated by the head of the Government, either the Viceroy or the Lieutenant-Governor. No election takes place in the strict sense of the term. The nearest approach to it is the nomination by the Viceroy, upon the recommendation of a majority of votes of certain public bodies. We do not propose to ask Parliament to abolish nomination. We do propose to ask Parliament, in a very definite way, to introduce election working alongside of nomination with a view to the aim admitted in all previous schemes, including that of the noble Marquess opposite[2]—the due representation of the different classes of the community. Third, the Indian Councils Act of 1892 forbids—and

(1) Increase of number of members

(2) Introduction of election

(3) Abolition of prohibition regarding financial discussions

[1] In a letter to the Secretary of State, dated August 24, 1907, the Government of India proposed the establishment of an Imperial Advisory Council consisting of about 60 members, of whom 20 were to be Ruling Chiefs and the rest territorial magnates. This proposal met with an unfavourable reception in India. It was, therefore, given up by the Government of India, and in the famous 'Reform Despatch' of October 1, 1908, it was suggested that "there should be an Imperial Council composed only of Ruling Chiefs." In a despatch dated November 27, 1908, Lord Morley observed, "I confess that, while entirely appreciating and sympathising with your object, I judge the practical difficulties in the way of such a Council assembling under satisfactory conditions to be considerable,—expense, precedence, housing, for instance, even if there were no others."

Plan for Advisory Council

[2] Lord Lansdowne.

this is no doubt a most important prohibition—either resolutions or divisions of the Council in financial discussions. We shall ask Parliament to repeal this prohibition. Fourth, we shall propose to invest Legislative Councils with power to discuss matters of public and general importance, and to pass recommendations or resolutions to the Indian Government. That Government will deal with them as carefully, or as carelessly, as they think fit—just as a Government does here. Fifth, to extend the power that at present exists to appoint a Member of the Council to preside. Sixth, Bombay and Madras have now Executive Councils, numbering two. I propose to ask Parliament to double the number of ordinary members. Seventh, the Lieutenant-Governors have no Executive Council. We shall ask Parliament to sanction the creation of such Councils, consisting of not more than two ordinary members, and to define the power of the Lieutenant-Governor to overrule his Council. I am perfectly sure there may be differences of opinion as to these proposals. I only want your Lordships to believe that they have been well thought out, and that they are accepted by the Governor-General in Council.

(4) Concession of power to pass resolutions on 'matters of public and general importance'

(5) Appointment of President of Council

(6) Proposed changes regarding Executive Councils

There is one point of extreme importance which, no doubt, though it may not be over-diplomatic for me to say so at this stage, will create some controversy. I mean the matter of the official majority. The House knows what an official majority is. It is a device by which the Governor-General, or the Governor of Bombay or Madras, may secure a majority in his Legislative Council by means of officials and nominees. And the officials, of course, for very good reasons, just like a Cabinet Minister or an Under-Secretary, whatever the man's private opinion may be, would still vote, for the best of reasons, and I am bound to think with perfect wisdom, with the Government. But anybody can see how directly, how palpably, how injuriously an arrangement of this kind tends to weaken, and I think I may say even to deaden, the sense both of trust and responsibility in the non-official members of these Councils. Anybody can see how

official majority

Effect of official majority on non-official members

the system tends to throw the non-official member into an attitude of peevish, sulky, permanent opposition, and, therefore, has an injurious effect on the minds and characters of members of these Legislative Councils.

Safeguards against abuse of power by non-official majority

I know it will be said that these Councils will, if you take away the safeguard of the official majority, pass any number of wildcat Bills. The answer to that is that the head of the Government can veto the wildcat Bills. The Governor-General can withhold his assent, and the withholding of the assent of the Governor-General is no defunct power.

And it must be remembered that the range of subjects within the sphere of Provincial Legislative Councils is rigorously limited by statutory exclusions.[1]

There is one proviso in this matter of the official majority, in which your Lordships may, perhaps, find a surprise. We are not prepared to divest the

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Morley's arguments against retention of official majority in Provincial Councils

[1] In his despatch dated November 27, 1908, Lord Morley observed, "The non-official majority may press legislation of a character disapproved by the Executive Government. This should be met by the exercise of the power to withhold assent possessed by the Head of the Government. Then, although the Local Legislature is vested with power to make laws for the peace and good government of the territories constituting the Province, still the range of subjects is considerably narrowed by the statutory exclusions now in force. On the other hand, and perhaps more often, there may be opposition on the part of the non-official members to legislation that the Government desires. With a Council, however, representing divergent interests, and realising, together with its increased powers, its greater responsibility, a combination of all the non-official members to resist a measure proposed by the Government would be unlikely, and some non-officials at least would probably cast their votes on the side of the Government. If, however, a combination of all the non-official members against the Government were to occur, that might be a very good reason for thinking that the proposed measure was really open to objection, and should not be proceeded with." This was Lord Morley's reply to the proposal of the Government of India to provide for a bare official majority in the Provincial Legislative Councils. The Government of India contemplated, however, that "in ordinary circumstances only the number of official members necessary for the transaction of business shall be summoned to attend."

Government of India wanted official majority in Provincial Councils.

Governor-General in his Council of an official majority. In the Provincial Councils we propose to dispense with it but in the Viceroy's Legislative Council we propose to adhere to it. Only let me say that here we may seem to lag a stage behind the Government of India themselves—so little violent are we—because that Government say in their despatch :

Government of India prepared to give up official majority in Imperial Legislative Council

"On all ordinary occasions we are ready to dispense with an official majority in the Imperial Legislative Council, and to rely on the public spirit of non-official members to enable us to carry on the ordinary work of legislation."

Lord Morley wants official majority in Imperial Legislative Council

My Lords, that is what we propose to do in the Provincial Councils. But in the Imperial Council we consider an official majority essential. It may be said that this is a most flagrant logical inconsistency. So it would be, on one condition. If I were attempting to set up a Parliamentary system in India, or if it could be said that this chapter of reforms led directly or necessarily up to the establishment of a Parliamentary system in India, I, for one, would have nothing at all to do with it.....If my existence, either officially or corporeally, were prolonged twenty times longer than either of them is likely to be, a Parliamentary system in India is not at all the goal to which I would for one moment aspire.

Parliamentary system not to be introduced in India

Appointment of one Indian member in Viceroy's Executive Council

One point more. It is the question of an Indian member on the Viceroy's Executive Council.[1] The absence of an Indian member from the Viceroy's Executive Council can no longer, I think, be defended. There is no legal obstacle or statutory exclusion. The Secretary of State can, to-morrow, if he likes, if there be a vacancy on the Viceroy's Council, recommend His Majesty to appoint an Indian member. All I want to say is that, if, during my tenure of office, there should be a vacancy on the Viceroy's Executive Council.

[1] For Edward VII's objection to this proposal, see Sidney Lee, *Life of Edward VII*, Vol. II.

I should feel it a duty to tender my advice to the King that an Indian member should be appointed. If it were on my own authority only, I might hesitate to take that step, because I am not very fond of innovations in dark and obscure ground, but here I have the absolute and the zealous approval and concurrence of Lord Minto himself. It was at Lord Minto's special instigation that I began to think seriously of this step. Anyhow, this is how it stands, that you have at this moment a Secretary of State and a Viceroy who both concur in such a recommendation. I suppose—if I may be allowed to give a personal turn to these matters—that Lord Minto and I have had as different experience of life and the world as possible, and we belong, I dare say, to different schools of national politics, because Lord Minto was appointed by the party opposite. It is a rather remarkable thing that two men, differing in this way in political antecedents, should agree in this proposal. We need not discuss what particular portfolio should be assigned to an Indian member. That will be settled by the Viceroy on the merits of the individual. The great object, the main object, is that the merits of individuals are to be considered and to be decisive, irrespective and independent of race and colour.

Proposal initiated by Lord Minto and accepted by Lord Morley

Merit to be preferred to race and colour

We are not altogether without experience, because a year ago, or somewhat more, it was my good fortune to be able to appoint two Indian gentlemen[1] to the Council of India sitting at the India Office. Many apprehensions reached me as to what might happen. So far, at all events, those apprehensions have been utterly dissipated. The concord between the two Indian members of the Council and their colleagues has been unbroken, their work has been excellent, and you will readily believe me when I say that the advantage to me of being able to ask one of these two gentlemen to come and tell me something about an Indian question from an Indian point of view, is enormous. I find in it a chance of getting the Indian angle of

Inclusion of two Indians in India Council enables Secretary of State to view an Indian question from an Indian point of view.

[1] Syed Hussain Bilgrami and Sir K. G. Gupta.

vision, and I feel sometimes as if I were actually in the streets of Calcutta.

I do not say there are not some arguments on the other side. But this, at all events, must be common-sense—for the Governor-General and the European members of his Council to have at their side a man who knows the country well, who belongs to the country and who can give them the point of view of an Indian—surely, my Lords, that cannot but prove an enormous advantage.

Proposal for including Indians in Provincial Executive Councils

.....I propose at once, if Parliament agrees, to acquire powers to double the Executive Council in Bombay and Madras, and to appoint at least one Indian member in each of those cases, as well as in the Governor-General's Council. Nor, as the papers will show, shall I be backward in advancing towards a similar step, as occasion may require, in respect of at least four of the major provinces.

Indian co-operation will strengthen the basis of British rule in India.

We believe that this admission of the Indians to a larger and more direct share in the government of their country and in all the affairs of their country, without for a moment taking from the central power its authority, will fortify the foundations of our position. It will require great steadiness, constant pursuit of the same objects, and the maintenance of our authority, which will be all the more effective if we have, along with our authority, the aid and assistance, in responsible circumstances, of the Indians themselves.

Military strength, material strength, we have in abundance. What we still want to acquire is moral strength—moral strength in guiding and controlling the people of India in the course on which time is launching them.....

41. LORD MORLEY ON INDIAN MEMBER IN VICEROY'S EXECUTIVE COUNCIL, 1909.

(Reply to a deputation of the London Branch of the All-India Muslim League, January, 1909)

I want to say that reference to the Hindu community or the Mahommedan community, in respect to the

Indian member to be chosen for 'ability and character', not on communal grounds

position of the Viceroy's Executive, is entirely wide of the mark in the view, I know, both of the Viceroy and of myself. If.....it may be my duty by-and-by to recommend to the Crown the name of an Indian member, it will not be solely for the sake of placing on the Viceroy's Executive Council an Indian member simply as either a Hindu or a Mahommedan. Decidedly we are of opinion that the Governor-General in Council will be all the more likely to transact business wisely, if he has a responsible Indian adviser at his elbow. But the principle in making such a recommendation to the Crown, would be to remove the apparent disability in practice—for there is no disability in law—of an Indian holding a certain appointment because he is an Indian. That is a principle we do not accept; and the principle I should go upon—and I know Lord Minto would say exactly the same[1]—is the desirability of demonstrating that we hold to the famous promise made in the Proclamation of Queen Victoria in 1858, that if a man is fully qualified in proved ability and character to fill a certain post, he shall not be shut out by race or religious faith[2].....I see no chance of our being able to comply with your present request.[3]

Lord Minto's view

[1] Lord Minto wrote to Lord Morley on January 6, 1909, "They assume that we want to have a Native Member, solely qua Native. That is not the case at all We say that if a man is fully qualified in ability and otherwise to hold a certain post he shall not be debarred from holding it by his colour. That is quite a different thing from attempting to represent Mahommedans or Hindus on the Viceroy's Council. We are simply endeavouring to fulfil the promise held out in the Queen's Proclamation, which we have been told so often that we have forgotten." (Countess of Mino, *India, Minto and Morley*, p. 276). For different views relating to this subject, see *India, Minto and Morley*, pp. 101, 104, 112, 116, 139.

[2] See Lord Morley's speech on the Indian Councils Bill in the House of Lords, February 23, 1909, printed in his *Indian Speeches*, pp. 127-132.

[3] The deputation wanted that, if there was a Hindu in the Viceroy's Executive Council, there should be a Muhammadan as well.

42. THE INDIAN COUNCILS ACT, 1909. (9 Edw. VII, C. 4.)

AN ACT TO AMEND THE INDIAN COUNCILS ACTS, 1861 AND 1892, AND THE GOVERNMENT OF INDIA ACT, 1833. (May 25, 1909).

[On July 11, 1906, Minto wrote to Morley: "I attach great importance to the official initiative being taken by the Government of India. It is better in every respect, both for the present and for the future, that the Government of India should appear to recognize all that is in the air here, the necessity of meeting new conditions, and that they should not run the risk of being assumed to have at last taken tardy action out of respect to instructions from home".[1]

On January 25, 1910, Minto declared in his speech to the reformed Imperial Legislative Council: "They (*i.e.*, the Reforms) had their genesis in a note of my own, addressed to my colleagues in August, 1906 . It was based entirely on the views I had myself formed of the position of affairs in India. It was due to no suggestions from home: whether it was good or bad I am entirely responsible for it".[2]]

Amendment of Acts of 1861 and 1892

1. (1) The additional members of the Councils for the purpose of making laws and regulations (hereinafter referred to as Legislative Councils) of the Governor-General and of the Governors of Fort St. George and Bombay, and the members of the Legislative Councils already constituted, or which may hereafter be constituted, of the several Lieutenant-Governors of Provinces, instead of being all nominated by the Governor-General, Governor, or Lieutenant-Governor in manner provided by the Indian Councils Acts, 1861 and 1892, shall include members so nominated and also members elected in accordance with regulations made under this Act, and references in those Acts to the members so nominated and their nomination shall be construed as including references to the members so elected and their election.

Provision for election of members

Details to be settled by regulations

(2) The number of additional members or members so nominated and elected, the number of such members required to constitute a quorum, the term of office of such members and the manner of

[1] *India, Minto and Morley*, p. 99.
[2] *India, Minto and Morley*, p. 371.

filling up casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall, in the case of each such Council, be such as may be prescribed by regulations made under this Act :

Numbers of members

Provided that the aggregate number of members so nominated and elected shall not, in the case of any Legislative Council mentioned in the first column of the First Schedule to this Act, exceed the number specified in the second column of that schedule.

Constitution and procedure of Executive Councils of Madras and Bombay

2. (1) The number of ordinary members of the Councils of the Governors of Fort Saint George and Bombay shall be such number not exceeding four as the Secretary of State in Council may from time to time direct, of whom two at least shall be persons who at the time of their appointment have been in the service of the Crown in India for at least twelve years.

(2) If at any meeting of either of such Councils there is an equality of votes on any question, the Governor or other person presiding shall have two votes or the casting vote.

Provision for creation of an Executive Council in Bengal

3. (1) It shall be lawful for the Governor-General in Council, with the approval of the Secretary of State in Council, by proclamation, to create a Council in the Bengal Division of the Presidency of Fort William for the purpose of assisting the Lieutenant-Governor in the executive government of the province, and by such proclamation—

(*a*) to make provision for determining what shall be the number (not exceeding four) and qualifications of the members of the Council ; and

(*b*) to make provision for the appointment of temporary or acting members of the Council during the absence of any member from illness or otherwise, and for the procedure to be adopted in case of a difference of opinion between a Lieutenant-Governor and his Council, and in the case of equality of votes, and in the case of a Lieutenant-Governor being obliged

to absent himself from his Council from indisposition or any other cause.

Provision for creating Executive Councils in other Lieutenant-Governors' Provinces

(2) It shall be lawful for the Governor-General in Council, with the like approval, by a like proclamation, to create a Council in any other province under a Lieutenant-Governor for the purpose of assisting the Lieutenant-Governor in the executive government of the province : Provided that before any such proclamation is made a draft thereof shall be laid before each House of Parliament for not less than sixty days during the session of Parliament, and, if before the expiration of that time an Address is presented to His Majesty by either House of Parliament against the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft.

(3) *Where any such proclamation has been made* with respect to any province the Lieutenant-Governor may, with the consent of the Governor-General in Council, from time to time make rules and orders for the more convenient transaction of business in his Council, and any order made or act done in accordance with the rules and orders so made shall be deemed to be an act or order of the Lieutenant-Governor in Council.

Executive Councillors to be members of Legislative Councils as well

(4) Every member of any such Council shall be appointed by the Governor-General, with the approval of His Majesty, and shall, as such, be a member of the Legislative Council of the Lieutenant-Governor, in addition to the members nominated by the Lieutenant-Governor and elected under the provisions of this Act.

Appointment of Vice-Presidents

4. The Governor-General and the Governors of Fort Saint George and Bombay, and the Lieutenant-Governor of every province respectively, shall appoint a member of their respective Councils to be Vice-President thereof, and, for the purpose of temporarily holding and executing the office of Governor-General or Governor of Fort Saint George or Bombay and of presiding at meetings of Council in the absence of the

Rank and status of Vice-Presidents

Governor-General, Governor, or Lieutenant-Governor, the Vice-President so appointed shall be deemed to be the senior member of Council and the member highest in rank, and the Indian Councils Act, 1861, and sections sixty-two and sixty-three of the Government of India Act, 1833, shall have effect accordingly.

Provision regarding financial discussions, debates on matters of general public interest and the asking of questions

5. (1) Notwithstanding anything in the Indian Councils Act, 1861, the Governor-General in Council, the Governors in Council of Fort Saint George and Bombay respectively, and the Lieutenant-Governor or Lieutenant-Governor in Council of every province, shall make rules authorising at any meeting of their respective Legislative Councils the discussion of the annual financial statement of the Governor-General in Council or of their respective Local Governments, as the case may be, and of any matter of general public interest, and the asking of questions, under such conditions and restrictions as may be prescribed in the rules applicable to the several Councils.

(2) Such rules as aforesaid may provide for the appointment of a member of any such Council to preside at any such discussion in the place of the Governor-General, Governor, or Lieutenant-Governor, as the case may be, and of any Vice-President.

(3) Rules under this section, where made by a Governor in Council, or by a Lieutenant-Governor, or a Lieutenant-Governor in Council, shall be subject to the sanction of the Governor-General in Council, and where made by the Governor-General in Council shall be subject to the sanction of the Secretary of State in Council, and shall not be subject to alteration or amendment by the Legislative Council or the Governor-General, Governor or Lieutenant-Governor.

Governor-General empowered to make regulations about nomination or election and qualifications of members

6. The Governor-General in Council shall, subject to the approval of the Secretary of State in Council, make regulations as to the conditions under which and manner in which persons resident in India may be nominated or elected as members of the Legislative Councils of the Governor-General, Governors, and Lieutenant-Governors, and as to the qualifications for

being, and for being nominated or elected, a member of any such Council, and as to any other matter for which regulations are authorised to be made under this Act, and also as to the manner in which those regulations are to be carried into effect. Regulations under this section shall not be subject to alteration or amendment by the Legislative Council of the Governor-General.

Regulations to be laid before Parliament

7. All proclamations, regulations, and rules made under this Act, other than rules made by a Lieutenant-Governor for the more convenient transaction of business in his Council, shall be laid before both Houses of Parliament as soon as may be after they are made.

* * * *

8. (3) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

FIRST SCHEDULE

Maximum Numbers of Nominated and Elected Members of Legislative Councils.

Legislative Council	Maximum Number
Legislative Council of the Governor-General	60
Legislative Council of the Governor of Fort Saint George	50
Legislative Council of the Governor of Bombay	50
Legislative Council of the Lieutenant-Governor of the Bengal division of the Presidency of Fort William	50
Legislative Council of the Lieutenant-Governor of the United Provinces of Agra and Oudh	50
Legislative Council of the Lieutenant-Governor of the Provinces of Eastern Bengal and Assam	50
Legislative Council of the Lieutenant-Governor of the Province of the Punjab	30
Legislative Council of the Lieutenant-Governor of the Province of Burma	30
Legislative Council of the Lieutenant-Governor of any Province which may hereafter be constituted	30

SECOND SCHEDULE

Enactments Repealed

SECTION AND CHAPTER	SHORT TITLE	
24 and 25 Vict., C. 67.	The Indian Councils Act, 1861.	In section ten, the words "not less than six nor more than twelve in number." In section eleven, the words "for the term of two years from the date of such nomination." In section fifteen, the words from "and the power of making laws and regulations" to "shall be present." "In section twenty-nine, the words "not less than four nor more than eight in number." In section thirty, the words "for the term of two years from the date of such nomination." In section thirty-four, the words from "and the power of making laws and regulations" to "shall be present." In section forty-five, the words from "and the power of making laws and regulations" to "shall be present."
55 and 56 Vict., C. 14.	The Indian Councils Act, 1892.	Sections one and two. In section four, the words "appointed under the said Act or this Act" and paragraph (2).

43. LORD MORLEY ON THE INDIAN COUNCILS BILL, 1909.

(House of Lords, March 4, 1909).

The Bill is a short one, and will speak for itself; I shall be brief in referring to it, for in December last I made what was practically a Second Reading speech. I may point out that there are two rival schools, and that the noble Lord opposite (Lord Curzon) may be said to represent one of them. There are two rival schools, one of which believes that better government of India depends on efficiency, and that efficiency is in the end of our rule in India. The other school, not neglecting efficiency, looks also to what is called political concessions. I think I am doing the noble Lord no injustice in saying that during his

Two schools of thought relating to India : (1) Efficiency,

(2) Concessions

eminent Viceroyalty he did not accept the necessity for political concessions, but trusted to efficiency. But splendidly successful as his work was from the point of view of efficiency, he still did leave in India a state of things when we look back—not in consequence of his policy—not completely satisfactory such as would have been the crowning of a brilliant career.

State of India at the departure of Lord Curzon

I am as much for efficiency as the noble Lord, but I do not believe—and this is the difference between him and myself—that you can have true, solid, enduring efficiency without what are called political concessions. I know risks are pointed out. The late Lord Salisbury, speaking on the last Indian Councils Bill, spoke of the risk of applying occidental machinery in India. Well, we ought to have thought of that before we applied occidental education; we applied that, and occidental machinery must follow. These Legislative Councils once called into existence, it was inevitable that you would have gradually, in Lord Salisbury's own phrase, to popularise them so as to bring them into harmony with the dominant sentiments of the people in India. The Bill of 1892 admittedly contained the elective principle, and now this Bill extends that principle. That noble Lord (Lord Curzon) will remember the Bill of 1892, of which he had charge in the House of Commons. I want the House to be good enough to follow the line taken by Mr. Gladstone, because I base myself on that. There was an amendment moved and there was going to be a division, and Mr. Gladstone begged his friends not to divide, because he said it was very important that we should present a substantial unity to India. This is upon the question of either House considering a Bill like the Bill that is now on the Table—a mere skeleton of a Bill if you like. I see it has been called vague and sketchy. It cannot be anything else on the principle explained by Mr. Gladstone[1]:—

There can be no efficiency without political concessions.

Political concessions —logical result of spread of Western education in India

Gladstone's attitude to Act of 1892

"It is the intention of the Government (t[redacted] the Conservative Government) that a serious

[1] See Document No. 19.

Gladstone was in favour of laying down broad principles, leaving details to authorities in India.

shall be made to consider carefully those elements which India in its present condition may furnish for the introduction into the Councils of India of the elective principle. If that effort is seriously to be made, by whom is it to be made? I do not think it can be made by this House, except through the medium of empowering provisions. The best course we could take would be to commend to the authorities of India what is a clear indication of the principles on which we desire them to proceed. It is not our business to devise machinery for the purpose of Indian Government. It is our business to give to those who represent Her Majesty in India ample information as to what we believe to be sound principles of government: and it is, of course, the function of this House to comment upon any case in which we may think they have failed to give due effect to those principles."

Morely follows Gladstone's policy.

I only allude to Mr. Gladstone's words in order to let the House know that I am taking no unusual course in leaving the bulk of the work, the details of the work, to the Government of India, and discussion, therefore, in this House and in Parliament will necessarily be not upon details. But no doubt it is desirable that some of the heads of the regulations, rules and proclamations to be made by the Government of India under sanction of the India Office should be more or less placed within the reach and knowledge of the House so far as they are complete. ...

Morley's 'plan of a mixed or composite electoral college' composed of Hindus and Muslims

There is one very important chapter in these regulations of which I think now on the Second Reading of the Bill, without waiting for Committee, I ought to say a few words to your Lordships about—I mean the Mahommedans. That is a part of the Bill and scheme which has no doubt attracted a great deal of criticism and excited a great deal of feeling in that very important community. We suggested to the Government of India a certain plan. We did not prescribe it, we did not order it, but we suggested and recommended this plan for their consideration—no more than that. It was the plan of a 'mixed or composite electoral

college,[1] in which Mahommedans and Hindus should pool their votes, so to say the plan of Hindus and Mahommedans voting together in a mixed and composite electorate would have secured to the Mahommedan electors, wherever they were so minded, the chance of returning their own representatives in their due proportion. The political idea at the bottom of that recommendation which has found so little favour was that such composite action would bring the two great communities more closely together and this idea of promoting harmony was held by men of very high Indian authority and experience who were among my advisers at the India Office. But the Mahommedans protested that the Hindus would elect a pro-Hindu upon it. At any rate, the Government of India doubted whether our plan would work, and we have abandoned it.

Muslims and Government of India opposed to Morley's plan

The Mahommedans demand three things. . They demand the election of their own representatives to these Councils in all the stages . Secondly, they want a number of seats in excess of their numerical strength. Those two demands we are quite ready and intend to meet in full. There is a third demand that, if there is a Hindu on the Viceroy's Executive Council . .there should be two Indian members on the Viceroy's Council and that one should be a Mahom-

Three demands of the Muslims, of which two may be accepted

[1] "Let it be supposed that the total population of the Province is 20 millions, of whom 15 millions are Hindus and 5 millions Mahommedans, and the number of members to be elected 12. Then nine Hindus should be elected to three Mahommedans. In order to obtain these members, divide the Province into three electoral areas, in each of which three Hindus and one Mahommedan are to be returned. Then, in each of these areas, constitute an Electoral College consisting of, let us say, a hundred members. In order to preserve the proportion between the two religions, 75 of these should be Hindus and 25 Mahommedans that body (Electoral College) would be called upon to elect three representatives for the Hindus and one for the Mahommedans.. ...In this way it is evident that it would be in the power of each section of the population to return a member in the proportion corresponding to its own proportion to the total population."—Lord Morley's Despatch, November 27, 1908.

Details of Morley's plan

medan. Well, as I told them and as I now tell your Lordships, I see no chance whatever of meeting their views in that way to any extent at all.

Deeply rooted differences between Hindus and Muslims

To go back to the point of the registers; some may be shocked at the idea of a religious register at all, of a register framed on the principle of religious belief. We may wish,—we do wish,—certainly I do,—that it were otherwise. We hope that time, with careful and impartial statesmanship, will make things otherwise. Only let us not forget that the difference between Mahommedanism and Hinduism is not a mere difference of articles of religious faith. It is a difference in life, in tradition, in history, in all the social things as well as articles of belief that constitute a community.

Question of an Indian Member on Viceroy's Executive Council

Now I will come to the question which, I think, has excited, certainly in this country, more interest than anything else in the scheme before you—I mean the question of an Indian member on the Viceroy's Executive Council. It is quite true, and the House should not forget that it is quite true, that this question is in no way whatever touched by the Bill. If this Bill were rejected by Parliament it would be a great and grievous disaster to peace and contentment in India, but it would not prevent the Secretary of State the next morning from advising His Majesty to appoint an Indian Member. Members of the Viceroy's Executive Council are appointed by the Crown.

* * * *

Act of 1833

Perhaps I might be allowed to remind your Lordships of the Act of 1833—certainly the most extensive measure of Indian Government between Mr. Pitt's famous Act of 1784 and Queen Victoria's assumption of the government of India. There is nothing so important as that Act. It lays down in the broadest way possible the desire of Parliament of that day that there was to be no difference in appointing to offices in India between one race and another,[1] and the

[1] See *Indian Constitutional Documents*, Vol. I, p. 253.

covering Despatch wound up by saying that "For the future, fitness is to be the criterion of eligibility."

I need not quote the famous paragraph in the Queen's Proclamation of 1858, for every Member of the House who takes an interest in India knows that by heart. Now, the noble Marquess[1] says that his anxiety is that nothing shall be done to impair the efficiency of the Viceroy's Council. I share that anxiety with all my heart. I hope the noble Marquess will do me the justice to remember that in these plans I have gone beyond the Government of India in resolving that a permanent official majority shall remain in the Viceroy's Council. Lord Macdonell said the other day: "I believe you cannot find any individual native gentleman who is enjoying general confidence who would be able to give advice and assistance to the Governor-General in Council" The question is whether there is no one of the 300 millions of the population of India who is competent to be the officially-constituted adviser of the Governor-General in Council in the administration of Indian affairs. You make an Indian a Judge of the High Court and Indians have even been acting Chief Justices. As to capacity, who can deny that they have distinguished themselves as administrators of Native States, where far more demand is made on their resources, intellectual and moral? It is said that the presence of an Indian member would cause restraint in the language of discussion. For a year and a half I have had two Indians at the Council of India and I have never found the slightest restraint whatever.

Queen's Proclamation

Fitness of Indians

Indians as judges of High Courts and administrators in Indian States

Then there is the question, what are you going to do about the Hindu and the Mahommedan? When Indians were first admitted to the High Courts, for a long time the Hindus were more fit and competent than the Mahommedans; but now I am told the Mahommedans have their full share. The same sort of operation would go on in quinquennial periods between

Question of Hindus and Muslims

[1] Lord Curzon.

Hindus and Mahommedans. Opinion among the great Anglo-Indian officers now at home is divided, but I know at least one, not, I think, behind even Lord Macdonell in experience or mental grasp, who is strongly in favour of this proposal. One circumstance which cannot but strike your Lordships as remarkable is the comparative absence of hostile criticism of this idea by the Anglo-Indian Press, and, as I am told, in Calcutta society. I was apprehensive at one time that it might be otherwise. I should like to give a concrete illustration. The noble Marquess opposite[1] said the other day that there was going to be a vacancy in one of the posts on the Viceroy's Executive Council—namely, the Legal Member's time would soon be up. Now, suppose there were in Calcutta an Indian lawyer of large practice and great experience in his profession—a man of unstained professional and personal repute, in close touch with European society and much respected, and the actual holder of important legal office. Am I to say to that man: In spite of all these excellent circumstances to your credit, in spite of your undisputed fitness, in spite of the emphatic declaration of 1833 that fitness is to be the criterion of eligibility, in spite of that noble promise in Queen Victoria's Proclamation of 1858—a promise of which every Englishman ought to be for ever proud if he tries to adhere to it and rather ashamed if he tries to betray or mock it—in spite of all this, usage and prejudice are so strong that I dare not appoint you, but must appoint instead some stranger to India from Lincoln's Inn or the Temple? Is there one of your Lordships who would envy the Secretary of State who had to hold language of that kind to a meritorious candidate, one of the King's equal subjects? I put it to your Lordships in that concrete way. These abstract general arguments are slippery. I do not say there is no force in them, but there are deeper questions at issue to which Lord Minto and myself attach the greatest importance.

Attitude of Anglo-Indian officers and Press

A concrete case, illustrating the difficulty of excluding Indians from Viceroy's Executive Council

[1] Lord Curzon.

44. MR. ASQUITH[1] ON THE INDIAN COUNCILS BILL, 1909.

(House of Commons, April 1, 1909).

No censure on Bureaucracy

The changes by this Bill are in no sense to be understood as reflecting on the ability, the patriotism or the flexibility of that great hierarchy which for more than two generations has given us the present state of things. But the fact remains that there are in India things which are inevitable, but which were not foreseen—such, for instance, as the spread of education, the great inter-communion between the East and the West, and the infiltration among the educated classes of the Indian people of ideas which 50 or 60 years ago were perfectly alien to them and which nobody ever imagined would exist. These have brought about a different state of things. Owing to a number of causes of this kind you cannot rest where you are, and if your Indian administration is to be efficiently conducted and founded on a stable basis, it must be done cautiously. I agree that it must be done prudently. I agree that it must be done more and more and step by step by associating the people of the country with the Government that exists for them. That is a trust which this country exercises on their behalf. That is a state of things which must inevitably have led, whatever Government was in power, to the gradual transformation and reconstruction of the existing machinery of Indian administration.

Necessity for change

Wanted—association of Indians with their British rulers

* * * *

The Noble Lord[2] has said that Indian reformers will not be satisfied with the proposals in the Bill. It is not unimportant to point out the language of Indian reformers. As late as Monday last Mr. Gokhale considered the nature of Indian reform. The language which was used by Mr. Gokhale fairly represents the opinions of Indian reformers. He said he had a perfectly impartial mind in dealing with the question.

Gokhale's view

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[1] Prime Minister, 1908-1916

[2] Earl Percy.

He eulogised Lord Minto and Lord Minto's attitude with regard to this particular proposal, and he declared that Lord Morley has saved India from being driven into chaos. I do not say that the aspirations of Mr. Gokhale are met by this Bill, or those of his friends, but it is a step which will avert the serious danger which has been confronting us for the last few years. The Noble Earl agrees, as I understand, entirely with that part of the Bill which proposes to increase the number of members of the Legislative Councils, and to give them a larger right of discussion and criticism than they at present possess.

Reform will avert chaos.

Earl Percy : Perhaps the number is rather greater than it need be.

The Prime Minister : That is a matter of detail. The Noble Lord, I understand, thinks they ought to be increased ?

Earl Percy : Yes.

The Prime Minister : Then, so far, the Noble Lord has no complaint. His main criticism on that part of the Bill which deals with the change in the constitution and composition of the Legislative Councils was, that outside the Viceregal Council the non-official element would be in a majority. In regard to that the Viceregal and official majority is preserved. With regard to the nature of the regulations the Noble Lord has quite treated them as though they were the subject-matter of consideration in this debate. The practice of creating a non-official majority is, I must point out to the House, not at all the same thing as creating an elective majority. They are not representative at all. The non-official element is largely composed of nominated members. Therefore it is not at all the same thing as if you were giving the elective representatives of particular classes or communities a voting majority on the Council to which they belong. That distinction must be carefully observed. The non-official majority already exists in the Council of Bombay. . whatever dangers may be apprehended—I think they are very shadowy—from the recogni-

Reply to opposition against non-official majority

Non-official majority does not mean elected majority.

tion of this non-official majority, they are amply safeguarded against by the security which I think the Noble Lord rates a little too low—namely, the initiative of the power of the veto by the Viceroy, or, in the case of the other Councils, by the Lieutenant-Governors, which I think may be regarded as very adequate safeguard against anything in the nature of violent or revolutionary legislation.

Safeguards against 'violent or revolutionary legislation'

Earl Percy: My criticism was, if you exercise these safeguards you create a sense of irresponsibility on the part of future majorities.

The Prime Minister: That is always said in regard to any power, whether in this country or anywhere else, in regard to the veto. We have here in this country the power in regard to the veto, which resides not in the Sovereign, but elsewhere,[1] and it sometimes creates a great deal of irritation, but still we go on. I do not know how long it is going to last, nor whether it will bring the community in India to anything like the state of irritation which the Noble Lord has indicated, and which the long-suffering people of this country have endured. I do not think we need be very much alarmed about that. On the other hand, it is most desirable in the circumstances to give to the people of India the feeling that these Legislative Councils are not mere automatons, the wires of which are pulled by the official hierarchy. It is of very great importance from that point of view that the non-official element should be in the ascendant, subject to proper safeguards. In that way you obtain some kind of security that the legislation which finally passes through the mill of the Council reflects the opinion of the community.

Remarks on veto

'Non-official element should be in the ascendant.'

The Noble Lord spoke of the position of the Mahommedans. Speaking generally with regard to that, the Noble Lord has stated that my Noble Friend[2] dropped his original proposal in regard to the Electoral

[1] The reference is to the House of Lords.
[2] Lord Morley.

Remarks on Electorate

College—dropped them in deference to objections made to a large extent by the Mahommedans themselves—and that when the Bill comes into law it will be a matter prescribed by regulation in each of the particular provinces as to how they shall elect their representatives. Undoubtedly there will be a separate register for Mahommedans. To us here in this country at first sight it looks an objectionable thing, because it discriminates between people, segregating them into classes, on the basis of religious creed. I am sure the Noble Lord will not regard that as a formidable objection, because the distinction between Mahommedan and Hindu is not merely religious, but it cuts deep down not only into the traditions and historic past, but into the habits and social customs of the people. Provided that, as we may assume, the regulations adequately safeguard the separate registration of the Mahommedan electorate, I do not think any practical suggestion has yet been made for more completely giving that kind of representation which undoubtedly as a minority they are entitled to demand. The number of Mahommedans on the Viceroy's Council are only five; but, on the other hand, as the Noble Lord knows, on the Viceroy's Council there will be 20 nominated members, of whom 17 are to be officials, and there is no reason why the Mahommedans should not come into that category. In addition, there are to be Mahommedans elected by other communities—Chambers of Commerce, and so forth—and it is not improbable that, among this category, Mahommedan representatives might be found. I do not think there is any serious danger, or any danger at all, of the Mahommedans not being adequately represented on the Viceroy's Council.

Differences between Hindus and Muslims

Arrangement for adequate representation of Muslims in Viceroy's Legislative Council

I now come to what the Noble Lord regarded as a more serious matter, though it is one not directly dealt with by this Bill, that is, the nomination of the native Member of the Executive Council of the Viceroy. The Noble Lord said that his objection to such an appointment was not one of principle. He admitted that the King's Proclamation announced absolute equality as far as race and religion are con-

Remarks on Indian member of Viceroy's Executive Council

cerned,[1] but that his objection was one, not of principle, but of expediency. He took the point so often taken in the course of these discussions, that if you put a native Member on the Executive Council of the Viceroy, you admit him to a knowledge not merely of what I may call local administrative matters, but you give him access, at any rate, to what may be described as the Arcana of Government. The noble Lord thinks this is a dangerous step to take. Why? In the first place, he says, because the gentleman so appointed, whoever he may be, cannot have any previous experience in these high matters. But that is an argument you might carry to very great lengths not only in India, but elsewhere. A gentleman is admitted for the first time to the Cabinet in this country; he has had no previous experience on official matters of this kind. But he becomes familiar with high secrets of State, and he acquires experience and justifies the confidence reposed in him after he has got there upon such presumption as his previous training and reputation may create. And unless you are going to lay down as a proposition that no native, Mahommedan or Hindu, whatever be his intellectual eminence, whatever be his practical training, like that of Mr. Sinha,[2] in a great profession like the profession of the law, however high he may have attained in that profession in competition not only with men of his own race, but with Europeans and Englishmen—unless you are going to lay down the fact that he is an Indian, born in India, and that in itself, for all time, permanently and irredeemably disables him from being put into this great position of responsibility, I fail to see how it is possible to justify the exclusion of Indians from positions of this kind.

Objections to appointment of Indians refuted

A concrete case—that of S. P. Sinha

[1] "Steps are being continuously taken towards obliterating distinctions of race as the test for access to posts of public authority and power. In this path I confidently expect and intend the progress henceforward to be steadfast and sure, as education spreads, experience ripens and the lessons of responsibility are well learned by the keen intelligence and apt capabilities of India."—Proclamation of Edward VII, November 2, 1908.

[2] S. P. Sinha (later Lord Sinha).

Question of previous experience

Let me point out also that if you talk about previous experience, who are the people whom we appointed, the men of eminence and distinction who thoroughly justified their selection, whom we have sent to India in days gone by? As a rule, in the vast majority of cases the Legal Member of the Council and the Financial Member of the Council have come from England, and, as a rule, they have been men without any previous experience of India before they landed there. Lord Macaulay, one of the most distinguished Englishmen, had never been in India before his appointment, and had never paid any special attention to it.

Case of Macaulay

It is quite true when he came back he wrote most brilliant essays on the heroes of Anglo-Indian history, but he landed in India with as small an amount of expert knowledge of Indian affairs as any man who ever sailed across the Indian Ocean. So it has been constantly with the Financial Member. As a rule, he goes from here to India without previous expert acquaintance with the problems of Indian finance. How is it possible for us to say then that we are in the habit of filling these posts in that way? Be it observed I am not in the least disparaging the men who have gone there. How is it possible for us to say, when you get men like Mr. Sinha, a distinguished gentleman, actually at the head of the legal profession, a man born and bred in India, who has studied the Indian law, Common Law, customary and statute law—how is it possible to say that he is not fitted for such a post as that of Legal Member of the Viceroy's Council? I undertake to say with the greatest confidence you could not find a man so qualified to discharge the duties of that particular position as the distinguished Hindu Lord Morley has got. The question really is: Are you going to say it is to be one of the inflexible rules of the Empire that, in spite of the terms of the King's Proclamation, a man so eminently qualified, so pre-eminently qualified, as Mr. Sinha is for this place, is to be disqualified because he was born in India and is not a member of our own race? The proposition is not an arguable one, and

Case of S. P. Sinha

Is the policy of racial discrimination to be continued?

I believe that my Noble Friend's action in that appointment will carry with it the assent of the vast majority of the people of this country. Let me say at once that I disclaim on the part of my Noble Friend, that because Mr. Sinha has been appointed to this position he is to see-saw between Mahommedans and Hindus in this particular position, and that a new rule of succession is to be established. Nothing of the kind. My Noble Friend plainly indicated when the Mahommedans waited upon him that he did not regard himself in any sense pledged to anything of the kind. This appointment of Mr. Sinha must be taken as an act which has nothing to do with this Bill, but an appointment made under the powers of the old Act, and not under the new power which would be set up under this Bill. The point is whether a man so eminently qualified for one of these posts on the Viceroy's Council is to be disqualified because he is an Indian and not an English man.

Sinha's appointment does not entitle Muslims to claim this post as a matter of right and precedent.

I come to the criticism which the Noble Lord passed on that which is not in the Bill, but which used to be in the Bill, and which we hope will be in the Bill again, *viz.*, the for the moment defunct clause 3, or the clause which I prefer to say is for the moment in a state of suspended animation. He said that he objected and his friends objected to the empowering—that is all clause 3 did—to give power to the Government of India from time to time, if it should think fit, to create these Executive Councils. First of all, let me say on the point of precedent that we are wisely following the example of the Act of 1861, which gave power from time to time—a power which has been more than once exercised—to create new Lieutenant-Governorships and Executive Councils.

Remarks on Clause 3

Precedent of creation of new Provinces

Earl Percy : Governorships in Council.

The Prime Minister : Oh, yes ; and I think it has been exercised in the case of Burma and the Punjab, and in the recent creation of the new Province of Eastern Bengal. If I am not mistaken at all, that was done under the powers conferred by the Act of 1861.

So that it is no new thing to confer upon the Government of India power of this kind to be exercised from time to time, and it has the obvious convenience that you have not got to come to Parliament each time that the situation arises for the creation of one of these new Executive bodies. So much for the precedent. Then as to the reasons. They cannot be better stated than they are stated in the passage which my Noble Friend has already read elsewhere in the despatch of the Viceroy of March 9th. [The Right Hon. Gentleman, having read a lengthy extract, proceeded]. That is the expression of opinion of the Government of India. They say that after many months' deliberation —there is no question here that the matter has been rushed—they say they desire after full consideration that this power should be placed in their hands; that they shall exercise it first probably in the case of Bengal, and that they shall in the light of experience cautiously and gradually apply it in other provinces.

Opinion of the Government of India

Case of Bengal

It is a power they say we wish to have, and through the Secretary of State we ask that Parliament should grant it. What possible objection can there be to that course? I could not quite gather from the speech of the Noble Lord whether he would be opposed to this clause if it is applied only to Bengal.

Earl Percy: No.

What Bengal now requires may be required by other Provinces later on.

The Prime Minister: If it had been limited to Bengal, if it had been confined to establishing an Executive Council for Bengal, he would have agreed to the clause. Is it making an undue draft on the part of the Government of India and the Secretary of State, on the confidence of Parliament, to say that that which you admit at the present moment to be good, to be not only expedient, but necessary, for administrative purposes in Bengal, may and probably will become expedient and necessary in other parts of India from time to time? "We ask you, therefore," the Government of India say, "to give us the power if and when the occasion may arise to establish these Executive Councils elsewhere, and we hope that in the

interests of India you will not refuse us that power." I do not see how any more reasonable or moderate proposal could be made than this appeal to the wisdom and the confidence of Parliament. I think I have dealt with all the main points which the Noble Lord raised in his speech. I submit, with some confidence, first of all, that the Bill is no breach of the great traditions of our Indian administration. It is, on the contrary, the natural and legitimate development of the principles upon which, for the last 50 or 60 years at any rate, the Government has been avowedly and explicitly founded. I submit, further, that in regard to its practical effect—the enlargement of the Legislative Councils, the introduction into them of the elected element, the predominance, except in the Viceroy's Council, of the non-official element, and as regards the power which it gives the Government of India first in Bengal, and then from time to time, as occasion arises, in other Provinces, to assist Lieutenant-Governors by the aid of Executive Councils—all these are provisions carefully thought out, moderate in their scope, calculated to associate gradually but safely more and more the people of India with the administration of their own affairs, and consistent in every respect with the maintenance of our Imperial supremacy.

Continuity with the past

'Gradual and safe' association of Indians in administration

45. REGULATIONS UNDER ACT OF 1909.

(REGULATIONS FOR THE NOMINATION AND ELECTION OF ADDITIONAL MEMBERS OF THE LEGISLATIVE COUNCIL OF THE GOVERNOR-GENERAL)

I. The Additional Members of the Legislative Council of the Governor-General shall ordinarily be sixty in number and shall consist of—

Number of members

A. Members elected by the classes specified in Regulation II, who shall ordinarily be twenty-seven in number; and

B. Members nominated by the Governor-General, who shall not exceed thirty-three in number, and of whom—

Nominated Members

(*a*) not more than twenty-eight may be officials, and

(*b*) three shall be non-official persons to be selected—

(*i*) one from the Indian commercial community,

(*ii*) one from the Mahomedan community in the Punjab :

(*iii*) one from the landholders in the Punjab :

Provided that it shall not be lawful for the Governor-General to nominate so many non-official persons under these Regulations that the majority of all the Members of the Council shall be non-officials.

Elected Members

II. The twenty-seven elected Members specified in Regulation I shall be elected as follows, namely :—

(*i*) By the non-official Additional Members of the Council of the Governor of Fort St. George	2 Members
(*ii*) By the non-official Additional Members of the Council of the Governor of Bombay	2 Members
(*iii*) By the non-official Additional Members of the Council of the Governor of Fort William in Bengal	2 Members
(*iv*) By the non-official Members of the Council of the Lieutenant-Governor of the United Provinces of Agra and Oudh	2 Members
(*v*) By the non-official Members of the Council of the Lieutenant-Governor of the Punjab	1 Member
(*vi*) By the non-official Members of the Council of the Lieutenant-Governor of Burma	1 Member
(*vii*) By the non-official Additional Members of the Council of	

the Lieutenant-Governor of Bihar and Orissa	1 Member
(*viii*) By the non-official Members of the Council of the Chief Commissioner of Assam	1 Member
(*ix*) By the District Councils and Municipal Committees in the Central Provinces	1 Member
(*x*) By Landholders in the Presidency of Fort St. George	1 Member
(*xi*) By Landholders in the Presidency of Bombay	1 Member
(*xii*) By Landholders in the Presidency of Bengal	1 Member
(*xiii*) By Landholders in the United Provinces of Agra and Oudh	1 Member
(*xiv*) By Landholders in Bihar and Orissa	1 Member
(*xv*) By Landholders in Central Provinces	1 Member
(*xvi*) By the Mahomedan Community in the Presidency of Fort St. George	1 Member
(*xvii*) By the Mahomedan Community in the Presidency of Bombay	1 Member
(*xviii*) By the Mahomedan Community in the Presidency of Bengal	1 Member
(*xix*) By the Mahomedan Community in the United Provinces of Agra and Oudh	1 Member
(*xx*) By the Mahomedan Community in Bihar and Orissa	1 Member
(*xxi*) By the Bengal Chamber of Commerce	1 Member
(*xxii*) By the Bombay Chamber of Commerce	1 Member

In addition to the Members specified in the foregoing part of this Regulation, a second Member shall be elected at the first, and succeeding alternate elections by the Mahomedan Members of the class specified in sub-head (xiii), and at the second, fourth and succeeding alternate elections, by the class specified in sub-head (xviii).

Explanation—The expression "alternate elections" shall not be deemed to include elections to fill casual vacancies.

46. RESOLUTION OF THE GOVERNMENT OF INDIA, 1909.

(November 15, 1909)

Maximum strength of Councils

3. The maximum strength of each Council is fixed by the first schedule of the Act. Excluding the head of the Government and the members of the Executive Councils, it varies from 60 for the Council of the Governor-General, to 30 for the Councils of the Punjab and Burma, the number for each of the other five Provincial Councils being 50. The actual strength of each Council is determined by the Regulations. The statutory maximum will at present be worked up to only in the Imperial and Bengal Councils, but as will be seen from the annexed statements the numbers are in every case slightly larger than those shown in the Despatch of the 1st October 1908.

Official majority in Imperial Council

4. For the reasons given by the Secretary of State in his Despatch of 27th November, 1908, there will continue to be a majority of officials in the Governor-General's Council, but the Regulations provide not only that there may be, but that there must be, a majority of non-official members in every Provincial Council. The following statement, from which the head of the Government is in each case excluded, shows the effect of this great constitutional change on the composition of each Council. It will be within the power of a Local Government to increase the non-official majority by nominating less than the maximum number of officials and substituting non-officials, but that majority cannot be reduced

Non-official majority in Provincial Councils

except to the limited extent indicated below and then only for a specified period or in connection with a particular measure.

Legislative Council of	Officials	Non-officials	Majority
India	35	32	Official 3
Madras	19	26	Non-official 7
Bombay	17	28	11
Bengal . ..	17	31	14
United Provinces .	20	26	6
Eastern Bengal and Assam .	17	23	6
Punjab	10	14	4
Burma	6	6	3

Varying strength of non-official majority

These figures relate to the ordinary constitution of the Councils and leave out of account the two experts who may be appointed members of each Provincial Council when the legislation in hand is of a nature to demand expert advice. If these members are non-officials the majority will be strengthened, and even if both are officials it will not be entirely neutralised. The strength of the non-official majority varies with local conditions.

Special provisions for representation of professional classes, landholders, Muslims, commerce

5. Special provision has been made for the representation of the professional classes, the landholders, the Mahomedans, European commerce and Indian commerce. The first of these interests will be represented on the Governor-General's Council by the members elected by the Provincial Legislative Councils and by the District Councils and Municipal Committees in the Central Provinces; and on the Provincial Councils by the representatives of the District Boards, the Municipalities, the Corporations of the Presidency towns and the Universities. The others will be represented upon all the Councils by members elected by special electorates or nominated under an express provision of the Regulations. The representatives of the Bombay landholders on the Governor-General's Council will be elected at

the first, third and subsequent alternate elections by the landholders of Sind, a great majority of whom are Mahomedans, while at other elections he will be elected by the Sardars of Gujrat or the Sardars of the Deccan, a majority of whom are Hindus. Again, the landholders of the Punjab consist of about equal numbers of Mahomedans and Non-Mahomedans and it may be assumed that their representative will be alternately a Mahomedan and a Non-Mahomedan. It has accordingly been decided that at the second, fourth and succeeding alternate elections, when these two seats will presumably not be held by Mahomedans, there shall be two special electorates consisting of the Mahomedan landholders who are entitled to vote for the member who represents in the Governor-General's Council the landholders of the Uunited Provinces and Eastern Bengal and Assam respectively. In some provinces there are special interests such as the tea and jute industries in Eastern Bengal and Assam and the planting communities in Madras and Bengal, for which special provision has been made. The representation of the minor interests and smaller classes will be provided for by nominations made from time to time as the particular needs of the moment and the claims of each community may require.

'Minor interests and smaller classes' to be represented through nomination

* * * *

Varying qualifications for electors in cases of landholders and Muslims

15. The qualifications prescribed for electors in the cases of the landholders and the Mahomedans vary greatly from province to province. They are in accordance, for the most part, with the specific recommendations of the Local Governments and these recommendations again were based upon inquiries made by a special officer appointed in each province to ascertain by personal consultation the wishes of the members of the two communities. The Governor-General in Council would have preferred some nearer approach to uniformity; but the principle he has borne in mind is that election by the wishes of the people is the ultimate object to be secured and he has felt that he must be guided by the advice of the local authorities as to what those wishes are. The status and circums-

tances both of the landholders and of the Mahomedan community differ widely from province to province, and qualifications which would produce a satisfactory constituency in one case would in another give an electorate insignificant in numbers and difficient in representative character.

16. The qualifications for the candidates are, as a rule, the same as those prescribed for voters, but in some cases, such as that of candidates for election to the Governor-General's Council by the non-official members of a provincial Council, any such restriction would be inappropriate. In other instances, there has been some difference of treatment in different provinces, but the object in all cases has been to secure that the member shall really represent the electorate. Qualifications for candidates

17. The different kinds of electoral machinery may be broadly classified under two main heads,—one under which the electors vote direct for the members and the other under which they select delegates by whom the members are elected. A subsidiary distinction in each case is that the electors or delegates either vote at a single centre before a Returning Officer or vote at different places before an Attesting Officer, who despatches the voting papers to the Returning Officer. A further distinction in the case of delegates is that in Bengal each delegate has a varying number of votes, the number depending in the case of District Boards and Municipalities upon the income of those bodies and in the case of the Mahomedan Community upon the strength and importance of the Mahomedan population of a district or group of districts. Elsewhere the same object has been attained by varying the number of delegates on like grounds, each delegate then having only one vote. In the Central Provinces, however, the number of delegates to be elected by each District Council and Municipal Committee has been fixed not with sole reference to income or population, but with regard to a number of factors, of which those two are perhaps the most important.

18. A special case of voting by delegates is that

(6) Government of India circular of 1907

Harold Stuart, dated 24th August, 1907, gave abundant evidence of the bias of that body against those who had agitated for Reform. The proposals for the special representation of Mahomedans contained in it tended clearly to set one religion against another and to counterpoise the influence of the educated middle class. The proposals for the special representation of landholders, who had never asked to be treated as a separate class, also had their origin evidently in the same kind of feeling. So also the proposals for creating Imperial and Provincial Advisory Councils. Those proposals met with a general condemnation from thoughtful men all over the country, excepting, of course, some among the landholders and the Mahomedans. They could not meet with a welcome because they did not deserve it.

Reactionary proposals

Later on the Government of India revised their provisional scheme in the light of the criticisms passed upon it, and with some important modifications submitted it to the Secretary of State for India. Lord Morley did not share the bias of the bureaucracy against the educated class,—it would have been as strange as sad if he did. He recognised that they were an important factor, if not the most important factor, who deserved consideration. In his speech on the Indian Budget in 1907, his Lordship observed : "You often hear men talk of the educated section of India as a mere handful, an infinitesimal fraction. So they are in numbers. But it is idle—totally idle—to say that this infinitesimal fraction does not count. This educated section makes all the difference, is making and will make all the difference." His Lordship appointed a Committee of his own Council to consider the scheme which the Government of India had submitted to him, and after receiving its report framed his own proposals which were published in the now famous Despatch of the 27th November, 1908.[1] His Lordship had, indeed, accepted the substantial part of

(7) Morley's policy

Morley on importance of the educated class

(8) Morley's Despatch of 1908

[1] See P. Mukherji, *Indian Constitutional Documents*, pp. 310—326.

his Excellency the Viceroy's scheme, but he had liberalised it by the important changes he had made in it into a practically new scheme. The proposals for the Imperial and Advisory Councils which had been condemned by educated India were brushed unceremoniously aside. The Provincial Legislative Councils were to have a majority of non-official members, who were to be, with very few exceptions, elected and not nominated members. His Lordship had already appointed two distinguished Indians as members of his own Council.[1] Indians were now to be appointed to the Executive Council of the Governor-General of India and of the Governors or Madras and Bombay. Similar Executive Councils were to be established, with one or more Indian members in them, in the other larger provinces, which were still ruled by Lieutenant-Governors. Under a scheme of Decentralisation, Municipal and District Boards were to be vested with increased powers and responsibilities and to be freed from official control. The cause of Local Self-Government was to receive an effectual advance. Its roots were to be extended deep down into the villages.[2] Taking full note of the various interests for which representation had to be provided in the enlarged Council, Lord Morley suggested a scheme of Electoral College[3] which, as was rightly claimed, was as simple as any scheme for the representation of minorities can be. It was built upon a system of a single vote, and fully avoided the evils of double and plural

Liberalisation of the plan of the Government of India

Scheme of Electoral Colleges

[1] Sir K. G. Gupta and Syed Hussain Bilgrami.

[2] "It is evidently desirable to present our revised constitutional system as a whole. From this point of view, it seems necessary to attempt without delay an effectual advance in the direction of local self-government the Resolution (of Lord Ripon, May 18, 1882) . treats the sub division, taluka, or the tahsil as the smallest administrative unit It is a question whether it would not be wise policy to go further. The village in India has been the fundamental and indestructible unit of the social system, surviving the downfall of dynasty after dynasty. I desire Your Excellency-in-Council to consider the best way of carrying out a policy, that would make the village a starting point of public life."—*Lord Morley's Despatch*, November 27, 1908.

[3] See p. 241, foot-note.

voting. It was equally free from the other objection to which the original proposals were open, *viz.*, that they would set one class against another. It gave the power to each section of the population to return a member in the proportion corresponding to its own proportion to the total population. This scheme, as we all know, was received throughout the country with feelings of great gratitude and gratification.

(9) Appointment of Indians to Executive Councils

Now, gentlemen, the feature of the Reforms which most appealed to the minds of educated Indians was the proposal to appoint Indians to the Executive Councils of the Governor-General of India and of the Governors of Madras and Bombay, and the proposal to create similar Councils in the other large Provinces of India, which were placed under Lieutenant-Governors. The most unmistakable proof of this fact was found in the thrill of grateful satisfaction which passed all over the country when the announcement was made of the appointment of Mr. Satyendra Prasanna Sinha as a member of the Viceroy's Council. And I take this opportunity of tendering our most cordial thanks for that appointment both to Lord Minto and Lord Morley. That appointment has afforded the best proof of the desire of both their Lordships to obliterate distinctions of race, creed and colour, and to admit Indians to the highest offices under the Crown for which they may be qualified, and it has been most sincerely and warmly appreciated as such by thoughtful Indians throughout the country. Our friends in Bombay and Madras will soon have the satisfaction of finding an Indian appointed to the Executive Councils of the Governors of their respective Provinces. And thanks to the large-hearted and liberal support given to the proposal by Sir Edward Baker, our brethren in Bengal[1] too will shortly have

S. P. Sinha's appointment

[1] An Executive Council was established in Bengal (*i.e.*, Western Bengal, Bihar and Orissa) in 1909. In 1912 the partition of Bengal was annulled, Bengal Presidency was constituted and Bihar and Orissa were separated. Both the Provinces (Bengal, Bihar and Orissa) were given Executive Councils.

the satisfaction of seeing an Executive Council established in their province with an Indian as one of its members. But, gentlemen, the people of my own province—the United Provinces[1]—and of the Punjab, of Eastern Bengal and Assam, and of Burma, have been kept out of the benefit of the undoubted advantages which would result by the judgment of the Lieutenant-Governor being "fortified and enlarged" (in the weighty words of Lord Morley's despatch) "by two or more competent advisers, with an official and responsible share in his deliberations." We in the United Provinces had looked eagerly forward to having an Executive Council created there at the same time that one would be established in Bengal. Hindus and Mahomedans, the landed aristocracy and the educated classes, were unanimous in their desire to see such Councils established. Bombay with a population of only 19 millions, Madras with a population of only 38 millions, have each long enjoyed the advantage of being governed by a Governor in Council. The United Provinces, which have a population of 48 millions, have been ruled all these many years and must yet continue to be ruled by a Lieutenant-Governor. Bengal, the population of which exceeds the population of the United Provinces by barely 3 millions, will have the benefit of an Executive Council. Not so the United Provinces; nor yet Eastern Bengal and Assam which have a population of 31 millions, nor the Punjab which has a population somewhat larger than that of the Presidency of Bombay! This is clearly unjust, and the injustice of it has nowhere been more keenly felt than in my own province.

Provinces without Executive Councils

Case of U. P.

Gentlemen, this is not a mere sentimental grievance with us. We find that the Presidencies of Madras and Bombay, which have had the benefit of being governed by a Governor-in-Council, have made far greater progress in every matter which affects the happiness of the people than my own province. And

Necessity of establishing Executive Councils in all Provinces

[1] In 1915 the House of Lords rejected the proposal for establishing an Executive Council in the United Provinces.

a conviction has gained ground in the minds of all thoughtful men that the Provinces will have no chance of coming abreast even of Bombay and Madras until they have a Government similar to that of those Provinces, so that there may be a reasonable continuity of policy in the administration and the proposals of the Provincial Government may receive greater consideration than they do at present from the Government of India and the Secretary of State.

Criticism of the Reforms:

We all remember that Lord Morley had put forward a most carefully considered scheme of proportional representation on the basis of population. We therefore regretted to find that in the debate which took place on the Bill, his Lordship accepted the view that the Mahomedan community was entitled, on the ground of the political importance which it claimed, to a larger representation than would be justified by its proportion to the total population. His Lordship was pleased, however, to indicate the extent of the larger representation which he was prepared to ensure to the Mahomedans after taking into account even their alleged political importance; and though the educated non-Moslem public generally, and many far-seeing men among our Mahomedan fellow-subjects also, were, and still are opposed to any representation in the Legislatures of the country on the basis of religion, yet there were several amongst us who recognised the difficulty that had been created by Lord Minto's reply to the Mahomedan deputation at Simla, and were prepared not to demur to the larger representation of Mahomedans to the extent suggested by Lord Morley. We were prepared to agree that a certain amount of representation should be granted to them; that they should try to secure it through the general electorates, and that if they failed to obtain the number of representatives fixed for them, they should be allowed to make up the number by election by special Mahomedan electorates formed for the purpose. The Regulations which have been published, however, not only provide that they shall elect the number of representatives which has been fixed for

(1) Separate Electorate for Muslims

Partial approval of Morley's scheme

them on a consideration not only of their proportion to the total population but also of their alleged political importance, by special electorates created for the purpose, but they also permit them to take part in elections by mixed electorates, and thereby enable them to secure an excessive and undue representation of their particular community to the exclusion to a corresponding extent of the representatives of other communities. The system of single votes which was an essential feature of Lord Morley's scheme has been cast to the winds; the injustice of double and plural voting which Lord Morley tried to avoid has been given the fullest play. In my province, and I believe in other provinces also, some of my Mahomedan fellow-subjects have voted in three places. So long as there was still a chance of getting the Government to increase the number of seats which were to be specially reserved to them, our astute friends of the Moslem League swore that none of them would seek election to the Councils by the votes of non-Moslems. When the Regulations were passed, they lost no time in concealling the Resolution of their League, and put forward candidates to contest almost every seat for which elections were to be made by mixed electorates. Members of Municipal and District Boards to whom the general franchise has been confined were elected or appointed at a time when the Moslem League had not preached the gospel of separation. The electors did not then accept or reject a candidate on the ground of his religion. Mahomedans therefore filled a far larger number of seats on Municipal and District Boards than their proportion to the total population or their stakes in the country would entitle them to hold. The result has been that in addition to the four seats specially reserved to the Mahomedans, they have won two more seats in the United Provinces in the general elections, and these with the nominations made by the Government, have given them eight seats out of a total of 26 non-official seats in the legislature of the province, where they form but one-sixth of the population! This is protecting the interests of a minority with a vengeance.

Criticism of Regulations framed by Government of India:

(1) Plural voting for Muslims

Unfair policy of the Muslim League

Undue proportion of Muslims in U. P. Council

It looks more like a case of allowing the majority to be driven to a corner by a minority. What makes the matter worse, however, is that this advantage has been reserved only to the favoured minority of our Mahomedan fellow-subjects. No such protection has been extended to the Hindu minorities in the Punjab and Eastern Bengal and Assam. The Hindu minorities in the said two provinces have been left out severely in the cold.

No favour to Hindu minorities

(2) Question of franchise

Let us now turn to the question of the franchise. Direct representation has been given to Mahomedans. It has been refused to non-Mahomedans. All Mahomedans who pay an income-tax on an income of three thousand rupees, or land revenue in the same sum, and all Mahomedan graduates of five years' standing, have been given the power to vote. Now I am not only not sorry but am sincerely glad that direct representation has been given to our Mahomedan fellow-subjects and that the franchise extended to them is fairly liberal.

Direct representation given to Muslims, but refused to non-Muslims

The point of our complaint is that the franchise has not similarly been extended to the non-Mahomedan subjects of His Majesty. A Parsee, Hindu or Christain who may be paying an income-tax on three *lakhs* a year is not entitled to a vote, to which his Mahomedan fellow-subject, who pays an income-tax on only three thousand a year or land revenue in the same sum, is entitled! Hindu, Parsee and Christian graduates of thirty years' standing, men like Sir Gurudas Banerjee, Dr. Bhandarkar, Sir Subramania Iyer and Dr. Rash Behari Ghose, have not been given a vote, which has been given to every Mahomedan graduate of five years' standing!

Anomaly

(3) Qualifications for membership in Provincial Legislatures

Let us next consider the restrictions that have been placed on the choice of electors in choosing candidates. In the Regulations for Bombay and Madras, and in those for Bengal also, eligibility to a membership of a Provincial Council has been confined to members of Municipal and District Boards only. This is a novel departure from the practice which obtained for the last seventeen years under the Indian Councils Act of

1892 The result of confining eligibility as a member of Council to members of Municipal and District Boards has, therefore, necessarily been to exclude a number of men of light and leading in every Province, —excepting in my own where, I am thankful to say, no such restriction has been made—from being eligible for election. Case of U. P.

A property qualification has for the first time been laid down in the case of candidates for membership of the Provincial Councils. No such qualification is required of Members of Parliament in England. None such was required in India under the Regulations which were in force for nearly seventeen years under the Indian Councils Act of 1892. Property qualification

One of the most important features of the Reforms which created widespread satisfaction was the promise of a non-official majority in the Provincial Councils. The Congress had, in the scheme which it put forward so far back as 1886, urged that at least half the members of both the Imperial and Provincial Legislative Councils should be elected and not more than one-fourth should be officials. Congressmen regarded this as the *sine qua non* for securing to the representatives of the people a real voice in the administration of their country's affairs. Lord Morley did not think it fit, however, to give us yet a non-official majority in the Imperial Legislative Council. We regretted the decision. But Lord Morley had been pleased to accept the recommendation for a non-official majority in the Provincial Legislative Councils, and we decided to accept it with gratitude, in the confidence that after the Provincial Legislative Councils have worked satisfactorily for a few years under the new scheme, the more important concession of a non-official majority in the Imperial Council was certain to come. (4) Non-official majority in Provincial Councils. Congress demand. (5) Official majority in Imperial Council

Speaking generally, we find that the regulations have been vitiated by the disproportionate representation which they have secured to the Mahomedans and to the landed classes, and the small room for representation which they have left for the educated classes; also

General criticism of the Regulations

by the fact that they have made an invidious and irritating distinction between Moslem and non-Moslem subjects of His Majesty, both in the matter of the protection of minorities and of the franchise, and lastly in that they have laid down unnecessarily narrow and arbitrary restrictions on the choice of electors.

II. Presidential Address of Pandit Bishan Narayan Dar, Calcutta, 1911.

Criticism of communal representation

First, as to the principle of communal representation. That it is an innovation in the governmental system, will, I hope, be readily admitted. But for the purpose of my argument, I assume its expediency under the present state of things and contend only against the method of its application. India is unfortunately split up into many communities, each of which is entitled to its proper share of representation and no sensible man has ever disputed this claim. But to secure representation in the Councils to every important community by a general electorate is one thing, and to secure it by its own communal and exclusive suffrage is quite another. While the former is a unifying agency which enables men of each community to co-operate with those of others in the common interests of the whole country, the latter is a disintegrating agency by which sectional interests come to claim the first regard of every member and those difficulties and troubles arise which we notice in respect of the separate representation of Mahomedans and landlords.

Its disintegrating effect

* * * *

Criticism of limited franchise

Our next complaint against the Regulations is that they have given us an extremely limited franchise, and except in the case of Mahomedans and landlords, the representation of the middle classes has been secured by indirect elections.....

* * * *

Real character of non-official majority in Provincial Councils

Another point upon which I should like to make a few observations refers to the position of non-official majorities in Provincial Counncils. One general objection which applies to all Councils is that the non-

official majority is composed of both elected and nominated members, which, as the Councils are now constituted, means a standing and indeed an overwhelming official majority in every one of them. The Bengal Council is better off in this respect, for there the elected members have a small majority; but this, too, is ineffective as some of the elected members are practically officials members. In every other Council the members returned under the present system are in a minority as against the official and nominated members combined.

Case of Bengal

The authorities instead of giving us a genuine non-official majority have given us an illusory one.

III. Presidential Address of Rao Bahadur R. N. Mudholkar, Bankipore, 1912.

The first thing we have to address ourselves to is the removal of the anomalies, the inequalities and the defects in the Council Regulations. These fall under the following heads:—

Defects of Regulations

(*a*) Wrong methods adopted in the application of the principle of communal representation.

(*b*) Differential treatment and unequal privileges.

(*c*) Omission to extend the principle of representation to some important tracts.

(*d*) Faulty method of election adopted in certain cases.

Communal representation meant to secure interests of minorities

As regards communal representation, the Congress has in view of existing circumstances recognised the expediency of adopting it; but we contend that the principle on which it is allowable being the desirability of granting representation to important minorities, effect has to be given to it as much in the case of the Hindus when they are in a minority, as has been done in the case of the Mahomedans.

* * * *

Criticism of Separate Electorate

A highly objectionable feature of the present regulations in the matter of communal representation is the constitution of separate Mahomedan electorates.

Gentlemen, in my opinion nothing is more calculated to retard the concord and harmony between Mahomedans and Hindus, to obstruct the intellectual and political advancement of the Mahomedans themselves, and the growth of a sturdy catholic public spirit and life amongst them than these water-tight compartments of separate electorates.

Criticism of inequalities in franchise

More objectionable than even separate electorates are the inequalities in the franchise. While the franchise is in a wise and liberal spirit conferred upon the middle class Moslem landholders, traders, merchants, graduates and professional men, no similar right is extended to the corresponding classes of the non-Moslem communities. In this matter we do not seek to bring down the Mahomedan community to our level. We want the non-Moslem communities to be raised to theirs.

No provision for representation of certain parts of India

Another inequality and hardship which has to be rectified is about the representation of those parts of British India like the North-Western Frontier Province, Coorg and Ajmer-Merwara which are under the direct administration of the Governor-General. These latter should be made into one constituency and one non-official member should be allotted to them.

Then there is the hard case of those tracts and districts which do not form part of British India technically as not being possessed in full sovereignty, but yet being held on a permanent tenure with exclusive and plenary powers of administration vested in the British Government, are, for practical purposes, in no way distinguishable from territories held in fee-simple. These are also entitled to be represented in the Council of the country.

Wanted—increase in number of members

The removal of these inequalities and anomalies would necessitate a certain increase in the number—about 5 or 6—of non-official members and a corresponding addition to official members. This is not a very radical change and does not involve any deviation from accepted principles. It can by no means be called

an organic change. Of course Parliamentary legislation is necessary, but it would only be in regard to the schedules.

Another matter is the substitution of direct election in place of indirect wherever the latter system still exists. The abolition of the machinery of electoral colleges, which is a clumsy and unsatisfactory device, is necessary for securing the full benefit of the principle of election to the extent that it has been granted The process of double distillation results on no rare occasions in the election of a candidate put forward by a minority. This again is not an organic change. It does not even require a resort to Parliament. A change has to be made only in the Regulations and this is within the competence of the Government of India and the Secretary of State.

Direct election preferred to indirect election

48. MONT-FORD REPORT ON MORLEY-MINTO REFORMS.

8. The underlying idea of the Morley-Minto changes, which were introduced in 1909, was to associate the people to a greater extent with Government in the decision of public questions. With this end in view one seat on the Governor-General's and one on each of the Provincial Executive Councils were in practice reserved for Indian members. All the Legislative Councils were enlarged, and all were given a real and substantial elected element, while the Provincial Legislative Councils were also given a non-official majority. The right of discussing questions of public interest was also conceded to the Councils. This gave members a real opportunity of exercising some influence on questions of administration and finance, and though the Executive Government was left free to act upon such recommendations as it thought fit, the concession was regarded by persons of insight as perhaps the most important part of the changes. The institution of finance committees of the Councils also gave the elected members a direct share in framing limited portions of the budget. Their scope in this direction, however,

'The underlying idea' of the Reforms of 1909

Executive Councils

Legislative Councils

Finance

was extremely restricted, being confined to the small margin of expenditure available for optional schemes, that is, such as had not already been definitely selected by the Government for execution. Not only was the amount available small, but in the nature of the case schemes under consideration were generally of secondary importance. It was thought impossible to introduce a general system of direct election with territorial constituencies; and indirect election was accordingly retained, except in the case of Muhammadans and certain other special electorates.

Indirect election

No new policy embodied in Reforms of 1909

9. The Morley-Minto reforms were essentially of an evolutionary character: they were a natural extension of the previously existing system. Excessive claims were made for them in the enthusiasm of the moment, but in any case they cannot justly be described as embodying any new policy. The change was one of degree and not of kind. Lord Morley himself emphatically repudiated the idea that the measures were in any sense a step towards Parliamentary Government. They were based on the fundamental principle that the Executive Government should retain the final decision of all questions, although some degree of popular control over legislation was established in the Provinces by providing small non-official majorities.....

Executive retained final decision of all questions.

* * * *

79. .....They (*i.e.*, 'the Morley-Minto changes') admitted the need for increased representation, while reiterating the impossibility of basing it generally on a direct or general franchise. They admitted the desirability of generally securing non-official approval to the Government legislation, though they trusted in an emergency to the support of nominated members, to the division of interests between different classes of elected members, and, in the last rsort to overriding legislation in the Indian Legislative Council where an official majority was retained. Frankly abandoning the old conception of the Councils as a mere legislative committee of the Government, they did much to make them serve the purpose of an inquest into the

Safeguards

Change in the character of the Legislatures

doings of Government, by conceding the very important rights of discussing administrative matters and of cross-examining Government on its replies to questions. Lord Morley's disclaimer—"If it could be said that this chapter of reforms led directly or indirectly to the establishment of a Parliamentary system in India, I, for one, would have nothing at all to do with it"—is no doubt explicable when we remember his stout insistence on the sovereignty of the British Parliament, and his acceptance of the decided advice of Lord Minto's Government, backed by the experience of every Indian administrator of eminence, that anything beyond very limited constituencies and indirect franchises was unthinkable in India. He took the constitutional view that no relaxation of the control exercised by the British electorate was possible until an Indian electorate, which was not then in sight, had arisen to take the burden from its shoulders. None the less we are constrained to say that the features of his reforms which we have described do constitute a decided step forward on a road leading at no distant period to a stage at which the question of responsible government was bound to present itself.

Morley's view

Transfer of power not possible till the rise of an Indian Electorate

Reforms of 1909—'a decided step forward'

83. No one can deny that as an embodiment of the representative principle the present electoral system has great defects. The chief of these are the very restricted nature of the present franchise, and, except in the constituencies composed of the members of some special class or community, the lack of any real connexion between the primary voter and the member who sits in the Councils. . . . In such circumstances there can be no responsibility upon, and no political education for, the people who nominally exercise a vote. The work of calling into existence an electorate capable of bearing the weight of responsible government is still to be done.

Defects of electoral system

84. A minor but still noteworthy result of the present electoral system is the large percentage of members of the legal profession who succeed at elections.

Large proportion of lawyers in Councils

in the only constituencies in which members of the general population are represented the chances are at least two to one that a lawyer will be returned. Now the predominance of the lawyer in politics is a feature of parliamentary institutions elsewhere: and it is obvious that the art of Parliamentary Government which is so largely concerned with the making of laws and so largely conducted through the medium of persuasive speech must in any case offer the lawyer a definite advantage. In India these conditions may be accentuated by the fact that the choice of occupations open to the educated classes has hitherto been narrowly limited. The class that is both leisured and educated is a small one. At the same time so great a political predominance of men of one calling is clearly not in the interests of the general community.....in framing our new constituencies an important object to be borne in mind is to ensure that men of other classes and occupations find a sufficient number of seats in Council.

Legislative Councils still considered as 'Governments in their legislative aspect'

85. On the other hand the arrangements for presenting and enforcing the Government's view are no less open to criticism. The old idea that the Legislative Councils are only the Governments in their legislative aspect still appears in the language of sections 63 and 73 of the Government of India Act, and has quite recently been enforced by Secretaries of State. This is no doubt a main reason why the official *bloc* has been maintained with peculiar rigidity in the Councils. Non-official members have long since enjoyed the right of introducing legislation; but the view that law-making was still primarily the prerogative of the executive Government which is amenable to Parliament has so far endured that it has been the exception, and not the rule, for Government to leave its official members free to speak and vote as they choose even on private members' business. The proceedings in Council have been controlled by Government; generally speaking, Government officials are not expected to ask questions or move resolutions, or (in some Councils) to intervene in debate or even to rise to points of order without Government's approval, and, though there is of late a

Position of official members

tendency to treat more matters as open questions, when a division is taken the official members nearly always vote by order in support of Government.

86. The effect upon the proceedings in Council can be readily imagined. The Government mandate has been compared to the rigidity of party discipline in the House of Commons, but, as we think, to little purpose. The reason which induces a member to acquiesce in the whip's bidding is the perception that, as the defeat of the Government ordinarily means a change of Ministry, it is his duty to sacrifice his personal opinions on a particular point for the greater principles for which his party stands. Moreover, there comes a time when individual judgment asserts itself and Governments fall because some of their supporters vote against them. The essence of the system is political responsibility. But the official obligation to vote with Government in an Indian Legislative Council is continuing, and is not made palatable by any necessity of securing an irremovable Government from demise; and as Mr. Gladstone saw many years ago the conflict between conscience and discipline may become acute.

False comparison between official members of Indian Councils and members of House of Commons

87. Upon the Indian members of the Legislative Councils the effect is frankly irritating. It prejudices in their view the position of the official members who form the *bloc*. Indian members may share in a debate in which the majority of speakers, and in their eyes the weight of argument, are arrayed against the Government. But when a decision is taken the silent official phalanx effectively carries the Government measure or votes down the private member's resolution the official solidarity naturally stifles any differences that exist between Indian elected members and drives them to a League against Government, into which the nominated Indian members also tend to enter.

Position of Indian members

88. These factors contribute to the unreality of the proceedings. Because the number of elected members is small, and the issue is often known beforehand, the debates lack life unless feelings are aroused or interests are directly affected; and because the Government has

'Unreality of the proceedings' of the Councils

to a great extent controlled the proceedings the Councils have not felt the need of developing any corporate opinion which would have the effect of raising the standard of individual performance.

* * * *

Why many Bills were passed without discussion

92. In the eight years 1910-17 the (Indian Legislative) Council passed 131 laws, of which no fewer than 77, or 59 per cent., were passed without any discussion whatsoever. perhaps the most important reason why so many Bills have met with small opposition lies in the Government's policy of avoiding opposition as far as possible. With this end in view every effort is made before a Bill is introduced to ascertain as far as possible non-official opinion. It is probably true that the Council exercises a greater influence on the shape of Bills before they are introduced than when they are actually under discussion. The tendency is for the departments to prune a Bill beforehand of all features expected to arouse controversy, and thereafter to oppose all material amendments. It may thus happen that amendments proposed in Council are less frequently adopted than suggestions submitted before the introduction of Bills. The constructive work of legislation is in fact still largely done by correspondence; and this can hardly be otherwise so long as the official majority is maintained. At the same time there is no reason for supposing that the non-official members are unable to influence the shape of Bills after introduction. On the contrary we find that in spite of the official majority they have in many cases been able to make their weight felt. Much of the most solid and useful work in the sphere of legislation is done in the seclusion of the committee room and not in the publicity of the Council chamber. The presence of the official *bloc* may to some extent give an air of unreality to criticism in the Council hall, but to the committee rooms its influence does not extend. The non-official member who is really interested in a particular measure, or is anxious to have a Bill altered, generally arranges to be put on the Select Committee on the Bill, or to approach the official member in charge and to discuss the ques-

Influence of non-official members on legislation

tion with him in private. The reported debates thus afford no measure of the real influence of non-official members. Since 1909 only eight Bills can be said to have encountered really serious opposition. . It appears that whenever the Government has met with anything approaching solid opposition on the part of the Indian members it has, except on matters touching the peace and security of the country, generally preferred to give way.

Government attitude to Bills seriously opposed by Indian members

93. Only five private Bills have been passed by the Imperial Legislative Council since 1910.

94. We pass to another aspect of the Council's work, namely, the influence which it exercises on the work of administration by means of questions and resolutions. 'The fact that nearly twice as many questions were asked in 1917 as in 1911 shows that serious value is attached to the right of interrogation..... it cannot be said that the right of interrogation has been abused.

Influence of Imperial Council on administration through questions and resolutions

In all 168 resolutions were moved in the Council up till the end of the year 1917; of these 24 were accepted by Government, 68 were withdrawn, and 76 were rejected either with or without a division. A rough classification of the resolutions shows that some 73 can be described as fructuous. In not a few instances substantial results were obtained.

* * * *

100. In the light of these anticipations it is not hard to understand how the Morley-Minto constitution ceased in the brief space of ten years' time to satisfy the political hunger of India. The new institutions began with good auspices and on both sides there was a desire to work them in a conciliatory fashion. But some of the antecedent conditions of success were lacking. There was no general advance in local bodies; no real setting free of provincial finance; and in spite of some progress no widespread admission of Indians in greater numbers into the public service. Because the relaxation of Parliamentary control had not been contemplated the Government of India could not relax their control over Local Government. The sphere in

Cause of the failure of the Reforms of 1909 'to satisfy the political hunger of India'

Disabilities of Provincial Governments

which the Councils could affect the Government's action, both in respect of finance and administration, was therefore closely circumscribed. Again and again a Local Government could only meet a resolution by saying that the matter was really out of its hands. It could not find the money because of the Provincial settlements; it was not administratively free to act because the Government of India were seized of the question; it could therefore only lay the views of the Council before the Government of India. As regards legislation also the continuance of the idea of official subordination led to much of the real work being done behind the scenes. The Councils were really more effective than they knew; but their triumphs were not won in broad daylight in the dramatic manner which political ardour desired. This was one reason why more interest was often shown in resolutions than in legislation. The carrying of a resolution against Government, apart from the opportunity of recording an opinion which might some day bear fruit, came to be regarded as a great moral victory; and it is evident that topics that are likely to combine all the Indian elements in the Council offered the best opportunity. Because the centralization of control limited the effectiveness of the Councils the non-official members were driven to think more of display than they might have otherwise done; and the sense of unreality on both sides deepened. All this time the national consciousness, and the desire for political power, were growing rapidly in the minds of educated Indians; and the Councils with their limited opportunities proved to be an insufficient safety-valve. While therefore inside the Councils there are signs of hardening opposition and the weariness which comes of sterile efforts, outside the Councils the tide of feeling was rising more quickly. For a short time after their inception the Morley-Minto reforms threatened to diminish the importance of the Indian National Congress and the Muslim League. It seemed as if the Councils where elected members took a share in the business of government must be a more effective instrument for political purposes than mere

Non-official members of Councils more interested in resolutions than in legislation

Growth of national consciousness and increasing demand for political power

self-constituted gatherings. But with the disillusionment about the reformed Councils, the popular conventions, where speakers were free to attack the Government and give vent to their own aspirations untrammelled by rules of business or the prospect of a reply, naturally regained their ascendancy; and the line taken by prominent speakers in them has been to belittle the utility of the Councils, if not to denounce them as a cynical and calculated sham. We cannot now say to what extent improvement might have been effected by gradual changes in the rules of business by relaxing official discipline, by permitting freer discussion, and by a greater readiness to meet the non-official point of view. However this may be, events have proved too strong. The Councils have done much better work than might appear to some of their critics. But they have ceased to satisfy Indian opinion, and their continuance can only lead to a further cleavage between the Indian members and the Government and a further cultivation of criticism unchecked by responsibility.

Revival of the importance of Congress and League

Morley-Minto councils no longer enough

101. It seems to us that the inherent weakness of the position created by the Morley-Minto changes is excellently brought out in the following comment :—

"We must make up our minds either to rule ourselves or to let the people rule: there is no half-way house, except of course on the highway of deliberate transition. At present we are doing neither. We are trying to govern by concession and each successive concession has the air of being wrung from us. We keep public business going by bargaining of the market place, by a steady yielding to assults which always leave some bitterness behind on both sides. This is in no sense the fault of individuals; it follows inevitably from the influences at work. Up to Lord Curzon's Viceroyalty, there was a sturdy determination to do what was right for India, whether India altogether liked it or not. The reforms which followed his regime brought in a power of challenge and obstruction—influence without responsibility; and rather than fight we have often to give way. We are shedding

Evil effects of 'government by concession'

the role of benevolent despotism, and the people—especially those who are most friendly to us—cannot understand what role we mean to assume in its place. We are accordingly losing their confidence and with it some of our power for good. If we returned to sheer despotism, we should carry many of the people with us, and should secure an ordered calm. But that being impossible, we must definitely show that we are moving from the Eastern to the Western ideal of rule. And, secondly, we must maintain the full weight and order of government while the move is going on. Otherwise we cannot look for either internal peace or the co-operation of the people, or indeed for anything else except growing weakness with the fatal consequences that weakness involves in an Eastern country."

Revival of despotism not possible

Wanted—'movement from the Eastern to the Western ideal of rule'

49. INDIAN NATIONAL CONGRESS ON THE BUREAUCRACY IN INDIA, 1911.

(Presidential Address of Pandit Bishan Narayan Dar, Calcutta, 1911).

[W. S. Blunt, a well-known British journalist who visited India during the administration of Lord Ripon, wrote in his book *India Under Ripon* :

" the English covenanted civilian is still, as he was in the days of the Company, the practical owner of India. His position is that of a member of a corporation, irremovable, irresponsible, and amenable to no authority but that of his fellow-members. In him is vested all administrative powers, the disposal of all revenue, and the appointment to all subordinate posts. He is, in fact, the Government, and a Government of the most absolute kind.

But the covenanted Civil Service is also a wholly conservative body . it has the vice of all corporations. Its first law is its own interest ; its second only those of the Indian people the Indian Civil Service sees in all reform an economy of its pay, a curtailment of its privileges, and a restriction of its field of adventure. Such a service is of its very nature intolerant of economy and intolerant of change.

* * * *

That they (*i.e.*, civil servants) are its masters (*i.e.*, masters of the State) has been abundantly proved by the success of their efforts to thwart Lord Ripon's policy during the last three years. Lord Ripon came out to India on the full tide of the Midlothian victory, and quite in earnest about carrying out Midlothian ideas ; nor has he faltered since. But the net result of his viceroyalty has been almost *nil*. Every measure

that he has brought forward has been defeated in detail; and so powerful has the Civil Service been that they have forced the Home Government into an abandonment, step by step, of all its Indian policy. This they have effected in part by open opposition, in part by covert encouragement of the English lay element in India. I found Lord Ripon like a schoolboy who has started in a race with his fellows and who has run loyally ahead, unaware as yet that these have stopped, and that all the world is laughing at his zeal. The Anglo-Indian bureaucracy had shown itself his master in spite of Midlothian."

Morley wrote to Minto on June 4, 1908, "For intractable blindness to all signs of the times, give me a certain sort of high Indian official".[1]

Growing antagonism of Bureaucracy to reforms

The root cause of most of our misfortunes, which, if not corrected, forebodes serious disasters in the future, is the growth of an unsympathetic and illiberal spirit in the bureaucracy towards the new-born hopes and ideals of the Indian people. While a new India has gradually been rising up, that spirit too has been growing and so the critical situation has arisen; on the one hand, the educated classes, filled with new knowledge and conscious of new political rights, but hampered by the bars and fetters of a system perhaps good enough for other days but now obsolete; on the other, the bureaucracy with its vested interests, its domineering habits, its old traditions of absolute and unquestioned authority, suspicious of knowledge, averse to innovation like every close corporation, cut off from the people by its racial exclusiveness, and wedded to a paternal system of government under which it has so long enjoyed power and pelf but which is discordant with the more liberal ideals of the present day.

Characteristic of Bureaucracy

Credit for beneficial measures claimed by Bureaucracy

The champions of bureaucracy stoutly contest this statement and say, as Mr. Chirol does, that "the contrary is the case, for to him (the Anglo-Indian Civilian) belongs the credit of almost every measure passed during the last 50 years for the benefit of the Indian masses, and passed frequently in the teeth of vehement opposition from the Indian politician," and that he has always been sympathetic in dealing with the larger problems of Indian statesmanship. There

[1] *India, Minto and Morley*, p. 237.

Is that claim justified?

is just that half-truth in this statement which so easily deceives the unwary. Undoubtedly Anglo-Indian officials have done great things for the people, undoubtedly some of them have been large-hearted and far-seeing statesmen. But the history of the last 25 or 30 years shows that, leaving out a few noble exceptions, as a body they have not been in sympathy with the new aspirations of educated India, which owes few of its political rights to their initiative and support.

History of the Bureaucracy since Lord Ripon's time

In Lord Ripon's time they opposed the Ilbert Bill which was introduced to establish some equality of criminal law as between Indians and Englishmen. They opposed his measure of local self-government, and although it was passed, yet they have succeeded (as Lord Morley acknowledged) in making it more or less ineffectual down to the present day. In Lord Dufferin's time the Congress was started, and their hostility to it has been notorious. Lord Lansdowne accepted the Indian Councils Act of 1892 because it was a too cautious measure, and the bureaucracy was unaffected by it. Lord Elgin proved a weak Viceroy and the reactionary tendencies of the bureaucracy began to manifest themselves in a variety of ways. Lord Curzon adopted a frankly narrow and autocratic policy, and was heartily supported by the bureaucracy .....His rule created that situation which Lord Morley and Lord Minto had to face. Did the bureaucracy suggest that policy of reform with which these two statesmen set about to allay the discontent which the preceding administration had created or intensified? No; their advice was, coercion—not conciliation. But Lord Minto realised the real nature of the Indian discontent and in Lord Morley he found even a more thorough-going reformer than himself. The bureaucracy, if not actively hostile, were certainly cool in the matter. The first draft scheme published by the Government of India was their handiwork and was at once condemned by the whole Indian public.[1]

The Bureaucracy and Reforms of 1909

[1] Government of India Reform Circular (August 24, 1907) and Government of India Reform Despatch (October 1, 1908). See P. Mukherjee, *Indian Constitutional Documents*, pp. 254—309.

Lord Morley transformed it into a more liberal and popular scheme[1]; the bureaucracy mangled and mutilated it.[2] The point, however, is that the policy of reform did not originate with them, on the contrary it was opposed by them. Even the President of that extremely loyal body, the Muslim League, was constrained to say at Nagpur that "there can be little doubt that had Lord Morley relied chiefly on official sources of information, and looked at Indian affairs through official glasses only, we should, in all probability, have been landed in a terrible mess, if not actual disaster." But when Lords Morley and Minto were, under the pressure of certain circumstances, led to embark upon coercion, the bureaucracy supported them most heartily and cried for more coercion. The Muslim League found every encouragement to act as a counterpoise to the national movement and virtually forced Lord Morley to introduce communal representation on the separatist principle into the Legislative Councils. It was not the bureaucracy who suggested appointment of Indians to the Governor-General's Executive Council and the India Council. They are still opposed to our admission to the higher grades of the public service, and our Local Governments have already expressed their disapproval of free and compulsory primary education for India. When on the occurrence of certain abominable crimes, the cry for "*martial law and no damned nonsense*" *arose in India*, it was Lord Morley and not the bureaucracy who first called upon the Government "to rally the moderates" to its side; Lord Minto and not the body of the Civil Service who at once realised the legitimate character of Indian unrest and decided to meet it by measures of reform and conciliation. When the Calcutta High Court vindicated British justice in certain important political cases, the officials became restive and the note

Bureaucracy in favour of coercion

Part played by the Muslim League

Policy of 'rallying the moderates'

[1] Lord Morley's Despatch, November 27, 1908.
See P. Mukherjee, *Indian Constitutional Documents*, pp. 310—326.

[2] The reference is to the Regulations framed under the Act of 1909 by the Government of India. See Document No. 45.

of alarm was sounded in the Anglo-Indian press. When Lord Hardinge passed the Seditious Meetings Act, against the best opinion of the country, he was heartily applauded by the Anglo-Indians; but when, like a wise and far-seeing ruler, he relaxed the policy of coercion and put a stop to wholesale political prosecution, they began to suspect his wisdom and firmness and the *Times* came out with its warnings and admonitions in the cause of law and order.....

Policy of Lord Hardinge

50. INDIAN NATIONAL CONGRESS ON SELF-GOVERNMENT WITHIN THE BRITISH EMPIRE.[1]

I. Presidential Address of Mr. Bhupendra Nath Basu, Madras, 1914.

Separation from England not wanted by any class in India

At the present moment, who would desire or support separation from England? The Indian princes secure in their dignity and status, the Indian aristocracy safe in their possessions and influence, the Indian middle classes free in their vocations, the toiling masses sure of the fruits of their labour, are all moving onwards to one common goal with the impetus which a central Government, a common vehicle of thought, common ideals and a growing sense of unity and nationality have given them. Will they support this separation and lose sight of their goal altogether? India, high and low, has published her answer to the world.....

Wanted—'joint partnership on equal terms'

The two extremes—the one of separation, the other of subordination—are both equally impossible and must be put out of our mind. The ideal that we must pursue, and which the Congress has set before itself, is that of co-ordination and comradeship, of a joint partnership on equal terms. I do not say that it must materialize to-day, but I do say that every step that we take, or ask the Government to take, must point in that direction. India no doubt is a continent and not a country divided into small administrative

[1] See Document No. 34.

areas : it is divided into communities, castes and sects ; it is divided by religion, language and race, by different types and stages of civilisation and progress, and by different methods of administration. It has within its limits princes of ancient lineage and traditions, and people great numbers of whom are still in a state of mental darkness ; the educated middle classes are still a small, if no longer a microscopic, minority ; there are peoples within its borders who know of nothing else but personal rule, and large classes which are ready to accept a representative government. Can any system of self-government be evolved in a country like this which will bring into coherence its heterogeneous elements, or must India from the very nature of its constitution be for ever subject to outside dominion ? I hope I have stated the case for the other side fairly. Let us see how we can apply our ideal to a state of things like this : let us clearly realise what that ideal may be. From the very extent of India and the diversity of her population, we must have a system of government modelled on the lines of the Commonwealth of Australia, or the United States of America, modified according to Indian conditions and presided over by a representative of our Sovereign. In this constitution all will find a place, the Englishman as well as the Indian, the prince as well as the peasant, and all communities, by a judicious combination of the methods of election and selection in the case of the less advanced. I am only suggesting tentative lines of development and not a scheme.....

Diversity in India

Is self-government possible here?

Federal Government suitable for India

II. Presidential Address of Sir S. P. Sinha, Bombay, 1915.

It seems to me, brother-delegates, that the only satisfactory form of self-government to which India aspires cannot be anything short of what President Lincoln so pithily described as "government of the people, for the people, and *by the people*."

* * * * *

Let us argue out for ourselves freely and frankly the various ways by which we can obtain the priceless

Three ways of securing self-government

treasure of self-government. It seems to me that it is possible only in one of the three following ways :

First, by way of a free gift from the British nation.

Second, by wresting it from them.

Third, by means of such progressive improvement in our mental, moral and material condition as will, on the one hand, render us worthy of it and, on the other, impossible for our rulers to withhold it.

Can self-government come as free gift?

Now, as to the first, the free gift. Even if the English nation were willing to make us an immediate free gift of full self-government—and those who differ most from the Congress are the first to deny the existence of such willingness—I take leave to doubt whether the boon would be worth having as such, for it is a commonplace of politics that nations like individuals must grow into freedom and nothing is so baneful in political institutions as their prematurity : nor must we forget that India free can never be ancient India restored.....

Can self-government come through violence?

As to the second, I doubt if the extremist of the extremists considers it feasible to win self-government immediately by means of a conflict with the British Power. Such a conflict is impossible, if not inconceivable : and I cannot imagine any sane man thinking that assassinations of policemen and dacoities committed on peaceful un-offending citizens will do aught but retard progress towards our goal.....

We are left, therefore, with the third alternative as the only means of attaining the goal of self-government.....

Self-government will come through "progressive improvement."

When we ourselves have so far advanced under the guidance and protection of England as to be able not only to manage our own domestic affairs, but to secure internal peace and prevent external aggression, I believe that it will be as much the interest as the duty of England to concede the fullest autonomy to India.....

III. Mahatma Gandhi's Speech at Madras Law Dinner, April, 1915.

.....I have been so often questioned how I, a determined opponent of modern civilization and an avowed patriot, could reconcile myself to loyalty to the British Empire.....; how it was possible for me to find it consistent that India and England could work together for mutual benefit. It gives me the greatest pleasure.....to redeclare my loyalty to the British Empire; and my loyalty is based upon very selfish grounds.....I discovered that the British Empire had certain ideals with which I have fallen in love, and one of those ideals is that every subject of the British Empire has the freest scope possible for his energies and honour and whatever he thinks is due to his conscience. I think that this is true of the British Empire, as it is not true of any other Government. .....I am no lover of any Government and I have more than once said that that Government is best which governs least. And I have found that it is possible for me to be governed least under the British Empire. Hence my loyalty to the British Empire.

Loyalty to the British Empire

Grounds of loyalty

51. THE CONGRESS-LEAGUE SCHEME, 1916.

[This scheme of Reforms was passed at the 31st session of the Indian National Congress held at Lucknow on December 29, 1916, and adopted by the All-India Muslim League on December 31, 1916. Mr. Montagu's criticism of this scheme is as follows: "It does not attempt to realize responsible government, but it leaves an irremovable executive at the mercy of a legislature which can paralyse it but not direct it. I do not believe that this House will ever agree to set up a constitution in India which will leave an executive, that is not removable, at the mercy of a legislature which cannot control it." (Speech in House of Commons, June 5, 1919)].

I. Provincial Legislative Councils.

1. Provincial Legislative Councils shall consist of four-fifths elected and of one-fifth nominated members.

Composition of Councils

2. Their strength shall be not less than one hundred and twenty-five members in the Major

Provinces, and from fifty to seventy-five in the Minor Provinces.

3. The members of Councils should be elected directly by the people on as broad a franchise as possible.

4. Adequate provision should be made for the representation of important minorities by election, and that the Mahomedans should be represented through special electorates on the Provincial Legislative Council.

Provision for Muslim representation

Punjab—One-half of elected Indian members.				
United Provinces—	30	per cent.	„	„
Bengal —	40	per cent.	„	„
Behar —	25	per cent.	„	„
Central Provinces—	15	per cent.	„	„
Madras —	15	per cent.	„	„
Bombay —	One-third of elected Indian members.			

Provided that Mahomedans shall not participate in any of the other elections to the Legislative Councils.

Communal veto on legislation

Provided further that no Bill, nor any clause thereof, nor a resolution introduced by a non-official member affecting one or the other community, which question is to be determined by the members of that community in the Legislative Council concerned, shall be proceeded with, if three-fourths of the members of that community in the particular Council, Imperial or Provincial, oppose the bill or any clause thereof or the resolution.

President

5. The head of the Provincial Government should not be the President of the Legislative Council, but the Council should have the right of electing its President.

Questions

6. The right of asking supplementary questions should not be restricted to the member putting the original question but should be allowed to be exercised by any other member.

Revenue

7. (*a*) Except customs, post, telegraph, mint, salt, opium, railways, army and navy, and tributes from Indian States, all other sources of revenue should be provincial.

(*b*) There should be no divided heads of revenue. The Government of India should be provided with fixed contributions from the Provincial Governments, such fixed contributions being liable to revision when extraordinary and unforeseen contingencies render such revision necessary.

(*c*) The Provincial Council should have full authority to deal with all matters affecting the internal administration of the province, including the power to raise loans, to impose and alter taxation and to vote on the Budget. All items of expenditure and all proposals concerning ways and means for raising the necessary revenue should be embodied in Bills and submitted to the Provincial Council for adoption. Administration

(*d*) Resolutions on all matters within the purview of the Provincial Government should be allowed for discussion in accordance with rules made in that behalf by the Council itself.

(*e*) A resolution passed by the Legislative Council shall be binding on the Executive Government, unless vetoed by the Governor in Council, provided however that if the resolution is again passed by the Council after an interval of not less than one year, it must be given effect to. Control of Legislature over Executive

(*f*) A motion for adjournment may be brought forward for the discussion of a definite matter of urgent public importance if supported by not less than one-eighth of the members present.

8. Any special meeting of the Council may be summoned on a requisition by not less than one-eighth of the members.

9. A Bill, other than a Money Bill, may be introduced in Council in accordance with the rules made in that behalf by the Council itself, and the consent of the Government should not be required therefor. Introduction of Bills

10. All Bills passed by Provincial Legislatures shall have to receive the assent of the Governor before they become law, but may be vetoed by the Governor-General.

11. The term of office of the members shall be five years.

II. Provincial Governments.

Governor

1. The head of every Provincial Government shall be a Governor who shall not ordinarily belong to the Indian Civil Service or any of the permanent Services.

2. There shall be in every Province an Executive Council which, with the Governor, shall constitute the Executive Government of the Province.

Executive Council

3. Members of the Indian Civil Service shall not ordinarily be appointed to the Executive Councils.

4. Not less than one-half of the members of Executive Council shall consist of Indians to be elected by the elected members of the Provincial Legislative Council.

5. The term of office of the members shall be five years.

III. Imperial Legislative Council.

Composition

The strength of the Imperial Legislative Council shall be one hundred and fifty.

2. Four-fifths of the members shall be elected.

Franchise

3. The franchise for the Imperial Legislative Council should be widened as far as possible on the lines of the Mahomedan electorates, and the elected members of the Provincial Legislative Councils should also form an electorate for the return of members to the Imperial Legislative Council.

President

4. The President of the Council shall be elected by the Council itself.

Questions

5. The right of asking supplementary questions shall not be restricted to the member putting the original question but should be allowed to be exercised by any other member.

6. Any special meeting of the Council may be summoned on a requisition by not less than one-eighth of the members.

Introduction of Bills

7. A Bill, other than a Money Bill, may be introduced in Council in accordance with rules made in

that behalf by the Council itself, and the consent of the Executive Government should not be required therefor.

8. All Bills passed by the Council shall have to receive the assent of the Governor-General before they become law.

9. All financial proposals relating to sources of income and items of expenditure shall be embodied in Bills. Every such Bill and the Budget as a whole shall be submitted for the vote of the Imperial Legislative Council. Finance

10. The term of office of members shall be five years.

11. The matters mentioned hereinbelow shall be exclusively under the control of the Imperial Legislative Council.

(*a*) Matters in regard to which uniform legislation for the whole of India is desirable. Jurisdiction

(*b*) Provincial legislation in so far as it may affect inter-provincial fiscal relations.

(*c*) Questions affecting purely Imperial revenue, excepting tributes from Indian States.

(*d*) Questions affecting purely Imperial expenditure, except that no resolution of the Imperial Legislative Council shall be binding on the Governor-General in Council in respect of military charges for the defence of the country.

(*e*) The right of revising Indian tariffs and customs-duties, of imposing, altering or removing any tax or cess, modifying the existing system of currency and banking, and granting any aids or bounties to any or all deserving and nascent industries of the country.

(*f*) Resolutions on all matters relating to the administration of the country as a whole.

12. A resolution passed by the Legislative Council should be binding on the Executive Government, unless vetoed by the Governor-General in Council : provided, however, that, if the resolution is again passed by the Council after an interval of not less than one year, it must be given effect to. Control of Legislature over Executive

13. A motion for adjournment may be brought forward for the discussion of a definite matter of urgent public importance, if supported by not less than one-eighth of the members present.

Veto

14. The Crown may exercise its power of veto in regard to a Bill passed by a Provincial Legislative Council, or by the Imperial Legislative Council, within twelve months from the date on which it is passed, and the Bill shall cease to have effect as from the date on which the fact of such veto is made known to the Legislative Council concerned.

War and foreign policy

15. The Imperial Legislative Council shall have no power to interfere with the Government of India's direction of the military affairs and the foreign and political relations of India, including the declaration of war, the making of peace and the entering into treaties.

IV. The Government of India.

Governor-General

1. The Governor-General of India will be the head of the Government of India.

Council

2. He will have an Executive Council, half of whom shall be Indians.

3. The Indian members should be elected by the elected members of the Imperial Legislative Council.

4. Members of the Indian Civil Service shall not ordinarily be appointed to the Executive Council of the Governor-General.

I. C. S.

5. The power of making all appointments in the Imperial Civil Service shall vest in the Government of India as constituted under this scheme, and subject to any laws that may be made by the Imperial Legislative Council.

Relations between Central and Provincial Governments

6. The Government of India shall not ordinarily interfere in the local affairs of a province, and powers not specifically given to a Provincial Government shall be deemed to be vested in the former. The authority of the Government of India will ordinarily be limited

to general supervision and superintendence over the Provincial Governments.

7. In legislative and administrative matters, the Government of India, as constituted under this scheme, shall, as far as possible, be independent of the Secretary of State. Secretary of State

8. A system of independent audit of the accounts of the Government of India should be instituted. Audit

V. The Secretary of State in Council.

1. The Council of the Secretary of State for India should be abolished. Council

2. The salary of the Secretary of State should be placed on the British Estimates.

3. The Secretary of State should, as far as possible, occupy the same position in relation to the Government of India as the Secretary of State for the Colonies in relation to the Governments of the self-governing Dominions. Colonies and India

4. The Secretary of State for India should be assisted by two permanent Under-Secretaries, one of whom should always be an Indian.

VI. Military and other matters of policy.

1. The military and naval services of His Majesty, both in their commissioned and non-commissioned ranks, should be thrown open to Indians and adequate provision should be made for their selection, training and instruction in India. Army and Navy

2. Indians should be allowed to enlist as volunteers.

3. Indians should be placed on a footing of equality in respect of status and rights of citizenship with other subjects of His Majesty the King throughout the Empire. Citizenship for Indians throughout Empire

4. The Executive Officers in India shall have no judicial powers entrusted to them, and the judiciary in every province shall be placed under the highest Court of that province. Separation between Judiciary and Executive

52. MONT-FORD REPORT ON CONGRESS-LEAGUE SCHEME.[1]

173. ..... the essence of the project is an executive, theoretically responsible to the Secretary of State but practically divided, a legislature responsible to the electorate, and a distribution of power which enables the legislature to paralyse the executive without having power to remove it. Our first observation is that in our view such a plan postulates the existence of a competent electorate, and an assembly which will be truly representative of the people ..... while we believe that both a sound electoral system and truly representative assemblies will be evolved in time, we cannot assent to proposals which could only be justified on the assumption that such institutions are immediately forthcoming.

No 'competent electorate,' no 'truly representative assembly' available at present

174. Our second criticism, which is decisive with us, is that the Congress-League scheme starts with a wrong conception. It is unsound that the legislature and the executive should derive their power from, and be responsible to, different authorities.....If the executive attempted to overcome the legislature there would be conflict and agitation : if it gave way then it would become merely the agent of the legislature and might as well be chosen from, and by, the legislature at once. But for a deadlock the Congress-League scheme provides no solution, such as there would be in England, by means of a change of Government. If responsible government cannot be conceded at once, as indeed the scheme implies, and if some measure of responsibility is yet to be given, then means must be found of dividing the sphere of administration into two portions, and for each of these there must be a part of the executive which can, in the last resort, secure its way from a legislative organ which is in harmony with it : and there must also be means of securing that both halves of the machine work together.

Executive and Legislature cannot derive power from, and remain responsible to, different authorities.

Dyarchy —only solution

[1] For detailed criticism of the Scheme see *Montagu-Chelmsford Report*, Paras 159-172.

175. It has been put to us that though the system is not an ideal one it may serve as well as any other for the transitional stage before the introduction of a complete system of responsible government. We cannot subscribe to this view. Because the system is one of negative power, without responsibility, it affords the worst possible education for responsible government. That it would not train political leaders in the practical experience of administration is a sufficiently grave defect. But what is far more serious is that the scheme makes no provision for an even greater need, the training of the people in the exercise of electoral responsibility. So long as the Council has no direct responsibility for executing the policy which it advises the faculty of judging and choosing between different leaders cannot be called into play. The only result must be such increasing bitterness between a powerless, and yet irremovable, executive and the assembly, that when the change did come—and it would come with a crash—it would be made in the most unfavourable circumstances.

As a means of political education Congress-League scheme must fail.

Bitter conflict between irresponsible Legislature and irremovable Executive

176. Apart from all questions of theory or historical examples we feel persuaded that the project would soon prove unworkable in practice. It proposes to concede to the popular assembly complete power of legislation and complete control of the budget. What will follow? We may judge from the tendencies displayed by the Morley-Minto Councils.....

Congress-League scheme unworkable in practice

177. .....Let us then try to make it clear why we believe that the Congress-League scheme is bound to fail. First,....the inherent defects of the machine would make it impossible to work at all. But, granted that the Government does its utmost, granted that the Indian politicians have a sincere desire to make the engine work, we still cannot see how they could do so, because success itself would be the negation of their ultimate aim, and ours, which is responsible government. They could not remain content with an alien executive, and therefore their policy naturally, and from their standpoint justifiably, must be to weaken and discredit it. There is evidence indeed that some of the

Success of Congress-League scheme will mean negation of responsible government.

advocates of the scheme are impressed by the force of these arguments; and look forward to producing a deadlock as a means of bringing the executive under the control of the legislature. We have no desire to produce deadlocks..... We believe in the possibility of 'smooth and harmonious progress' pursued in the spirit of mutual good will and devotion to common interests.....

53. THE GOVERNMENT OF INDIA ON THE ORIGIN OF SEPARATE ELECTORATE.[1]

Popular representation as understood in Western countries was not contemplated (in 1892), but it was felt that there was room for considerable advance in the representation of interests on the lines indicated in the following extract taken from one of the Government of India's despatches addressed to the Secretary of State in 1892 at the time when the new Indian Councils Bill was being brought before Parliament :—

Lord Lansdowne's Government on representation by classes

"Indian society from historical causes..... is essentially a congeries of widely separated classes, races, and communities, with divergences of interest and hereditary sentiment which for ages have precluded common action of local unanimity. Representation of such a community upon such a scale as the Act permits can only be secured by providing that each important class shall have at least the opportunity of making its views known in the Council by the mouth of some member specially acquainted with them."

* * * *

After the receipt of the Secretary of State's instructions,[2] the Government of India defined for each province the classes which were of sufficient importance to require representation. Thus the classes considered to require representation in the province of Bengal were as follows :—

"(1) Hindus.

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[1] *Memoranda submitted to the Indian Statutory Commission by the Government of India*, Vol. IV, pp. 127—140.

[2] See pp. 158-159.

(2) Muhammadans.
(3) Non-official Europeans and Anglo-Indians.
(4) Merchants, traders and manufacturers.
(5) The planting community.
(6) The population of the Presidency town.
(7) The urban classes of the mufassil.
(8) The rural classes.
(9) The professional and literary classes."

'Classes considered to require representation' in Bengal

It was recognised at the time that this classification was a cross division: a person representing the professional or urban classes might also represent the Hindus; and a person representing the rural classes might also represent the Muslims.

Cross division

It will be noticed that the classes in Bengal to which the Government of India considered that representation must be secured comprised communities (for instance, Hindus, Muslims and Europeans), classes (for instance, the urban, rural and professional classes), and interests (for instance, commercial interests). In the distribution made under the regulations, no right of nomination was conferred on any community as such, but the regulations were so designed as to give effect to the expression of opinion of the Government of India.....that "each important class shall have the opportunity of making its views known in Council by the mouth of some member specially acquainted with them....."

System of representation under Act of 1892

* * * *

Lord Minto assumed office as the Viceroy and Governor-General on the 18th November, 1905. In August, 1906, a Committee of the Executive Council was formed to consider a number of suggestions for reform, including, among other matters, increased representation on the Indian and provincial Legislative Councils.

Committee of Lord Minto's Government

While the Committee was at work, a deputation representing the Muslims of India waited upon His Excellency on the 1st October, 1906, and presented an address which was read by H. H. the Aga Khan. It was in this address that the claim to separate Muslim

Muslim Deputation of 1906

representation was made; and it was in the reply given by His Excellency that the claim is commonly understood to have been conceded..... In the course of the address the deputation made the following points :—

Arguments of Muslim Deputation :

(1) that in the whole of India the Muslims number over 62 millions or between 1/5th and 1/4th of the total population;

Numerical strength of Muslims

(2) that if Animists and depressed classes ordinarily classed as Hindus, but not properly Hindus, were deducted, the proportion of Muslims to Hindus would be larger than is commonly shown;

(3) that as their number exceeds the entire population of any first-class European power, except Russia, Muslims might justly claim adequate recognition as an important factor in the State;

Political importance of Muslims and their contribution to defence of Empire

(4) that the position accorded to the Muslim community in any kind of representation, direct or indirect, and in all other ways affecting their status and influence should be commensurate not merely with their numerical strength, but also with their political importance and the value of the contribution which they make to the defence of the Empire;

Criticism of system of representation

(5) that the representation hitherto accorded to them, almost entirely by nomination, had been inadequate to their requirements and had not always carried with it appoval of those whom the nominees were selected to represent;

(6) that while Muslims are a distinct community with additional interests of their own, which are not shared by other communities, no Muslim would ever be returned by the existing electoral bodies unless he worked in sympathy with the Hindu majority in all matters of importance.

On these grounds the deputation made the following proposals :—

Demands of Muslim Deputation:

(*a*) that in the case of municipal and district boards the number of Hindus and Muslims entitled to seats should be declared; such proportion being deter-

mined in accordance with the numerical strength, social status, local influence and special requirements of either community and that each community should be allowed to return their own representatives, as in the Aligarh Municipality and in many towns in the Punjab ; Municipal and District Boards

(*b*) that in the case of senates and syndicates of Indian universities there should, so far as possible, be an authoritative declaration of the proportion in which the Muslims are entitled to be represented in either body ; Universities

(*c*) that in the case of provincial Legislative Councils the proportion of Muslim representatives should be determined and declared with due regard to the considerations noted above, and that the important Muslim landlords, lawyers and merchants and representatives of other important interests, the Muslim members of district boards and municipalities and the Muslim graduates of Universities of a certain standing, say five years, should be formed into electoral colleges and be authorised to return the number of members that may be declared to be eligible ; Provincial Legislative Councils

(*d*) for their representation in the Imperial Legislative Council they suggested— Imperial Legislative Council

(*i*) that the proportion of Muslims should not be determined on the basis of numerical strength and that they should never be an ineffective minority ;

(*ii*) that as far as possible appointment by election should be given preference over nomination ;

(*iii*) that for the purpose of choosing Muslim members, Muslim landowners, lawyers and merchants, and representatives of every important interest of a status to be subsequently determined by Government, Muslim members of provincial Legislative Councils and Muslim Fellows of Universities should be invested with electoral powers.

His Excellency's reply to the address contained the following observation[1] :—

* * * *

The Council's Committee ..... gave special attention to the problem of Muslim representation. As a result of their enquiries, the Committee found that the Muslims had not been sufficiently represented on the existing Councils, that the few elected members had not been really representative, and that nomination had failed to secure the appointment of Muslims of the class desired by the community. In order to remove these grievances they considered two measures necessary. In the first place they suggested that, in addition to the small number of Muslims who might be able to secure election in the ordinary manner, a certain number of seats should be assigned to be filled exclusively by Muslims ; and secondly, that for the purpose of filling those seats, or a proportion of them, a separate Muslim electorate should be formed.....

Proposals of Committee of Lord Minto's Council

These proposals were supported by the Government of India and communicated to the Secretary of State, who accepted the principle that the Muslim community was entitled to a special representation on the Governor-General's and local Legislative Councils commensurate with its numbers and political and historical importance.

Conclusions of Government of India and Secretary of State

* * * *

During the period when these reforms were under discussion, there may be said to have been three schools of opinion on the subject of Muslim representation, namely,—

Three schools of opinion on Muslim representation

(1) Extreme separatists who insisted on absolute isolation ;

(2) Moderate separatists who would give the Muslims full and adequate representation by means of special Muslim electorates and would also maintain their participation in the elections of the general electorate ;

[1] See pp. 207-209.

(3) Non-separatists who objected to any sort of class representation by separate electorates.

The proposals of the Government of India were those of the second class, and in a speech in the Imperial Legislative Council on the 29th of March, 1909, Mr. Gokhale said that his views on the subject of Muslim representation were practically the same as those of the Government of India. The words he used were as follows :— Gokhale's views

"I think the most reasonable plan is to throw open a substantial minimum of seats to election on a territorial basis in which all qualified to vote should take part without distinction of race or creed. And then supplementary elections should be held for minorities which numerically or otherwise are important enough to need special representation, and these should be confined to members of minorities only."

Later on he added :—

"The idea of two water-tight compartments for Hindus and Muslims separately will not promote the best interests of the country, and moreover it is really not feasible, for there cannot be only two such compartments unless all minorities other than Muslims are to be joined to the Hindus, in which case the division will practically be Muslims and non-Muslims."

* * * *

The result then of the Morley-Minto reforms was that the constitution of the Provincial Legislative Councils was based upon a system of representation of classes and interests consisting of basic constituencies representing landholders, groups of district boards, and groups of municipal townships. There were no territorial constituencies properly so called, but the three Presidency corporations returned special representatives, and except in their case, no individual town or city had its own special member. To these basic classes were added representatives of universities, chambers of commerce, trades associations and other like interests, the members returned being in the great majority of Morley-Minto Reforms : Provincial Legislative Councils based on representation of classes and interests

cases elected, but in some few instances nominated. On these constituencies there were super-imposed certain special Muslim electorates. Thus besides voting in their own special constituencies, Muslims also voted in the general electorates, to counterpoise which these constituencies themselves were created. These special Muslim constituencies were on a territorial basis in the sense only that the province was divided territorially for the purpose of the election of Muslim representatives. Thus the Bombay Presidency was divided into four "areas" (they were not described as constituencies in the electoral rules), namely, the Southern, Northern and Central Divisions and the city of Bombay.

Special Muslim electorates

Double vote of Muslims and differentiation of their franchise

The double vote possessed by the Muslims was a source of grievance to other communities, who also resented the fact that in the special Muslim constituencies the franchise which was based upon property, educational and service qualifications went lower than the franchise in the general constituencies. The necessity for devising special electorates for Muslims in place of the utilisation of machinery already to hand in the shape of existing bodies, institutions and associations, or by the adoption of standards such as the payment of land revenue, had in effect resulted in the creation of special franchise lists reaching much lower down in the social scale and in consequence in many provinces there were persons with property or other qualifications who had a vote if they were Muslims, but not if they belonged to any other creed. There were no special constituencies for Muslims either in the Punjab, where it was felt that they would secure sufficient representatives in the general constituencies, or in Burma and the Central Provinces, where their numbers are insignificant. In the remaining provinces, except Assam, the total strength of the Councils was 50: the special Muslim constituencies varied from 2 in Madras to 5 in Bengal. In Assam the strength of the Council was 30, and there were 2 special Muslim constituencies. "... the Additional Members of the (Imperial Legislative) Council were sixty in number including five elected by special Muslim constituencies, one each

Distribution of special Muslim constituencies

for the three Presidencies, one for the United Provinces, and one for Bihar and Orissa.

Introduction of separate electorate in 1909 was a continuation of policy adopted in 1892.

The most important point to stress with reference to the introduction of special Muslim electorates at the time of the Morley-Minto reforms was that they were accepted as an item in the generally approved policy that representation in the Councils should be representation of the various communities, classes and interests of which the country was composed. The need for securing adequate Muslim representation was recognised no less in 1892 than in 1909. When speaking on the 1892 Bill in the House of Lords Lord Kimberley had said, "there must be found some mode in India of seeing that minorities such as the important body of Muslims are fully represented." The reforms of 1892 were found to have failed to secure the adequate representation of Muslims, and it was in these circumstances that Parliament accepted the solution of special Muslim constituencies. In the circumstances of the case it would not be entirely accurate to describe the creation of a Muslim electorate, at the time when the elective principle was first openly recognised, as a novel departure from a previously accepted policy; in effect, these separate electorates confirmed the policy already accepted of representation by interests, including communal interests. Secondly, the acceptance by Lord Morley of communal electorates on behalf of His Majesty's Government requires to be read in the closest possible relation to the nature of the reforms which were being introduced at the time. The limited extent of those reforms was expressed in Lord Morley's well-known disclaimer—"If it could be said that this chapter of reforms led directly or indirectly to the establishment of a parliamentary system in India, I for one would have nothing to do with it."

No 'novel departure' in 1909

'Limited extent' of Morley-Minto reforms

With regard to the manner and form of the Muslim electorates of 1909, three points deserve to be borne in mind:—

'Manner and form of Muslim electorates of 1909'

(1) That the Muslim electorates were superimposed upon the general electorates, in which also qualified Muslims were competent to vote;

(2) That the political importance of the community as distinct from its numerical strength was accepted by Lord Morley as a basis for special representation;

(3) That the franchise in the Muslim constituencies, which elected direct to the Councils, was wholly different from the franchise qualifications in the general constituencies, in which the district boards and municipalities intervened between the primary voters and their representatives in the Councils.

* * *

Effect of Congress-League scheme on Muslim representation

The effect of the Congress-League scheme can be judged from the following table which gives a comparison of the representation suggested for Muslims with the representation which they enjoyed under the Morley-Minto scheme in the Councils in existence at the time when the Lucknow Pact was ratified :—

Province	Population[1]	Muslim Population	Strength of Council[2] in 1917	Number of Sitting Muslim Members and percentage[3]	Percentage proposed under Congress-League Scheme
Bengal	44·5 millions	24 millions or 52·6 p.c.	48	5 or 10·4 p.c.	40 per cent.
Bihar and Orissa .	34·5 millions	3·7 millions or 10·5 p.c.	40	4 or 10 p.c.	25 per cent.
Bombay ..	19·7 millions	4 millions or 20·4 p.c.	42	4 or 9·5 p.c.	33·3 per cent.
Central Provinces ..	13·9 millions	6 millions or 4·3 p.c.	24	*Nil*	15 per cent.
Madras	41·4 millions	2·7 millions or 6·5 p.c.	41	2 or 4·8 p.c.	15 per cent.
Punjab ..	20 millions	11 millions or 54·8 p.c.	28	*Nil*[4]	50 per cent.
United Provinces ..	47·2 millions	6·7 millions or 14 p.c.	47	4 or 8 p.c.	30 per cent.

[1] Figures from Census of 1911.
[3] Elected by the Muslim community.
[2] The figures exclude seats for experts.
[4] No seats reserved for Muslims, but there were at the time seven Muslim members of whom five were elected.

The percentage of Muslim seats to the Muslim population worked out as follows :—

Province	Muslim percentage of population (1)	Percentage of Muslim seats proposed (2)	Percentage (2) of (1) (3)
Bengal . ..	52 6	40	76
Bihar and Orissa .	10 5	25	238
Bombay	20 4	33 3	163
Central Provinces ..	4 3	15	349
Madras . ..	6 5	15	231
Punjab . .	54 8	50	91
United Provinces ..	14 0	50	214

Extremely liberal concessions to Muslims of Muslim-minority provinces

The result would have been that while Bengal Muslims would have obtained only three-quarters and the Punjab Muslims nine-tenths of what they would receive upon a population basis, the Muslims of other provinces received extremely liberal representation..... The system of communal representation proposed in the Congress-League scheme, and accepted in principle in the Reforms of 1919, laying down hard and fast proportions of Muslim representation, went far beyond the Morley-Minto system of communal representation in which a number of special Muslim seats were superimposed over and above the general constituencies in which Muslims might vote in order to adjust inequalities of representation. This brought the position closer to that adopted by those who..... were described in 1909 as the extreme separatists who favoured the complete isolation of the communities.[1] Lastly, the Lucknow Pact included separate Muslim electorates in the Punjab and the Central Provinces, where they had not yet been introduced.

Lucknow Pact 'went far beyond Morley-Minto system of communal representation.'

[1] See pp. 302-303.

54. MONT-FORD REPORT ON RELATIONS BETWEEN CENTRAL AND PROVINCIAL GOVERNMENTS.

46. It is time to see how the tasks of government are apportioned between the Government of India and the Local Governments. At the outset, it is obvious that their responsibility for the entire country constrains the Government of India to keep some functions of government entirely in their own hands.[1] Since the Madras and Bombay military commands were abolished in 1893, the defence of India has been treated formally, as it had long been in fact, as an undivided charge. Connected with defence is the diplomatic business of relations with bordering Asiatic powers, and with this again the administration of bastions of territory like the Frontier Province and British Baluchistan. There is also the business of political relations with the numerous Native States, which is mainly, though not yet wholly, the sole concern of the Government of India. In a separate category come the administration of tariffs, the currency and the exchanges, and the debt, and also of the great commercial services like the post office and the railways, all of which concern the whole country. Again the central Government controls the business of audit and accounting, and has maintained it on a uniform system for the whole country. But responsibility for everything else is shared in greater or lesser measure by the Government of India with the provinces; and it is well to understand on what basis the distribution rests, if we are

Defence

Frontier policy and administration of frontier tracts

Tariffs, Currency, Post Office, Railways, etc.

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[1] Section 45 of the Government of India Act, 1915, ran as follows: "Every local government shall obey the orders of the Governor-General in Council, and keep him constantly and diligently informed of its proceedings and of all matters which ought, in its opinion, to be reported to him, or as to which he requires information, and is under his superintendence, direction and control in all matters relating to the government of its province."

The Simon Commission observed, "It is highly instructive to observe how this section was amended by the Act of 1919."

to be on sure ground in making proposals which must radically affect it.

Views of the Court of Directors in 1834

47. Eighty-four years ago the Court of Directors set themselves to define the right principles of demarcation.[1] They reminded Lord William Bentinck emphatically that the whole civil and military administration of India was committed to the hands of the Government by the Act of 1833 and that for what was good or evil in it the honour or dishonour would redound on him. They criticized the control previously exercised over the Presidency Governments as having generally taken the invidious and ineffective form of *ex post facto* intervention. They wrote :—

"It is evidently the object of the present Act to carry into effect that intention of the legislature to which we have alluded. Invested as you are with all the powers of government over all parts of India, and responsible for good government in them all, you are to consider to what extent, and in what particulars, the powers of government can be best exercised by the local authorities, and to what extent, and in what particulars, they are likely to be best exercised when retained in your own hands. With respect to that portion of the business of government which you fully confide to the local authorities, and with which a minute interference on your part would not be beneficial, it will be your duty to have always before you evidence sufficient to enable you to judge if the course of things in general is good, and to pay such vigilant attention to that evidence as will ensure your prompt interposition whenever anything occurs which demands it."

Views of the Court of Directors in 1839

And again five years later :

"Although a minute interference on your part in the details of the local administration of the subordinate presidencies is neither desirable nor practicable, yet we should hold you but ill acquitted towards those whose interests are committed to your charge, if you should allow to pass without comment and, if

[1] See *Indian Constitutional Documents*, Vol. I, pp. 248-250.

necessary, without effective interference, any measures having, in your opinion, an injurious tendency either to one presidency or to the Empire at large."

48. We imagine that the Directors intended that Lord William Bentinck's Government should define the matters in which their interference would be rare, and those in which their control would be constant; but we find that no such formal differentiation was actually ever attempted. Such discrimination between functions as obtains at present is the result of gradual administrative devolution. As the Decentralization Commission says :— No formal differentiation of functions between Central and Local Governments

"The difficulty of defining the exact limits between a 'just control, and petty, vexatious, meddling interference' recognized by the Court of Directors in 1834, still remains. It is easy to say that the central Government should confine itself to laying down general principles, and that the detailed application of these should be left in the hands of the subordinate Governments; but in practice it is sometimes extremely difficult to say what are mere details, and whether these may not affect the application of a principle. Again, what is normally a detail, properly left to a Local Government, may at a period of political stress or under altered circumstances become a matter in which the Government of India, and even the Secretary of State, must assert their responsibilities. It is, therefore, of paramount importance, that the relations between the Government of India and the provincial Governments should be readily adaptable to new or changing conditions, and should not be stereotyped by anything in the nature of rigid constitution." Views of Decentralisation Commission No stereotyped division of functions possible

Obviously there are tendencies pulling in two opposite directions. Material development, improved communications, the raising of standards of administration, and the interest taken by Parliament in Indian affairs all tend to throw work on the central power; just as the want of detailed knowledge and the variety of local conditions make for provincial liberty of Functions of Central Government expanding

action.[1] The spread of enlightenment has on the whole probably operated to cast more work upon the Government of India; for the growth of national feeling among the educated classes has raised many questions of a general nature with which only the Government of India could deal and increased the habit of invoking its intervention.

Varied duties of Government of India

49. Let us glance at the list of work which the administrative departments of the Government of India deal with not at first-hand, but as supervising and appellate authority. To the Home Department

Home Dept.

are referred questions from the provinces affecting the Indian Civil Service, internal politics, jails, police, the civil medical service, law and justice, and courts; the

Revenue Dept.

departments under the Revenue Member are similarly concerned with revenue, surveys, forests, agriculture,

Political Dept.

veterinary administration, meteorology, and famine and public works and irrigation; the Political Department with such Native States as are in political relations with local Governments; the Finance Department with

Finance Dept.

opium, stamps, income-tax, and the pay, leave, and pensions of the services; the Department of Commerce with commerce, exhibitions, factories, mining, explo-

Commerce Dept.

sives, emigration, fisheries, salt, and excise; the Department of Education with education, local self-govern-

Education Dept.

ment, sanitation, and so forth. All these spheres of business are primarily the concern of local Govern-

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Lord Curzon on Bombay and Madras Government.

[1] Lord Curzon felt 'irritated surprise' at the isolation of the Governments of Madras and Bombay. He wrote to the Secretary of State on May 17, 1899, "Decentralisation is all very well, but it appears to me in the case of Bombay and Madras to have been carried to a point in which the supreme Government is nowhere, and in which the petty kings of those dominions are even unconscious that responsibility attaches to any one but themselves." In a despatch to the Secretary of State, September 28, 1899, the Government of India suggested that Madras and Bombay should be reduced to the same footing as the other major provinces. The British Cabinet were 'practically unanimous' in their opposition to this proposal. See Ronaldshay, *The Life of Lord Curzon*, Vol. II, pp. 56-60, 416. By creating the North-West Frontier Province Lord Curzon deprived the Punjab Government of its control over frontier affairs, which were brought under the direct supervision of the Government of India. See Ronaldshay, *The Life of Lord Curzon*, Vol. II, pp. 44-45, 55, 131-140.

Creation of N.W.F. Province

ments, but in all of them the Government of India exercise an unquestioned right of entry, either of their own instance or on appeal. The measure of interference actually practised varies with circumstances, and to a great extent depends on the financial system[1].....

50. The text-books generally describe the Government of India as interfering very little with the details of provincial administration. Sir Bampfylde Fuller, writing as an ex-Lieutenant-Governor, says that the Government of India, as a rule, content themselves with laying down general principles and watching the effect that is given to them, but keep a very strict hand upon the creation of new appointments or the augmentation of salaries. We have no doubt that this correctly expresses the general aim. But in such a matter all opinion is relative. Compared with past days, provincial Governments enjoy great liberty of action ; but, as we shall show in due course, substantial restrictions are imposed on them by the dominant conception that the entire government system is one indivisible whole and amenable to Parliament. Even though the Decentralization Commission accepted this governing condition, they thought that both the Indian Government and in their turn the provincial Governments also had in the exercise of the control with which they were invested been dominated too much by considerations of administrative efficiency.

Views of Bampfylde Fuller

'The entire government system is one indivisible whole.'

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[1] "Nothing illustrated more clearly the overriding unity of the Centre and the subordination of the provinces to it than the arrangements between them as to finance provincial expenditure, provincial taxation, and provincial borrowing were all subject to central control, and the spending powers of provincial Governments could be exercised only subject to elaborate and voluminous codes of instructions issued by the Government of India . Add to this that it was the practice to control all legislative action in provincial councils by means of 'instructions,' and it becomes clear that, whether from the administrative, the financial, or the legislative point of view, the concentration of authority at the centre was a cardinal feature of the pre-Reform constitution. This was one of the features which Parliament in 1919 set itself to modify."—*Simon Commission Report.*

Views of Decentralisation Commission

"They have, we think, paid too little regard to the importance of developing a strong sense of responsibility amongst their subordinate agents and of giving sufficient weight to local sentiments and traditions. In our opinion, the burden of work could be materially diminished if the Indian Government were to refrain from interfering in unnecessary detail with the actions of the authorities subordinate to them, an interference which results in large measure in every administrative authority in India having to do over again work already accomplished at a stage below. Future policy should be directed to steadily enlarging the spheres of detailed administration entrusted to provincial Governments and the authorities subordinate to them and of recognizing that they must definitely dispose of an increasing share of the ordinary work of government."

Detailed administration should be left to Provinces.

We understand that public and official opinion alike endorsed this criticism. But.....the question now turns mainly on new and bigger considerations. Official control from above is incompatible with popular control from within, and the admission of the latter justifies, indeed demands, a corresponding reduction of the former. Parliament, the Secretary of State, and the Government of India must all relax control if the legislative councils in the provinces are to share the responsibility for the administration. Similarly provincial Governments must abate their superintendence where popularly-constituted subordinate authorities have been entrusted with functions of their own.

Centralisation must diminish in proportion to introduction of popular control.

55. MONT-FORD REPORT ON PARLIAMENTARY SUPREMACY.

33. .....Whatever other elements[1] originally entered into it, India's constitution has been in the main derived from Parliament and, indeed, has very

[1] This is a reference to Ilbert's remark: "British authority in India may be traced, historically, to a twofold source. It is derived partly from the British Crown and Parliament, partly from the Great Mogul and other native rulers of India." (*The Government of India*, p. 1).

recently been embodied, to the great convenience of all concerned, in a consolidating statute (5 and 6 Geo. V., c. 61).[1] The powers of the various Governments and legislatures and High Courts in India, indeed the establishment of the Secretary of State in Council, are thus due to Parliamentary enactment.

Various methods of giving effect to Parliamentary control over India

It is open to Parliament to exercise control either by means of legislation, or by requiring its approval to rules made under delegated powers of legislation; or by controlling the revenues of India; or by exerting its very wide powers of calling the responsible Minister to account for any matter of Indian administration. Some of these things, however, Parliament does not do. As a general rule it does not legislate specially for India; though from time to time it passes measures such as the Merchant Shipping Act or the Copyright Act, drawn after consultation with the India Office, which apply to India in common with other British possessions. Parliament as a rule legislates for India alone in two important directions only —amendments in the constitution of India and loans raised by the Secretary of State. The bulk of Indian legislation it leaves to the Indian legislatures which it has itself created, though it exercises through the Secretary of State complete control over the character of such law-making. But it insists that decisions on certain important matters, such as rules for the nomination or election of additional members of Council, or for appointments to the Indian Civil Service, or defining the qualifications for persons to be appointed to listed posts, or notifications setting up Executive Councils for Lieutenant-Governors, shall be laid before it. Nor are Indian revenue and expenditure controlled by Parliament. The revenues apart from loans are not raised, nor are the charges except for military expenditure beyond the frontiers incurred with its direct approval. The Home expenditure is met from Indian revenues and therefore the salaries of the Secretary of State and his office are not included in the estimates.

Parliament and legislation for India

Parliament and Indian revenues

[1] Government of India Act, 1915. Government of India (Amendment) Act, 1916.

A motion in favour of placing these amounts on the estimates was made in 1906, and defeated by a large majority, on the ground that the change would tend to bring the Indian administration into party politics. Accordingly all that at present happens is that a detailed account of receipts and charges is annually laid before Parliament together with a report, the quality of which has incurred some criticism, upon the moral and material progress of the country. A motion is made that Mr. Speaker do leave the chair for the House to go into Committee on the East India revenue accounts; the motion made in Committee is declaratory and formal; a general debate on Indian affairs is in order, and the Secretary or Under-Secretary of State usually takes this opportunity to inform the House about any important matters of administration. All sums expended in England on behalf of India are also examined by an auditor who lays his report before both Houses. Because Parliament does not vote the revenue of India, it has not the same opportunity of exercising the control over its administration as over the great departments of the public service in Great Britain. It is, of course, true that when any matter of Indian administration attracts public interest Parliament has the ordinary and perfectly effective means of making its opinion felt, by questions, by amendments to the address, by motions to adjourn, by resolutions or by motions of no confidence. We have no hesitation in saying, however, that the interest shown by Parliament in Indian affairs has not been well-sustained or well-informed. It has tended to concern itself chiefly with a few subjects, such as the methods of dealing with political agitation, the opium trade, or the cotton excise duties. It may be well to record that in India such spasmodic interferences are apt to be attributed to political exigencies at Home. We note that Her Majesty's Ministers did not feel it necessary to give effect to resolutions of the House of Commons on the opium trade in 1889 and 1891, nor about simultaneous examinations in India and England for the Indian Civil Service in 1893, because they felt

Parliament and Indian administration

Interest of Parliament in Indian affairs not 'well-sustained or well-informed'

assured that the House would not on reflexion constrain them to carry out measures which on inquiry proved to be open to objection. No one questions the competence of Parliament to interfere as drastically or as often as it chooses. Our point, however, is that it does not make a custom of interfering. There may be good reasons for this. The press, the telegraph, improved communications, the steady advance of India to Western methods and standards of administration, and the beginnings of representative institutions in India itself may all have helped to promote a feeling that India's welfare was generally safe in the hands of the Indian Government. Nor can it be denied that constant interference by Parliament in the affairs of a distant Asiatic country would have greatly increased the difficulties of its administration, or that India has been fortunate in rarely becoming a subject of party strife. But whatever advantages may have attended this comparative immunity from criticism of the Indian administration, we think that there have been losses as well. We have seen how in the days of the Company it was Parliament's habit before renewing the Charter to hold a regular inquest into Indian administration. That practice has lapsed since 1858. Indeed we have the paradox that Parliament ceased to assert control at the very moment when it had acquired it. It cannot be said that Royal Commissions on particular subjects, for example, those over which Sir Charles Hobhouse and Lord Islington presided, are an adequate substitute for the old procedure.....

Justification of non-interference by Parliament in Indian affairs

Arguments against non-interference by Parliament in Indian affairs

* * * *

34. The absolute character of the supremacy of Parliament may be judged from the fate of attempts that have occasionally been made to impugn it. After the Councils Act of 1861 had made the Legislative Councils into something recognizably different from the Executive Councils and encouraged the idea that they enjoyed some measure of deliberative independence, we at once find signs of that conflict of principle which inevitably exists between allegiance to Parliament and

Conflict between 'allegiance to Parliament and amenability to any representative body in India'

amenability to any representative body in India. Questions vitally affecting the structure of the government were thereby raised. The unity of the executives in India, the subordination of Provincial Governments to the Government of India, and the ultimate supremacy of Parliament in legislative matters, all became questions in issue. Members of the Governor-General's Executive Council who differed from the views of the majority on legislative questions wished to reserve their freedom of action when the Bill came before the Legislative Council.[1] Some claimed actually to oppose the Government measure if they chose; others said that they would be content if allowed to abstain from voting. Mr. Gladstone's Government at first dealt tenderly with the claim of individual liberty of conscience and declined to order official members to vote at dictation; they suggested that a proper sense of the necessity for upholding the authority of the Government should suffice to secure unity. But when Lord Mayo's Government as a whole protested at being required to pass the Bills which became the Contract Act and the Evidence Act in the shape in which the Secretary of State on the report of the *Indian Law Commissioners approved them, on the* ground that such a course deprived the Legislative Councils of all liberty of action, the Home Government proceeded to assert their rights of control in the most emphatic manner:

Policy of Gladstone's Government

Attitude of Lord Mayo's Government

Emphatic assertion of the right of the 'Home' Government to control Indian administration

"It cannot be denied that some theoretical inconveniences are inseparably connected with the working of a such a machinery of government as that through which the Empire of India is ruled from Home. In practice these inconveniences may be, and have actually been, reduced to a minimum by mutual respect on the part of those who discharge various functions and exercise different powers in a divided and complex system of administration. But the risk of serious embarrassment would become much greater than hitherto it has been found to be, if a clear understand-

[1] See Document No. 26.

ing were not maintained as to one great principle which from the beginning has underlaid the whole system. That principle is that the final control and direction of the affairs of India rest with the Home Government, and not with the authorities appointed and established by the Crown, under Parliamentary enactment, in India itself.

'Final control and direction of the affairs of India rest with the Home Government'.

"The Government established in India is (from the nature of the case) subordinate to the Imperial Government at Home. And no Government can be subordinate, unless it is within the power of the superior Government to order what is to be done or left undone, and to enforce on its officers, through the ordinary and constitutional means, obedience to its directions as to the use which they are to make of official position and power in furtherance of the policy which has been finally decided upon by the advisers of the Crown.

"Neither can I admit that it makes any real difference in the case if the directions issued by the Imperial Government relate to what may be termed legislative as distinguished from executive affairs. It may be quite as essential, in order to carry into effect the views of the Imperial Government, as to the well-being of Her Majesty's Indian dominions, that a certain measure should be passed into a law, as that a certain act, described in common language as executive, should be performed. But if it were indeed the case, as your argument would represent it to be, that the power of the Imperial Government were limited to the mere interposition of a veto on Acts passed in India, then the Government of the Queen, although it could resist the passing of an injurious law, would be helpless to secure legislative sanction for any measures, however essential it might deem them to be, for the welfare or safety of her Indian Empire. I think that, on reconsideration, you will see how inadequate such a power would be to regulate and control the affairs of that Empire, and how small a part it would represent of the supreme and final authority which has always

'Home' Government entitled to issue directions regarding executive as well as legislative affairs

'Supreme and final authority' belongs to the Government of the Crown.

been held and exercised by the Government of the Crown.

"The Imperial Government cannot indeed insist on all the members of the Governor-General's Council, when assembled for legislative purposes, voting for any measure which may be proposed, because on such occasions some members are present who are not members of the Government and not official servants of the Crown. But the Act which added these members to the Council for a particular purpose made no change in the relations which subsist between the Imperial Government and its own executive officers. That Government must hold in its hands the ultimate power of requiring the Governor-General to introduce a measure, and of requiring also all the members of his Government to vote for it.

Governor-General must introduce and Executive Councillors must vote for measures wanted by the 'Home' Government.

"I must add that the principle I have now asserted is the recognized principle of the British Government in relation to other parts of the Queen's dominions where the authority of the legislative body is derived from the Crown and is not founded on the principle of popular representation. The vastness and importance of Her Majesty's Indian dominions, however they may add to the dignity of those who are called upon to administer its affairs on the spot, in no degree exempt them from the necessary tie of subjection, but rather render it more incumbent on Her Majesty's advisers and councillors at Home to maintain the more carefully the existing order of things as defined by constitutional usage, and by what I may term the fundamental axioms of the connexion between this country and India".

Vastness and importance of India cannot exempt its administrators from subordination to 'Home' Government.

Again when Lord Northbrook's Government attempted to assert the independence of his Government in fiscal matters Mr. Disraeli's Government were equally decided in affirming their constitutional rights:

Lord Northbrook's claim for fiscal independence repudiated by Disraeli's Government

"It is not open to question that Her Majesty's Government are as much responsible to Parliament for the government of India as they are for any of the Crown Colonies of the Empire. It may even be said that the responsibility is more definite, in that the

powers conferred are, in the case of India, armed with a more emphatic sanction.

"It necessarily follows that the control exercised by Her Majesty's Government over financial policy must be effective also. They cannot, of course, defend in debate measures of which they do not approve; nor can they disavow all concern in them, and throw the responsibility for them upon the distant Government of India.

As the 'Home' Government is responsible to Parliament for Indian affairs, it must have complete control over Indian administration.

"Full legal powers having been entrusted to Her Majesty's Government, Parliament would expect that care should be taken that no policy should be pursued which Her Majesty's Government were unable to defend. If the control they possess were to be in any respect less than complete, the power of Parliament over Indian questions would be necessarily annulled. If the Government were at liberty to assume the attitude of bystanders, and to refer the House of Commons for explanations to the Governor-General in Council upon any policy that was assailed, there would practically be no one whom the House could call to account, or through whom effect could be given to its decisions. In scrutinizing the control exercised over the Government of India by Her Majesty's Government, and the grounds for maintaining that control, it must be borne in mind that the superintending authority of Parliament is the reason and the measure of the authority exercised by the responsible Ministers of the Crown; and that, if the one power is limited the other must be limited at the same time."

Restriction of control of 'Home' Government would mean curtailment of Parliamentary supremacy.

Further, when in 1878 a member of the Madras Executive Council moved an amendment, which had been rejected by the Government of India, to a Bill that was before the Provincial Legislative Council, the Secretary of State declared that his action was constitutionally improper.

A Madras case

The debate on the cotton duties in 1894 was the last occasion on which the issue was raised. Sir Henry Fowler then laid it down[1] positively that the principle

Sir Henry Fowler's view

[1] See Document No. 26.

of the united and indivisible responsibility of the Cabinet, which was recognized as the only basis on which the government of the United Kingdom could be carried on, applies to the Indian Executive Council, in spite of the different nature of the tie which held its members together.

Analogy between British Cabinet and Viceroy's Executive Council

"It should be understood that this principle, which guides the Imperial Cabinet, applies equally to administrative and to legislative action; if in either case a difference has arisen, members of the Government of India are bound, after recording their opinions, if they think fit to do so, for the information of the Secretary of State in the manner prescribed by the Act, either to act with the Government or to place their resignations in the hands of the Viceroy. It is moreover immaterial for the present purpose what may be the nature of the considerations which have determined the Government of India to introduce a particular measure. In any case, the policy adopted is the policy of the Government as a whole, and as such, must be accepted and promoted by all who decide to remain members of the Government."

All Executive Councillors must act with the Government or resign.

The supremacy of Parliament over the Government of India and that of the Government of India over Local Governments was thus finally established: and also the principle of unity within the Indian executives

35. Parliament may sometimes be a sleepy guardian of Indian interests; but the feeling that it may call him at any time to account certainly leads the Secretary of State and his Council to exercise with some strictness both the specific powers of control with which they are particularly invested and also the general power of superintendence which the Government of India Act gives them. We need not dwell on the fact that they manage directly the Home charges (which amount to one-fifth of the total expenditure of India) on account of military equipment, stores, pensions, leave allowances, and the like; and that they also control the raising of sterling loans. The greater part of their duties consists in the control of the Government of

Powers exercised by Secretary of State and his Council.

India. The Governor-General in Council is required by section 33 of the Government of India Act, 1915, "to pay due obedience to all such orders" as he may receive from the Secretary of State; and we have to see how this obedience is in fact exacted. Obviously the intensity of control must vary with the interest shown by Parliament on whose behalf the Secretary of State exercises his powers. The relations between Simla and Whitehall vary also with the personal equation. If resentment has been felt in India that there has been a tendency on occasions to treat Viceroys of India as "agents" of the British Government,[1] it is fair to add that there have been periods when Viceroys have almost regarded Secretaries of State as the convenient mouthpiece of their policy in Parliament. Certainly there have been times when the power of the Government of India rested actually far less upon the support of the Cabinet and Parliament than on the respect which its reputation for efficiency inspired. The hands of the Government of India were strong: and there was little disposition to question the quality of their work, so long as it was concerned chiefly with material things, and the subtler springs of action which lie in the mental development of a people were not aroused.

Factors determining relations between Simla and Whitehall

36. We must distinguish, however, between the measure of control which has been exercised and the powers of control which the existing system provides. These are very great. All projects for legislation, whether in the Indian or provincial legislatures, come Home to the Secretary of State for approval in principle. Before him are laid all variations in taxation or other measures materially affecting the revenues and in particular the customs; any measures affecting the currency operations or debt; and, generally speaking, any proposals which involve questions of policy or which raise important administrative questions or involve large or novel expenditure. To set out all the Secretary of State's specific powers would be a long task: but we may mention the construction of public

Control of Secretary of State over legislation, taxation, etc.

[1] See *Indian Constitutional Documents*, Vol. III, p. 1.

Illustrative list of Secretary of State's powers

works and railways; the creation of new appointments of a certain value, the raising of the pay of others, or the revision of establishments beyond a certain sum; grants to local governments, or loans to Native States; large charges for ceremonial or grants of substantial political pensions; large grants for religious or political purposes; mining leases and other similar concessions; and additions to the military expenditure, as classes of public business in respect of which he has felt bound to place close restrictions upon the powers of the Governments in India. For some such restraints we have no doubt that there is solid constitutional justification. The Government of India exercise immense powers over a vast and populous country, and in the absence of popular control in India it is right that they should, in matters of importance, be made to feel themselves amenable to Parliament's responsible Minister and that he should exercise conscientiously the powers which Parliament entrusts to him. Nor should we underrate the value of the permanent officials at the India Office in contributing to maintain continuity of policy in a country where the high authorities are constantly changing. This consideration is of great importance ... .

Justification of Secretary of State's control

Value of permanent officials at India Office

* * * *

294. But whatever control over Indian affairs the Secretary of State keeps, he keeps in the name of Parliament; and it will not suffice to improve the agent so long as his relations with his principal are not what they should be. Of all the great departments of the State the India Office is at present the least concerned with Parliament. Parliamentary control cannot in fact be called a reality. Discussion is often out of date and ill-informed; it tends to be confined to a little knot of members, and to stereotyped topics; and it is rarely followed by any decision. We fully realize the other preoccupations of Parliament, and yet we are sure that means must be found of enabling it to take a real and continuous interest in India. No one would wish matters that ought to be discussed and settled in India to be debated

Parliamentary control not a reality

and decided in Parliament; but there remain large questions of policy with which only Parliament can deal. We are anxious that Parliament should be in a position to take them up with interest and to decide them with knowledge. We have already made one important proposal—that for periodic commissions to deal with the political progress of India—which will be of value for this purpose. We will add two further suggestions. We advise that the Secretary of State's salary, like that of all other ministers of the Crown, should be defrayed from Home revenues and voted annually by Parliament. This will enable any live questions of Indian administration to be discussed by the House of Commons in Committee of Supply.

Proposals for making Parliamentary control effective

56. THE IMPERIAL WAR CONFERENCE ON THE POLITICAL STATUS OF INDIA, 1917. (Resolution, April 16, 1917).

They (*i.e.*, the Imperial War Conference) place on record their view that any such readjustment (*i.e.*, readjustment of the constitutional relations of the component parts of the Empire), while thoroughly preserving all existing powers of self-government and complete control of domestic affairs, should be based upon a full recognitin of the Dominions as autonomous nations of an Imperial commonwealth, and of India as an important portion of the same, should recognize the right of the Dominions and India to an adequate voice in foreign policy and in foreign relations, and should provide effective arrangements for continuous consultation in all important matters of common Imperial concern, and for such necessary concerted action, founded on consultation, as the several Governments may determine.

India should have 'an adequate voice in foreign policy and in foreign relations.'

57. DEBATE ON THE REPORT OF THE MESOPOTAMIA COMMISSION, 1917. (House of Lords, July 12-13, 1917)

[In the first World War the management and conduct of the campaign in Mesopotamia were entrusted to the Government and military authorities in India. "After the commence-

ment of the Mesopotamia campaign, India's needs became urgent. The results of her sacrifices at the beginning of the war were soon reaped in disastrous fashion. Her best troops were not available: her supplies were depleted. Owing to shortage of transport, essential munitions were unobtainable. As a natural result, while the civil machinery managed somehow to 'carry on', the military machinery came perilously near a break-down. The management of the Mesopotamia campaign became an ugly scandal: official enquiry serving only to confirm some of the worst rumours. Indeed it was painfully obvious to all that the 'Frontier War' standard of military preparedness, when exposed to a strain it was never designed to endure, had involved India in a confusion almost as disastrous as any that might have arisen from sheer unreadiness."[1]

A commission of enquiry was appointed in London under the presidency of Lord George Hamilton, a former Secretary of State for India. The Report of the commission criticised the India Office organisation and also the substitution of private telegrams from the Secretary of State to the Viceroy for public telegrams which would have passed through or been communicated to the India Council. The conclusions of the commission were debated in both Houses of Parliament and led to the resignation of the Secretary of State for India, Mr. Austen Chamberlain.[2] Among important constitutional points raised in the debates was the old Curzon-Kitchener controversy[3] about the best form of military administration in India.]

I. Speech of Lord Crewe[4], July 12, 1917.

'Division of responsibility'

.. This brings me to another point—namely, what the Report describes as the division of responsibility for the Mesopotamian campaign. That division of responsibility may have been regretted—I think it was—but it grew out of the unique position of India in the Empire. India is not a self-governing Dominion and is not a Crown Colony. Therefore if India was to have any share in the campaign, a division of responsibility became necessary ...

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[1] *The Cambridge History of India*, Vol. VI, pp. 480-481.

[2] For the views of the Viceroy—Lord Hardinge—see his *Old Diplomacy*.

[3] For details see Ronaldshay's *Life of Lord Curzon* and Sir George Arthur's *Life of Lord Kitchener*.

[4] Former Secretary of State for India.

I notice that on page 97 of the Report, Part XI(A), it is stated that the Government of India was at first lukewarm on a proposition which it did not originate. That is not accurate. I have described what the origin of the campaign really was. It is, of course, true, however, that the policy of the Expedition all through was a matter for the Cabinet alone. No combination of this kind can be easy to conduct, but it is argued in the Report that I made it needlessly difficult because I ignored the Act of Parliament which created the Secretary of State in Council, thereby differing from other Secretaries of State, and that more might have been done in the way of utilising the Council of India. Lord Hardinge dealt in his statement with the criticisms that were made of his dealings with his own Council, which are, of course, principally first concerned. In a technical sense I think that the position in India can best be explained by quoting a statement from a Despatch of Lord Canning at the time that the Councils of India and here were founded. That was in 1861, which is the same year in which the Indian Councils Act was passed. In speaking of the Council of the Governor-General, Lord Canning said—

Charge against Lord Crewe

Charge against Lord Hardinge

Lord Canning on relation between Governor-General and Council

"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."[1]

That seems to me to represent the case fairly as regards the Council of the Governor-General.

Relation between Secretary of State and India Council

But as regards the Council in London, with which it was my pleasure to work, the Report says, on page 101, that—

[1] See Document No. 5.

"the object of the creation of the Council was to associate the Secretary of State with trained Indian administrators."[1]

By "Indian administrators" is meant British administrators with experience of India, because at that time there were no Indian members of the Council. Nobody is more cognisant than I of the advantage which the Secretary of State derives from his consultations with the Council, and I hope that if any of the distinguished gentlemen with whom it was my pleasure to work during the four and a-half years I was at the India Office were asked they would say that I showed no disposition to ignore their advice or to flout their suggestions. But they are selected for that purpose because they were administrators in India conversant either with Indian law, with Indian public works, with Indian revenue—that is to say, the whole management of the land—or sometimes from their knowledge of dealings with the native Indian States, not being thereby more specially fitted than other experienced and capable men to conduct the war.

Views of Lord Crewe

Then the Report goes on to say that secret communications are limited to certain subjects. I ought to explain, what many of your Lordships know, that the term "secret" at the India Office is a term of art, applying to certain objects named in the Statute on which action can be taken by the Secretary of State without reference to the Council. And, as the Report says, the secret communications are limited to certain subjects, but it does not say that the principal of those subjects is war, which is, for fairly obvious reasons, excluded from the usual rather long and cumbrous procedure accompanying Council action. The Commissioners proceed to say that there would have been no difficulty in the Council meeting every day, in order, I presume, to discuss these matters. I confess that this to me is an astonishing suggestion. I had always supposed that one of the objections that had been taken to the former Cabinet was its excessive size. And supposing it had been necessary that every point concerning operations in Asia had, besides going

"Secret communications"

Could operations of war in Asia be discussed in India Council?

through the War Committee, also to be discussed at length between the Secretary of State for India and the Council of India, it is hard to believe that greater efficiency would have been attained, or certainly that more rapid decisions would have been taken than actually were.

Private telegrams between Secretary of State and Viceroy

The Report then says that the practice of telegraphing privately was carried to excess both by myself and by my successor. I have no desire to weary the House by a detailed description of what happens in the India Office, but it is necessary to state that private telegrams which are not strictly personal in character can be, and are, printed and made official later—as, indeed, happened in the case of all these telegrams—in order to ensure their being preserved for reference in the office. The advantage of sending them in that form is at this end that they go through fewer hands than if they were sent as official telegrams, and that is not altogether a disadvantage even here. But in India, where they arrive, it is a greater advantage that they should go direct to the Viceroy and the small number of people who deal with such messages, rather than have to pass through the Secretariat in the Army Department, passing through a great number of hands and undoubtedly risking some leakage of the kind which has not been altogether unknown. I fear that I may be wearying your Lordships with this, but I am bound to treat it at some length because the matter is dealt with at length in the Report.

Story of expedition from India to China in 1901

The sending of private telegrams is in itself no new thing. There was a close analogy in the year 1901 with regard to the Expedition which went from India to China in that year, which was precisely analogous to the Mesopotamian Expedition in that it was manned from India and managed from here in its broad lines. At the opening of that Expedition, when great secrecy was demanded, private telegrams were sent, and some of them even contained direct Cabinet orders for the movement of troops. I mention that because it is the giving of orders in this manner to which the Report so greatly objects. The

Chairman of Mesopotamia Commission adopted 'the practice of telegraphing privately' when he was Secretary of State.

practice was undoubtedly then carried on, on a smaller scale than it has been during this campaign; but the fact is interesting that the Secretary of State at that time was Lord George Hamilton, now chairman of the Mesopotamian Commission, and therefore he saw that the adoption of the principle was necessary, although very likely he did not develop it to the same extent to which it was developed later.

Lord Curzon on 'telegraphing privately' in 1901

Earl Curzon of Kedleston: I am loath to interrupt the noble Marquess. But as I happened to be the Viceroy who was responsible for conducting that campaign perhaps he will permit me to say that the number of private telegrams from the Secretary of State to me, and from myself as Viceroy to him, during the whole period of the better part of the year in which that Expedition was absent from India, was only twelve; that of those twelve telegrams, six were immediately made official; and that the remaining six related to matters of an obviously private character. Therefore from the experience of that Expedition, at any rate, the noble Marquess cannot draw any defence for the much larger use of private telegrams that has since prevailed.

Lord Crewe's reply

The Marquess of Crewe: I endeavoured to explain that the scale on which private telegrams were then sent was smaller, but that the principle of which the Report complains—namely, of the sending of orders for the movement of troops by private telegram—was adopted on that occasion. I am far from making any complaint of it; and if the noble Earl likes to say that the large adoption of the system later on was inadvisable or improper, of course, he is entitled to do so. I was merely on the point of principle. Certainly I had not—and I am certain Mr. Chamberlain had not—the faintest desire or intention of keeping anybody in the dark who ought to be informed or had a right to know what was going on. I have no reason to suppose that any such persons would have known more, or that on the advice of anybody we could have acted differently if another procedure had been adopted. In fact, I think that the importance of the whole business

has been exaggerated in the Report, because as a matter of fact all the telegrams of this class which were important were made official afterwards and are preserved at the India Office.

II. Speech of Lord Lansdowne, July 12, 1917.

. . I can come to no other conclusion than that the explanation of these short-comings is to be found in the fact that the military system in India was radically unsound. India has been suffering, as the Commissioners tell us, from a systematic over-concentration, which I believe has had the effect of starving and atrophying the sense of Departmental responsibility. Your Lordships may think that I am prejudiced in regard to this question. I have never made a secret in or out of this House of the fact that I deeply regretted the changes which were made in the military administration of India in 1905, and still more in 1908 and 1909. I deeply regretted the abandonment of the old Indian military system under which there was a division between the duties of the Commander-in-Chief, entrusted with the command, training and discipline of the troops, and Army administration with all its numerous departments. I had five years' experience of the old system, and although there may have been moments when the machinery creaked, although it may have been necessary to make changes from time to time, I believe that in principle the old plan was absolutely sound. And under Lord Roberts as Commander-in-Chief, and men like Sir George Chesney and Sir Henry Brackenbury as Military Members of the Council, I believe the administration of the Army was carried on properly and successfully.

"The military system in *India was* radically unsound."

Justification of system existing before 1905

We all remember, however, that there came a time, when an overwhelming attack was made upon that system. I was then a member of the Government, and I remember very well what happened. We endeavoured to find a compromise. We appointed a strong Committee to examine the question. Lord Roberts was a member of it, Lord Inchcape was another, Sir Edward Law I think was a third, and

Curzon-Kitchener controversy

that Committee devised a plan which we adopted, and which—my noble friend behind me (Lord Curzon) will correct me if I am wrong—we at first had good hopes would find favour both with him and with the then Commander-in-Chief in India, Lord Kitchener. We know that those hopes were eventually disappointed. But what I want to impress upon the House is that the compromise then arrived at did not have the effect of doing what we were asked to do, which was to get rid of the Military Member altogether. It left us with two military representatives in the Viceroy's Council—the Commander-in-Chief and another Member, to whom we gave the name of Supply Member of the Council. This Supply Member of Council was entrusted with the administrative departments, notably with supply and transport and with the medical business of the Government of India. And my noble friend Lord Midleton,[1] I remember, stipulated expressly in a Despatch, a copy of which I have by me, that the Supply Member should have the right to advise the Viceroy upon questions of general policy as well. That was the compromise of 1905. As far as we were aware, the compromise did not work badly at all. In March, 1907, Lord Minto was glad to report—

Compromise of 1905

Lord Minto on compromise of 1905

"that the various measures which have been undertaken to ensure the smooth working of the new system have been completely successful, and that the business of Army administration in all departments is now conducted with a singleness of purpose and a freedom of delay which is greatly to the advantage of the public service."

Six months later Lord Minto "strongly deprecated the reopening of the question eighteen months after the introduction of the new system," and again a year afterwards he and his Government advised that they had not altered their views.

But the supporters of what I suppose we may call the one-man system had tasted blood, and they re-

[1] Lord George Hamilton, who was then Secretary of State for India.

turned to the charge. My noble friend,[1] with a prophetic instinct, warned us when this compromise was made, or soon after, that the Supply Member would not have enough to do, and that we should be probably pressed to get rid of him upon that ground. That is exactly what happened. Accordingly the Supply Member disappeared, and with his disappearance India was left face to face with the highly centralised one-man system in all its effrontery. I have here a few lines written by a high Indian official with whom it was my good fortune to work, and who had a very intimate acquaintance with Indian military questions, Sir Edwin Collen. Let me read to your Lordships his description of the system which we created in the year 1909. He said—

Abolition of Supply Member

"Highly centralised one-man system"

"We shall then have the remarkable spectacle of a Commander-in-Chief, not only commanding an Army of 225,000 men, dispersed in nine so-called 'divisions' over an immense continent but administering every conceivable department of supply, and, at the same time, supposed to take his share in the civil government of the country."

System created in 1909

I ask your Lordships to note what follows :—

"If he even attempts to do a little of the work he can never leave his office and his council table. The system must inevitably develop into the most prodigious centralisation." That is exactly what happened.

I should like to add one other observation upon this subject. It is, perhaps, conceivable that a man like Lord Kitchener, with his great and impressive personality and wonderful powers of organisation, might have been able to work such a system as I have described. I do not myself think it would have been possible even for him to have done the work that used to be done by Lord Roberts and Sir Henry Brackenbury, and also, perhaps, to look after two or three frontier expeditions, and, on the top of it all, a considerable work beyond the confines of India. I do not think he could have done it. But I am certain that a system of that kind, placed under men of a

One man could not bear the burden imposed on the Commander-in-Chief in 1909

[1] Lord Curzon.

very different calibre such as those who followed Lord Kitchener in India, was predestined to ignominious failure.

I dwell upon this because throughout the lamentable story of these happenings that took place after the failure to reach Baghdad you continually come across illustrations of the way in which this one-man system worked. What is the great complaint? That there was a failure in regard to transport and medical supplies. The phrase used by the Commissioners is that "there was a want of comprehensive grasp of the transport question." But the Supply Member of Council who had been abolished in 1909 was the very official who was charged in so many words with looking after transport and supply. He was the man to whom you would have looked for a comprehensive grasp of these questions. But you had got rid of him. Will anybody tell me that, if Sir Henry Brackenbury or Sir George Chesey or Sir Edwin Collen had still been in their places, the Viceroy would have been allowed to remain in ignorance of the things which were, we know, actually withheld from him, or that the difficulties would have been slurred over in the way in which we know they were slurred over?

Failure of transport and medical supplies due to abolition of Supply Member

Another illustration. The Commander-in-Chief has been taken to task because while these events were passing he remained at Simla. Why did he remain at Simla? Because under this system we had made him a bureaucrat instead of a Commander-in-Chief. He stayed at Simla in order that he might be near his office. Does anybody doubt that if you had Lord Roberts as Commander-in-Chief he would not have remained at Simla? He would have gone down to Bombay, or more probably to Basra. But Sir Beauchamp Duff was the head of a great office, and conceived it to be his duty to stick to his desk. There is a certain grim irony in the statement made by the Commissioners that when Sir Beauchamp Duff came up for examination he produced no less than forty volumes of carefully annotated Blue-books. That does not seem to have quite the Commander-in-Chief ring

Result of making Commander-in-Chief a bureaucrat

about it. I apologise for having dwelt so long upon these matters, but they have always seemed to me to be matters of fundamental importance, and I most sincerely believe that it is to these things that you must look for an explanation of a great deal that has been going wrong in India of late.

I have not left myself time to say more than a few words about one or two other points that have been touched upon. In the first place, about private telegrams. I am in entire agreement with what was said by the Royal Commission in regard to the danger of excessive resort to private telegrams. I do not believe that you can do without them altogether. It is of the utmost importance that the relations between the Viceroy and the Secretary of State should be of the most intimate and confidential character, and private telegrams are necessary. But I think that your Lordships will agree when I say that such telegrams ought to be subsidiary to and explanatory of the official telegrams, and that they ought never to be allowed to take the place of documents that are necessary for the purpose of the official record. To switch the official correspondence off the official rails on to the rails of a private correspondence is entirely unfair to all concerned. It is unfair to the Council, and also unfair to Parliament and to the public. It is difficult to read this Report without coming to the conclusion that the practice of resorting to private telegrams has tended to grow of late years, and it seems to me an abuse which ought to be corrected. I am well aware of the great difficulty of drawing a line between subjects which can be dealt with in private telegrams and subjects which should be dealt with in official telegrams. I remember hearing once of a well-known leader at the Parliamentary Bar who was asked by his opponent where he drew the line, and he replied, "I do not know where I draw the line, but I know I am on the right side of it"; and that is, I think, advice that might be taken to heart in India.

"Danger of excessive resort to private telegrams"

Then with regard to the relations of the Viceroy and his Council. Here, again, I am in entire agree-

Lord Lansdowne on relations between Viceroy and Executive Council

ment with the Royal Commission in holding that it is of the utmost importance that the Viceroy should be in close and constant touch with his Council, and that any attempt to give the Council the go-by is likely to be fraught with the worst possible results. When I listened to the statement made by Lord Hardinge the other evening I thought that the least convincing part of it—for on the whole I regarded it as a very convincing statement—was that in which he defended the practice of doing with the assistance of a single Member of Council, that Member being the Commander-in-Chief, things which under the Government of India Act can be done only by the Governor-General in Council. Lord Hardinge relied upon a clause in the Act authorising that practice if necessary. I always understood that section[1] to be intended to provide for emergencies where the Viceroy found himself unable to call his Council together, and where consequently, to make the proceeding technically correct, he had to be content with the concurrence of a single Member of his Council. But, apart from technicalities altogether, I am sure that the Viceroy cannot be too careful to consult his Council and to call them together frequently and regularly. The Viceroy's Council is like a small Cabinet, and it always includes a certain number of men who have a very intimate knowledge of Indian affairs. The Viceroy himself when he arrives probably knows very little about India, and in all probability when he has completed his five years he will still think that he knows a great deal less than he would like to know. It is of the utmost importance that, having as he has at his command the advice of men who have passed through the Indian Civil Service, who have held office in the districts and also in the Secretariat, he should give them every possible opportunity of making their opinions known, and he will, as a rule, find that their opinion is worth taking

Lord Hardinge's plea in self-defence

Viceroy's Executive Council is like a Cabinet composed of experienced men.

[1] Section 48 of Charter Act of 1833: "..... all other functions (except legislation) of the said Governor-General in Council may be exercised by the said Governor-General and one or more Ordinary Member or Members of Council....."

in regard to any question of public importance, even if it be on the face of it a purely military matter.

III. Speech of Lord Curzon, July 13, 1917.

.....I now pass to the question, more important really than it may seem to those of your Lordships who are not familiar with Indian administration—namely, the relations of the Secretary of State to his Council here and to the Governor-General and his Council in India. I offer no opinion as to whether in the course of these transactions, or even before, the Secretary of State in the India Office has at all given the go-by to, or ignored, his Council in Charles Street. I have no evidence to lead me to think that he has. Under the law he enjoys powers of acting in independence of his Council much greater than those enjoyed by the Viceroy in India, and certainly I shall say nothing which will lead anybody to suppose that these powers have been at all abused in the India Office during the time of any of the ex-Secretaries of State now in Parliament. But when we come to the question of private letters and telegrams, I must speak in rather a different key. It is, of course, necessary that in the conduct of a Government like that of India much important business should be done by private communication. It is done in every office. The Secretary of State for Foreign Affairs is constantly corresponding privately with his Ambassadors; the Colonial Minister corresponds with Colonial Governors; and in India itself the Viceroy is in constant confidential communication with his Governors and Lieutenant-Governors. It is a vital and indispensable instrument of government. I do not know whether your Lordships realise what an amazingly complex and dual form of administration the Government of India is. It has two Chiefs—the Secretary of State here, the man at the desk, the man on the Front Bench in this country; and the Viceroy, the man on the spot in India. It is the latter who, at any rate in India, is invested with paramount power, but the final responsibility rests with the Secretary of State at Home. You can imagine in that situation the prodigious need there is for tact,

Relations between Secretary of State and India Council

Private telegrams between Secretary of State and Viceroy

'Dual form of administration' in India

for discretion, for intercommunication at every point. And I will say this, that without the machinery of private telegrams, letters, and so on, the Government of India could not be successfully conducted for any length of time.

But what is an advantage, and even a necessity, may easily be converted into an abuse. I have no doubt, from the evidence of the Commission and from what I have heard myself, that there has been an increasing tendency in recent years to use private instead of official telegrams as a means of communication between these two chiefs, and to a large, and, as I think, unconstitutional, extent they have succeeded in displacing official correspondence. The noble Marquess, Lord Crewe, said yesterday that there were advantages in this procedure, advantages in the prompt despatch of business and in the secrecy which attends it. Quite true. But those advantages may be purchased at an excessive cost. In the first place, your Council at home here may be left in ignorance of what is going on. Secondly, the Council of the Governor-General in India is deprived of its constitutional right to a voice in the affairs of government. You allow the Secretary of State and the Viceroy to rule India together by a sort of clandestine arrangement between them; you convert them into a kind of concealed duumvirate managing the affairs of that great Dependency without reference to the Council or to Parliament. And when the breakdown comes, as it has come in this case, the failure is very far-reaching and disastrous. I sincerely hope, in fact, I have not the slightest doubt from conversations with Mr. Chamberlain that, had he remained Secretary of State—and I am certain the same action will be taken by his successor, whoever he may be—there will be a reversion to the older methods, and a revision of the, as I think, unconstitutional practice that has been developed in recent years.

Criticism of government through private telegrams

'Unconstitutional practice' of recent years

Before I pass from this aspect of the case, may I add one word of cordial agreement with what Lord Lansdowne said yesterday about the Council of the

Viceroy in India? I cannot exaggerate, not merely the importance, but the value to the Viceroy, frequently a public man not previously connected with India, of the advice and counsel of his Councillors in India. Not only is he constitutionally bound to refer to them, but he is weak without them; and he gains in strength every time that they know all that is passing and give him the benefit of their knowledge and support. I learned with positive amazement from the report of this Commission that the advance to Baghdad was actually decided upon without the knowledge of, or reference to, the Council of the Governor-General in India. I hope that such incidents may never recur; and this Report would almost be justified if for no other reason than that it had exposed, as it has done, that particular dereliction from correct practice.

Importance of Viceroy's Executive Council

'Dereliction from correct practice'

One other small point I should like to deal with before I pass away from this branch of the case. I am afraid it is impossible to accept the contention of the late Viceroy (Lord Hardinge), advanced in your Lordships' House, that it is permissible under the law for the Viceroy in combination with but one other Member of Council to represent the Government of India. The Act to which Lord Hardinge referred is a statute that was framed in the year 1833. There were then only three Members of Council, and it was designed in order to enable the Viceroy, on tour with one of his colleagues, to act in independence of the third. It had no relation whatever to the ordinary conduct of business. When the Government is at Simla, Delhi, Calcutta, or anywhere else, there is no excuse, when the Members of Council are all assembled together, for their functions to be usurped by one or two of their number; and if you look even to the text of the law you will see that it refers only to an ordinary Member of Council, whereas the cases to which Lord Hardinge was applying it were the private consultations that so frequently took place between himself and the Commander-in Chief, who is an extra-ordinary and not an ordinary, Member of Council.

Criticism of Lord Hardinge's view

Act of 1833 not applicable

I come now to a point about which I speak with some difficulty, but on which I ask for the sympathetic attention of your Lordships. The Commission have attributed the failure of the Mesopotamian campaign to a large extent to what they describe as the faulty organisation of military administration in India..... And, believe me, all the lessons might have been, in my opinion must have been, entirely different had you not been working on a radically unsound and vicious system of military administration in India. Do not take my word for it. What have the Commission themselves, presided over by an ex-Secretary of State perfectly familiar with all the details, said? They say that it was a unique form of military administration; that it was an astounding system; that it led to an impossible centralisation of authority at the top, a cumbrous dualism below. I congratulate the Commission for saying with so much force and with such reverberating effect what I vainly endeavoured to impress upon my colleagues in this country twelve years ago. I agree with my noble friend Lord Lansdowne that the old military system in India was a perfectly workable system. He worked it with success for five years. I worked it, not without success, for six; and sooner than agree to its extinction, I resigned my office in India. In its place the noble Viscount who sits opposite, Lord Midleton, set up a system which he fondly imagined would enable the Government of India still to have two military advisers without the drawbacks he saw in the dual system, and which he still thinks with an innocence that I admire, might have saved India from the disasters it has just experienced. I am afraid he knows little of the true nature of the system which he set up—the system of the Military Supply Member which was abolished by Lord Morley, and which was described at the time by an authority of the greatest eminence as a compromise of appalling feebleness, with no element of permanence, and certain to dissatisfy all parties. So it did. They took an officer of subordinate military rank, an ordnance officer; they limited his powers in every possible way;

"Radically unsound and vicious system of military administration in India"

Centralisation at the top—dualism below

Criticism of Lord George Hamilton

they made him the head of a store-keeping department. He used to be called facetiously in India the Director of the Army and Navy Stores, Limited. In no sense was he an adviser of the Government, and he was put there by the noble Viscount with the vain idea that he would be able to be a check on the Commander-in-Chief. It was not surprising that in 1909 this transient and embarrassed phantom disappeared from the scene at the instance of Lord Morley when Secretary of State, and I, at any rate, shed no tear upon his grave.

Supply Member—'transient and embarrassed phantom'

Then it was that we reverted to the system of one-man control which had been set up in 1905, and from that moment I venture to say disaster was certain. May I read a passage from a speech that was made in a debate in this House on June 28, 1909? The speaker said—

"The only thing about which I am absolutely confident is that the present system cannot last. I assure your Lordships that I do not criticise it because it has broken down in practice. I criticise it rather because, as I have endeavoured to show, it is incompatible with the principles of sound military administration; because it deprives the Government of India of the opportunity of hearing any but one high military opinion upon the military matters submitted to it; because although you may muddle along, as our nation is in the habit of doing, in time of peace, no one knows what will happen to your machine in time of war.....I believe that if this system, as I think, of excessive concentration, of dangerous centralisation, is allowed to continue to exist in the headquarters of the Army in India, a time will come when this country will be called upon to pay a serious price for it."

Prophecy of Lord Curzon in 1909

There was another passage in the same debate which I may perhaps read—

"The noble Viscount (Lord Morley) said yesterday that I was flogging a dead horse. I can assure him that nothing would be more pleasing to me than never to say one word more about this question. It has soured and beclouded some of the best years of my life. I

wish I could put it away from me for ever. But I do not believe that the horse is dead. I am perfectly certain that in a few years' time you will find that it is alive again. The fear I have is that if you leave things as they are now, at some date which we cannot anticipate, and which may be a date most inconvenient and most dangerous for us, the horse which is now supposed to be dead may rise and may unseat its rider."

Price of the 'faulty system'

Those prophecies, which were addressed to your Lordship's House by the individual who is now speaking to you, have been sadly and woefully fulfilled. The horse has unseated its rider, and there is a grim tragedy in the fact that the rider whom it has unseated is the very official, Sir Beauchamp Duff, who originally saddled the horse at the time I was in India, and who has now ridden it to his own ruin.

The price of this faulty system has had to be paid not only in India, not only in the lives that you have spent on the sands of Mesopotamia, it has had a more wide-reaching effect—its repercussion is felt here. It deprived you only yesterday afternoon of one of the best Secretaries of State[1] India has had for many years.

APPENDIX

DOCUMENTS ON INDIAN STATES

58. LORD CANNING'S SANAD TO MEWAR[1], 1862.

(March 11, 1862)

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; I hereby, in fulfilment of this desire, convey to you the assurance that, on failure of natural heirs, the adoption by yourself and future Rulers of your State of a successor according to Hindoo law and to the customs of your race will be recognized and confirmed.

Adopted heirs to be recognized by the British Government

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.

59. PROCLAMATION OF THE GOVERNMENT OF INDIA ON THE GAIKWAR CASE[2], 1875.

To all whom it may concern.

His Highness Mulhar Rao, Gaekwar, was suspended from the exercise of power, and the administration of the Baroda State was temporarily assumed by the British Government in order that a public enquiry might be made into the truth of the imputation that His Highness had instigated an attempt to poison Colonel R. Phayre, C.B., the late Representative of the British Government at the Court of Baroda, and that every opportunity should be given

Charge against the Gaikwar

[1] Similar *Sanads* were granted to almost all ruling Chiefs. In the case of Muslim Chiefs it was laid down that "on failure of natural heirs any succession to the Government of your State which may be legitimate according to Mahomedan law will be recognised and confirmed."

[2] See Masani, *Life of Dadabhai Naoroji.*

to His Highness of freeing himself from the said imputation.

The proceedings of the Commission having been brought to a close, Her Majesty's Government have taken into consideration the question whether His Highness Mulhar Rao, Gaekwar, shall be restored[1] to the exercise of sovereign power in the State of Baroda.

Conclusion of Commission of Enquiry

The Commissioners being divided in opinion[2], Her Majesty's Government have not based their decision on the enquiry or report of the Commission, nor have they assumed that the result of the enquiry has been to prove the truth of the imputations against His Highness.

Gaikwar's unfitness to govern

Having regard, however, to all the circumstances relating to the affairs of Baroda from the accession of His Highness Mulhar Rao, Gaekwar, to the present time, his notorious misconduct, his gross misgovernment of the State, and his evident incapacity to carry into effect the necessary reforms; having also considered 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, that His Highness should be restored to power, Her Majesty's Government have decided that His Highness Mulhar Rao, Gaekwar, shall be deposed from the sovereignty of Baroda, and that he and his issue shall be hereafter precluded from all rights, honours, and privileges thereto appertaining.

Gaikwar deposed and his issue disinherited

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[1] When the Government of India decided to hold an enquiry into the allegations against the Gaikwar, he was arrested and 'suspended from the exercise of power'; the Governor-General-in-Council temporarily assumed the administration of the Baroda State.

[2] The Commission was composed of the Chief Justice of Bengal as President, and Sir Richard Meade, Mr. P. S. Melvill, Maharaja Sindhia, the Maharaja of Jaipur and Sir Dinkar Rao as members. The European members decided that the charges were proved, but the Indian members found them not proved.

Accordingly His Excellency the Viceroy and Governor-General in Council hereby declares that His Highness Mulhar Rao, Gaekwar, is deposed from the sovereignty of the Baroda State, and that he and his issue are precluded from all rights, honour, and privileges thereto appertaining.

Mulhar Rao will be permitted to select some place in British India, which may be approved by the Government of India, where he and his family shall reside with a suitable establishment and allowance to be provided from the revenues of the Baroda State.

Adoption of heir permitted

Her Most Gracious Majesty the Queen, in re-establishing a Native Administration in the Baroda State, being desirous to mark her sense of the loyal services of His Highness Khundee Rao, Gaekwar, in 1857, has been pleased to accede to the request of his widow, Her Highness Jumnabaee, that she may be allowed to adopt some member of the Gaekwar house, whom the Government of India may select as the most suitable person upon whom to confer the sovereignty of the Baroda State.

* * * *

No alteration in treaty engagements

In conferring the sovereignty of the Baroda State, no alteration will be made in the Treaty engagements which exist between the British Government and the Gaekwars of Baroda, and the new Gaekwar will enjoy all the privileges and advantages which were conveyed to the Gaekwar of Baroda in the Sunnud of Earl Canning dated the 11th of March, 1862.

60. LORD RIPON'S AGREEMENT WITH MYSORE, 1881.

(March 1, 1881)

3. The succession . . shall devolve upon the lineal descendants of the said Maharaja Chamrajendra Wadiar Bahadur, whether by blood or adoption, according to the rules and usages of his family, ex-

cept in case of disqualification through manifest unfitness to rule:

Provided that no succession shall be valid until it has been recognized by the Governor-General in Council.

British control over succession

In the event of a failure of lineal descendants, by blood and adoption, of the said Maharaja, it shall be within the discretion of the Governor-General in Council to select as a successor any member of any collateral branch of the family whom he thinks fit.

* * * *

Coinage

13. The coins of the Government of India shall be a legal tender in the said territories and all laws and rules for the time being applicable to coins current in British India shall apply to coins current in the said territories. The separate coinage of the Mysore State, which has long been discontinued, shall not be revived.

* * * *

Criminal jurisdiction over Europeans

17. Plenary criminal jurisdiction over European British subjects in the territories shall continue to be vested in the Governor-General in Council, and the Maharaja of Mysore shall exercise only such jurisdiction in respect to European British subjects as may from time to time be delegated to him by the Governor-General in Council.

* * * *

British right of interference in internal affairs

22. The Maharaja of Mysore shall at all times conform to such advice as the Governor-General in Council may offer him with a view to the management of his finances, the settlement and collection of his revenue, the imposition of taxes, the administration of justice, the extension of commerce, the encouragement of trade, agriculture and industry, and any other objects connected with the advancement of His Highness's interests, the happiness of his subjects, and his relations to the British Government.

* * * *

23. In the event of the breach or non-observance by the Maharaja of Mysore of any of the foregoing conditions, the Governor-General in Council may resume possession of the said territories and assume the direct administration thereof, or make such other arrangements as he may think necessary to provide adequately for the good government of the people of Mysore, or for the security of British rights and interests within the province.

British right of resuming administration

* * * *

24. This document shall supersede all other documents by which the position of the British Government with reference to the said territories has been formally recorded.

All previous engagements superseded

61. LORD LANSDOWNE ON INDIAN STATES.

I. Speech at St. Andrew's Dinner, Calcutta, November 30, 1891.

I regard it as a matter of first rate importance that the States in subordinate alliance with Her Majesty should be so governed that we need have no scruple in preserving for them that measure of independence which they at present enjoy. Not only would it be an act of injustice to deprive them of the privileges of self-government to which they are entitled, but it would, I am convinced, be a distinct misfortune to the Empire if these interesting remnants of indigenous rule were to be entirely effaced. They may not all of them be governed entirely in accordance with our ideas of good government, but it is a question whether, in spite of this, they do not, from their point of view, prefer to remain under their own rulers, even if they are denied some of the administrative luxuries which we provide for the people of British India. Be this as it may, the territory directly under the Government of India is already so large, and our tendency to govern it in accordance with uniform principles, and according to stereotyped methods of administration, is so strong,

States should be well-governed, so that their existence may be continued.

that, from our point of view, I should regard with unfeigned regret any events which might force us to assume responsibility for any part of the large areas at present governed by Indian Chiefs and Rulers. It is instructive both for the natives of this country and for Europeans, that the two kinds of government should be in force side by side, and in the full view of public opinion. We are all of us fond of dwelling upon the necessity of decentralising our administration, and, considering all the circumstances of India, I doubt whether there is any form of decentralisation more useful than that which leaves the domestic affairs of a large portion of the country to the management of its own people.

Administrative decentralisation requires continuance of States.

II. Speech at Hyderabad, November 3, 1892.

I yield to none of my predecessors in my desire to treat with respect which is due to them the Indian States in subordinate alliance with Her Majesty the Queen-Empress. I have always recognized the advantages of the arrangement under which a considerable portion of the Indian Empire continues to be governed by its hereditary rulers, and to be subject to forms of administration, differing, to a considerable extent, from our own, but inspired by our proximity, and stimulated by our example. No one would be more averse than I should be to any changes in our relations with the Native States inconsistent with the measure of local autonomy which they now enjoy. It is because I entertain these feelings so strongly that I am anxious to see the government of these States carried out upon sound principles, and in such a manner as to place it beyond the power of any one to say that the Government of India, in arresting, as it has striven to arrest, the process by which the greater part of the territories of India were passing under the direct rule of the Crown, showed itself unmindful of the welfare of the millions of people who still remain outside the limits of British India.

Advantages of leaving the States undisturbed

Administration of the States should be 'carried out upon sound principles'.

62. LORD CURZON ON INDIAN STATES[1], 1899.

(Speech at Gwalior, November 29, 1899).

The Native Chief has become, by our policy, an integral factor in the Imperial organisation of India He is concerned not less than the Viceroy or the Lieutenant-Governor in the administration of the country I claim him as my colleague and partner He cannot remain *'vis a vis'* of the Empire a loyal subject of Her Majesty the Queen Empress, and *'vis a vis* of his own people, a frivolous or irresponsible despot He must justify and not abuse the authority committed to him, he must be the servant as well as the master of his people He must learn that his revenues are not secured to him for his own selfish gratification, but for the good of his subjects, that his internal administration is only exempt from correction in proportion as it is honest, and that his *gadi* is not intended to be a 'divan' of indulgence, but the stern seat of duty His figure should not merely be known on the polo ground, or on the race course, or in the European hotel These may be his relaxations, and I do not say that they are not legitimate relaxations, but his real work, his princely duty, lies among his own people By this standard shall I, at any rate, judge him By this test will he, in the long run, as a political institution, perish or survive

The Native Chief is 'an integral factor in the Imperial organisation of India'

The Native Chief must be a benevolent ruler

63. THE INDIAN NATIONAL CONGRESS ON INDIAN PRINCES, 1903.

(Presidential Address of Mr. Lal Mohan Ghose, Madras, 1903).

The descendants of the sovereign Princes before whom English merchants had presented themselves on bended knees, and with whom the East India

[1] See Ronaldshay, *The Life of Lord Curzon* Vol II, pp 87 92 214 220 *Cf* Lord Curzon's remarks in *British Government in India,* Vol II, pp 131 134

Company after they had acquired sovereign rights in this country concluded treaties as allies—the descendants of those Princes found themselves treated as ordinary subjects and their proud and sensitive natures were subjected to a humiliation which they had never known before under the British Government.[1] I have said that our Indian Princes, instead of being treated as the allies and feudatories of His Britannic Majesty, have been treated like ordinary subjects, but I ought to add in order to fill up the picture, that the Princes are denied the rights and privileges of British subjects. If the poorest and meanest of His Majesty's subjects in British India is charged with the most heinous offence known to the law, he has the right to be tried by a jury of his peers, and if found guilty, he has the further right of appealing to the highest judicial tribunal of the Presidency to which he belongs. But in the case of an Indian Prince, if his enemies succeed in persuading the British Resident that he has committed some grave offence, the Government of India, endorsing the opinion of its Political Agent, directs his trial before a special commission entirely composed of British officials and the verdict of such a special commission is always a foregone conclusion.....On one occasion only, in the case of Mulhar Rao Gaekwar, the India Gvernment tried the experiment of a mixed commission. But in that case the Indian Commissioners, consisting of two Princes and a statesman of repute, returned a verdict of acquittal, but the three English officials associated with them. "knew not how to send back absolved an accused person of such importance." Lord Curzon the other day at Alwar sneered at our endeavours to get better treatment for our Princes as making "bad blood" between them and the Government.. we know how helpless our Princes are, and if we, who are British subjects, endeavour to see that our Princes are at least as well off as ourselves, can that be justly described as making "bad blood"?

Indian Princes treated like ordinary subjects

Difficulty of Princes

Gaikwar case

[1] This refers to Lord Curzon's regime.

64. LORD MINTO ON INDIAN STATES, 1909.

(Speech at Udaipur, November 1, 1909).

It is sometimes asked by Ruling Chiefs, as well as by the public in India and in Europe, what our policy towards Native States is. I can only tell you that the basis of that policy was laid down in Queen Victoria's *Proclamation* of 1858 and repeated in the Coronation message of His Majesty the King-Emperor

Policy laid down in Queen's Proclamation

In pursuance of these pledges our policy is with rare exceptions one of non-interference[1] in the internal affairs of Native States. But in guaranteeing their internal independence and in undertaking their protection against external aggression it naturally follows that the Imperial Government has assumed a certain degree of responsibility for the general soundness of their administration and could not consent to incur the reproach of being an indirect instrument of misrule. There are also certain matters in which it is necessary for the Government of India to safeguard the interests of the community as a whole, as well as those of the paramount power, such as railways, telegraphs and other services of an Imperial character. But the relationship of the Supreme Government to the States is one of suzerainty. Your Highness will, I know, recognize the difficulty that must exist in adhering to a uniform policy owing to the varying conditions of different States. It is this diversity of conditions which renders so dangerous any attempt at complete subservience to uniformity. I have therefore made it a rule to avoid as far as possible the issue of general

Policy of non-interference in internal affairs

Misgovernment can not be allowed.

A uniform policy cannot be applied to varying conditions of different States.

[1] Lord Minto wrote to Lord Morley on December 19, 1906, "Nothing is more annoying to the Chiefs themselves than officially worded directions from the Central Government. My view is that the success of our dealings with the Chiefs must depend largely on the Viceroy himself. Everything connected with them comes before him, and . already *a great change has been effected. I have overruled petty interference over and over again which has almost invariably* emanated from a want of sympathy." (Countess of Minto, *India, Minto and Morley*, p. 71).

Minto overruled petty interference.

instructions and have endeavoured to deal with questions as they arose with reference to existing treaties, the merits of each case, local conditions, antecedent circumstances and the particular stage of development, feudal and constitutional, of undivided principalities. . .

Identity of interests between Imperial Government and States

The foundation-stone of the whole system is the recognition of identity of interests between the Imperial Government and the *Durbars* and the minimum of interference with the latter in their own affairs. I have always been opposed to anything like pressure on *Durbars* with a view to introducing British methods of administration. I have preferred that reforms should emanate from *Durbars* themselves and grow up in harmony with the traditions of the State. It is easy to overestimate the value of administrative efficiency. It is not the only object to aim at, though the encouragement of it must be attractive to keen and able Political Officers and it is not unnatural that the temptation to further it should, for example, appeal strongly to those who are temporarily in charge of the administration of a State during a minority. Whether they are in sole charge or associated with a State Council, their position is a difficult one. It is one of peculiar trust, and though abuses and corruption must, of course, as far as possible be corrected, I cannot but think that Political Officers will do wisely to accept the general system of administration to which the Chief and his people have been accustomed. The methods sanctioned by tradition in States are usually well adapted to the needs and relations of the ruler and his people. The loyalty of the latter to the former is generally a personal loyalty which administrative efficiency, if carried out on lines unsuited to local conditions, would lessen or impair.

Reforms should emanate from Princes.

Political Officers should not disturb the system to which States are accustomed.

I can assure Political Officers I am speaking in no spirit of criticism. No one has a greater admiration of their services than I have .. My aim and object will be, as it has always been, to assist them, but I would impress upon them that they are not

only the mouthpiece of Government and the custodians of Imperial policy, but that I look to them also to interpret the sentiments and aspirations of the *Durbars*. It is upon the tactful fulfilment of their dual functions that the Supreme Government and the Chiefs must mutually rely. It is upon the harmonious co-operation of Indian Princes and Political Officers that so much depends, co-operation which must increase in value as communications develop and new ideas gain ground.

Dual functions of Political Officers

65. MONT-FORD REPORT ON INDIAN STATES.

302. In view of the fact that constitutional changes in British India may react in an important manner on the Native States we have carefully considered their present relations with the Government of India. We became aware at the outset that, although the policy which has been followed for more than a century towards the States has been amply vindicated by the trust and confidence which the Princes as a body repose in the British Government, yet in some quarters uncertainty and uneasiness undoubtedly exist. Some Rulers are perturbed by a feeling that the measure of sovereignty and independence guaranteed to them by the British Government has not been accorded in full, and they are apprehensive lest in process of time their individual rights and privileges may be whittled away. We ascribe this feeling to two causes. In the first place, the expression "Native States" is applied now, and has been applied during the past century, to a collection of about seven hundred rulerships which exhibit widely differing characteristics, which range from States with full autonomy over their internal affairs to States in which Government exercises, through its agents, large powers of internal control, and even down to the owners of a few acres of land. Uniformity of terminology tends to obscure distinctions of status; and practice appropriate in the case

Constitutional changes in British *India may* react on *States*.

Some Princes afraid of losing their 'sovereignty and independence'

Wide import of the term "Native States"

Rulers enjoying 'full powers of internal administration' should be distinguished from others.

of the lesser Chiefs may be inadvertently applied to the greater ones also. We are convinced that it would improve and assist future relations between the Crown and the States if a definite line could be drawn separating the Rulers who enjoy full powers of internal administration from the others.

British interference in States in violation of treaties

303. In the second place, we cannot disregard the fact that the general clause which occurs in many of the treaties to the effect that the Chief shall remain absolute Ruler of his country has not in the past precluded, and does not even now preclude, "interference with the administration of Government through the agency of its representatives at the Native Courts." We need hardly say that such interference has not been employed in wanton disregard of treaty obligations. During the earlier days of our intimate relations with the States British agents found themselves compelled, often against their will, to assume responsibility for the welfare of the people, to restore order from chaos, to prevent inhuman practices, and to guide the hands of a weak or incompetent Ruler as the only alternative to the termination of his rule. So, too, at the present day, the Government of India acknowledges, as trustee, a responsibility (which the Princes themselves desire to maintain) for the proper administration of States during a minority, and also an obligation for the prevention or correction of flagrant misgovernment.

Interference in the interests of the people

Change of circumstances partly responsible for violation of treaties.

304. Moreover, we find that the position hitherto taken up by Government has been that the conditions under which some of the treaties were executed have undergone material changes, and the literal fulfilment of particular obligations which they impose has become impracticable. Practice has been based on the theory that treaties must be read as a whole, and that they must be interpreted in the light of the relations established between the parties not only at the time when a particular treaty was made, but subsequently. The result is that there has grown up around the treaties a body of case-law which anyone

who is anxious to appreciate the precise nature of existing relations must explore in Government archives and in text-books. The Princes, viewing the application of this case-law to their individual relations with Government, are uneasy as to its ultimate effect. They fear that usage and precedent may be exercising a levelling and corroding influence upon the treaty rights of individual States. Case-law regarding interference

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