MAHARAJA'S COLLEGE, ERNAKULAM, COCHIN STATE.

THE RELATIONS BETWEEN THE INDIAN STATES AND THE GOVERNMENT OF INDIA,

AS ILLUSTRATED BY THE HISTORY OF COCHIN AND TRAVANCORE.

BEING

THE JUBILEE MEMORIAL LECTURES DELIVERED ON MARCH, 8 & 9, 1930.

BY

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THE PEARL PRESS,

COCHIN.

1930.

Price As. 12.] [1 Sh.

(Copies can be had of the Principal, Maharaja's College, Ernakulam.)

With the best compliments of

THE JUBILEE MEMORIAL LECTURE COMMITTEE.

The Relations between the Indian States and the Government of India.

I

The study of the relations between the Indian States and the Government of British India has always been of importance to students of Indian polity. It has become of the first importance now that the constitution of British India is about to be recast. The importance of this question was recognized only the other day when the Chairman of the Indian Statutory Commission requested the Prime Minister of England to permit him to include it within the terms of reference of his Commission. The Indian Princes, also, through more than one spokesman have asked for authoritative reviews and statements of the position of the Indian States in view of the past history and in view of the future development of the constitution of the Government of India. So when I was invited by the Ernakulam Maharajah's College Jubilee Committee to deliver the Jubilee lecture, I thought I could not choose a more interesting topic—one, also, which has lain in the field of my own studies—than this of the relations between the Indian States and the Government of India.

There are two ways of approaching the study of such a question. The one is the political or legal way of taking the relations as they actually are to-day and as they can be taken from documents, like treaties in force, sanads, agreements, authoritative statements on the one side or the other, and accepted conventions or usages and to state the principles governing those relations. The other is the historical approach to this question which lies in a survey of the relations from the time they began to be created down to the present. There are potent reasons why I should choose the latter method. The former method has been adopted and well used by a number of recent writers. And I should be only doing again and not very well what has already been done before. The latter method, although it has been used to some extent by some of the principal writers on this question like Tupper and Lee Warner has not been exclusively used by them. I thought, therefore, that it would be some kind of useful contribution to the study of this question if I showed the relations of the Indian States to the Government of India as they grew and developed. Especially in a study of such relations as have to be governed not merely by express written agreement but, as we shall see, by custom, convention, usage, and circumstances a historical study would be particularly instructive. And I have narrowed the scope of my studies still further by deciding that it shall be that of the relations between the South Indian States of Cochin and Travancore

and the Government of India. This, I have done not because I consider Cochin and Travancore to be representative of the whole body of Indian States although they would certainly be representative of a class of them, but for the sufficient reason that the *forum rei sitae* in this case is the capital of one of them. If one is to begin an intensive study of these questions, any one or two States are as good as others. Nor will the scientific value of such a narrow study be impaired provided no attempt is made to apply the conclusions dictated by such a piecemeal study to the whole body of Indian States until and unless they are supported by similar studies of the relations between other Indian States and the Government of India. It is only as a small contribution to the study of a great question that these lectures will possess any value if, indeed, they pretend to have any value at all.

The earliest actual treaty between either of these South Indian States and the East India Company now extant seems to be one concluded on 25th April 1723 by the Rajah of Travancore and the head of the East India Company's factory at Anjengo, Dr. Orme, the father of the historian of British India, and by which the contracting parties agreed to be "in league and united in good friendship." To the year 1723 is also ascribed another Olai written on 15th August by which the Travancore Rajah granted a number of commercial concessions to the Company and promised that "if in future times any of my vassals act in such manner against the Hon'ble Company both jointly should punish them." (1) In 1765 Travancore proposed to the East India Company to give 2,000 candies of pepper in return for help against the Nawab of Arcot. The earliest political relations between the English and Cochin were created in January 1791 (2) when after going through the fiery experience of Dutch and Mysore supremacy, the Rajah of Cochin concluded a treaty with the British. By this treaty which has been described as a Treaty of Vassalage and Allegiance, Cochin was to become tributary to the East India Company and pay a yearly tribute, but it was to be tributary only in respect of the territories wrested from Tippu Sultan and given to Cochin. Cochin was to exercise uncontrolled authority over these territories "under the acknowledged sovereignty of the East India Company." The Company on its side was to give Cochin protection against all enemies and aggressors Provision was also made in the Treaty for the settlement of claims of various chiefs to pieces of territory

(1) Logan, Malabar Treaties etc.

(2) Aitchison's Treaties, Sanads, Engagements etc., Volume X No. XXXVI.

against the Rajah of Cochin, by a Commission appointed by the Company, the findings of these Commissioners being subject to the final decision of the Company's government. The same causes that contributed to the establishment of treaty-relationship with Cochin, i. e., the fear of Tippu Sultan's chauvinism also brought Travancore and the English into such relationship. The informal alliance between the East India Company and Travancore during the wars of Hyder Ali and the hesitation of the Madras Government in going to the aid of Travancore during Tippu's invasion of Malabar and the commercial pepper contract of 1793 were replaced or added to by the formal Treaty of Alliance and Allegiance concluded in 1795. In return for the promise of effective protection against all external aggression guaranteed by the Company by clause 5, (1) the Rajah of Travancore promises to pay an annual tribute towards the expenses of troops to be stationed in the territories or on the frontiers of Travancore, to refrain from all aggression against other States in India, disputes with them being settled by the Company. With regard to the internal affairs of Travancore, by clause 9," the Company engage not to impede in any wise the course of the rule or administration of the Rajah of Travancore's Government; nor at all to possess themselves or enter upon any part of what regards the management of the present Rajah or his successors' country. But these treaty obligations of the Rajah of Travancore did not abolish his old obligations to the Nawab of the Carnatic which are secured by the same clause of the Treaty. The treaties with Cochin and Travancore of 1791 and 1795 may be taken as determining the spirit of the first period of the relations between the British and these two South Indian States.

In this the first period which we may date from about 1750 to 1800 the relations between the States of Cochin and Travancore and the British may be described in the language of the Travancore State Manual as those of "friends and advisers", and not as those between an inferior and a superior authority. But even in this period, especially towards the end, the theory of independence is being attacked. Although in theory these two States may be recognised as being independent in regard to the administration of internal affairs we find the Marquis of Wellesley in private correspondence and instructions to his representatives at the courts of these States inculcating a policy of interference. Thus in a letter (2) to Major Bannerman, Resident in Travancore

(1) Aitchison Volume X. No. XXXII.

(2) Despatches, minutes and correspondence of the Marquis of Wellesley edited by Martin-Volume I, Letter dated Fort St George, 25th April 1799.

dated 29th April 1799 he authorises him "to interfere as far as he may judge it advisable in the recommendation of a proper person to succeed in the office of Dewan "and he asks him" to be guided by no other motive than an equal consideration of the interests of the Company and those of the Rajah of Travancore." When he appoints a Resident to reside at the court of the Raja of Travancore he is among other things "to report on the military officers and equipment of the Rajah, to expel all Europeans not favourable to the English and to take measures against Tippu Sultan". (1) Not only in Travancore but in a much larger and more powerful State, in Hyderabad, the Residents are to do similar work. In one (2) of his Despatches to Col. Kirkpatrick, Resident at Hyderabad, Wellesley distinguishes between Residents and Ambassadors, the latter being accredited only to independent powers and calls upon his Resident "to press upon the Nizam the desirability of reducing his French forces, of increasing the British force "and to urge upon him the duty of supporting the pro-British claimant to the throne" and invests him with full powers to direct the employment of troops"in the Nizam's Dominions. Although in his earlier letters to Tippu Sultan (e.g. 14th June 1798) Wellesley, speaks of a "maxim among States" and regular discussions "according to the established law of nations" and refers to a human and fundamental maxim of the law of nations that treaties are not merely personal contracts but bind the States whosoever may be the person on whom the power of the State may devolve. (3) Yet he urges strongly "a firm resistance against the intrusion of any foreign power which shall endeavour to the prejudice of our alliances and interest to acquire a preponderant influence in the realm of Indian politics" (a sort of Monroe Doctrine for India) and will not allow Tippu's vakils to stay at the court of Poona after he had begun to suspect Tippu of hostility, and in 1805 he successfully forced upon the Nizam the appointment of his nominee as Chief Minister. I have dwelt some time on the general policy of Wellesley towards the Indian States which even in the period of the "ring-fence" theory contemplated alliances no doubt with them but alliances which would find room for the subordination of the States and paramountcy of the British power with the right to interfere in the internal affairs of the States. And I have done this in view of the attempt made by official and non-official advocates speaking to-day on behalf of the Princes to show that the present atti-

(1) Despatches, minutes and correspondence of the Marquis of Wellesley edited by Martin; Volume I.

(2) Ibid-Volume I Despatch to Col. Kirkpatrick, July 1798.

(3) Letter to Col. Palmer, July 1798.

tude of the British Government had degenerated from an original recognition of the independence and equality of the Indian States to the British Government. The case made out by the Directorate of the Chamber of Princes' Special Organisation (1) that the suzerainty of the British in the time of Wellesley was restricted to external relations, and military obligations is disproved by Wellesley's instructions to the Resident in regard to the choice of a Dewan of Travancore to the Resident at Hyderabad in regard to the succession to the throne and by his theory of the Resident's duties at the courts of these States. It is still further contradicted by the policy of Wellesley towards Cochin and Travancore after the famous joint insurrection of these States against the British in 1804. In a letter to Lord William Bentick dated 17th December 1804 on this matter of the insurrection Wellesley makes clear what he thinks was implied in the policy of the Governor-General towards Travancore. He thinks that although the Treaty of 1797, which amended that of 1795 did not contain "any express stipulation for the aid of the British power in quelling internal commotions within the territories of that prince, the spirit of the treaty certainly imposes upon us that obligation" "especially under this consideration that the avowed object of the insurrection is the subversion of the British influence in the councils of the Raja." He urges the Governor of Madras to despatch troops immediately for the quelling of the commotion. He considers this occurrence to afford a favourable opportunity (2) "for the modification of our subsidiary engagements with the Rajah of Travancore so that the British force at present subsidized by the Raja be permanently stationed within his dominions and that the British Government possess authority to regulate the disposition of that force within the territories of the Rajah in such a manner as may appear best calculated to secure the objects of its appointment." And he lays it down once more that the preservation and improvement of our influence in that country has been uniformly considered by me to be the object of the greatest importance to the interests and security of the British Government in India "and the British force should be needed not only for the restoration of the authority of the Rajah of Travancore but for the preservation of the British interests in that quarter." And these views of the Marquis of Wellesley were embodied in the new Treaty that was concluded with Travancore in 1805. This Treaty which according to the preamble "shall be binding on the parties as long as the sun and moon shall endure" is in most of its clauses a confirmation of the Treaties of 1795 and

(1) The British Crown and the Indian States, (P. S. King & Son.)
(2) Wellesley's Despatches, etc., Volume II No XXV.

1799. But certain articles contain new principles. (1) By Article 2 the Rajah of Travancore is dispensed from the obligation of going to the help of the Company with troops in time of need. Article 5, after preambling that it is indispensably necessary that effectual and lasting security should be provided against any failure in the funds destined to defray either the expenses of the permanent military force in time of peace or the extraordinary expenses described in the preceding article of the present treaty, says "it is hereby stipulated and agreed between the contracting parties that whenever the Governor-General in Council of Fort William in Bengal shall have reason to apprehend such failure in the funds so destined, the said Governor-General in Council shall be at liberty and shall have full power and right either to introduce such regulations and ordinances as he shall deem expedient for the internal management and collection of the revenues or for the better ordering of any other branch and department of the Government of Travancore or to assume and bring under the direct management of the said Company Bahadur such part or parts of the territorial possessions of His Highness the Maharajah Rama Rajah Bahadur as shall appear to him the said Governor-General in Council, necessary to render the said funds efficient and available in times of peace or war." Although this right to enter into the affairs of Travancore is granted only with a view to, and to the extent of, securing the subsidies payable by Travancore to the Company, yet any one who knows how the thin end of the wedge in politics and international affairs has a habit of going deeper and farther than was originally intended, will recognize, that all the full-fledged rights of interference in, and oversight over the affairs of Indian States now exercised by the Government of India lay implicit in the declarations of the Marquis of Wellesley and in the Treaties which he concluded with the Indian States. Article 6 of the Travancore Treaty requires the Rajah of Travancore to call upon all his officers to help in giving effect to any regulations or ordinances that may be issued by the officers of the Company in pursuance of the power given by Article 5. By Article 9 the ruler of Travancore promises to pay at all times the utmost attention to such advice as the English Government shall occasionally judge it necessary to offer to him with a view to the economy of his provinces, the better collection of his revenues, the administration of justice, the extension of commerce, the encouragement of trade, agriculture and industry or any other objects connected with the advancement of His Highness's interests, the happiness of the people, and the mutual welfare of both States." A similar right of entrance into the affairs of internal

(1) Aitchison, Treaties, Sanads etc, Volume X. No. XXVIII.

administration was asserted by the one party and accepted by the other in the Treaty (1) of 1809 with Cochin. This also which was to be "binding upon the contracting parties as long as the sun and moon endure" in Article 4 states that "the said Governor-in Council, Fort St. George, shall be at liberty and shall have full powers and right either to introduce such regulations and ordinances as he shall deem expedient for the internal management and collection of the revenues or for the better ordering of any other branch or department of the Rajah of Cochin or to assume or bring under the direct management of the servants of the said Company Bahadur such part or parts of the territorial possessions of the Rajah of Cochin as shall appear to him the said Governor-in-Council necessary to render the funds efficient either in times of peace or war".

A striking illustration and proof of this policy was the career of Col. Macaulay as Resident of Cochin 1800-1808 and of the more beneficent administration of Col. Munro as not only Resident but Dewan of Cochin and Travancore, 1812.

The policy of Wellesley was continued by his immediate successors. Even the non-interventionist Sir George Barlow was provoked into interfering with the affairs of Hyderabad on the occasion of the intrigue to get rid of the Minister Mir Alam. Although as may be seen from a minute (2) dated 20th November 1809 Lord Minto was averse to the assumption of direct administration of Travancore he was not averse to the appointment of Col. Munro the Resident as Dewan. It was not only Col. Munro that was convinced that there was no subject of the State good enough in the circumstances for the Dewanship but the ruler of the time the Rani Gowri Lakshmi Bai was of the opinion that there was no person in Travancore that she wished to elevate to the office of Dewan, and that her own wishes were that the Resident should superintend the affairs of the country "as she had a degree of confidence in his justice, judgment, and integrity which she could not place in the conduct of any other person." (3) However beneficial the administration of Col. Munro was to these States there can be no doubt that his appointment as Dewan was an extreme use of the powers of intervention given by the Treaties of 1805 and 1809. This right of intervention continued

(1) Aitchison's Treaties, Sanads, Agreements etc., Vol. X No. XXXIX.

(2) Quoted in Travancore State Manual.

(3) Travancore State Manual-Ch. VI—History.

to be exercised off and on ever afterwards. In 1835 on the representation of a deputation "consisting of several respectable Brahmins, Nairs and Native Christians" who waited upon the Governor of Madras at Ootacamund with a memorial containing charges of corruption and oppression against Dewan Sankara Menon of Cochin (1) the Madras Government ordered the Resident to institute inquiries into his conduct. In 1846 the Court of Directors, when a reference was made to them on the subject of the retention of the famous Sankara Warriar as Dewan against the wishes of the Rajah, said that their opinion was "that under the ninth article of the Treaty you are empowered to maintain in office a minister whom the Rajah wishes to remove, if you have good reason to believe that the Rajah's displeasure is occasioned as you hold it to be in this case, by the honest endeavours of the Dewan to perform his duty in conformity to the views of the British Government". (2) In a review in 1846 of the administration of Cochin the Governor-in-Council attributes the prosperity of Cochin" to the able management of the Dewan under the judicious guidance of the Resident". The career and activities of General Cullen who in a letter to the Dewan of Cochin describes himself as the real ruler of Cochin were a proof and sign of the preponderant influence exercised by the British Government in the internal affairs of Cochin. In Travancore also in modern times the right to intervene in internal administration was frequently used and exercised by the British Government. A striking illustration of this policy was the letter of warning addressed by the Governor of Madras Lord Harris under instructions from Lord Dalhousie the Governor-General in which the Rajah is reminded of the terms of Article 9 of the Treaty of 1805 and is called upon to institute an enquiry into complaints about his administration and forthwith institute reforms.

This letter of the Madras Government to the Rajah of Travancore is interesting and instructive in view of the contention of the Directorate of the Chamber of Princes that the Marquis of Dalhousie (with the Marquis of Hastings) expressly repudiated any claim to paramountcy which justified interference in internal affairs. When we remember that it was during Hastings' Governor-Generalship, 1813-23. that Col. Munro (1811-1814) was Resident and Dewan of Cochin and Travancore and during Lord Dalhousie's regime (1848 1856) that General Cullen was Resident at Travancore this theory that these

(1) Cochin State Manual Ch. II Political History.

(2) Ibid.

two Governors-General repudiated the right of interference in the affairs of Indian States always and in all cases falls to the ground. All that Hastings and Dalhousie say is that they refuse to assert a right to interfere at all times and for every case. This very Hastings who in 1821 as Governor-General-in-Council had stated that the assumption of our possessing an universal supremacy in India "is a mistake and refused interference in the affairs of the Nizam" states in his Private Journal (1) "Our object ought to be to render the British Government *paramount in effect* if not declaredly so. We should hold the other States as vassals in substance though not in name; not precisely as they stood in the Mogul Government, but possessed of perfect internal sovereignty and only bound to repay the guarantee and protection of their possession by the British Government with the pledge of the two great *feudal duties.*" It is true that feudal duties in Hastings' opinion were to consist in their supporting the British Government with all their forces and in their submitting their mutual differences to the head of the confederacy (our Government) without attacking each other's territories. Hastings himself acknowledged that the prevalent practice and usage were not in accordance with his theory of non-interference "In our treaties with them" he says "we recognize them as independent sovereigns. Then we send a Resident to their courts. Instead of acting in the character of ambassador he assumes the functions of a dictator; interferes in all their private concern, countenances refractory subjects against them" and makes "the most ostentatious exhibition of their exercise of authority". (2) But it may be questioned whether Hastings who was against the confiscation of the territories of Native States as in the case of Kurnool (3) would have stayed his hand from interference in the case of gross misrule. And how did this protagonist of non-interference with the States behave in action? As soon as he arrived in India he prepared a remonstrance to the Court of Gwalior on the score of the "Pindari being permitted to arrange within the Maharajah's dominion the preparation for assailing the Honourable Company's provinces." (4) The Peshwa Baji Rao was forced to outlaw his favourite Trimbakji for the murder of the Gaekwar's envoy Gangadhara Sastri. Though the alliance with the Peshwa should continue in force, he says "there must be some defalcation from his powers." In 1819-1834 the administration of Cutch after the deposition

(1) Private Journal of the Marquis of Hastings. ed. By his daughter. Vol. I. D/ 6-2-1814.

(2) Private Diary of Marquis of Hastings, February 1814.

(3) Ibid

(4) Summary of the Administration of Indian Govt. by Marquis of Hastings.

of the Rao was conducted by a Regency under the control of the Resident; Lord Hastings' policy also forbade Native States to employ foreigners without the permission of the Government of India. (1)

As for Lord Dalhousie's policy of non-interference it must be remembered that it was determined not so much by principle as by the conditions of his time. In his famous minute of 27th May 1851 in which he reviewed the policy of his government towards the Nizam of Hyderabad he explained various instances of interference which had occurred in the past as due either to the Nizam's own conduct or to exceptional conditions. Such conditions did not exist in his time, for, "in these days there exists no Native States whose power or whose influence renders it necessary for the security of our external relations or for the maintenance of our alliance with the Nizam that one should seek for the establishment of any direct authority in the government of his kingdom." (2) So that if those conditions should once more re-appear, the implication is that Dalhousie would interfere as his successors had done in the past. Moreover, Dalhousie grants in the same minute that the acknowledged supremacy of the British power in India "entitles it to interfere in the administration of Native Princes if their administration tends unquestionably to the injury of the subjects of the allies of the British Government." What he will not recognize is "the right of terminating the existence of native independent sovereignties whenever their administration will not accord with the views of the Government of India nor the right of obtruding on Native Princes or their people a system of subversive interference which is vexatious alike to people and prince." It is only certain kinds and degrees of interference that seem to have been forbidden. How difficult was a strict and unconditional adherence to the policy of non-interference was proved in the time of Dalhousie's own administration when one of the claimants to the throne of Bhawalpur was captured as a State prisoner in Lucknow "to guard against complications" as the biographer of Dalhousie puts it "by Dalhousie's objection to the recognition of Fakruddin as heir-apparent to the kingship of Delhi urging that upon his father's death he shall be styled prince but should be called upon to vacate the palace," by the deprivation of the title, privileges and immunities of the Nawab of Carnatic of the then Nawab. What is the annexation of Oudh whose kings as the Court of Directors said, whatever may have been their offences towards their own subjects had not been unfaithful to the

(1) Private Diary of Marquis of Hastings, May 26th 1817.

(2) Lord Dalhousie by Lee Warner Ch. The Native States.

British Government but interference with the internal affairs of a State justified no doubt by gross mismanagement but none the less interference. And was not Dalhousie's famous doctrine of lapse an extreme assertion of the right of interference with internal administration forbidding as it did the native practice of Adoption which has since been recognised? Of course Dalhousie drew a distinction between dependent and independent States by applying his policy of non-interference only to the latter. But the policy of interference allowed in the case of a large number of minor States who iffered from the small number of major States in degree rather than in kind, tends almost irretrievably to be applied to both kinds of States. And the argument that only the right to interference embodied expressly in treaties can be exercised is fallacious. For even if treaties do not allow interference with internal administration, interference is in circumstances found to be unavoidable. For, if subsidies are to be paid to the sovereign power, if the States are to respect each other's boundaries, and their internal administration does not make these conditions capable of fulfilment, the Paramount Power is in fact bound to interfere as has happened in the case of the major States ever since and as has happened in the regime of Hastings and Dalhousie themselves. The policy of judicious intervention does not date from Earl Mayo's Viceroyalty but is as old as the early years of British rule in India.

This history of the relations between Cochin and Travancore and the Government of India after Dalhousie's time follows the tenor of the old way. The right of Adoption sanads granted to all Rulers of Indian States by Lord Canning on behalf of His Majesty's Government on the morrow of the suppression of the mutiny were granted also to the rulers of these States. The right of interference in the affairs of these States was exercised in a striking manner in the controversy now amusing, but then serious enough, of Hindu and Christian Shanar women claiming the right to wear the same costume as Hindu women of the higher castes in Travancore, a controversy in which the powerful personality of Sir Charles Trevelyan indulged in rather forcible language and which ended in the views of the Madras Government being accepted by the Travancore Durbar under the leadership of Sir T. Madhava Rao who was then Dewan. A more serious affair was the question of the jurisdiction, in criminal cases, of Travancore Courts of Law, over European British subjects which was raised in 1866 over the case of one John Liddel, commercial Agent at Alleppey, who was charged and convicted of embezzlement in a Travancore Court of Justice. This

case is memorable not only in itself but also for the able advocacy of rights of sovereignty of Travancore by Sir. T. Madhava Rao and Mr. John D. Mayne and the minute of Sir Henry Maine (1) whose opinion was that the "Travancore State so long as in any sense it is not part of British India has jurisdiction theoretically to try European British subjects for offences committed within its boundaries and that the notification of January 10, 1867 was issued under the authority of an Act of Parliament (28 Vic. C. 17. sec. 3.) but that the statute and the notification (the issue of which was a quasi-legislative act) no more take away the inherent jurisdiction of Travancore than the common and statute law of England which permits the trial by Englishmen of Englishmen committing crimes abroad take away the inherent rights of France and Prussia to try Englishmen by their own courts for offences committed within their jurisdiction". The Madras Government withdrew their objection to Liddel's trial, but the Governor-General-in-Council decided in 1874 that having regard to the position of Her Majesty as Paramount Power in India and to the Treaty engagements entered into with Travancore he does not recognise the position that the exercise of jurisdiction over European British subjects is an inherent right possessed by the Government of Travancore. The argument used by the Governor-General in Council was "that when the jurisdiction of Travancore was recognized in 1837 there were difficulties in the way of trying in British Courts, European British subjects for offences committed in Native States, and that these difficulties had been removed by different Acts of the Imperial and Indian Legislatures". In spite of the spirited protest of Sir Seshiah Sastri, the Government of India stuck to their position and conceded only that the First Class Magistrates who should try European British subjects and who should try all cases in which European British subjects were defendants should be appointed by the Travancore Durbar and not by the Government of India. This position was recognised in a proclamation issued by the Maharajah of Travancore in 1875 and has been recognised in Cochin also.

Extra territorial jurisdiction in the territory of the States of Cochin and Travancore has been granted by the governments of these States to the Government of British India by the various Railway agreements that have been entered into by these governments. The Tinnevelly-Quilon Railway Agreement (2) may serve as an example. By it "Rama Varma Maharajah of

(1) Minute dated April 19, 1869, in Duff's Life of Sir Henry Summer Maine.

(2) Aitchinson, Treaties Vol X. No. XXXIII.

Travancore cedes to the British Government full and exclusive power and jurisdiction of every kind over the lands in the said State which are or may hereafter be occupied by the Tinnevelly-Quilon Railway including all lands occupied for stations, for out-buildings and for other railway purposes and over all persons and things whatsoever within the said lands".

This historical survey of the relations between Cochin and Travancore and the British Government shows how they began with independence of the States, then were marked by stages of subsidiary alliance and finally ended in a species of subordination.

II

After this historical survey of the relations between the Indian States of Cochin and Travancore and the Government of British India it remains for us to see how far the facts of those relations enable us to answer some of the interesting questions that have been raised of late in regard to them. Many of these questions are not new—they are as old as the relations themselves. But they have become important and insistent in recent times. It is not merely the wistful look back after lost possessions and lost power that has always operated in the minds of the rulers of these States. But the contemplated changes in the structure of the Government of India have forced the rulers "to make a return upon themselves" and to examine their position *vis-a-vis* the future Government of India. Let us see how the historical facts and data that we have dealt with enable us to furnish an answer to these questions. First among the questions that have been raised on behalf of the rulers of these States is that the relations between the Indian States and the Government of India belong to the sphere of International Law rather than of Municipal Law and that the relations must be regulated according to the principles of International Law. This plea was put forward recently by the Nizam of Hyderabad in regard to his request for the rendition of Berar. The chief argument used to maintain this view is that these relations have been invariably founded and regulated by Treaties between the States and the Government of India and that these relations are to be strictly interpreted according to the terms of these treaties or other contractual agreements. A corollary of this view is that the Indian States are sovereign and independent except only to the extent to which they themselves have divested themselves of that sovereignty and that independence. This latter view is the staple of the opinion of eminent counsel led by Sir Leslie Scott who were briefed for an opinion to be placed before the Indian States Enquiry Committee on behalf of certain Indian Princes, although they indeed repudiate the theory that the relations between the States and the British Government are to be governed by the principles of International Law. But as all these questions hang together and are deduced from each other we shall consider them one after the other. The question whether the relations belong to the sphere of International Law or not is not an academic question as it was raised only the other day by the Nizam of Hyderabad but it helps us to answer the other questions that have been raised in more recent controversy.

It cannot be denied that the original relations between most of the States and the East India Company, the predecessor of the Government of India, were those of sovereign and independent powers and belonged to the sphere of International Law. The first treaties of Cochin and Travancore for instance with the Company bear this out. The Marquis of Wellesley acknowledged "in our relations with the Mysore State itself, the Nizam and the Mahrattas, we copied to some extent the procedure of International Law". Judicial decisions have also acknowledged that the first treaties were recognised to be agreements between sovereign States. That the East India Company was acting as a fully sovereign power in its relations with the country powers by which it was surrounded was asserted in very unequivocal terms by Lord Stowell in the case of the *Indian Chief* (3 C. Rob. 29) "Though the sovereignty of the Moguls" he said, and I would recommend his dicta to those who would press the theory of Mogul sovereignty into service in this controversy, "is occasionally brought forward for purposes of policy it hardly exists otherwise than as a phantom. It is not applied in any way for the actual regulation of our establishments. This country exercises the strongest marks of actual sovereignty and if the high or, as I might say, the empyrean sovereignty of the Mogul is sometimes brought down from the clouds as it were for purposes of policy it by no means interferes with that actual authority which this country and the East India Company a creature of this country exercises there with full effect." So also Commissioner Eyre in *Nabob of Carnatic versus East India Company* (2 Ves. June 56) says of the treaty in question 'It is a case of mutual treaty between persons acting in that instance as States independent of each other; and the circumstance that the East India Company were subjects with relation to this country has nothing to do with it. That Treaty was entered into with them not as subjects but as a neighbouring independent State and is the same as if it was a treaty between two sovereigns and consequently is not a subject of private municipal jurisdiction." But although these Treaties were when they were first concluded, agreements between sovereign and independent powers, one of them did not remain as sovereign and independent during the operation of the treaty as when he first entered into it. By the treaty itself he suffered a diminution of his sovereignty and independence. By the treaty itself he divested himself of the right to have foreign policy and relations of his own, of the right to enter into relations with other Indian States without the consent of the Company's Government, of the right to declare war or make peace, to maintain whatever military establishments he pleased, and took upon

himself the obligation of paying subsidies, of maintaining subsidiary forces, and coming to the aid of the Company in times of stated need". The first Treaties, although they may not be considered as recognizing the paramountcy, did acknowledge the hegemony of the Company. And Treaties, it is well-known, have to be interpreted by the facts and circumstances that envelop them at any given moment. Custom is a decisive factor in international relationships governed as they are by imperfect, inchoate Law. Custom according to a writer on International Law, rarely mistakes actual circumstances as is the case with treaties which are based on theories or presumed facts or are made to satisfy temporary emergencies. Treaties are liable to be modified by tacit assent, or by agreed usage. And the intentions of the contracting parties are a determining factor in the interpretation of treaties. The way to ascertain our claims, as they arise from promises or contracts, says an authority (1) on International Law, is to collect the meaning and intention of the promisor or contractor from some outward sign or marks, the collecting of a man's intention from such signs or marks being called interpretation". Paley lays down another rule of interpretation when he says "where the terms of promise admit of more senses than one, the promise is to be performed in that sense in which the promisor apprehended at the time that the promisee received it. It cannot be the sense in which the promisee actually received the promise; for then you might be drawn into engagements which you never designed to undertake."

From the historical facts and circumstances attendant on the conclusion of most of the treaties in British Indian history, like the Cochin and Travancore treaties, the hegemony of the British Government was in the minds of both the contracting parties. It is not all treaties that are concluded between States on an equal footing, for as Despagnet (2) points out, it is only States that possess external sovereignty that conclude treaties on an equal footing. Mr. Justice Bargrave Deane who delivered the judgment of the Privy Council in *Statham v Statham and the Gaekwar of Boroda* quoted Grotius' dictum that treaties could be made between unequal States. And international contracts, as they were not created, do not operate, *in vacuo*. Treaties are what you can get out of them. Treaties are therefore modifiable by the consideration of the welfare of the parties, the progress of civilisation in general, the trend of public opinion. These principles in regard to the interpretation of the treaties between Indian States and the British Government have been deposited in the stream of the development of

(1) Rutherforth quoted in Hallect
(2) Droit International publique.

International Law and not dictated by the practice of the Indian Political Department. Hall (1) for instance acknowledges that although the original intention of the treaties was different, the conditions of English sovereignty in India have greatly changed since these were concluded and the modifications of this effect which the changed conditions have rendered necessary are thoroughly well understood and acknowledged. Nor are these Indian Treaties to be treated as scraps of paper. The essentials of internal sovereignty guaranteed to the States by the Treaties are to be secured to them and there is nothing to prevent Indian States from claiming their full rights under them and protesting against any infringement of them. It is only when the governments of these States are not able to govern, and thus imperil not only the peace of their own territories but that of their neighbours that the Government of British India is called upon to intervene. And in actual practice it may be stated without contradiction that on the whole and in the long run the British Government has intervened and intervenes in the internal administration of only those States that have not been able to secure the elementary blessings of just and peaceful rule. The right of ultimate and periodical intervention by the British Government in the internal administration of the so-called Treaty States has been recognised and even invited by certain States. In the case of Cochin and Travancore this intervention is provided for in the Treaties of 1805 and 1809. But even in States which did not by express treaty provide for such intervention, it has been practised from the beginning. In Hyderabad in 1805 the Governor-General-in-Council successfully pressed upon the Nizam the appointment of a certain individual as Chief Minister. In 1815, the Indian Government had to intervene because the Nizam offered a violent resistance to his orders. In 1820 British officers were appointed to improve the district administration. And what happened to Hyderabad has happened to each of the larger Treaty States, Baroda, Gwalior, Indore. The Indian Princes themselves have on many occasions recognised the right of the British Government to act as the supreme power. They have, for instance, by their own action, even when there were no treaty obligations recognised the right of the British Government to sit in judgment over the actions of one of their own order as when in the famous instance of the trial of Malhar Rao Gaekwar in 1877 the rulers of Gwalior and Jaipur agreed to form part of the tribunal that tried a fellow prince. The truth of the matter is, as is the truth of most matters political, that facts govern life and high *apriori* theories have to bow to facts.

(1) International Law.

Although the relations between the States and the British originated in Treaties, they do not belong to the sphere of International Law. Although most of the States enjoy many of the rights of sovereignty they are not completely independent States and only fully independent States are the subjects of International Law. Sovereignty, as Maine (1) points out, is separable from independence, and sovereignty is as the same lawyer points out divisible. It is divisible into internal and external sovereignty. While the Indian States possess the rights and powers of internal sovereignty, they possess none of the following rights and powers of external sovereignty enumerated by Despagnet in his treatise on International Law: the right to be represented in foreign States by their own representative, the right to make Treaties on a *footing of equality*, the right to make war for offence or for defence, the right to demand respect for its territory, its interests, its nationals, and so forth. Not only the British Government as in their decision in the Manipur case in 1891 or in Lord Reading's letter to the Nizam of Hyderabad in March 1926 but international lawyers have asserted the view that 'the principles of International Law have no bearing upon the relations between the Government of India and the Native States'. "The Native Princes" says Prof. Westlake (2) "have no international existence". "The subjects of the Native Indian Princes" says the same writer "are British subjects" in the eyes of other States and of International Law". Protected States such as those included in the Indian Empire of Great Britain, says Hall (3) are not subjects of International Law. Oppenheim, a later authority goes farther and classifies the Indian States among vassal States which have no international relations between themselves or with foreign States". According to the Foreign Jurisdiction Act of 1876 the subjects of native princes are considered to be British subjects for international purposes. It will also be generally accepted that any sufficiently adverse action by an Indian State against the British Government would be treated as an act of rebellion not as an act of war although the recent German authority Strupp (4) is not of this view. The Manipur rising for instance was treated as rebellion and the actors were treated and punished as rebels. The Gaekwar of Baroda's alleged attempt in 1875 to poison the British Resident was described in a proclamation of January 13th, 1875 "as a high crime

(1) See his Minute of 22nd March 1864 quoted in *Sir Henry Maine* by Duff.

(2) Chapters in International Law.

(3) International Law. Part I. Chapter P. 27. footnote.

(4) Droit International publique—French trans.

against Her Majesty the Queen and a breach of the condition of loyalty to the Crown".

The refusal of British Courts of Law to assert jurisdiction over the rulers of Indian States is no argument in favour of their International Status. The decision of the Privy Council in *Secretary of State versus Kamachee Bai Sahiba* (1859, 13 Moore P. C.) "that even if a wrong had been done it is a wrong for which no municipal court could offer *a remedy*" *and of Sir John Romilly M. R in Raja of Coorg versus East India Company* (1860, 29 Beav.) when he said "that the taking of these notes by the East India Company's Government were acts done in the exercise of their sovereign power and that these acts are not subject to the control of their courts" dealt with the legal import of Acts of States and were treating Indian States as sovereign and not fully Independent States. There is one important historical circumstance that prevented the relations between the States and the British Government being governed by International Law, although at first they were and it was pointed out by Sir Henry Maine when he said "One of the many difficulties attending the application of International Law in India arises from the circumstance that the whole system of the law of nations was framed by its authors subject to the contingency of occasional war." The elimination of war by the British in India stopped the application of International Law in India. The fact that in International Law cases, like Prize Court cases ruling princes or their subjects are treated as British subjects is conclusive proof that Courts of Law however willing to recognise the sovereignty of Indian States refuse to recognise them as fully independent. International Law therefore does not apply to the relations between these States and the British Government. And finally it may be noted that it is well for them that it does not apply. As Professor Westlake pointed out, the Treaties with Indian princes are safer under the system of Constitutional Law than under a system of International Law, being no longer subject to the chances of war. Treaties can be denounced by one of the parties peacefully as in the case of Oudh or by means of war as in the case of Coorg; and modification by the practice of the political department may be construed as a mode of denunciation and making new treaties. For what is there in the principles of International Law to prevent the British Government from denouncing this or that other inconvenient treaty and offering to conclude another in the place of the denounced treaty, to the greater disadvantage of the Indian States in question in their present physical and political position? And the advantages to be derived by one party or the

other to a treaty depend on the force physical or moral it is able to command as the Treaty of Versailles is the most recent to show. The fact of the military and political supremacy of the British Government will be the dominant factor in determining the clauses of any new treaties that may be concluded with an Indian State after denunciation of an old one. Nor will a reference to the moral force of the League of Nations to which the interpretation of Treaties may be referred as the Nizam of Hyderabad attempted to refer it in the Berar controversy be of any use. Even the League of Nations must take account of the moral and political and military supremacy of the British Government in India. The public opinion of the world influenced as it can be by the superior resources of the British Government is likely to be on the side of it rather than on the side of the Indian States. There would seem to be more safety for the Indian States in the principles and practices of Constitutional Law, than in those of International Law. For according to English Constitutional Law the Courts of Law would be the forum for the decision of disputes between the Indian States and the British Government, and they would be decided according to the evidence in each case (consisting of relevant treaties, agreements, usages, facts and circumstances). And any changes in these relations would have to be secured by legislation which is well known to be more difficult to secure than changes in international treaties which are made by executive power. The English Rule of Law may turn out to be a more secure guardian of the liberty of Indian States than the theory of independence or the uncertain prop of International Law.

Would then the advocates of the rights of Indian Princes accept the defences of Constitutional Law? We cannot be yet sure. Forced to abandon the theory of independence and of International status and not willing to accept the rule of Constitutional Law, for that would reduce their rulers to the position of British subjects and the States to the position of British Indian Provinces, the learned Counsel of the princes led by Sir Leslie Scott asserts the view that the relationship between the Crown and the various Indian States is one of mutual rights and obligations and should be governed by what they call legal criteria. They want well recognized legal principles to be applied in ascertaining the rights and obligations of the States and the British Government. But legal criteria and legal principles to have any value must be applied and enforced by somebody. By whom, the advisers of the Princes do not expressly say. Can it be by the ordinary courts of British India for muni-

cipal courts would have jurisdiction over private contractual agreements which they say the Treaties are. But then they would be reducing their clients to the position of private individuals. It may be by arbitration tribunals for, although they do not expressly say so, they refer to arbitration between Indian States and the British and the analogy of the Permanent Court of International Justice. But if arbitration should fail, what is to happen? Will they allow the British Government to act as the ultimate judge as in the boundary questions of Cochin and Travancore in the 19th century? Or should the arbitration tribunals have the final say? This takes us to the whole argument of the application of International Law to the relations between the States and the British Government, for it is only the subjects of International Law that can resort to permanent and final international tribunals. A right which is not granted to the self-governing dominions of the British Empire is certainly not going to be granted to any of the Indian States. It would mean the abandoning of the theory of paramountcy, of ultimate responsibility for the government of the people and territory of the States which the British Government have assumed in the place of the responsibility of the rulers to their own people which was enforced by popular risings or palace revolutions. Surely, the Indian Princes are asking too much when they will not be responsible to their own people and will not accept the intervention of the British Government. It would mean such a repudiation of the past history and the modern practice and of the whole complex of facts and circumstances of the relationship of the British Government with Indian States that it is difficult to look upon it as a practicable suggestion. Nor can legal criterion and legal principles be left to the Indian Political department. Neither its training nor its procedure would make it competent to do so. If then the Indian States cannot have International Law and will not have the political practice of the Government of India, it seems to me they ought to accept the protection of constitutional Law.

More important and of more immediate interest than the question of the independence and of the international status of the Indian States is the new theory that has been advanced of late in regard to the relations between these States and the British Government. The new theory is that the relations between the States and the British Government is between the States and the Crown and not between them and any Indian Government. This new theory is all the more important that it has found favour not only with the advocates of the case of the Indian princes but with the supporters of British

supremacy. The learned counsel of the Princes and the Indian States Enquiry Committee (the latter by way of assumption and explanation rather than by direct statement) seem to agree on this matter. The mutual rights and obligations, say the Princes Counsel, by treaty and agreement are between the States and the British Crown. They go on to say the Treaty relations of the States are with the King in his British or it may be in his Imperial capacity and not with the King in the right of any one of his Dominions. "The contract" they say, "is with the Crown as the head of the Executive Government of the United Kingdom under the constitutional control of the British Parliament" and that "in municipal law contracts made in reliance on the personal capacity and characteristics of one party are not assignable by him to any other person" and they finally conclude that the British Crown cannot require the Indian States to transfer the loyalty which they have undertaken to show to the British Crown to any third party nor can it without their consent hand over to persons who are in law or fact independent of the control of the British Crown, the conduct of the State's foreign relations nor the maintenance of their external or internal security. Now let us see how each of these statements stands in the light of the facts of history and of Constitutional Law.

That all treaties made by foreign countries with any representative of the Government of England are in English Constitutional Law made by the latter on behalf of His Majesty the King or the Crown, there can be no doubt. But as a matter of historical fact the first treaties made by the Indian rulers with the English were made by the East India Company. It is with the Hon'ble East India Company Bahadur that the first treaties of the Nizam, the Peshwa, Mysore, and of our own States of Cochin and Travancore were concluded. As Lord Stowell, in the case of the *Indian Chief*, already cited said, "the East India Company had full power acting as a creature of the English Government to enter into treaty relations with foreign powers". This right of committing their sovereign and his Government to treaties made by them the Company exercised till it was abolished subject only to the right of the sovereign to repudiate this policy. All the treaties made by the British with the Indian rulers during the days of the East India Company as you can see for yourself by turning over the pages of Aitchison were made by the agents and representatives of the English Government in India. None of these were made with the Crown or with His Majesty the King or even with His Majesty's Government. So much for the theory of the Princes Counsel that the first treaties were entered into with the

Crown. Nor was the Crown the paramount power in India in those days. It was no doubt so ultimately and in the last resort. But in normal day-to-day intercourse with the Indian States or Indian rulers the paramount power was the East India Company. In the despatches and correspondence of Wellesley, the Marquis of Hastings and Dalhousie, the paramount power is the East India Company. That the sovereignty and paramountcy of the East India Company were delegated we may admit. But it was to a local agent of a distant principal, to the local subordinate of a distant sovereign that the Indian States were brought into relationship. The Crown was never mentioned in any of the transactions between the East India Company and their neighbours or rivals. It did not enter into any of their calculations. The first treaties of the Indian States like all the Treaties of Cochin and Travancore were made with the East India Company and not with the Crown.

What happened then when the Government of India was transferred from the East India Company to the Crown? If you look at the Government of India Act of 1858 (21 and 22 Victoria C. 106) you will see exactly what happened. According to section 21 of the Act, "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 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." Note the distinction that this section makes between the vesting of the territories or powers in Her Majesty and the exercising in her name of all powers ever exercised by the East India Company. The territories or powers and rights are vested in Her Majesty but the power and rights are to be exercised not by her but in her name. There is no reference to Her Majesty or the Crown being "responsible" for the defence and security of the States and their conduct of their foreign relations". It is no doubt true that section 53 of the Act of 1858 makes "all treaties made by the said Company binding on Her Majesty". But all duties and obligations owed or rights exercisable under those treaties are to be exercised not by her but in her name. In her name, by whom? English Constitutional Law of that time and of to-day would answer, by her lawful and responsible advisers. The Princes' counsel so blandly and so frequently

bring in the Crown in their discussion of the relations between the British Government and the Indian States that we would be justified in asking them the question what they mean by the Crown. It may be stated at the outset that neither in the statutes relating to the Government of India, nor in treaties made with Indian States after 1858, nor in proclamations or sanads is there any mention of the Crown. Lord Canning grants his sanads of adoption in the name of and on behalf of Her Majesty. The later treaties are made with the British Government. The Crown is a gratuitous constitutional assumption of the Princes Counsel. But granted that the Crown is their equivalent to His or Her Majesty, let us see what exactly they mean by the Crown. They confess that they refer not to "Crown" *simpliciter* but to the Crown in possession of certain attributes. I suppose they mean by Crown what English Constitutional Law seeks to imply when it uses the term the Crown. Now what is the Crown in English Constitutional Law? The Crown has been a stumbling block to constitutional lawyers and historians. One of the memorable passages in the late Prof. Dicey's "*Law of the Constitution*" is that in which he expresses the unreality of the position and power of the Crown as described by a Blackstone or a Freeman. The term Crown used in a general sense is employed, says a recent constitutional lawyer, to distinguish the King in his public capacity where in general other countries employ the word State (1). The fact is that in English Constitutional Law Crown means not what it purports to mean i. e. the King, but what has been determined by the development and usages of the constitution. The Crown cannot do anything except through responsible ministers. The famous maxim, the King can do no wrong, means that some person is legally responsible for every act done by the Crown. As Anson points out (2) the Crown does not operate by itself. As the Crown in Parliament, it is the supreme law-making body, and as the Crown in the Courts it is the supreme law-administering body, and as the Crown in Council it is the supreme executive body. And the Crown according to the same authority means the appropriate Secretary of State not only in domestic but in foreign and colonial affairs. The Crown therefore in relation to the Government of India means the Secretary of State for India. The Act of 1858 which created the Government of the Crown in India enacted that the power and duties vested in and exercised by the East India Company should be held and exercised

(1) Ivor Jennings "La personalite" internationle danos l'empire britannique Revue da droit enternationle etc., 1928
(2) Law and custom of the constitution Part II Crown.

by one of the King's Secretaries of State "and among the powers and duties vested in and exercised by the East India Company were the right of entering into treaty relations, of acting as the suzerain power and of overseeing the administration of India—all of which rights as we have seen were actually and immediately exercised by the East India Company subject only to the over-riding powers of the Crown in Council in England. And the Crown acting and operating in India now means the Governor-General-in-Council. This has been recognized and asserted in numerous Acts of Parliament or of the Indian Legislature. Sec. 33 of the Government of India Act of 1919 which only repeats a provision of the Act of 1858 gives the Governor-General-in-Council the right of and control over the whole civil and military government of India. By the Interpretation and General Clauses Act India means British India together with any territories of any native Prince or Chief under the suzerainty of His Majesty exercised through the Governor-General of India, through any Governor or other officer subordinate to the Governor-General. Of course this superintendence, direction and control of the Governor-General-in-Council over the Indian States must be exercised subject to the rights and immunities granted in treaties and sanads and other agreements. Other sections of the Act dealing with the relations of British India with the States speak of the Governor-General-in-Council as the representative and agent of the supreme Government. Not only the Governor-General-in-Council but subordinate Governments like the Madras Government have been recognised as competent to act as agents and instruments of the Crown (see *East India Company v Syed Ally 1827*—7 M. Ind. app. 553.) Till the other day the Governor-in-Council of Fort Saint George dealt with the States of Cochin and Travancore. The Foreign Jurisdiction Act XXI of 1877 recognises that by treaty, capitulation, agreement, grant, usage, sufferance and other lawful means the Governor-General of India in Council has power and jurisdiction within diverse places beyond the limits of British India while the British Acts of 1843 and 1890 state that the jurisdiction of His Majesty extends within any country or place out of their Majesty's Dominions in the same and as ample a manner as if His Majesty had acquired such power or jurisdiction by the cession or conquest of territory. That Parliament in Great Britain by means of legislation cannot curtail any rights of the States is strange constitutional doctrine and is as opposed to history as to law. Acts of the British Parliament like the Foreign Jurisdiction Acts just referred to and of the Indian Legislatures have been passed curtailing the rights of the States as in

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See Ilbert, Government of India, Ch. V.

regard to the British subjects in Indian States or in regard to the Indian Marine Service or Merchant Shipping and no protest has been issued by any of the Indian States till only the other day when certain tendencies in Indian constitutional development have urged the Princes and their advocates to invent their novel theory. The extra territorial jurisdiction of the Governor-General-in-Council in the territory of Indian States is now regulated by an Order in Council of 1902 against which also no protest has been registered.

It is the changes in the constitution of the Government of India, and not constitutional purism that account for the new theory of the relations between the British Government and the Indian States. It is, as the Princes' Counsel confess, because, there is a possibility of the Government of India becoming a Government of Ministers responsible to a legislature which in its turn is to be dependent on a popular electorate that the Princes and their advocates are asking for a change in the conduct of the relations between the two governments. Apart from the debating argument that the Princes by tacitly accepting and not raising a word of protest against the successive changes in the constitution from 1858 onwards especially when the constitution of the Governor-General's Council was radically changed when Indian non-officials were introduced into the Council and became part of the supreme government of India—how revolutionary a change it was can be realised from the protests of Ripon and Edward VII—let us see whether this theory that the relations between the British Government and the Indian States ought to be conducted without the intervention or intermediary of any Indian Government is possible or even commendable. If the Government of India is not to be the instrument or the agent of the British Government in its relations with Indian States it must be the Secretary of State for India or of the Dominions. But some local agent would still be required and so the Princes and the Indian States Enquiry Committee advocate that that local agent and instrument of the Crown in Council shall be the Viceroy. Let us see how far this substitution of the Vicerory for the Governor-General-in-Council is possible or commendable.

That such a change would be a wrench from the constitutional law and custom as they have operated upto now needs no elaborate proof. Whether in the days of the Company or in the days of Crown Government the Governor-General-in-Council has been the Agent and Delegate of His Majesty's Government. The treaties concluded with Cochin and Travancore for instances, the sanads issued in Lord Canning's time to those and other States were concluded or issued

by the Governor-General in Council. In all their dealings with Cochin and Travancore as in the appointment of Residents, the approval of Dewans, the modification of the terms of the original treaties, the delimitation of boundaries, (1) the appeal from arbitrators appointed, it is the Governor-in-Council at Madras that acts under the orders of the Court of Directors or the Supreme Government in Bengal. The question of the jurisdiction of the Travancore Government over European British subjects was finally decided by the Governor-General-in-Council. It was so also in regard to other States. It was the Governor-General-in-Council that deposed Malhar Rao Gaekwar in 1875 and selected the present ruler. Although the Viceroy is always his own foreign minister it is a department of the Government of India, the Political and Foreign Department that advises him—and we know how powerful is the advice of the Permanent Civil Service tendered to an amateur Minister—on questions of intervention, deposition, regency, and the like. The Governor-General-in-Council, not the Viceroy is the representative in India of the British Crown (2).

That the proposal that the Viceroy should be substituted for the Governor-General-in-Council is opposed to the present law of the Indian Constitution is realized by the Indian States Enquiry Committee for they admit that the change would have to be brought about by new constitutional legislation. But would that change be in accordance with the principles and traditions of English and Indian Constitutional Law? The proposal now under consideration desires to replace, as far as the conduct of the relations of the British Government with Indian States is concerned, so, the power and action of a Council by that of a single person. Now council government is an integral part of the Indian constitution. Historical origins, long usage and efficient service have made government by council one of the most important institutions of Indian Government. Council government has been found so useful that it has been extended in recent years to provinces which did not know it before. What the States Enquiry Committee suggest is that the whole of an important department of the Government of India should be taken away from the jurisdiction of a council and given into the hands of a single person. It was for good and sufficient reason that the government of a remote dependency was committed from the very beginning into the hands not of a single Governor-General or Governor but of a council

(1) Cf. the agreement between Cochin and Travancore for the settlement of boundary disputes 1830.

(2) Ilbert, Government of India Ch. V.

some of whom would be acquainted directly and immediately with the facts of Indian life. For the conduct of the relations with the Indian States, an acquaintance with Indian facts and circumstances would, according to the States Enquiry Committee, apparently not be necessary. But there are more serious constitutional objections to the proposal. The Viceroy, according to the proposal, would occupy a dual position, one part of which would be radically different from and opposed to the other. As the agent of His Majesty's Government in relation to the Indian States, he would be acting as a single agent, whereas as Governor-General, he would be acting as part of a council. He would be more powerful as such an agent than as a Governor-General. If the control of the army were left to him as Viceroy he would be able to have the whip hand of the Government of India. If the control of the army were with the Governor-General-in-Council and, if the Governor-General-in-Council refused the Viceroy the use of the army or refused to find the money for the army or other supplies connected with his work as Agent of His Majesty's Government, he would be in a parlous position. If on the other hand in the capacity of Agent the Viceroy had his own sources of revenue, his own officers, his own public force, he would be too powerful a factor in Indian Government for the freedom of the Governor-General-in-Council and for the autonomy of any popular system of government. A single person made so powerful as the Viceroy endowed with such powers and such force would be opposed to the whole theory of English Constitutional Law which insists on a division and distribution of powers especially in non-responsible overseas government.

This transfer of power and functions in regard to the relations of the British Government with the Indian States from the Governor-General-in-Council is therefore not commendable. Is it necessary? The Princes' Counsel seems to think so. They argue that treaties made with the Crown (we have seen that none of them were made with the Crown but only with the sovereign agents and delegates of the Crown) when the Government of India was constituted in a certain form would not be tenable when the Government is constituted in a different way. But this theory is opposed to one of the fundamental principles of International Law and would encourage the repudiation of all treaties when a change of government takes place in one or other of the contracting States. They argue that the States cannot be placed under an Indian Government which is not under the direct control of the Crown and which takes on a democratic character such as it had not when the relations between the States and the

British Government first arose. This theory cannot be held in constitutional law, for, any government of India as long as it remains within the British Empire would continue to be the Crown's Government. The contention of the Princes' Counsel that the British Crown cannot require the Indian States to transfer the loyalty which they have agreed to show to the British Crown to any third party and that it cannot without their consent hand over to persons who are in law or in fact independent of the control of the British Crown would seem to show that they visualise the goal of India as independence and not freedom within the Empire. And this theory like most of the theories invented by the Princes' Counsel is born out of due time. The Government of the Crown in England has now become more democratic than it was when the States entered into relations with the British Government. The Government of India has escaped more and more from the control of the Crown's Government as in the matter of fiscal policy. And yet the Indian States have not protested against the conduct of their relations by the Government of India. Is it because the democratic government is to be transferred from England to India that the Princes have now raised a protest?

Unlike the Princes' Counsel, the Indian States Enquiry Committee recognise that the conduct of the relations between the States and the Governor-General are quite legally and constitutionally conducted now by the Governor-General-in-Council. Only they would like the transfer from the Governor-General-in-Council to the Viceroy to be effected by an Act of Parliament Of course, the British Parliament, we have been taught by Dicey to recognise, can do anything it pleases. But we also know that many things that it can do it will not do. And the transfer of the conduct of the relations between the States and the Crown from the Governor-General-in-Council to the Viceroy, I venture to think, is one of the things it can do but will not do. It is as I have said against the principles of English Government. It is also against the whole trend of the development of Indian Government. Ever since the East India Company came to fill the void in the government of India which arose out of the absence of a single and imperial rule the advance of Indian government has been in the direction of the consolidation and development of a single supreme central government for India. The establishment of a different authority for the conduct of the relations with the States would mean the re-establishment of that principle of double government from which the British Government in India has escaped—let us hope for ever—to the lasting benefit of India. Parliament,

if it did any such thing would be doing violence not only to the principles of government which it has consecrated by its secular life and legislation but to a century and a half of Indian history. Parliament may do what it can to reconstitute the central government of India so as to make it acceptable to and find room in it for the Indian States. But it will refrain—if it is true to itself and loyal to Indian history—from laying violent hands on the Ark of the Covenant of Indian Government which is a strong central authority attained by the people of India after centuries of wandering in the wilderness and to be treasured and guarded by them as the pledge and bond of their political life.

The doctrine of the two India's asserted by the Indian States Enquiry Committee is opposed to the whole trend of the political development of India. The ascription to the Viceroy of powers and functions exercised by the Governor-General-in-Council is a violent breach in that development. It would prevent that evolution in the direction of the establishment of that political unity which is the common ideal of the princes and the peoples of India. It would call a halt to the development of the idea of a single India which so far has been recognised by the public opinion of the world. In International Law neither British India nor the Indian States are recognised as independent units. But it is India that was included in the British India delegation to the Peace Conference at Versailles, and that signed the treaty of Versailles and that is represented in the League of Nations—not British India or the Indian States by themselves. As a recent writer has pointed out "Indian States are not protectorates in the sense held in International Law; for all international purposes they are always treated with British India as a part of the entity called India". Oppenheim also acknowledges that the admission of the four self-governing dominions and of India to membership of the League of Nations gives them a position in International Law. The doctrine of the two India's is again opposed to the ideal of Indian Government proclaimed by representatives of princes and peoples which is the establishment of a federal State to be called the United States of India. In any Federal State worth the name there are two principles that are built into the fabric of government by appropriate institutions—the autonomy of the component States and the authority of the Central Government. When politicians, especially princely politicians, talk of a Federal India they think only of the autonomy of the States and not of the authority of the central federal government. But the history of Federal Government proves the imperative need of the one

as of the other. The United States of America were prepared to go through the terrible ordeal of a civil war in order to place in an unassailable position the principle of the supremacy of the federal government challenged by the Southern States.

The ease with which the doctrine of the two India's is accepted by the advocates of the Princes' case proves the atmosphere of unreality in which talk about the federal future of India is indulged. If the people who talk so glibly about the federalisation of India knew what the constitutive principles of federal government were they would be a little more hesitant and very much more helpful than they are at present. I have referred to one such constitutive principle, the supremacy of the central government. Another is the establishment of the same system of government in all the parts, composing the federal system. There cannot be in some parts of Federal India democratic responsible government and in other parts autocratic systems of government. The discussion about the federal future of India will become real when all the members of the Indian States shall have decided to introduce similar, not necessarily the same principles and institutions of government, as those which prevail in the Provinces of British India. The Indian States would have to travel very far from their present theory and practice of government before this result can be reached. And when they shall have done that they will be prepared by this political education to accept that essential principle of a federal system—the due subordination of the parts to the supreme central government. And in that stage of development they will be quite willing to accept the position of subordinate autonomy which the provinces of British India under a system of responsible self-government would engage. For the autonomy of the Provinces in any system of real freedom and self-government will be great. They will be free and self-governing in all matters except national defence, foreign affairs and a few other matters of national all-India concern. That exactly is the measure of the autonomy that can be given to the parts of federal States and that also will be the measure of the readiness with which the advocates of a United States of India will be able to accept the ideal of federal India. Obviously, in the supreme central Federal Government, the Indian States will be given a measure of influence, power and authority commensurate with their political importance as assessed by their population, their territory and their services to the country. Nor is the position of subordinate autonomy which the States will enjoy in common with British Indian Provinces in the Federal India of the future one to be sneered

at. For while they will lose some of the rights of sovereignty like the right to have their own systems of of law, of courts of justice and of administration they will be free from the interference by the Government of India to which they are subject at present and which will be reduced to very narrow limits. For one thing they will not have a Resident or Political Agent at their elbow. The succession to their gadis would not require the approval of the Government of India. They will not have to take their stand for the protection of their rights and liberties on the precarious and shifting sands of International Law or custom whose sanction is physical or moral force or of legal rights without legal sanction but on the surer foundations of constitutional law built on the principles of the English Rule of Law and supported by the sanction of courts of law with a final appeal to the Judicial Committee, of the Privy Council. It is true that the rulers of the States will have to fill the position of hereditary constitutional heads of States analogous to that of the temporary appointed Governors of British Indian Provinces. But while this means that they will lose much of their old traditional power they will fill the nobler role of the first servants of the State by which title alone hereditary rulers can keep their thrones in modern times.

All this, however, is speculation about the distant future, and I have been led to indulge in it by the desire to clarify ideas on the present position and immediate future of the States. If British Indian politicians or their opposite numbers in Indian States want the federalisation of India, the future that I have outlined must be the *terminus ad quem* of their anticipations. If they refuse to face that eventuality, then they must cease to talk about the federal United States of India. But, on the other hand, the federal movement is the political process which large countries like India must follow if they are to live. Sidgwick and Acton have taught the present generation of students of political science to believe that the political future of the world is with Federalism. For, it is federation that can allow large countries like India to satisfy the political cravings of unity and liberty at the same time. And the political process of federalism is already here in India. The doctrine of paramountcy, not as we saw of the Crown directly but of the Governor-General-in-Council as the agent and delegate of the Crown has already decided that there shall be one single central government for all India. The fact that for a century or more the fiscal policy, the customs tariff, of all India has been decided by the Governor-General-in-Council incorporates another principle of federation in the constitution.

The coming together for common purposes and common action of a large number of the rulers of Indian States has brought them into contact with the governmental system of British India. And here, in passing, it may be noted that the Achillean conduct of a few of the rulers of India in keeping aloof from the Chamber of Princes will not help them long to remain in the position of isolation, however splendid it may be to-day. Just as the political practice of the foreign department of the Government of India has been formed by the conduct of that department towards the majority of the States and has been applied to the greater treaty-States, so called, so it may be that the pace of the political future of the States may be set for all States large or small by the activities of Princes who have decided to become members of the Chamber of Princes and who have decided to come into more frequent and more direct contact with the Government of India. It would therefore appear to be the part of political wisdom for the rulers of the major States to take their place in the movement that is bringing British India and the Indian States into a common polity. For, not in splendid isolation but in leadership, in action and in service lies the title to pre-eminence in national as in international life.

I have now fulfilled the promise I made when I undertook nearly six months ago to deliver the Maharaja's College Jubilee Lectures. How I have fulfilled that obligation it is not for me to say. Many criticisms against the various theses I have advanced will be inevitable and most of them I shall welcome, for criticism is the salt of political discussion. But one criticism I trust will not be advanced and that is that my views on the present position and the future status of Indian States are not consistent with a sufficiently high view of their historical origins or the political dignity of these States. As for their historical position I have allowed the facts to speak for themselves. Independence, hegemony, suzerainty, paramountcy are the successive stages of that position. The facts of Indian History that allowed British supremacy to be established in this country have allowed that supremacy to continue and to develop. As for the future, I ask whether the creation, of two India's with different systems of government, of defence, of fiscal policy would redound to the credit or the benefit of either or of the country as a whole. And the future that I have allowed myself to assert of Indian States is one which finds room for the freedom of the Indian States as well as for the unity of India. The next step that my thesis demands of the Indian States is to acknowledge the supremacy of a cental government of which they will form a part. And Supremacy is

more definite, more certain, more conducive to the freedom and the self-government of the States than Paramountcy. And if Indian statesmen, whether they belong to British India or the Indian States have any regard for Indian States, it is because these form an integral part of India. They could not love the States so much if they did not love India more.

Whatever the future may hold in store for us, well-governed States like those of Cochin and Travancore have little or nothing to fear. Whatever may be the theory of the relations between the British Government and themselves, the measure of their self-government will be their good government. The States will be free to govern themselves as long as and to the extent to which they are able, well and wisely to govern themselves. The public opinion of India and of England and the world is the sanction for the interference of the suzerain power with them. And that public opinion will be on their side as long as they are true to the twin stars of progress and freedom.
