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The British Colonial System

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THE BRITISH COLONIAL SYSTEM.

In a note to the first book of these Commentaries (p. 109), the Colonial System of Great Britain is spoken of as the grandest in extent and power the world has ever known. A more detailed account of the system, and of the countries and places embraced within it, than was given in the place referred to, will justify the statement there made, and at the same time will give us particulars of British Colonial government in all its varieties.

In respect to government the British colonies and possessions are classified officially in three classes, as follows: *First*; Those properly denominated crown colonies, in which the crown has entire control of legislation, and the administration of whose affairs is carried on by officers under the control of the home government. In this class are: In Europe, Gibraltar, Heligoland, Malta, Cyprus. In America: Falkland Islands, Guiana, Honduras, Jamaica, and Turks Island. In Africa: Ascension, Gambia, Gold Coast, Sierra Leone, Lagos, St. Helena. In Asia: India, Aden and Perim, Hong Kong, Labuan, Straits Settlements. In Australasia: Fiji Islands, Rotumah. For each of these there is an executive officer, appointed by the crown, and removable at pleasure, and whose title of office is Governor, except as follows: For India it is Governor-General; for Honduras it is Lieutenant-Governor; for Jamaica it is Captain-General, and for Gambia, Gold Coast and Lagos it is Administrator. The population of each of these was as follows at the dates given: Cyprus (1871) 150,000; Gibraltar (1871) 14,764; Heligoland (1871) 1,913; Malta (1871) 149,084; Falkland Islands (1871) 803; Guiana (1871) 193,491; Honduras (1870) 24,710; Jamaica and Turks Island (1871) 510,354; Ascension (1871) 27; Gambia (1871) 14,790; Gold Coast (1871) 408,070; Sierra Leone (1881) 60,546; Lagos (1871) 62,021; St. Helena (1871) 6,241; India (1881) 252,541,210; Aden (1871) 22,507; Perim (1871) 211; Hong Kong (1876) 139,144; Labuan (1871) 4,898; Straits Settlements (1871) 308,097; Fiji Islands (1881) 124,999; Rotumah (1881) 2,500. *Second*; Those which have legislative bodies chosen by their own people, with a veto on legislation in the representative of the crown, and a general control of public officers in the home government. These are: In America: Bahamas, Bermudas, Leeward Islands, Windward Islands. In Africa: Natal. In Asia: Ceylon. In Australasia: Western Australia. Each of these has an executive appointed and removable by the crown, and whose title of office is governor. The population of these at the dates named was as follows: Bahamas (1871) 39,162; Bermudas (1871) 12,121; Leeward Islands (1871) 120,491; Windward Islands (1871) 284,078; Natal (1877) 325,512; Ceylon (1876) 2,459,542; Western Australia (1881) 31,000. *Third*; Those which not only have legislatures of their own election, but whose governors, though appointed and removable by the crown, must reflect in their

government and administration the sentiments of the legislature as expressed by its votes. These are: In America: Dominion of Canada, Newfoundland. In Africa: Cape of Good Hope and dependencies. In Australasia: New South Wales and Norfolk Island, New Zealand, Queensland, South Australia, Tasmania, Victoria. The population of these severally in the year 1881 was as follows: Canada, 4,324,310; Newfoundland, 161,374; Cape of Good Hope and dependencies, 1,420,162; New South Wales and Norfolk Island 751,468; New Zealand, 544,032; Queensland, 213,525; Tasmania, 115,705; Victoria, 862,346. This class is supposed to embrace all the colonies that are fitted, by the numbers and character of their population, and by other circumstances, to be entrusted with the sole responsibility of making their own laws and guiding their own destiny.

Responsible parliamentary government for these colonies began in Canada, and may be said to have originated with the Earl of Durham, who, as governor-general in the year 1831, in a report made to the home government, recommended as a remedy for the widespread and long-continued discontent in the extensive provinces of Lower and Upper Canada, that representative institutions, which should be "an image and transcript of the British constitution," should be allowed to the people. In accordance with this recommendation, Mr. Poulette Thomson, the successor to the Earl of Durham, was directed to introduce a government which should be responsible to the representatives of the people, and the principal officers of which, constituting the governor's advisers, should possess the confidence of the legislature, and be subject to removal from office whenever any sufficient motives of public policy should suggest the expediency. Accordingly, this official, on his arrival in Canada, made public announcement that henceforth its government should be conducted in accordance with the wishes of the people as expressed by their representatives. The understanding which was had of this announcement, and which has ever since been acted upon, is tersely expressed in three resolutions adopted by the Legislative Assembly of Canada, in the year 1841, and which are as follows:

"1. That the head of the executive government of the province, being, within the limits of his government, the representative of the sovereign, is responsible to the imperial authority alone; but that nevertheless the management of our local affairs can only be conducted by him, by and with the assistance, counsel and information of subordinate officers in the province.

"2. That in order to preserve between the different branches of the provincial parliament that harmony which is essential to the peace, welfare, and good government of the province, the chief advisers of the representative of the sovereign, constituting a provincial administration under him, ought to be men possessed of the confidence of the representatives of the people; thus affording a guarantee that the well understood wishes and interests of the people, which our gracious sovereign has declared shall be the rule of the provincial government, will, on all occasions, be faithfully represented and advocated.

"3. That the people of this province have, moreover, a right to expect from such provincial administration the exertion of their best endeavors that the

imperial authority, within its constitutional limits, shall be exercised in the manner most consistent with their well understood wishes and interests."

It will be seen that this gave to the province of Canada a government which, as respects local affairs, was not to differ in its general features from that which existed within Great Britain itself. Its success in giving content to the people was immediate, and Lord Elgin, who went out as governor-general of Canada in 1847, and who was most influential in settling it upon secure foundations, was constrained to say, that, with his constitutional and changing cabinet, he was allowed by the free consent of the people to exercise greater authority than was permitted to the same office in colonies where responsible government did not exist. The like institutions were introduced into the colonies named at the dates following: Nova Scotia and New Brunswick, 1848; Tasmania and Victoria, 1855; New South Wales, South Australia and New Zealand, 1856; Queensland, 1860; Cape of Good Hope, 1872. When in 1867 Upper and Lower Canada and New Brunswick were united into one government by the name of The Dominion of Canada, the imperial act of union declared that the constitution of the new dominion should be similar in principle to that of the United Kingdom. Upper Canada was at this time given the name of Ontario, and Lower Canada that of Quebec, and authority was given to the Queen in council to admit into the Union any of the other British-American provinces whose legislature might express a desire to that effect. Under this authority Manitoba was admitted in 1870, British Columbia in 1871, and Prince Edward's Island in 1873. Each of the provinces has a legislature of its own, and a lieutenant-governor appointed by the governor-general, and subject to removal by him, but not within five years from his appointment except for cause assigned. Government in the several provinces, as in the Dominion itself, is responsible to the representatives of the people.

In the colonies, as in the united kingdom, the executive is a constituent part of the legislature, and the governor may withhold assent to any bill which may be passed, and take the opinion of the home government thereon. The home government may also, even against the opinion of the governor, disallow any colonial act, but it will only do so where the reasons seem imperative, or where the act is regarded as *ultra vires*. In judicial matters an appeal lies from the colonial courts to the queen in council. It seems to have been doubted, after the creation of the Supreme Court of Canada, with power to hear and finally adjudicate upon appeals from the highest courts of the several provinces, whether appeals to the privy council would any longer lie, but it was decided that parties at their option might appeal to either tribunal.

In respect to the self-governing colonies and provinces, as much as to all others, the imperial government reserves to itself the power of legislation on all subjects of general imperial policy, and retains control of international intercourse, and of all questions of war or peace with other nations. The customs establishments, however, of all the colonies, are under the control and management of the several colonial governments, and the colonial legislatures are permitted to establish their own customs regulations and rates of duty. Canada has taken advantage of this authority to establish a protective tariff,

in direct antagonism to the principles of free trade, which for a long time have prevailed with the home government.

Among the subjects for which the imperial parliament still legislates for all the colonies and dependencies are those of copyrights and patents, and the establishment of admiralty courts. Theoretically it has power to legislate to any extent; but how far this would be consistent with the constitutional rights of British subjects, or with true imperial policy must depend very much upon the condition of the colony or dependency legislated for, and the fitness of the people under the circumstances in which they are placed, to take their destinies into their own hands. The general policy of the imperial government has now for a long time been to foster and encourage independent self-government, to the fullest extent consistent with local safety and the general interests of the empire. In one noted instance, experience demonstrated to the entire satisfaction, not only of the home government, but of the colony itself, that the time for self-government had not yet arrived. Jamaica, which had been allowed a government responsible to the local representatives, abandoned it voluntarily in 1866, and with its own consent was remanded to the condition of a crown colony. It has now a legislative council, composed in part of official, and in part of non-official members, and the governor's council is responsible only to himself. The advice of this council the governor follows only so far as he finds it satisfactory to his own judgment.

The imperial authority over all the colonies is administered through the agency of a member of the administration, who is designated secretary of state for the colonies. In all the crown colonies, however, the governor is nearly absolute. As has been said by one of them, "he not only reigns, but governs in the strictest sense. All subordinate officers act in accordance with his directions. He is responsible for their short-comings if he fails to correct them. They are liable to suspension at his will. The legislature is so constructed as to enable him to secure, should he deem it necessary, the passage of any enactment he may frame. He is in the colony the ultimate referee on almost every conceivable subject of administration or legislation. * * * * In all crown colonies there exist—and it is the reason for the maintenance of so peculiar a form of constitution—two or more different races, to neither of which can safely be entrusted the charge of governing the other, and the existence of which is the cause of the establishment of what is in fact a species of despotism, modified by a power of appeal to the imperial government at home, and by the action of public opinion and common sense upon the mere legal rights of the post." This was said with special reference to the Fiji Islands, but was intended to be applicable to all whose condition is described in it.

The case of India is in some respects different from that of any of the other British possessions, it being by far the most populous of all, and only a small per centage of the inhabitants being of British birth or origin, while an uncertain proportion of the remainder are ill-affected to the British rule. The necessity for a strong and somewhat autocratic government is, under such circumstances, apparent, and this has been provided by imperial legislation. The history of British dominion over that extensive country is familiar. It began

with the charter granted by William III, in 1698, to a company of merchants, for trading with that country. This company became great and powerful, and acquired for its purposes the control of territory for which it became necessary to establish civil and criminal courts, and these were provided for by letters patent of the king. The government was in a board of directors, having its office in London. In the latter part of the 18th century, the company carried on extensive wars with the native princes, and won great victories over them, which resulted in the acquisition of immense territories. In 1783 parliament deemed it necessary to interfere to prevent abuses, and passed what is known as the regulating act. This act recites that "the several powers and authorities granted by charters to the United Company of Merchants of England trading to the East Indies, have been found by experience not to have sufficient force and efficacy to prevent various abuses which have prevailed in the government and administration of the affairs of the said united company, as well at home as in India, to the manifest injury of the public credit, and of the commercial interests of the said company." It then proceeds to empower his majesty to erect and establish a supreme court of judicature for the company's dominions, to consist of a chief justice and three other judges, being barristers of England, or Ireland, of not less than five years' standing. This was an important step in parliamentary control, and it was followed in 1833 with one still more important, which formally converted the trading corporation into a purely political body, with authority, under the parliament, to govern the British dominions in India. A governor-general was provided for, and the governor-general in council was to have general legislative authority, with power, however, in the court of directors of the company, to disallow any law or regulation that might be made.

The legislative power conferred was further restricted, as follows: "The said governor-general in council shall not have the power of making any laws or regulations which shall in any way repeal, vary, suspend or affect any of the provisions of this act, or any of the acts for punishing mutiny and desertion of officers and soldiers, whether in the service of his majesty or of said company, or any provisions of any act hereafter to be passed in any wise affecting the said company, or the said territories or the inhabitants thereof, or any laws and regulations which shall in any way affect any prerogative of the crown, or the authority of parliament, or the constitution or rights of the said 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 said crown over any part of the said territories."

A still more important step was taken in 1858, when the direct government of India was finally transferred from the company to the crown. At the same time a "council of India" was created, consisting of fifteen persons, of whom seven were to be elected by the court of directors of the company, and eight to be appointed by the crown. The president of the council was to be a secretary of state, who was to be charged with the administrative functions previously vested in the board of directors. The members of the council were to hold office during good behaviour, but this was so changed in 1869 as to

limit their term of office to ten years, and all vacancies in the council were to be filled by the crown. Several acts in modification of the act of 1858 have since been passed without introducing any very radical changes.

In 1876 the title of Empress of India was conferred upon the Queen by act of parliament.

As the proportion of colonists in India is very small as compared with the native population, it would obviously be unsafe to confer upon the people the powers of self-government, and it is not likely that any attempt going very far in that direction will be made for a long time to come. Local officials of the native races are allowed to exercise authority over their own people, and it is now proposed to give to native magistrates jurisdiction in small cases even where Europeans are parties.