

THE
BRITISH COMMONWEALTH
OF NATIONS
ITS TERRITORIES AND CONSTITUTIONS

BY
ARTHUR BERRIEDALE KEITH
D.C.L., D.LITT., HON. LL.D.

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THE BRITISH COMMONWEALTH OF NATIONS

ITS TERRITORIES AND CONSTITUTIONS

I. THE TERRITORIES OF THE BRITISH COMMONWEALTH

IN the following lists are included all territories which are British possessions, or are under the protection of, or have been allotted in mandate to, the British Crown, or are held in condominium by the Crown with a foreign State. British possessions include all parts of His Majesty's dominions outside the United Kingdom; they make up therefore with the United Kingdom all the territories over which the King has complete sovereignty, as contrasted with a protectorate, a mandate, or a condominium or share in control. Of British possessions there are now two distinct classes, styled "Dominions" and "colonies" respectively, the former word being usually spelt with a capital to distinguish the term from "dominions" in its wide sense. The distinction between the two categories of possessions rests on the fact that the former are territories whose relations with the United Kingdom are those of equality, while the colonies stand in a relation of dependence. This distinction and the character of protectorates and mandated territories are further dealt with in Section 3.

The United Kingdom consists of Great Britain and Northern Ireland. Great Britain includes England with Wales, and Scotland (which were united as one kingdom in 1707). Ireland was as a whole united with Great Britain in 1801, but the Irish Free State (now called Eire) was separated in 1922, leaving only Northern Ireland in the United Kingdom. Northern Ireland, while subject to the Government and Parliament of the United Kingdom, possesses a Government and Parliament for matters of local concern.

The Channel Islands and the Isle of Man, which with the United Kingdom make up the British Isles, also have legislatures of their own for purely local purposes, but the executive government is con-

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ducted by Lieutenant-Governors under the control of the British Government.

European Territories

	Area in Square Miles	Population	Year
United Kingdom :			
England and Wales . . .	58,343	41,031,000	1937
Scotland	30,410	4,979,500	1937
Northern Ireland . . .	5,449	1,279,753	1937
Isle of Man	227	49,308	1931
Jersey	45	50,462	1931
Guernsey, etc.	30	42,743	1931
Eire	26,959	2,965,854	1936
Gibraltar	1 $\frac{1}{8}$	19,278	1937
Malta, etc.	121	260,000	1938

Asiatic Territories

	Area in Square Miles	Population	Year
Cyprus	3,572	365,372	1936
Palestine (Mandate) . .	10,400	1,402,000	1937
Trans-Jordan (Mandate)	34,750	300,000	1938
Aden Colony	80	50,809	1931
Protectorate	42,000	600,000	1938
Ceylon	25,332	5,780,000	1937
Maldives	180	79,281	1931
Indian Empire :			
British India	862,599	256,808,309	1931
Indian States	712,508	81,310,845	1931
Burma	233,492	14,667,146	1931
Straits Settlements . .	1,356	1,310,969	1937
Federated Malay States	27,540	2,089,835	1938
Brunei	2,226	33,642	1936
Johore	7,500	613,510	1937
Kedah	3,660	474,775	1937
Perlis	316	52,703	1937
Kelantan	5,750	400,378	1937
Trengganu	5,050	190,459	1936
Sarawak	50,000	475,000	1936
North Borneo	29,347	284,813	1936
Hong Kong	391	1,028,619	1938

The Territories of the British Commonwealth

African Territories

	Area in Square Miles	Population	Year
Gambia Colony and Protec- torate	4,068	199,520	1931
Gold Coast Colony	23,937	1,860,845	1937
Ashanti	24,379	685,506	1937
Northern Territories Pro- tectorate	30,486	843,100	1937
Togoland Mandate	13,041	359,754	1937
Nigeria:			
Northern Provinces Pro- tectorate	338,593	10,800,000	1938
Southern Provinces and Colony		8,590,545	1937
Cameroons Mandate		817,616	1936
Sierra Leone Colony and Pro- tectorate	34,081	1,776,822	1937
Union of South Africa :			
Cape of Good Hope	27,925	3,529,900	1936
Natal	277,169	(European 791,574)	1936
Transvaal	35,284	1,946,468	1936
Orange Free State	110,450	(European 190,549)	1936
South-West Africa Man- date	49,647	3,341,470	1936
Basutoland	11,716	(European 820,756)	1936
Bechuanaland Protectorate . .	275,000	772,060	1936
Swaziland	6,704	(European 220,978)	1936
Southern Rhodesia	150,344	357,787	1936
Northern Rhodesia Protec- torate	290,323	(European 30,677)	1936
Nyasaland Protectorate . . .	47,949	562,311	1936
Tanganyika Mandate	360,000	(European 1,934)	1936
Kenya	224,960	265,756	1936
Uganda Protectorate	93,981	(European 1,899)	1936
		156,715	1936
		(European 2,740)	1936
		1,375,540	1936
		(European 58,870)	1937
		1,364,000	1937
		(European 10,000)	1937
		1,639,329	1937
		(European 1,894)	1937
		5,149,496	1937
		(European 9,128)	1937
		3,331,092	1937
		(European 19,211)	1937
		(Asiatic 46,026)	1937
		3,711,494	1937
		(European 2,111)	1937
		(Asiatic 17,256)	1937

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African Territories—(contd.)

	Area in Square Miles	Population	Year
Zanzibar Protectorate . . .	1,020	235,428	1931
Somaliland Protectorate . .	68,000	344,700	1938
Anglo-Egyptian Sudan Con- dominium	967,500	5,900,000	1938
Mauritius	720	399,878	1937
Seychelles	156½	29,803	1935
St. Helena	47	3,995	1931
Ascension	38	198	1936

American Territories

	Area in Square Miles	Population	Year
Newfoundland	42,750	284,872	1935
Labrador	120,000	4,716	1935
Dominion of Canada :			
Alberta	255,285	772,782	1936
British Columbia . . .	366,255	735,000	1936
Manitoba	246,512	711,216	1936
New Brunswick	27,985	408,219	1931
Nova Scotia	21,428	512,846	1931
Ontario	412,582	3,431,683	1931
Prince Edward Island .	2,184	88,038	1931
Quebec	594,534	3,140,000	1937
Saskatchewan	251,700	930,893	1936
North-west Territories .	1,309,682	9,723	1931
Yukon	207,076	4,230	1931
Bermuda	19	30,949	1937
Bahamas	4,403	66,908	1937
Barbados	166	190,939	1937
Jamaica	4,450	1,152,528	1937
Cayman Islands	100	6,800	1937
Turks and Caicos Islands .	166	5,552	1938
Leeward Islands :			
Antigua	108	34,523	1937
Montserrat	32	13,712	1937
St. Christopher-Nevis .	153	38,057	1937
Virgin Islands	58	6,000	1934
Trinidad and Tobago . . .	1,978	456,006	1937
Windward Islands :			
Dominica	304	49,505	1937
Grenada	133	88,201	1937
St. Lucia	233	67,404	1937
St. Vincent	150	57,526	1937
British Honduras	8,598	56,893	1937
British Guiana	89,480	337,039	1937
Falkland Islands with depend- encies	6,068	3,180	1936

The Territories of the British Commonwealth

Australasian Territories

	Area in Square Miles	Population	Year
Commonwealth of Australia :			
New South Wales . . .	310,372	2,692,659	1937
Victoria	87,884	1,855,688	1937
Queensland	670,500	992,091	1937
South Australia	380,070	588,678	1937
Western Australia . . .	975,920	454,231	1937
Tasmania	26,215	232,286	1937
Federal Capital	940	10,276	1937
Northern Territory . . .	523,620	17,730 (natives) 5,454 (Europeans, etc.)	1936 1937
Norfolk Island	15	1,142	1936
Papua	90,540	277,200 (natives) 1,488 (Europeans)	1938
New Guinea Mandate . .	93,300	667,000 (natives) 4,495 (Europeans) 1,775 (Asiatics)	1938
Australian Antarctic Terri- tory	Unknown	Nil	1938
New Zealand	103,415	1,604,244 (Maori 87,145)	1938
Cook Islands, etc. . . .	199	16,350	1936
Tokelau or Union Islands .	4	1,176	1937
Western Samoa Mandate .	1,133	57,759	1938
Ross Dependency	Unknown	Nil	1938
Fiji	7,083	205,391 (European, 4238) (Indian, 89,333)	1937
Western Pacific High Com- mission :			
British Solomon Islands Protectorate	15,000	94,066	1931
Gilbert and Ellice Islands .	180	34,786	1937
Tonga	250	32,861	1937
New Hebrides	5,700	40,000 (natives) 1,175 (Europeans) 2,030 (Asiatics)	1938
Nauru	8½	3,097	1937

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These figures, which are necessarily only approximate, give as under British control the following areas and populations :

	Area in Square Miles	Population
Europe . . .	121,586	50,677,898
Asia . . .	2,058,049	368,318,465
Africa . . .	3,785,243	60,351,128
America . . .	3,974,572	13,695,940
Australasia . .	3,292,348	9,895,128

—a total of 13,231,798 square miles and 502,938,559 population, about a quarter of the known surface of the globe and rather over a quarter of the population thereof. Some 70 millions are of European origin, mainly English, Scottish, and Irish, but the French Canadians and the Dutch of South Africa form an important element, the French making up some 30 per cent of the Canadian population, the Dutch 60 per cent of that of the Union. The various races of India, Ceylon, and Burma make up 360 millions, those of Africa 40 millions, Arabs and Malays about 6 millions each, and there are over 1 million Chinese.

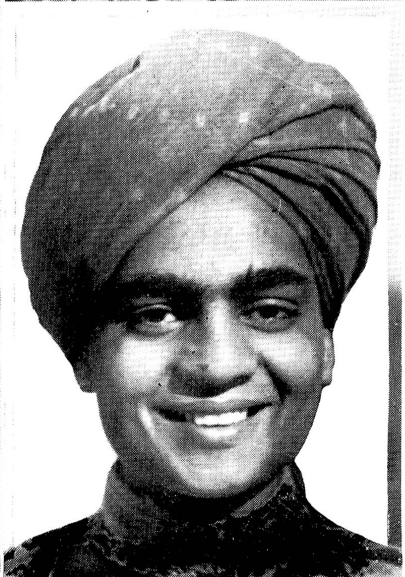
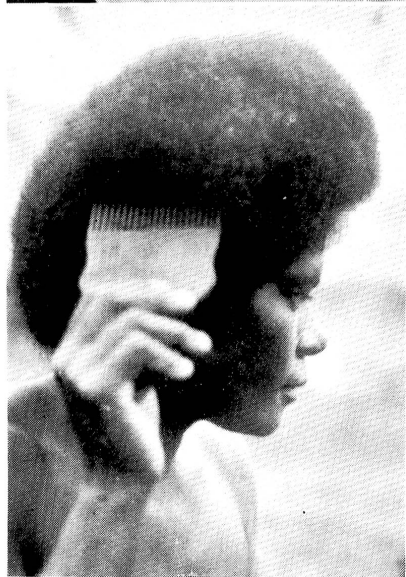
2. THE CREATION OF THE BRITISH COMMONWEALTH

Of late years the term “British Commonwealth of Nations” has come into both official and private use as a synonym for “British Empire”. The choice of name is not arbitrary ; it is felt to be more appropriate to describe a grouping of peoples, which now rests essentially on a voluntary basis, than the older name with its suggestion of the rule of Britain over subject races. Even in its earliest days the Empire had closer affinities to the Empire of Athens in the fifth century B.C. than to that of Rome. The colonies in America were settlements of Englishmen who were subjects of the King, and who received protection from England as against foreign Powers. In return they accepted restriction of their trade to England, but in other matters governed themselves in so large a measure that when, in 1763–76, Britain sought to impose a larger measure of control in the interests of defence, the American colonies declared their independence. This was finally established in 1783.

Great as was this loss, Britain still retained Canada, Newfoundland,



The King and Queen in a Red Indian encampment, at Alberta, Canada. The portrait on the easel is of Queen Victoria



Lubinski: Keystone: Wide World: Wide World

Some men and women of the Empire : 1. A young negro nurse, Gold Coast Colony, W. Africa. 2. A Red Indian Chief, Western Canada. 3. A Fiji Island girl. 4. A young Indian

The Creation of the British Commonwealth

and some West Indian islands, together with considerable territories in India. A fresh era of expansion began with the acquisition of Australia in 1788 and of the Cape of Good Hope in 1814, and the reign of Queen Victoria (1837-1901) marked the growth of the Empire to something like its present dimensions. The Great War of 1914-18 resulted in the creation of Mandated Territories.

The modes of acquisition have been various. (1) The greater part of the Commonwealth has been acquired by the settlement overseas of British subjects. (2) In certain cases territories have been ceded by foreign Powers. (3) In many cases peoples have placed themselves under British protection, either becoming British subjects or accepting a British protectorate. (4) In a few cases a title rests on conquest. At no time, however, has the Empire closely resembled that of Rome, which was the result of the subjugation of foreign peoples and the maintenance over them of sovereignty by armed power. The British colonies were the result in many cases of the needs of trade or they served as homes for surplus population. In West and East Africa alike humanitarian and religious movements, excited by the iniquities of the traffic in slaves, resulted in acquisition of territories, and New Zealand was accepted as a colony in large measure in order to establish security for the natives. Expansion of dominion in South Africa and India was long disapproved by the British Government, but was forced upon it by the necessity of protecting from external aggression the territories which had been taken possession of by the Crown.¹

European Territories

The essential contrast with the Empire of Rome is shown in the fact that in Europe Britain holds only *Gibraltar*, the key to the Mediterranean, captured from Spain in 1704 and ceded in 1713, and *Malta*, whose people received from 1798 British protection against France and asked for and obtained the status of British subjects in 1813.

Asiatic Territories

The island of *Cyprus* was taken over from Turkey in 1878 as part of a plan for the introduction of reforms in Asia Minor, which Turkey

¹ There are convenient summaries of the history of the oversea Empire by H. E. Egerton, *A Short History of British Colonial Policy* (Methuen, new ed. by A. P. Newton, 1932), *British Colonial Policy in the Twentieth Century* (Methuen, 1922); J. A. Williamson, *A Short History of British Expansion* (Macmillan, 1930).

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never carried out ; it was annexed only in 1914 on the outbreak of the Great War. That war led to the conquest of *Palestine*, which was formally granted in mandate to the Crown by the principal Allied Powers in 1922 ; the claims of Turkey on the territory were renounced by the Treaty of Lausanne, 1923, and the mandate thereafter took formal effect. It contained provision for the establishment of a Jewish National Home in accordance with a British declaration of 1917. This did not apply to the *Trans-Jordan* territory, in which accordingly an Emir was established ; under a treaty of 1928 arrangements are made to secure the power of Britain to carry out the terms of the mandate.

Aden was occupied in 1839 as a bunkering station and an entrepôt for trade with Arabia. The colony has been extended in area by purchase of territory, and a protectorate established over neighbouring areas at the request of the tribes therein ; Socotra was placed formally under a protectorate in 1886 by agreement with the Sultan of Qishn. The Government of India has long maintained close relations with the Sultans of Maskat, Bahrein, Kuwait, and other chiefs on the Persian Gulf, but these States are not formally protectorates, though they can rely on British support against aggression.

Ceylon was conquered from Holland in 1796, and at first attached to Madras, but became a distinct colony in 1802. The Maldive Archipelago is tributary to Ceylon under a native Sultan.

India formed originally only a sphere of trade operations for the East India Company, which had neither power nor ambition to conquer territory. The first territory of the Crown was Bombay, ceded by Portugal in 1661 as part of the dowry of Katherine of Braganza on her marriage to Charles II, who leased it to the Company, which in 1640 acquired Madras, on payment of tribute, from a local ruler, but both areas were narrowly circumscribed. It was the war with France which extended in 1744 to India that brought about extension of political power. The rivals began to support the contending claims of Indian princes, and, as the French in India were inadequately supported from home, the Madras Government eventually secured a protectorate over the Carnatic. But it was only in 1801 that these territories, on the death of the ruler, were annexed. In Bengal serious friction, in part due to French influence, occurred between the Company and the Nawab. The latter was defeated at the battle of Plassey in 1757, and in 1765 the Mogul Emperor granted to the Company authority in Bengal, Bihar, and Orissa, which soon developed into

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full sovereign control. In the period from 1802 to 1819 the Maratha States were in part by war, in part by agreement, brought effectively under the control of the Company, and the territory of Bombay substantially extended. British relations were also established on a cordial footing with the minor states of Rajputana and Central India, which, by the overthrow of the Marathas, were relieved from a régime of anarchy and much suffering inflicted by hordes of freebooters. The war with Afghanistan (1839-42) was followed by the annexation of Sind in 1843; the rulers there were recent intruders, and the annexation was regarded with approval by the ruled. The annexation of the Punjab in 1849 was reluctantly undertaken as the result of the anarchy prevailing in the country after the death of its great ruler, Ranjit Singh, which led to two attacks by the Sikh forces on British territory. In the period 1849-53 the States of Satara, Jhansi, and Nagpur fell to the Crown on the death of their rulers without legitimate heirs, and in 1856 Oudh was annexed as the only means of protecting its people against continued misrule and severe oppression. It was the view of the Company that, owing to the unsatisfactory system of government in the Native States, it was right and proper to take any opportunity of annexing such States, in case of failure of heirs, in order that the people should enjoy the benefits of law and order and of administration in their interests.

The outbreak of the mutiny of 1857 among the soldiers of the Bengal army led to the decision of the British Government to take over government from the Company, which hitherto had exercised the functions of administration under the control of the British Government. This was carried out in 1858 and at the same time a change in policy towards the Indian States was resolved upon, it being laid down that it was not the intention of the Crown to take advantage of the right to annex States on the failure of direct heirs, but that adoptions duly made would be recognised. From that date extension of territory has practically ceased, and the great State of Mysore was in 1881 handed over to an Indian prince. It is a signal proof of the readiness of the Crown to maintain the existence of the Indian States that over 712,000 square miles of the 1,575,000 of the Indian Empire are under the direct government of Indian rulers.¹

¹ See W. H. Moreland and A. C. Chatterjee, *Short History of India* (Longmans, Green, 1936); E. Thompson and G. T. Garratt, *Rise and Fulfilment of British Rule in India* (Macmillan, 1934).

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Burma fell into British hands as the result of wars in 1824-6, 1852, and 1885. The two former were caused by unprovoked aggression on the part of the Burmese monarch ; the last was the outcome of the refusal of King Thibaw to respect the treaty rights of British subjects, violation of the British frontier, and intrigues with France. The great expansion of population and the increase in the welfare of the people form a remarkable testimony to the advantages of the new régime.

The *Straits Settlements* (Singapore, Penang, Malacca, and Labuan) were acquired by peaceful cession ; Singapore in 1819-24 from the Sultan of Johore, Penang in 1786-1800 from the Sultan of Kedah, Malacca in 1824 from Holland in exchange for Bencoolen in Sumatra, and Labuan in 1846 from the Sultan of Brunei. Singapore and Penang serve as centres for the collection and distribution of commodities for the countries of the Malayan archipelago.

In Malaya there are States under British protection, in part federated, in part unfederated. The Federated Malay States were created in 1895 by agreement with the rulers of certain States ; of these *Perak* and *Selangor* accepted British protection in 1874 as the best means of countering the then prevalent anarchy ; protection was applied for by the Sultan of *Pahang* in 1888, and by the rulers of the small States, now grouped as the *Negri Sembilan*, from 1874 to 1889. Of the unfederated States *Johore* asked for British protection in 1895, *Brunei* accepted a protectorate in 1888, and Siam transferred her rights of protection over *Kedah*, *Perlis*, *Trengganu*, and *Kelantan* in 1909 ; agreements have since been made with each of these States.

The British Crown also protects and controls the external relations of *Sarawak*, which is a State under the rule of a Rajah, who is a British subject and holds the State in right of succession from Sir James Brooke, by whom it was acquired by grant from the Sultan of Brunei in 1842. It also protects the State of *North Borneo*, which is held by a British chartered corporation, the British North Borneo Company, and was acquired by grant from the Sultans of Brunei and Sulu. The modern prosperity of the Malayan area is beyond question the outcome of the peace and order introduced by British authority which was voluntarily sought by the rulers, when they found themselves unable without aid to maintain their authority and further the welfare of their subjects.

Hong Kong was granted by China in 1842-60 and a lease of the

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adjoining area was conceded in 1898. Its essential value was and is as a centre of trade activities.

African Territories

The earliest British interests in West Africa were those of trading companies, and these aimed merely at establishing a few forts as headquarters for trade, without seeking to control in any way the local tribes. In 1788 an effort under British protection was made to establish a settlement largely of North American negroes in *Sierra Leone*. From 1821 the British Government took over direct responsibility for governmental relations in respect of *Sierra Leone*, the *Gold Coast*, and the *Gambia*, where trading posts were maintaining a difficult existence. In 1861, in order to combat the slave trade, the ruler of *Lagos* was induced to surrender his territory to the Crown. In the following year treaties were entered into with the tribes adjacent to the four chief centres of British influence, and, after the Berlin Conference of 1885 had clarified the legal position regarding African protectorates and spheres of influence, treaties with the other Powers with interests in Africa resulted in the recognition of British protectorates over territories adjacent to the *Gambia*, the *Gold Coast*, *Sierra Leone*, and *Lagos*, including *Northern* and *Southern Nigeria*. Of these compacts the most important was that with France in 1898 under which large concessions were made to that Power, but the Nigerian territories were definitely recognised as within the British sphere of activity. In 1901 the ruler of *Ashanti*, who had shown great hostility, was defeated and his territory annexed; it was placed under the authority of the Governor of the *Gold Coast*. In 1914 the former colony of *Lagos* was amalgamated with the Nigerian protectorates to form the Colony and Protectorate of *Nigeria*.

In the meantime Germany had acquired the territories of the *Cameroons* and *Togoland*. After the Great War these were assigned in mandate to France and Britain, the former receiving much the larger area of both territories. *Togoland* under British mandate was placed under the control of the *Gold Coast*, the *Cameroons* under British Mandate under that of *Nigeria*, since neither area was sufficiently important to be governed by itself.

In South Africa the earliest British acquisition was that of the *Cape of Good Hope*, which had been occupied by British forces acting with the approval of the Prince of Orange, Holland having fallen under

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the control of France during the Napoleonic wars. Holland in 1814 formally ceded the territory. Its boundaries were extended by a long series of contests with native tribes, and by many voluntary cessions by such tribes which found themselves in danger from the pressure of other more warlike tribes invading their territories from the north. *Natal* was secured by cession from the Zulu king who claimed ownership, and became a distinct colony in 1845. Its area likewise was expanded by cessions, mostly voluntary. Anarchy among the Zulus drove them in 1887 to ask for annexation by the Crown, and this was conceded, Zululand being finally incorporated in Natal in 1897.

From the Cape there had taken place in 1836 a great exodus of Boers, who resented the abolition of slavery by the British Parliament, and desired freedom from British control over their treatment of their servants. Impatient of authority, the Boers engaged for many years in conflicts with the natives and among themselves until finally there emerged two States, the Orange Free State and the Transvaal. The latter was temporarily annexed to the Crown in 1877 in order to save it from destruction at the hands of the Zulus ; but, after the complete defeat of the Zulus by British forces, a rising took place, and a measure of independence was conceded in 1881. The discovery of gold in the territory led to the influx of British subjects and foreigners of many races, and grave disputes arose between the new-comers and the Government of the State, which refused to recognise the claims of the former for a fair share in the control of the administration, and of the expenditure of the wealth which was accruing to the State from their introduction of capital and skill in mining operations. Finally, after much discussion between the British and the Republican Governments, the latter attacked Natal with strong forces, and, as a result of the war which ensued, both the *Transvaal* and the *Orange Free State*, which came to its aid, were annexed in 1900. The war continued until 1902 when the burghers still in arms surrendered on generous terms. The good feeling created by the grant in 1906-7 of responsible government to the conquered territories resulted in 1909 in their union with the Cape and Natal into the Union of South Africa.¹

There are still outside the Union and under direct control by the British Government the colony of *Basutoland*, which was annexed at the request of the native chief in 1868 in order to secure protection from the Orange Free State ; the *Bechuanaland Protectorate*, proclaimed

¹ See E. A. Walker, *History of South Africa* (Longmans, Green, 1936).

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in 1885 at the request of the leading chiefs to protect them against the claims of the Transvaal ; and *Swaziland*, which passed under British protection on the annexation of the Transvaal, which had exercised a protectorate over it.

The Union of South Africa received in mandate in 1920 the former German *South West Africa*, which it had conquered in 1915.

North of the Union lies *Southern Rhodesia*, which represents territory over which authority was obtained by grants from native chiefs by the British South Africa Company, a corporation created by royal charter in 1889. Native unrest in 1893-4 and in 1896-7 led to the defeat of the tribesmen and the establishment of full authority over the territory. In 1923 a wide measure of responsible government was duly conferred upon it, and it was annexed.

Northern Rhodesia was acquired by the British South Africa Company by accords with the native chiefs. When Southern Rhodesia became a colony, Northern Rhodesia remained a protectorate and was placed under the direct control of the Crown, which took over the Company's former powers of administration.

To the east of Northern Rhodesia lies the *Nyasaland Protectorate*, which was proclaimed a protectorate in 1891 by agreement with the native chiefs who desired aid against inroads by slave traders. The *Uganda Protectorate* owes its existence to treaties made from 1890 onwards first by the Imperial British East Africa Company, and later by the British Government direct. Zanzibar fell under British protection by agreement with the Sultan in 1890 ; in the same year a protectorate was proclaimed over British East Africa, which is now represented by the colony of *Kenya*, created in 1920 in view of the large number of British settlers therein, and the protectorate of Kenya representing the coastal strip of the dominions of the Sultan of Zanzibar, in respect of which annual payment is made to the Sultan. The gap between territories under British control was filled by the grant of a mandate for *Tanganyika*, taken from Germany in the course of the Great War, over which that Power renounced all rights in the Treaty of Versailles, 1919. *Somaliland* was declared a protectorate in 1884.

North of Uganda lies the Anglo-Egyptian *Sudan*, which was conquered by British and Egyptian forces in 1898, and over which control is exercised by the British Government under agreements with Egypt of 1898-9 and 1936. Egypt itself was by agreement with its ruler occupied by British forces from 1882 to 1936, a formal protec-

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torate was declared in 1914, and the British High Commissioner largely controlled the administration of the country until 1922, when its independence was formally recognised, subject to certain safeguards for British communications with its eastern territories, for Europeans in Egypt, and for minorities. A treaty of alliance in 1936 allowed Egypt to assume full independence, though, in order to secure the full protection of the Suez Canal, the British forces were to continue to remain in Egypt in the vicinity of the Canal. Under the new régime Britain and Egypt are pledged to afford each other assistance against aggression, a pledge at once honoured in September 1939.

Mauritius was taken possession of in 1810 during the war with Napoleon and ceded by France in 1814. The *Seychelles* were also ceded by the treaty of 1814 ; in fact they had been occupied by British forces as early as 1794, but only in 1810 were they made a dependency of Mauritius, from which they were formally separated in 1903.

St. Helena was occupied by the East India Company in 1659, and after capture by the Dutch was retaken in 1673 and held by the Company until 1834, when it passed over to the direct control of the Crown, in whose hands it had been from 1815 to 1821, when it served as the place of exile for Napoleon. It served as a port of call for ships trading to the East, but its utility and prosperity alike passed away with the opening of the Suez Canal.

American Territories

In North America *Newfoundland* claims to be the oldest of British colonies, as it was taken possession of in 1583, though it was some years later before settlement began seriously. *Nova Scotia* for a brief period from 1621 to 1632 was held by the Crown, but then restored to France, and it was only by the Treaty of Utrecht in 1713 that France surrendered the Acadian territories which became the colony of Nova Scotia, from which *New Brunswick* was detached in 1784. *Prince Edward Island*, surrendered by France in 1763, was made a distinct colony in 1769. The same treaty surrendered *Quebec*, which included not only the modern territory of that name but much of what is now *Ontario*. It was at first proposed to encourage British settlement in Quebec and to establish therein English law and the English language, but in 1774 Parliament decided to allow the French to remain under the conditions of the régime before the cession. Enjoying full protection for their religion, language, laws, and customs, the French in Canada have

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multiplied so that they form not far short of a third of the population. In 1791-2 the western districts were erected into a distinct province, Upper Canada, wherein English law was established, as the inhabitants were overwhelmingly English by race, Quebec being renamed Lower Canada.

The rest of British North America was acquired by settlement : much of the area was included in the territories granted to the Hudson Bay Company in 1670. These lands were acquired by purchase from the Company in 1869-70 by the *Dominion of Canada*, a federation created in 1867 by the British Parliament to include the two sections of the former Quebec, under the names of Ontario and Quebec, Nova Scotia, and New Brunswick. From the lands of the Company were formed the new provinces of *Manitoba* (1870), *Saskatchewan*, and *Alberta* (1905). The lands west of the Rocky Mountains were organised as the colonies of *Vancouver Island* in 1849 and *British Columbia* in 1858, and united as British Columbia in 1866. That territory entered federation in 1871, and Prince Edward Island followed suit in 1873. There remain in the position of territories without provincial status the vast areas of the *Yukon* and the *North-West Territories*.

The *Bermudas Islands*, 580 miles east of Cape Hatteras in North Carolina, became British by settlement in 1612, and retain in large measure the ancient constitution granted in 1620. The *Bahamas*, the most northerly of the British West Indies, were claimed for the Crown in 1629, but settlement was only regularised in 1670, and a formal colony had to be re-established in 1717. *Barbados* was also secured by settlement in 1626. In the Leeward Islands *St. Christopher* (*St. Kitts*) was settled in 1623, *Nevis* in 1628, *Antigua* and *Montserrat* in 1632, and the *Virgin Islands* were recognised as a colony in 1773. *Dominica*, long contended for by Britain and France, was assigned to the former by the Treaty of Paris, 1763. It, along with the other islands, was given a federal constitution in 1871.

The Windward Islands of *St. Vincent* and *Grenada* were ceded by France in 1763, while *St. Lucia* became finally British in 1803. *Trinidad* was ceded by Spain in 1802. *Tobago*, which was ceded by France in 1763 but restored in 1783, was finally assigned to Britain in 1814 ; in 1899 it became a single colony with Trinidad.

Jamaica was conquered from Spain in 1655, when the Spaniards left the island, and some settlement of Englishmen followed.

On the mainland of Central America English settlers appeared

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early, and entered into friendly relations with the Mosquito coast Indians, while after the conquest of Jamaica the Governor of that colony exercised a vague supervision over them. Their territorial claims, however, were never admitted by Spain, but in 1798 the last of many attempts to eject the settlers was defeated. Thereafter the territory under the style *British Honduras* came more and more to be recognised as a British colony and was definitely given this status in 1884, when superintendence of it by Jamaica ceased.

In South America the settlements which now constitute *British Guiana* were ceded by Holland in 1814.

The *Falkland Islands* in the South Atlantic were first occupied by Britain in 1767, but occupation, interrupted by Spanish action, was abandoned in 1774, and not resumed until 1833, full colonial status dating from 1842.

Australasian Territories

The whole of Australia is British by settlement. The first colony, *New South Wales*, was established in 1788, including the whole of the eastern side of the continent. From it were carved out in 1825 *Tasmania*, and in 1851 *Victoria*, and in 1859 *Queensland*. *Western Australia* was formed in 1829 and *South Australia* in 1834-6. These six colonies in 1901 became States of the Commonwealth of Australia under a federal constitution. South Australia in 1911 transferred to the Commonwealth the Northern Territory.

A protectorate was proclaimed in 1884 over the south-east coast of New Guinea, and the territory was formally annexed in 1888. In 1906 it was placed under the control of the Commonwealth, and given the style of *Papua*. The German area of New Guinea was occupied by Australian forces on the outbreak of war in 1914 and allotted in mandate to the Commonwealth in 1920, and now ranks as the *Territory of New Guinea*.

New Zealand was acquired from the native chiefs by the Treaty of Waitangi in 1840. They applied for and accepted British sovereignty as the best mode of preventing anarchy in consequence of the resort to that country of Europeans of many races and lawless character.

Western Samoa, on the outbreak of war in 1914, was occupied by New Zealand forces and allotted in mandate to New Zealand in 1920.

The *Australian Antarctic Territory*, created in 1936, comprises the islands and territories, other than Adélie Land, south of latitude 60°

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and lying between east longitude 160° and 45°. The islands and territories from east longitude 160° to west longitude 150° were in 1923 declared to be the *Ross Dependency* of New Zealand.

The *Fiji Islands* were voluntarily placed under British sovereignty by their chiefs in 1874. The Governor of Fiji also controls, as High Commissioner for the Western Pacific, a large number of islands. The *Gilbert and Ellice Islands* were annexed in 1915 at the request of the native communities. Over the southern Solomon Islands a protectorate was proclaimed in 1893, and the northern islands were ceded by Germany in 1900; the whole form the *British Solomon Islands Protectorate*. The Kingdom of *Tonga* accepted a protectorate in 1900.

The *New Hebrides* are under a condominium of France and Britain arranged in 1906 and revised and modified in 1914 and 1939-40.

3. THE CONSTITUTIONS OF THE BRITISH COMMONWEALTH

The determination of types of constitution depends essentially on the purpose to be served. The British doctrine at the present day rests on two fundamental principles, which are accepted by the great majority of the electorate.

In the first place, it is recognised that the justification for the possession of any territory is that British rule over it is exercised for the primary purpose of the benefit of the people thereof, and that, if any divergence between their interests and those of the people of the United Kingdom arises, it is the duty of the British Government to prefer the welfare of the residents of the territory. There must, it is felt, be no question of exploiting oversea territories; such advantages as may properly be gained should be based on policies whose primary aim is the prosperity of those governed.

In the second place, it is held that the first principle can best be carried out by giving to the people in each territory as far as is possible the power to order their own affairs. Self-government, it is felt, affords effective protection from exploitation in the interests of the United Kingdom, and it strengthens the character and self-reliance of the people. Even if control by the British Government might be more efficient, yet, it is argued, such control serves to stunt the growth of the people governed. It is right that men and women should be made to accept responsibility for measures to bring about their own

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well-being ; even if they at first make mistakes, by experiencing the disadvantages thence arising they will learn to avoid repeating such errors and become more and more fit for full responsibility.

It follows, therefore, that government of dependencies is not confined to the creation therein of the maximum amount of material well-being. As pointed out by the Secretary of State for Dominion Affairs and the Colonies on 7th December, 1938, the great purpose of the British Empire is the gradual spread of freedom among all the King's subjects—a slow evolutionary process. It may take generations or even centuries for the peoples in some parts of the Colonial Empire to achieve self-government. But it is a major part of British policy, even among the most backward peoples of Africa, to encourage them always to be able to stand a little more on their own feet, and the best assurance these peoples can have that this spirit will continue to be a guide in the management of their affairs is that they shall continue their association with the British Empire.

Hence there has arisen a great variety of constitutions within the Commonwealth, all adapted to the purpose of securing to the maximum degree the operation of these doctrines, that all government must be in the interest of those governed, and that this principle can best be carried out by giving to the governed the greatest share of which they are capable of making good use in their own administration. Thus some territories enjoy complete autonomy, others are controlled in detail, and many intermediate types exist.

Formally the territories of the Empire or Commonwealth outside the British Islands are classified as (a) Dominions, (b) Colonies, (c) Protectorates, (d) Mandated Territories. Within these divisions there are varying forms of government. There are also the Indian Empire and Burma which do not fall within any of these classes.

(a) *The Dominions*

The Dominions are defined as the *Dominion of Canada*, the *Commonwealth of Australia*, the *Dominion of New Zealand*, the *Union of South Africa*, *Eire* (formerly styled the Irish Free State), and *Newfoundland*. The creation of these Dominions has been mentioned above, except as regards *Eire*. That territory was originally a part of the United Kingdom, but by agreement it was detached therefrom in 1922 and given the same status in the Commonwealth as that of Canada. The position of Newfoundland is at present anomalous. The former

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constitution and with it the exercise of the rights appertaining to Dominion status are in abeyance since 1934, the Parliament of Newfoundland having invited the British Government to assume control of the administration in order to restore the finances of the territory and to improve the economic conditions of the people. The government is therefore conducted by the Governor with the aid of a Commission, appointed by the British Government and subject to its control. Legislation is passed by the Governor with the Commission, and the operation of the local Parliament is suspended.

I. Dominion Status and Inter-Imperial Relations

The essential position of the Dominions was defined by the Imperial Conference of 1926, which was a meeting of representatives of the Dominions and of the United Kingdom. They agreed to define the position of the United Kingdom and the Dominions as follows :

“They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.”

The meaning of this declaration was further elucidated by the next Imperial Conference in 1930, and legal steps to remove certain technical obstacles to its operation were taken in the Statute of Westminster, 1931, an Act of the British Parliament, in the terms of which all the Dominion Parliaments had concurred. The operation of the Statute was made conditional in the case of the Commonwealth of Australia, New Zealand, and Newfoundland on the Parliaments of these Dominions legislating to give its provisions, or such part thereof as they desired, effect, but, although they have not yet taken this step, the omission is of no substantial importance, and hardly affects their autonomy.¹

In *external relations* equality is shown by the fact that each Dominion (except Newfoundland) is a member of the League of Nations, although the British Empire, now represented by the United Kingdom and the territories thereon dependent, is a member. Moreover, the

¹ See A. B. Keith, *Responsible Government in the Dominions* (O.U.P., 2nd ed. 1928) ; *The Dominions as Sovereign States : their Constitutions and Governments* (Macmillan, 1938) ; W. K. Hancock, *Survey of British Commonwealth Affairs*, vol. i. (O.U.P., 1937).

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Dominions are eligible for election to the non-permanent seats on the Council of the League, despite the fact that the British Empire has a permanent seat. In all matters arising under the League the Dominions are free to hold and express opinions, and to vote on questions raised, in opposition to the views or vote of the British Empire ; they may accept or refuse to accept treaties concluded under League auspices or under the Labour clauses of the treaties of peace. In the Labour organisation under these clauses they have the full status of independent States.

In matters arising under the League the representatives of the Dominions are accredited to the League and authorised to act by the Dominion Governments alone, and are solely responsible to them.

In questions of external relations other than those conducted in connection with the League the Dominions are in the same position as independent States, but they have the advantage that they can, if they so desire, make use of the British diplomatic machinery in the transaction of their business. Practice varies. Australia and New Zealand prefer to conclude formal treaties through the Foreign Office and British legations. Canada does so except in the case of business with the United States, France, Belgium, and Japan ; the Dominion exchanges diplomatic representatives with those Powers. Eire and the Union of South Africa have established legations at Washington, Paris, Berlin, Rome, and other capitals, but make use of the British legations in other cases. There is, however, equality of status in all cases, for the British Government acts in accordance with the desires of the Dominion concerned.

The only obligation binding in honour, not in law, on each Dominion and on the United Kingdom is that no unit of the Commonwealth shall negotiate with foreign Powers without informing all the other units, so that they may call attention to any interests of their own which may be involved ; there is no obligation, however, on any unit to accept any suggestion which another may make. No unit, however, may conclude a treaty which imposes obligation on another unit or the residents or nationals therein. But the United Kingdom in its treaties endeavours to secure for all British subjects, including those connected with a Dominion, such personal rights as the foreign Power with which the treaty is made is willing to concede. British consular officers are authorised to afford advice and assistance to all British subjects whether connected with the United Kingdom or any

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other part of the Commonwealth. Hence the Dominions seldom appoint consular officers in foreign countries.

As a result of their autonomy, the Dominions are absolutely free to refuse to accept treaties deemed necessary by the United Kingdom ; thus neither Eire nor the Union of South Africa became parties to the London treaty of 1930 on the limitation of Naval Armament, and none of the Dominions accepted the obligations assumed in 1938-9 by the United Kingdom towards France. On the other hand, the Dominions are kept fully informed by the British Government of all matters of international concern, and the fullest consideration is assured for any views which they may desire to express.

In regard to *defence* the autonomy of the Dominions is complete. Each Dominion determines for itself the number and character of its forces, and no suggestion regarding them is made by the British Government except on the express request of the Dominion, when the matter may be brought before the Committee of Imperial Defence, to which representatives of the Dominions are invited for purposes of discussion. Each Dominion retains absolute freedom to decide for itself whether it will lend any aid to Britain in the event of that power being engaged in a war, and no such action would be taken except after consulting the Parliament of the Dominion. The substantial fleet of Australia, and the smaller units of Canada and New Zealand, fall absolutely under the control of their own Governments, though efforts are made by consultation with the British Admiralty to secure similarity of equipment and training.

The United Kingdom, on the other hand, has made it explicit that it will afford the utmost assistance in its power to any Dominion which may be attacked at any time, and it is clear that in the case of aggression on Britain there would be strong pressure on all Dominion Governments to give all possible aid to that State. The fact of the freedom of the Dominions exempts them from any control by the United Kingdom, but it imposes upon them all the stronger an obligation to assist the British Government in vindicating any just cause. The true view was clearly laid down by the Imperial Conference of 1926 when enunciating the doctrine of equality and freedom :

“ The British Empire is not founded on negotiations. It depends essentially, if not formally, on positive ideals. Free institutions are its life-blood. Free co-operation is its instrument. Peace, security, and progress are among its objects. Aspects of all these great themes have

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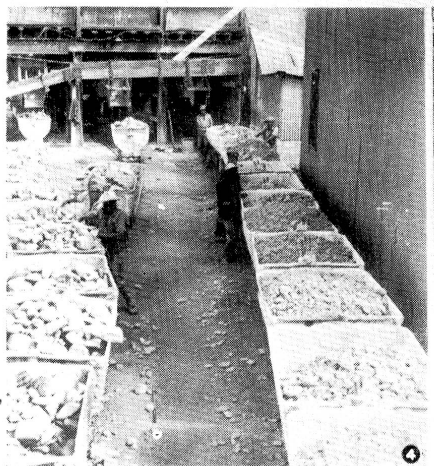
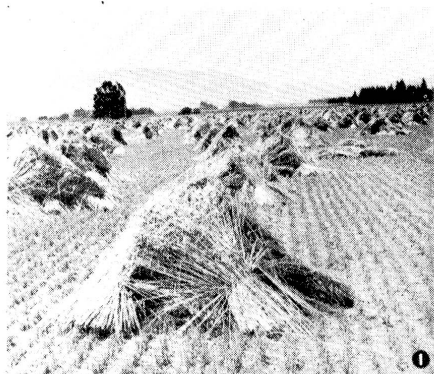
been discussed at the present Conference ; excellent results have been thereby obtained. And, though every Dominion is now, and must always remain, the sole judge of the nature and extent of its co-operation, no common cause will, in our opinion, be thereby imperilled."

In harmony with the spirit of this declaration the United Kingdom maintains naval armaments based on acceptance of the duty of protecting the trade routes and every part of the Commonwealth from attack, and it has provided naval bases such as Singapore as the indispensable foundation of such a naval policy. In like manner the air force is planned to protect the whole Empire, and the military forces are organised so that effective aid may be forthwith despatched to any point at which security is menaced.

The solidarity of the Commonwealth was signally displayed in September 1939. On the outbreak of the war Canada, the Commonwealth of Australia and New Zealand forthwith resolved to take part in the war against Germany's effort to dominate Europe, there being no dissent. In the Union of South Africa the Premier proposed neutrality, but this was decisively rejected by the Assembly and a new ministry was formed. In Eire alone was neutrality decided upon, but public opinion was strongly expressed against Germany's aggression on Poland.

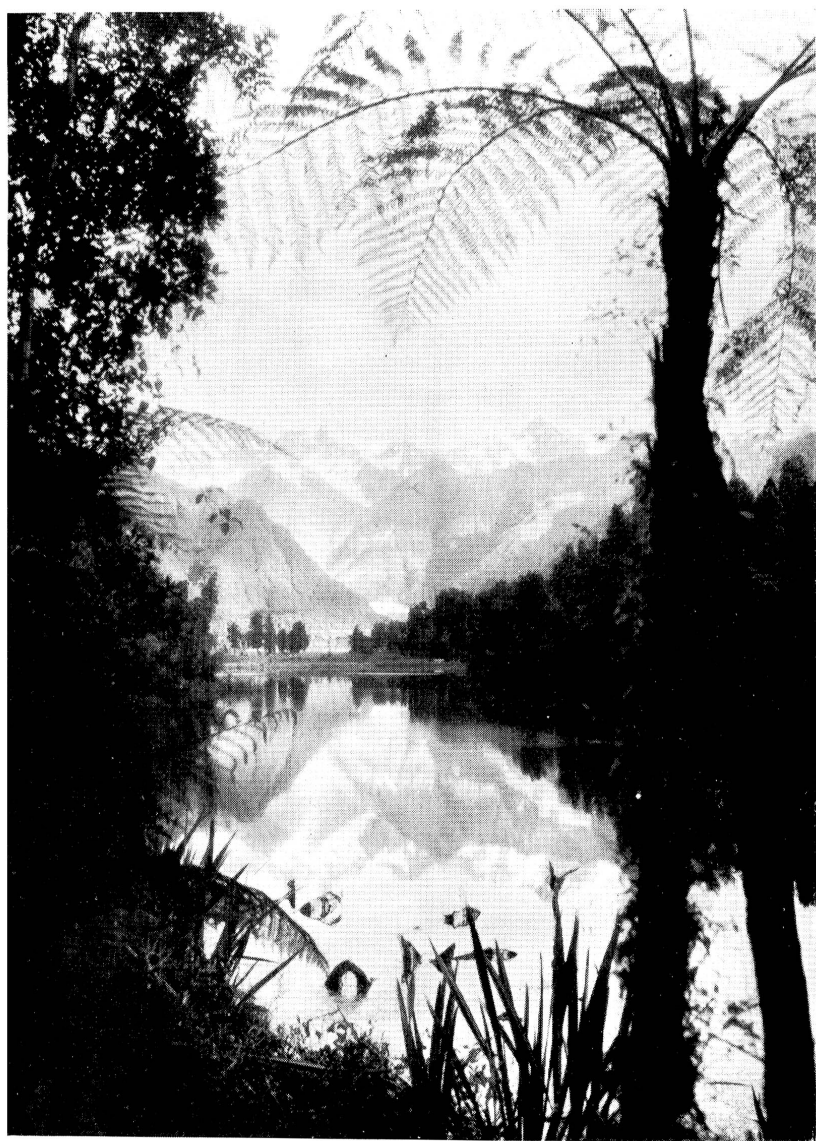
In *internal affairs* autonomy is revealed in the fact that the British Government has renounced any right to interfere with the legislation passed by Dominion Parliaments, which are now free to enact whatever they please, subject to the provisions of their constitutions. The constitutions themselves may be altered at the discretion of the Parliaments in accordance with the procedure therein laid down ; for instance, in the Commonwealth of Australia and Eire constitutional changes require acceptance at a referendum by the majority of the voters. In the Union of South Africa and New Zealand the constitution may be changed by Parliament at its discretion. In the case of Canada the constitution was made rigid by the British North America Act, 1867, creating the Dominion, because the statesmen of Canada, who framed the constitution which was accepted by the British Parliament, were desirous of preventing change therein. Alterations now must therefore still be made by the British Parliament, but it would act only on the request of the Parliament of Canada, and that Parliament has not yet determined on any change in the procedure.

In judicial matters the right to appeal from the final decision of the



Fox Photos

Some economic resources of the Empire : 1. Canada : Wheat. 2. New Zealand : Sheep. 3. Singapore : Rubber. 4. South Africa : Gold. 5. West Indies : Cocoa



Mounts Tasman and Cook, seen from Lake Malthesan at the foot of Fox Glacier, New Zealand

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Dominion Courts to the Privy Council rests on a traditional prerogative or right of the Crown which has been in operation since the earliest days of colonial government. It rests, however, with each Dominion to decide whether to maintain the appeal or not. In the case of Canada in 1933 all appeals in criminal cases were forbidden ; in that of Eire all appeals of any kind ; in the case of the Commonwealth of Australia the Constitution of 1900 forbids appeals in constitutional cases involving the rights of the Commonwealth and the States among themselves, unless the High Court certifies that the matter should be decided by the King in Council, and the High Court does not now so certify. It is clear that the appeal is retained only in so far as the Dominions so desire. Thus in civil cases in Canada it is retained because on the whole the Canadian provinces desire that the most important issues should be dealt with by judges who have no immediate connection with Canada, and are thus able to take a detached and purely legal view of questions brought before them.

The immediate link between the Dominions and the Crown is the Governor-General, who was prior to 1926 the representative not only of the Crown but also of the British Government, whose views on matters affecting relations between Britain and the Dominions he was expected to represent to his Ministers. It was then decided that the Governor-General should become merely the representative of the Crown, and that his relations to Ministers should be modelled on those of the Crown in the United Kingdom to the British Government. He has thus ceased to represent British interests, a High Commissioner instead being sent to each Dominion (including since 1939 Eire) where he occupies much the same position as do the High Commissioners for the Dominions in the United Kingdom ; thus he deals with trade questions affecting Britain and any political issues which he may be instructed by the Secretary of State to discuss with the Dominion Government. The normal channel of communication on such matters is direct between the Dominion Ministry of External Affairs and the Secretary of State for Dominion Affairs in London, but the Prime Ministers of the Dominions may communicate direct with the Prime Minister of the United Kingdom.

The British Government has, therefore, now no power to interfere in the executive government of a Dominion any more than in the activity of its Parliaments.

The British Parliament remains in theory sovereign over the

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Dominions, but only because British law does not admit the possibility of Parliament imposing legal limits on its power. The rule has been solemnly declared in the Statute of Westminster, 1931 ; no Act of the British Parliament shall extend to a Dominion as part of its law, unless it is expressly declared in the Act that that Dominion has requested, and consented to, the enactment thereof. No use has so far been made of this provision for normal legislation of general interest, and it is expected that, where there is agreement on legislation of general concern, for instance regarding shipping and Admiralty jurisdiction, the result will be effected by separate Acts in each Dominion as a mode of emphasising their autonomy.

With the disappearance of the sovereignty over the Dominions of the British Parliament the Crown becomes the essential link of connection, the people in the Dominions and the United Kingdom being united by the fact of the common allegiance they owe to the Crown, by virtue of which they are all British subjects. Canada, Eire, and the Union have defined those persons who are nationals of these Dominions ; in the Union and Eire political rights are restricted to nationals. Nearly all Dominion nationals are British subjects, and, as above mentioned, are given protection by the British Government as such.

Co-operation between the Dominions and the United Kingdom is promoted by the meetings of the Imperial Conference from time to time. Its resolutions have no binding force even on those Governments which agree to them ; usually only unanimous resolutions are recorded. The value of the Conference is that Ministers from the different parts of the Empire form personal contacts, and discuss fully matters of foreign policy and defence. The visits of individual Ministers from the Dominions to England serve a like purpose, and the High Commissioners for the Dominions in London and those for the United Kingdom in the Dominions aid in keeping touch. Exchange of information by telegram, despatches, and telephone is constant. The Imperial Shipping Committee and the Imperial Economic Committee provide for co-operation in these spheres by investigations, reports, and recommendations. Reference has been made to the Committee of Imperial Defence as ready to advise on any defence question, and the Dominions may send officers to study at the Imperial Defence College, and for courses of training with the British Forces, etc.

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In dealing with appeals from Dominion Courts the Privy Council acts through its Judicial Committee of judges of the highest standing. Dominion judges are eligible for appointment to the Committee, and sit from time to time.

Emigration to the Dominions has of recent years diminished greatly, owing to improvement of social conditions in the United Kingdom and economic depression in the Dominions. The British Parliament, however, still provides large grants to encourage settlers and to assist oversea Governments in schemes of land development. The Dominions Secretary acts through an Oversea Settlement Department with the advice of an Oversea Settlement Board. The Dominions have of course complete freedom to refuse admission to British subjects or would-be immigrants from any foreign country, but the British Government permits in time of peace free right of entry into Britain of any British subject.

2. The Dominion Constitutions

Of the Dominions *Eire*, *New Zealand*, and *Newfoundland* under the constitution now suspended, have the simplest constitutions, having each but a single legislature with full legislative power. All three Parliaments have two chambers, an elected lower house, and an upper house, the members of which are nominated in New Zealand and Newfoundland, but elected in a complex manner in *Eire*, with a view to secure representation of interests, not localities. The upper house in *Eire* has only a limited power of delaying ordinary legislation ; in the other two its authority is slightly greater, but in all the lower house has final authority as regards bills imposing taxation, raising loans, appropriating moneys, etc.

The executive government in each case is conducted on the British principle of responsible government, under which the Prime Minister is the leader of the party which has a majority of the members of the lower house, and selects his colleagues, the ministry holding office so long as it retains a majority in the house ; if it ceases to possess a majority, it must resign unless it advises a dissolution and this is accorded. If then defeated, it resigns office and the head of the State appoints another Prime Minister.

In New Zealand and Newfoundland the head of the Government is a Governor-General and a Governor respectively, representing the King ; in *Eire* the head is a President elected by the people for seven

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years, the Crown having been eliminated from connection with the internal administration of the State, though still recognised for purposes of the making of treaties and the appointment of diplomatic and consular officers.

The judiciary is appointed by the executive, but exercises its functions in complete independence thereof, the judges of the highest tribunals holding office during good behaviour and incapable of being removed from office except on addresses from both houses of Parliament. In New Zealand and Newfoundland appeal lies to the Privy Council, but there is no appeal from Eire.

Canada and the Commonwealth of Australia are federations, both influenced by the model of the United States, but they differ in certain important particulars.¹ In *Canada* there are nine provinces, enumerated above, and in each and in the federation the executive government is of the usual responsible type. The provincial legislatures are unicameral, except in the case of Quebec which has a nominated upper house. The federal Parliament consists of a House of Commons in which the provinces are given representation according to the population of each, and a Senate whose members are nominated by the Prime Minister for life, fixed numbers being given to each province, so that Ontario and Quebec have 24 members each, the maritime provinces together 24, and the western provinces 24. The federal Government appoints the Lieutenant-Governors who represent the Crown as heads of the provinces, and it can disallow provincial Acts if it thinks this desirable in the interests of Canada as a whole. Legislative power in all topics of importance to Canada as a whole is given to the federation, which is assigned in addition all power not expressly given to the provinces. They are given authority in matters of local concern, including property and civil rights, municipal government, and like subjects. The provinces provide for the constitution of civil and criminal courts, the federation provides a Supreme Court to hear appeals from the provincial courts; but appeal in civil causes lies also direct to the Privy Council from the provincial courts as well as from the Supreme Court, and all important constitutional issues are in fact disposed of by the Privy Council.

In Australia the *Commonwealth* shares control with six State Govern-

¹ See W. P. M. Kennedy, *The Constitution of Canada, 1534-1937* (2nd ed. 1939); W. A. Wynes, *Legislative and Executive Powers in Australia* (1936); A. J. Harrop, *My New Zealand* (1939).

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ments, all of the usual responsible character. But the federal Government has no control over the Governors of the States, who are appointed by the British Government, and it cannot disallow State Acts. The powers of the Commonwealth, though wide, are expressly defined, all power not so conferred upon it being left to the States. The federal Parliament is composed of a Senate in which each State has six members elected by the population of the State, and of a House of Representatives in which the States are assigned members, in proportion to population, elected in single-member constituencies. Each State, except Queensland which has one elected house only, has a bicameral Parliament, the upper house being elected by the people, except in New South Wales where its members are elected by the two houses from time to time. The States establish their own courts, from which appeal lies to the High Court of Australia created by the constitution. That Court has been given by the Constitution and Commonwealth Acts exclusive jurisdiction in all important constitutional issues, and is now the final interpreter of the constitution. In matters not affecting the powers *inter se* of the States and the Commonwealth appeal lies to the Privy Council from the State Supreme Courts and the High Court.

The *Union of South Africa* is essentially a unitary State, with a fully sovereign Parliament and a responsible Ministry.¹ The Parliament consists of two houses, the Senate and the House of Assembly, and it can legislate on any matter. But, as a result of the fact that the Union was formed from four independent colonies, there are maintained four provincial governments and legislatures, with narrowly defined powers, chiefly as regards primary education and local government; the governments are composed of the Administrator, appointed by the Union Government, and four members elected by the provincial council, which is elected by the voters. The members of the councils and the members of the Assembly for the provinces elect the eight members of the Senate for each province, while eight are nominated, and four are elected indirectly by the natives who are otherwise excluded from the franchise. The courts are provided by the Union alone, and appeal to the Privy Council, which is almost unknown, lies only from the Appellate Division of the Supreme Court.

In Canada, Australia, and the Union of South Africa it has been

¹ W. P. M. Kennedy and H. J. Schlosberg, *The Law and Custom of the South African Constitution* (1935).

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found impossible so to divide the power of taxation as to allow the subordinate units to raise all their revenue independently of the central Government. Large subsidies are therefore given from the funds raised by the federation and Union Parliaments to the provinces and States.

As above mentioned, the Union has complete power by ordinary legislation to alter its constitution ; Australia can do so, at least subject to the maintenance of a federal form, by referendum ; Canada can secure change only by an Act of the British Parliament.

Each Dominion maintains its own defence forces, consisting of a small permanent force and larger forces of territorial or militia type, all voluntarily raised in time of peace. For home service in the present war Australia and South Africa have adopted a limited measure of compulsion. In addition to military and air forces Australia, New Zealand, and Canada have naval forces, in the case of Australia of considerable strength ; Australian defences are being largely increased. Britain maintains no military or air forces in the Dominions, and the only British naval base therein is at Simonstown in the Cape of Good Hope. The Union Government is under obligation to protect that base from attack by land.

3. Dominion Territories and Dependencies

Certain territories, though included within the boundaries of the Dominions, are subjected to a special régime, and other territories are administered by the Dominions, though not forming part thereof.

In *Canada* the federal Government and Parliament have full authority over the *Yukon* and the *North-West Territories*, but each has a small legislature, elected in the first case, nominated in the second. The latter area includes the lands and islands north of Canada up to the North Pole.

In *Australia* the Commonwealth Government controls directly the Federal Capital area and the *Northern Territory*, which is of vast extent but scanty population. Outside Australia the Commonwealth controls *Norfolk Island*, *Papua*, and *New Guinea*. The two former are British colonies, the last is a territory mandated to the Commonwealth. In *Norfolk Island* there is an advisory council to aid the Administrator ; in *Papua* and *New Guinea* there are nominated legislative councils with official majorities. The *Australian Antarctic Territory* is almost uninhabited.

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In the case of *New Zealand* the *Cook Islands*, though included within the limits of the Dominion, are mainly inhabited by natives and have a special régime, Island Councils advising the Resident Commissioners who administer the Islands. New Zealand administers also *Western Samoa* under mandate ; the Administrator is aided by a Legislative Council, chiefly nominated. The *Ross Dependency* in the Antarctic has no permanent residents, but is under the supervision of New Zealand officers.

The *Union of South Africa* administers under mandate *South-West Africa*. The territory has been given a constitution of the same type as, but with greater powers than, those of the Union provinces.

(b) *The Colonies*

1. Relations with the United Kingdom

The colonies are possessions of the Crown as are the Dominions, but they differ from the latter in the fact that they are in a status of dependency, not of equality, with regard to the United Kingdom. The character of that dependence varies greatly in the different circumstances of the colonies.¹ Southern Rhodesia, for example, is in many respects almost in the position of a Dominion, Gibraltar is governed as a fortress. The one principle governing the situation is that control should be relaxed in proportion to the existence in any colony of a population qualified to take a share in the management of its affairs and to provide impartially for the welfare of all elements in the population. The United Kingdom cannot renounce direct responsibility for securing that the interests of the native populations shall not be sacrificed to those of European immigrants. It recognises that its ownership of native territories can be justified only by the exercise of a wise trusteeship of their interests.

There are certain principles applicable to all colonies except Southern Rhodesia.

(1) The British Government has the entire control and manages the issues of foreign policy affecting colonies, acting with due regard to their special interests ; in the case of Southern Rhodesia the colonial government's representations are normally given effect to, in matters

¹ See A. B. Keith, *Constitutional Law* (1939), Part IX ; Lord Lugard, *Dual Mandate in Tropical Africa* (4th ed. 1929) ; Lord Hailey, *An African Survey* (1938) ; *The Colonial Problem* (1937).

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especially concerning that territory, but in general policy the United Kingdom decides.

(2) Britain provides security against external aggression and in cases where local police and defence forces are not sufficiently strong to deal with domestic unrest. British military and air forces are maintained at Gibraltar, Malta, Cyprus, Mauritius, Ceylon, Straits Settlements, Hong Kong, Jamaica, and Bermuda ; there are British naval bases at Gibraltar, Malta, Ceylon, Singapore, Hong Kong, and Bermuda, and by agreement with Egypt and Iraq British forces are maintained in these countries to secure British communications with the east. The colonies provide supplementary forces to the British, and all are expected to aid in their own defence against external and internal dangers.

(3) The British Government appoints and controls the Governor who is the head of the executive in each colony ; it decides all matters of importance regarding the development of the colony.

(4) All colonial legislation is subject to its approval ; important legislation should only be initiated by the Governor with its approval ; he must reserve for its consideration certain types of bills affecting imperial interests or the interests of non-Europeans ; any Act, despite the fact that he has assented to it, may be disallowed. The Governor may be instructed to secure the enactment of measures deemed desirable by the British Government.

(5) The power of the British Parliament to legislate for the colonies is absolute, though in practice it is restricted to cases where uniformity is desirable, or affecting international agreements, or dealing with matters of Imperial importance, such as merchant shipping. It is usual in such cases for Parliament to give the King in Council power to apply such Acts with any necessary modifications to the colonies, *e.g.* as regards air navigation.

(6) The British Government controls colonial finances ; it gives subsidies or makes loans where necessary, secures the adoption of proper methods of accounting and audit, and sanctions the colonial budget, exercising a measure of control proportional to the measure in which it has to make good deficits in the colonial revenues. The fiscal policy of the colonies is finally determined in Britain, but the principle has been adopted that, in return for any preference granted to British imports, an effective preference for colonial exports must be accorded, any exploitation of colonial resources being ruled out.

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(7) The colonial judiciary is independent in the exercise of its functions, the judges of the highest courts being liable to removal only on the advice of the Privy Council on grounds of misconduct. From all colonies appeals lie to the Privy Council, so that miscarriage of justice is effectively checked.

2. The Sources and Types of Colonial Constitutions

All Dominion constitutions, except that of Newfoundland prior to the suspension of its constitution in 1934, rest on Acts of the British Parliament with subsequent amendments normally by their own Parliaments, but in the case of the colonies many have been created by virtue of the royal prerogative, that is the power still vested in the Crown by virtue of the common law of England. Prerogative powers can be taken away by Parliament, but until that is done remain and can be used. The prerogative permits the Crown by Order in Council to confer on any colony acquired by settlement, as opposed to cession or conquest, a constitution analogous to the British constitution, that is with a Governor to represent the Crown, and a legislature of which at least half the members in the lower house, if there are two, or in the only house, are elected by the people. In the case of ceded or conquered colonies the Crown can create any form of legislature it pleases. Parliament may itself confer a constitution on a colony, but normally it simply authorises the Crown to do so, leaving to its discretion the form of constitution to be granted. Its authority is requisite if it is desired to confer a constitution without, or with only a minority of, elected members on a settled colony, or on a ceded or conquered colony which has been given a representative constitution by the Crown, if the Crown has not reserved the right to revoke the constitution. Thus in 1936 Parliament legislated to permit the withdrawal of responsible government which Malta had been granted by prerogative in 1921.

Of types of constitution there are :

(1) Colonies in which the Governor normally acts on the advice of Ministers responsible to an elected legislature. *Southern Rhodesia*, which has a single chamber, is of this kind, the British Government reserving only a limited control over native administration and legislation affecting natives in view of their vast numerical preponderance, and control of external relations. In *Ceylon* also there is a single chamber and the ministry acts somewhat on the model of responsible

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government, which it is proposed to introduce at an early date. The British Government exercises a larger measure of control, including defence, external relations, the interests of minorities, and of Civil servants.

(2) In three of the old colonies, *Bermuda*, *Bahamas*, and *Barbados*, the original constitution survives. The administration is carried on by the Governor, but the legislatures are composed of two houses, the Legislative Council, which is nominated, and an elected Assembly over whose activities the Governor has no control except to refuse assent to Bills.

(3) The normal type at present of colonial constitution is one in which the legislature is composed of a single chamber, containing members holding high offices, nominated members, and elected members. The proportion of the latter to the other members varies; normally official and nominated members equal or outnumber those elected, but in every case provision exists by which the Governor is enabled to secure the passing of any legislation which the British Government desires him to have passed. Otherwise much weight is allowed to the views of the elected members, especially in *British Guiana*, *Jamaica*, and *Mauritius*.

Other colonies in this category are *Fiji*, *Gold Coast*, *Nigeria* (colony and protectorate), *Sierra Leone* (colony and protectorate), *Straits Settlements*, *British Honduras*, *Trinidad and Tobago*, and the colonies of *Grenada*, *St. Vincent*, and *St. Lucia*, which are grouped together under one Governor as the *Windward Islands*, but are not federally united; to them *Dominica* was added in 1940. The *Leeward Islands Federation*, created by Parliament in 1871, has a constitution of this type for the federation, and for its constituent members, *Antigua*, *St. Christopher-Nevis*, and *Montserrat*; for the *Virgin Islands* the Governor alone legislates. *Kenya* has such a constitution, but great weight attaches to the views of the European elected members. *Malta* in 1939 was given such a constitution.

(4) In the small colonies of the *Gambia*, *Falkland Islands*, *Hong Kong*, and *Seychelles* there are only official and nominated members, the latter in a minority. The *Turks and Caicos Islands*, a dependency of Jamaica, has a constitution of this kind with restricted local powers, while another dependency, the *Cayman Islands*, has a legislature with an elective majority for local purposes, but Jamaica has full legislative and executive authority over these islands.

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(5) In the case of *Aden, Ashanti, Basutoland, St. Helena, the Virgin Islands, Gibraltar, and Cyprus* the Governor alone legislates. Prior to the disturbances in the island in 1931, Cyprus had a constitution with an elected majority. Ashanti is under the Governor of the Gold Coast and Basutoland under the High Commissioner for Basutoland, the Bechuanaland Protectorate, and Swaziland.

Each territory has a Supreme Court from which appeal normally lies to the Privy Council. For West Africa, however, and Eastern Africa appeals go first to the West African and Eastern African Courts of Appeal ; from the West Indian colonies appeal may be brought to the West Indian Court of Appeal.

The Governor is aided in each colony by an Executive Council, composed of the chief officials ; in certain cases unofficials may be added, who may be chosen from the members of the Legislative Council. But he has always the power to override their advice.

Since 1932 steps have been taken to constitute a single colonial service, while formerly each colony had a distinct service. There are now administrative, legal, medical, forest, agricultural, veterinary, educational, audit, and police services, which offer better facilities for promotion and encourage *esprit de corps*. The more important posts are filled by officers recruited for the Secretary of State in the United Kingdom or by promotion ; minor posts are filled by the Governor. Appeal lies in the case of all but holders of minor posts to the Secretary of State in event of dismissal, etc.

Most colonies have, in addition to police, some form of defence forces. The West African territories have the Royal West African Frontier Force, the East African the King's African Rifles ; there is a force for service in the Straits and Malaya. Recently there have been developed branches of the Royal Naval Volunteer Reserve in the West African territories, Fiji, Hong Kong, Kenya, Ceylon, and the Straits Settlements, and facilities for training for air defence are being provided. Generous contributions to the cost of the Singapore base were made by Malaya.

Power to legislate by Order in Council for all the colonies above mentioned has been reserved by the Crown, in the case of ceded and conquered colonies, or conferred by Parliament, the exceptions being Southern Rhodesia, where the Crown has only a limited power of constitutional change, Bermuda, Bahamas, Barbados, Jamaica, and the Leeward Islands. Constitutional changes of importance are

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normally made by the Crown, but Ceylon and the colonies named above have power to alter their constitutions subject to the assent of the Crown.

The powers of the Crown as regards the colonies are exercised, subject to the supreme control of the Cabinet, by the Secretary of State for the Colonies, but the Secretary of State for the Dominions deals with the affairs of Southern Rhodesia and the Native Territories in South Africa, in view of their relations to the Union. The Colonial Secretary is not aided by a Council, but there exist a large number of advisory and other bodies to deal with finance, medical questions, agriculture and animal health, survey, social services, and colonial development.

(c) *Protectorates*

The common feature of all protectorates is that the territories have been granted the protection of the British Crown, so that relations between them and foreign States must be conducted through the British Government. That Government is therefore responsible for securing that justice shall be done to foreigners admitted to these territories, and must accordingly secure that suitable governmental arrangements exist in each. In dealing with protectorates different policies suited to the circumstances of each case have been adopted, with the result that two distinct classes of protectorates can be recognised ; protectorates assimilated to colonies in the matter of administration, and protected States. The chief distinction is that in the former the supreme government is vested in the Crown ; in the latter it remains in the local ruler, although he may be in large measure controlled by officers of the Crown.

(1) Protectorates of the former type may either be administered separately or attached to colonies. Of those administered separately *Northern Rhodesia* has a legislature partly elected ; *Nyasaland* and *Uganda* legislatures partly official, partly nominated ; *Somaliland* is legislated for by the Governor alone ; *Bechuanaland* and *Swaziland* by the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland ; the *British Solomon Islands Protectorate* by the High Commissioner for the Western Pacific ; and the *Northern Territories of the Gold Coast* by the Governor of the Colony. The *Gambia* and *Kenya Protectorates* are legislated for by the colonial legislatures. The legislature of *Sierre Leone* represents both colony and protectorate ; that of *Nigeria* deals with the colony and the Southern Provinces of

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the Protectorate, and in financial matters the Northern Territories, for which in general the Governor alone legislates.

In all these territories, whether colonial or protectorates, much use is made of the indirect system of rule, under which considerable executive and judicial, and to some extent legislative and financial, powers are entrusted to native chiefs or native councils, who act in general agreement with native customary law, but subject to the abolition of barbarous practices. A certain measure of control and guidance is exercised by European officers, but the ideal is to assist progress along lines which do not detribalise the native and destroy native social organisation so far as it is capable of development. The experiment has been carried furthest in the native kingdom of Buganda in Uganda and in the great emirates of Northern Nigeria. It is confronted by the difficulty that native society has often so disintegrated under contact with Europeans that it cannot effectively be recreated, and that it is difficult to find a suitable function in native society for those natives who have acquired European education and a European point of view.

(2) Protected States, administered in the name of their rulers but under British control, include the little Kingdom of *Tonga* in the Pacific, which has a native Parliament and has considerable autonomy ; *Zanzibar*, which has a legislature, partly official, partly nominated ; the *Federated* and the *Unfederated Malay States*. Each State has a Council, partly official, partly nominated, and there is a federal council, of like composition, for the Federated States. In Malaya the British Residents or General Advisers exercise a measure of control in varying degree ; in Brunei and the Federated States it extends to much of the administration, but the rulers in the other States are less closely controlled.

In the case of *Sarawak* and *North Borneo* no control over internal government is normally exercised.

The legal basis for the exercise of the power of the Crown in protectorates is furnished by the Foreign Jurisdiction Act, 1890, which gives the Crown in Council full power to legislate to provide such form of government as it thinks fit and to make laws from time to time. The question of the extent and character of the jurisdiction of the Crown in any territory cannot be discussed by the law courts, for the matter falls to be authoritatively settled by a declaration of a Secretary of State.

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(d) Mandated Territories

The mandate is a form of government regulated by Article 22 of the covenant of the League of Nations which was drawn up to regulate the treatment of territories detached from Germany and Turkey as the result of the Great War. The governing principle is that these territories shall not be treated as ordinary conquests, but the well-being and development of their peoples shall form a sacred trust of civilisation. Three types of mandate were provided for. Type A contemplated territories which with administrative advice and assistance might be able to stand forth as independent. Such was Iraq, which in 1932 was admitted to membership of the League of Nations, whereupon the mandate of Britain ceased. Relations with Iraq now rest on a treaty of alliance of 1930, which permits the stationing therein of a British air force. In accordance with it Iraq in September 1939 placed itself on the side of Britain.

Palestine was given in mandate subject to the rule that a Jewish National Home was to be established there. This purpose clearly ran counter to the ultimate grant of independence to the Arab population, and this conflict of ideals led to the maintenance of Palestine under close British control, the High Commissioner legislating with only the aid of an advisory Council of officials, and order being imposed by the use of martial law, supported by large numbers of British troops. Partition as a solution of the difficulty has been negatived. Further plans for a settlement have been made; both Arabs and Jews have readily agreed to co-operate in war precautions, and this co-operation may facilitate an accord later on. *Trans-Jordan* is not subject to the Jewish Home promise and is governed by an Emir under treaty of 1928, which enables Britain to secure the carrying out of the mandate. His autonomy was increased in 1939.

Tanganyika falls under Type B of mandate which requires the mandatory to administer under conditions which will secure freedom of conscience and religion, the prohibition of the slave trade, arms, and liquor traffic, the prevention of the establishment of military or naval bases and of military training of the natives for other than police purposes and local defence, and equal opportunities for the trade and commerce of other members of the League. *Tanganyika* has a legislature with official and nominated members. The mandate permits federation between the territory and adjacent territories under

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British control ; but this step has not been taken, though Kenya, Uganda, and Tanganyika have the same customs tariff, and the postal service is managed by the Kenya Post Office.

Mandates of Type B were also given for parts of *Togoland* and the *Cameroons*. These territories are attached to the Gold Coast and Nigeria respectively ; the Governor of the Gold Coast legislates for Togoland, the Governor of Nigeria for the northern area of the Cameroons, and the legislature of the Colony and Protectorate of Nigeria for the southern area.

Mandates of Type C, which permits administration as integral parts of the mandatory's territory, subject only to the above safeguards for native interests, were allotted to the Dominions, *New Guinea* to Australia ; *Western Samoa* to New Zealand ; and *South-West Africa* to the Union of South Africa ; their constitutions have been noted above. *Nauru*, a Pacific island rich in phosphates, was allotted to the British Empire and is administered by agreement between the British, New Zealand, and Australian Governments by Australia, the Administrator exercising full executive and legislative power and being charged with safeguarding native welfare. The phosphate deposits were purchased by these three Governments from their owners and are exploited by a Commission.

The League of Nations exercises a supervision over the carrying out of the mandates through the fact that an annual report must be rendered, which is studied by a Mandates Commission, a majority of whose members are not representatives of countries possessing mandates, and the Commission's report is dealt with by the League Council.

The legal basis of British authority over mandated territories is the Foreign Jurisdiction Act, 1890, which is deemed to apply to them as it does to protectorates. The same Act has been used in the case of Western Samoa, authority being conferred by Order in Council of the Government and Parliament of New Zealand. For Australia authority is provided by the constitution, and the Union of South Africa has asserted it as inherent in the power of the Union to legislate for the peace, order, and good government thereof.

(c) *The Indian Empire*

The constitution of the Indian Empire is at present in a state of transition to a federal system under the Government of India Act,

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1935, and its structure is somewhat illogical.¹ The federation has been made operative in regard to the provinces, but the central government is not yet federalised, nor have the Indian States, which are to form with the provinces the federation, yet determined whether they are to enter the federation. The terms of federation will be reconsidered after the war, and great changes are probable.

There are eleven provinces under Governors appointed by the Crown, *Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa, and Sind*. These provinces have bicameral legislatures in the case of Madras, Bombay, Bengal, the United Provinces, Bihar, and Assam ; the others have one chamber only. The executive government is conducted by the Governor with the advice of a Council of Ministers responsible to the majority in the Assembly on the usual British lines. But the Governor is required to exercise special responsibilities for the maintenance of peace or tranquillity, the safeguarding of minorities, of the position of Civil servants, and of the rights of Indian States and their rulers, and the government of certain backward areas in each province. If he thinks it necessary he can overrule Ministers on these issues, and is given power to legislate if the legislature refuses to act ; finally he may suspend the operation of the constitution and govern himself. Where he acts without the advice of Ministers, he is subject to the control of the Governor-General, and through him of the Secretary of State for India. In matters of finance he is empowered to authorise expenditure, even if it is refused by the Assembly. The franchise for the Assemblies was given to 30,173,914 persons, including 4,254,704 women. The system has been operative since 1st April, 1937, with general acceptance, which is the more remarkable because responsible government is almost entirely new.²

The subjects allotted to the provinces are enumerated in detail,

¹ See A. B. Keith, *Constitutional History of India, 1600-1935* (2nd ed., carried down to 1937) ; M. Ramaswamy, *The Law of the Indian Constitution* (1938) ; S. M. Bose, *The Working Constitution in India* (1939).

² In several provinces Ministries resigned in November 1939, pending agreement between the Congress Party and the British Government as to further constitutional advance. The difficulty is that the Moslems, the depressed classes among the Hindus, and others are hostile to responsible government under a Congress majority, and the British Government cannot ignore minority rights.

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while in a large field there is concurrent power with the federation, and federal powers are also set out in full ; these powers are now exercised by the central legislature pending federation.

Six special areas—*Delhi*, the site of the capital, *Ajmer-Merwara*, the *Andaman and Nicobar Islands*, *British Baluchistan*, *Coorg*, and *Panth Piploda*—are governed by Commissioners under the direct control of the Governor-General, and subject to the power of the central legislature.

Under federation the federal legislature will be bicameral. The upper house, the Council of State, will consist of 260 members, 104 representing the Indian States ; the House of Assembly will contain 250 representatives of the provinces and 125 of the States ; the numbers for the States are maxima ; federation can only take place if States with not less than half the total population of the States accept it. On federation the Governor-General will act on the advice of a Council of Ministers under the system of responsible government, but he will have special responsibilities analogous to those of the Governors, and the further duty of securing financial stability for India. Matters of defence and external affairs will be under his direct authority.

At present there is no responsibility in the central executive of the Government of India to the legislature, which consists of two houses both containing elected and nominated members ; in the Assembly those elected are in a large majority. But the Governor-General has power to legislate and take financial decisions against the will of the Assembly. It is, however, normally the rule not to override the Assembly on the issue of tariff policy, including relations with the United Kingdom, as it is not desired to risk placing British above Indian interests in this important regard. In all his actions the Governor-General is subject to control by the Secretary of State.

While the Indian services are now largely recruited in India, the Secretary of State controls the recruitment and the employment of members of the Indian Civil Service and the Indian Police. Both services are being steadily Indianised, but a certain number of Europeans is deemed necessary for the time being.

The defence of India against external aggression and internal disorder requires the presence in India of some 60,000 of the British Army ; there is also a regular Indian Army, part of which is being steadily Indianised, with an army reserve, an auxiliary force, and a territorial force, as well as Indian State forces which may be placed at the disposal of the Governor-General by the rulers of the States.

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A small Royal Indian Navy has been created since 1928. In *lia*, however, relies on British naval protection, and large grants have been made recently in order to aid India in meeting the heavy burden of defence costs.

Each province has a High Court whence appeal lies to the Privy Council. There is also a Federal Court already in operation, which has jurisdiction in matters affecting the interpretation of the constitution and which may later be made a court of appeal generally from provincial courts. The independence of the judges of these courts is fully secured by the fact that they cannot be removed from office except on the recommendation of the Privy Council.

The Indian States are, under the new constitution, given the opportunity of entering the proposed federation. They would require to submit to the control of the federal government, legislature, and judicature over their States in so far as concerns the matters of federal importance, but they may secure the right to administer federal legislation in their States, subject to satisfying the Governor-General that their administration is effective. They would also become liable to federal taxation in due course. On the other hand, all matters outside the scope of federation would remain as they are, and the federation would have no powers to interfere in the internal affairs of a State. Rulers would retain their present rights in these issues, including that of determining the local form of constitution. The representatives of the States would be chosen by the rulers, not their people, and would form an important conservative element in the federal legislature. With their aid the majority in both houses would probably be conservative in politics, and thus strengthen the stability of all Governments in India. By federation also rulers would obtain a voice in the decision of fiscal policy, which at present is determined by the Indian legislature without any consultation with the States. One reason why the States hesitate to federate is the feeling of some rulers that association with the democratically governed provinces in a federation would create an irresistible movement in the States for wider political privileges than they desire to concede.

Apart from federation the States do not fall under the Government of India. Since 1st April, 1937, their relations with the Crown are controlled by the representative of the Crown in its relations with Indian States. This office is held by the Governor-General, but is quite distinct from the Governor-Generalship, and its functions are

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exercise through a Political Department, not the External Affairs Department of the Government of India. The extent of the powers of the rulers varies greatly ; in about 109 of the 562 States recognised by the Crown the rulers have wide powers of administration, legislation, and jurisdiction, civil and criminal, over their subjects, while many of the small States have very limited or nominal powers. The extent of the authority of the rulers is determined in part by formal agreements, but very largely by practice. The States are not governed in their relations to the Crown by international law, and over all the Crown has paramount power to secure that no State shall so act as to endanger the interests of India or prevent its progress. No State may have any relations with foreign Powers, and relations with other States are subject to the approval of the Crown. While the Crown does not dictate the form of constitution to be adopted by States, it intervenes to prevent anarchy or gross misgovernment, and may compel the retirement of unfit rulers. In certain States, notably Mysore, Cochin, Travancore, and Baroda, the rulers have created legislative bodies with powers of advice, but the power to disregard such advice and to change the constitution is always reserved. Many rulers, however, have established efficient Civil services on the model of those in the provinces, created regular courts, and some have separated the governmental revenues from those allocated for their personal use. There is, naturally, a strong movement among their subjects in favour of wider reforms to place the people in the same position as they enjoy in British India. British Residents are appointed to the important States and to groups of States, with powers of advice : in the case of those States with limited powers, they exercise wide control. In nearly all States jurisdiction over Europeans is reserved for the Resident or for the courts of British India.

The rulers of the States owe allegiance and loyalty to the Crown, but their subjects are not British subjects. They are, however, protected persons and in foreign countries stand in the same position as British subjects. Natives of British India are British subjects.

From the legal point of view British jurisdiction in the States is regulated by the Foreign Jurisdiction Act, 1890, so that the States may be regarded as in law protectorates of the Crown.

The Secretary of State, who represents the Crown in dealings with India, is aided by a small body of advisers, but only in certain matters affecting Civil servants is he required to obtain the assent of the

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majority thereof. On matters of high importance the In liadecision rests with the Cabinet and the King-Emperor.

(f) Burma

On 1st April, 1937, Burma was separated from India, of which it had hitherto been a province, and was given a Government analogous to those operative in India. The legislature consists of a Senate of 36 members, half nominated by the Governor, half elected by the House of Representatives, and that house, which is elected. The Governor carries on the executive government on the advice of Ministers commanding a majority in the lower chamber according to the principles of responsible government. But he has control of external affairs and defence independently of Ministers, and he has special responsibilities in respect of financial stability, peace and tranquillity, the protection of the interests of minorities and of Civil servants, the government of certain backward areas, the prevention of commercial discrimination against Britain or India, etc. In such matters he can override Ministers, and he is given power to legislate and take financial measures independently of the legislature if he thinks fit, and in emergency he may suspend the constitution. In all such action he is subject to the control of the Secretary of State for Burma, an office held together with the Secretaryship of State for India, so as to secure harmony between India and Burma in matters of trade, immigration, and the treatment of residents.

The judges of the High Court are independent in the exercise of their functions, and appeal lies from their decisions to the Privy Council.

There are no important States in Burma which are not British territory. Certain areas of British Burma, however, including the Federated Shan States, are administered under their own chiefs and are not subject to the ordinary administrative system.

So far the carrying on of responsible government in Burma has been fairly successful, but it is hampered by the fact that parties based on different political programmes have not yet developed, and there exist only a number of small groups under leaders who are reluctant to co-operate in the formation of a stable Government.

(g) The Condominiums

Two territories of importance differ from these above described, because over them the Crown does not exercise unfettered control.

Systems of Law in the Commonwealth

The *Hebrides* were subjected in 1906 to an agreement for joint control by the United Kingdom and France, and are now governed under the terms of a later agreement of 1914, effective from 1923. There is a Joint Court and a small number of common services, but for many purposes British and French nationals are subject only to the authority of the British and French Resident Commissioners respectively. British jurisdiction is regarded as akin to that in a protectorate, and is exercised under the Foreign Jurisdiction Act, 1890, in accordance with the agreement of 1914. For British subjects the High Commissioner for the Western Pacific can legislate.

The Anglo-Egyptian *Sudan*, since its recovery in 1898, is administered by a Governor-General, who is appointed by the King of Egypt with the approval of the British Government, and who has full executive and legislative power, which he exercises subject to the general principles laid down by the British Government, which does not supervise his actions in detail. In his functions he is aided by a Council of officials and legislation is passed in Council. Subordinate to him are Governors of provinces, and native authorities are used as far as possible for judicial and administrative purposes. There is a locally raised Sudan Defence Force under British officers, and a small British garrison. Under the treaty of 1936 between Britain and Egypt provision is made for the employment in the Sudan of Egyptian forces, and Egypt and Britain join in any decision regarding the application of new treaties to the Sudan. The question of sovereignty remains open. No duties may be levied on imports from Egypt nor impediments placed in the way of Egyptian immigration.

It may be added that, as the United States put forward claims of sovereignty to Canton and Enderbury Islands, which were included in the Gilbert and Ellice Islands Colony in 1937, an agreement was made in 1938 that the islands should be available to both Powers for aviation and communication purposes.

4. THE SYSTEMS OF LAW IN THE COMMONWEALTH

No attempt has ever been made to impose uniformity of law in the Commonwealth, and hence there are important divergences even in the bases of the law. Thus in the British Islands themselves, while the common law of England extends to Wales, Scotland has its own

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system much affected by Roman law concepts, the Channel Islands have the Custom of Normandy, and the Isle of Man retains features of Norse law. Northern Ireland and Eire recognise English common law, but have greatly altered it by legislation.

In the Dominions and colonies English law was introduced by the English settlers, and this is normally the common law of each territory. But, where territories were taken over from civilised States, it was deemed undesirable to substitute English law without very strong reasons. Hence in Quebec the common law rests on the Custom of Paris ; in Mauritius and Seychelles the law is based on the Napoleonic codes, in St. Lucia on the French law in force on its occupation.

The Roman Dutch law in force in the Cape of Good Hope was retained after the cession of 1814, and extended to Natal when it became a separate colony. It was carried by the emigrant Dutch from the Cape to the Transvaal and Orange Free State and is now the law of the Union of South Africa, of South-West Africa under mandate, and of Southern Rhodesia, and, in so far as Europeans are concerned, of Basutoland, the Bechuanaland Protectorate, and Swaziland. It has been retained also in Ceylon, but has been superseded by legislation in British Guiana. It is interesting that it thus survives on British territory, though in Holland itself it has long been abandoned.

The old Spanish law of Trinidad has practically been replaced by English law.

In those Dominions and colonies which have large numbers of non-European peoples, and in the protectorates, in matters arising among such peoples their native law is normally applied so far as it is consistent with British authority and with the dictates of humanity. This is especially the case in matters respecting land tenure, inheritance, and family relations of every kind. The principle is carried out to the fullest extent in India where Hindu and Muhammadan law are in regular application, and in Burma where Burmese law is based on Hindu law. In these territories, as in protectorates, for Europeans the principles of English law are applied. In Palestine full effect is given to the Jewish and Muhammadan law of the chief communities, as well as those of the Latin and Orthodox Churches, in matters of status.

There has been much modification of the non-English systems of law taken over, partly by judicial interpretation based on the influence of English common law, partly by legislation assimilating local to

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English, especially in matters of commercial importance. Important measures of codification have taken place in many colonies, the eastern territories and those in East Africa having been influenced by the Indian codes. In Quebec the English criminal law was introduced on cession and French criminal law was not restored with civil law under the Quebec Act, 1774.

5. POSTSCRIPT

Following on the recommendations of the West India Royal Commission, a bold and far-reaching policy of aid to colonial development and welfare was announced by the British Government in February 1940. It was announced that in the first place a sum of £5,000,000 a year for the next ten years would be voted to be available for grants to colonies, protectorates and mandated territories, not only for schemes involving capital expenditure necessary for development in the widest sense, but also to help to meet recurrent expenditure on such services as agriculture, education, health and housing. In planning expenditure the government will be aided by a Colonial Development and Welfare Advisory Committee, partly official, partly unofficial. A Colonial Research Advisory Committee is also being established, and a separate sum up to £500,000 a year will be voted. Development programmes for a period of years ahead will now be possible, and great strides should be made in providing the people with the essential social services, which the limited local resources of most territories render impossible. The grants will not be accompanied by the present system of control exercised over grants-in-aid, nor will there be any derogation from the rights of local legislatures, whose co-operation is to be sought and relied upon. There will be no attempt to impose rigid uniformity, local conditions being faithfully respected. One important aspect of the work is already decided on; a central organisation under a Comptroller and a skilled staff will plan, in consultation with the local administrations, the further development of welfare services in the West Indies.

These decisions, coupled with the measures already undertaken to afford rights of combination and fair treatment to workers, should inaugurate an era of great advantage to all the peoples controlled by the Crown through the Colonial Secretary. The High Commission Territories in South Africa are to share in them.

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These economic and social reforms will afford the basis for political progress. In the case of St Helena there has already been set up an Advisory Council, through which the Governor will in legislating have the aid of representative members of the working classes.

A signal testimony to the popularity of British rule has been afforded by the eagerness of Cypriots to enlist in a regiment created for the war, as well as by the whole-hearted support of the people of Malta, and the co-operation with equal zeal of the Arabs and Jews of Palestine, despite their proximity to possible theatres of war. The response of the rest of the Colonial Empire, as of the Dominions, has been even more generous than in the Great War, forming a spontaneous and invaluable tribute to the principles of liberty and justice upon which the British Commonwealth of Nations is based.

A Royal Commission in Canada has recommended and the Dominion Government and Parliament have obtained from the British Parliament an Act (see p. 32) to authorise the federation to establish unemployment insurance throughout the Dominion.

With a view to maintaining peace in the Pacific, Australia has appointed a High Commissioner to Canada, and Ministers Plenipotentiary to Washington and Tokyo.

On 3rd September, 1940, President Roosevelt announced the conclusion of negotiations with Britain giving the United States the right to lease naval and air bases in Newfoundland and Bermuda, and the power to acquire similar bases in the Bahamas, Jamaica, St. Lucia, Trinidad, Antigua, and British Guiana. The bases in Newfoundland are "generously given and gladly received", the others are granted in consideration of the transfer to Britain of fifty over-age destroyers. The President compared the value of the concession to that of the purchase of Louisiana, and declared the bases of incalculable value for the protection of the Panama Canal, Central America, the northern portion of South America, the Antilles, Canada, Mexico, and the eastern and Gulf seaboard of the United States.

The fundamental importance of this intermingling of British and American defence preparations has been enhanced by the formation of a Canadian-American Defence Commission to prepare plans for the mutual defence of the hemisphere, and by the decision of Canada to exchange diplomatic representatives with Argentina as a token of the solidarity of their interest in the maintenance of security.

Readers who wish to follow up this subject are recommended to consult "The British Commonwealth", a select list of recent books, which can be obtained for threepence post free from the National Book Council, 3 Henrietta Street, London, W.C.2.

The National Book Council issues also, in conjunction with the British Council, a longer Book List on "British Civilisation and Institutions", which covers history, politics, economics, language, literature, music, art, education, etc. etc. This list can be obtained from the same address for sevenpence post free.



