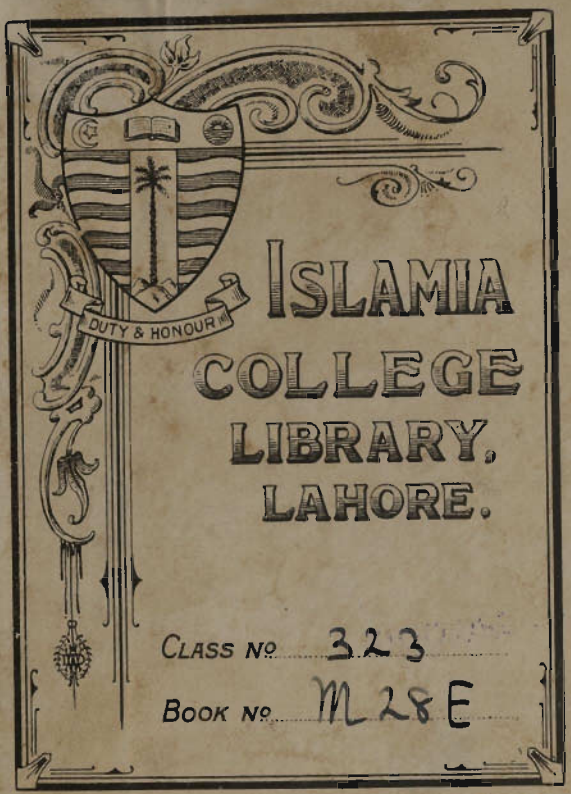
England and the Moslem World

A [illegible] ARTICLES, ADDRESSES AND ESSAYS ON EASTERN SUBJECTS

BY

SYED H. B. ABDEL MAJID, LL.D.



ENGLAND AND THE MOSLEM WORLD

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ERRATA.

Page.	Para.	Line.	
15	3	7	*Read* "for" *after* "hope."
15	4	6	*Read* "such as" *for* "like."
17	1	2	*Read* "deal" *for* "would be dealing."
17	1	3	*Read* "latter" *for* "later."
17	2	2	*Read* "were" *for* "was."
17	3	1	*Read* "to both" *for* "between."
17	4	4	*Read* "of" *for* "among."
19	1	3	*Delete* "it."
19	5	12	*Read* "due" *for* "proper."
22	4	1	*Delete* "would."
22	4	1 & 2	*Delete* "it will be a very wise step if."
22	4	6	*Read* "would" *for* "will."
22	5	3	*Read* "will ensure" *for* "ensures."
23	6	3	*Read* "wherein" *for* "where."
26	4	5	*Read* "come" *for* "comes."
26	7	3	*Read* "who" *before* "speaks."
45	1	6	*Read* "to" *before* "interest."
48	3	8	*Read* "seventh" *for* "seventeenth."
74	3	8	*Read* "to" *before* "whom."
74	3	10	*Delete* "him."
75	2	4	*Read* "Scutari" *for* "Secutri."
118	2	4	*Read* "makes" *for* "make."
155	6	2	*Read* "sharai" *for* "shaire."
171	1	9	*Read* "various" *for* "serious."
175	2	15	*Read* "Urdu" *for* "Wrdu."
180	2	3	*Read* "and" *for* "or."

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ENGLAND AND THE MOSLEM WORLD

Articles, Addresses and Essays on Eastern Subjects

BY

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To

Sir RAYMOND WEST, K.C.I.E., LL.D.,

for

His vast learning and kindness of heart,

his sympathy for India and the Moslem world,

and

as a slight personal acknowledgment

for his

kindly encouragement to the author in his study

of Law, History, and Politics,

With affection, admiration, and gratitude

this book is most respectfully dedicated.

Contents

I.

POLITICAL

II.

LEGAL

III.

SOCIAL

PREFACE

THIS book owes its existence to the pressure brought to bear upon me by my friends to collect and publish certain of my contributions to law, politics and literature.

Various were the occasions on which they were written. Some dealt with the matters of the moment; others were written to answer certain accusations levelled against the East, but all to place certain information before the generous English people in order to win their sympathy.

Of these, the Wakf as Family Settlement was written partly to elicit legal opinion in England, and partly to solicit protection for the Moslem community of India against moneylenders. Fortunately it will soon become law, as a bill on Wakf is already before the Imperial Legislative Council. The Moslem International Law was to show that the humane principles which characterise the so-called Modern International Law had already found expression in Moslem Law. The view on the Ottoman Constitution was expected to draw the attention of the Ottomans to the details of the English constitution as contrasted with the French, on which the Ottoman Constitution was originally based. Happily a deputation of Ottoman deputies paid a visit to England and had some opportunity of seeing the working of the British Constitution. The article on the Balkan question was in reply to Professor Westlake, under whom I had studied International Law at Cambridge, and who had written an article on this question in the *Nineteenth Century*.

"England and Modern India" is one of a series of lectures I gave in Lancashire and to the German Association in London.

My object was to encourage friendly relations and stronger commercial ties between India on one side, England and Germany on the other. Certain of my suggestions have since borne fruit.

The "Moslem Constitutional Theory" was written with two objects. In the first place, to controvert the notion generally prevalent in Europe and often made use of by politicians, that a Constitution is unsuited to Moslem countries. In the second place, to show that the representation given to the Moslems in India was not in excess of their number. Opinions are divided on the Anglo-Russian Convention, but the recent events in Persia brought about by Russia support the line of thought I had adopted. "Egypt and the Powers" is merely a historical survey of the period leading up to the British occupation, with a few suggestions to improve the administration of Egypt. The remaining articles are slight sketches of certain social features of life in the East.

I take this opportunity of expressing my thanks to the Right Honourable Lord Lamington, G.C.M.G., &c., ex-Governor of Bombay and of Queensland; Sir William Comer-Petheram, K.C., ex-Chief Justice of North-Western Provinces and of Bengal; the Right Honourable Sir Fletcher-Moulton, a Lord of Appeal; the Right Honourable Sir Frederick Pollock, Bart., D.C.L., LL.D., &c.; Sir Courtenay Ilbert; Sir Theodore Morison; Sir John Macdonnell; the Right Honourable Syed Ameer Ali; Mr. John A. Compston, Mr. E. Manson, and Mr. Corbet, Barristers-at-Law; Sir Charles Mathews; H.H. Prince Ala-us-Saltanat of Persia and Prince Mohamad Ali of Egypt; H.E. Tewfik Pasha, the Ottoman Ambassador to the Court of St. James; H.E. Mushir-ul-Mulk Medhi Hasan Khan, Persian Minister; the Honourable Mirza Abbas Ali Baig; Mr. R. G. Corbet; Major Syed Hassan

Bilgrami; Dr. John Pollen; Mr. Samuel Digby; Mr. E. Digby; Professor T. W. Arnold; Dr. F. W. Thomas; Dr. Keynes; Professor Westlake; Mr. W. T. Stead; Dr. Kenny, Downing Professor of Laws, Cambridge; Professor E. G. Browne, of Cambridge; Mr. F. H. Brown; Rev. J. W. Cartmell, Senior Tutor of Christ's College, Cambridge; the late lamented Dr. John Peile, Master of Christ's; the late Professor Maitland; the late Dr. Furnival; the late Mr. W. Halkett; the late Musurus Pasha; Professor D. H. Macgregor; Dr. S. A. Kapadia; Mr. C. H. Rosher; H.E. Enver Bey and Mansour N. Shakour Pasha; Mr. Milholland, the Honourable Benchers of Gray's Inn, and other friends too numerous to mention, for their many acts of kindness.

A. MAJID.

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I.

POLITICAL

I.

ENGLAND AND MODERN INDIA.[1]

IT is with a great deal of diffidence that I rise to address you on this occasion. The feeling does not originate in any lack of confidence in the subject itself, but from a deep conviction of the magnitude of the subject, and from consciousness of my inability to do justice to it in such a short time as will be at my disposal. But while these circumstances discourage me, I feel emboldened at the thought that I am in the midst of generous persons like yourselves, who do and will think more of the importance of the subject than of my shortcomings.

I begin by asking the question: What is India?—not that India which is depicted by casual travellers or by superficial writers—but the real India. And I cannot do better than quote from the speech of Lord Dufferin given on St. Andrew's Day, at Calcutta, in 1888. He was a man who had played a very important part in the affairs of the Empire, and combined in himself culture with experience.

"It is an Empire equal in size, if Russia be excluded, to the entire Continent of Europe, with a population of 250 (now 315) million souls. This population is composed of a large number of distinct nationalities, professing various religions, practising divers rites, speaking different languages, while many of them are still further separated from each other by discordant prejudices, and by conflicting social usages. Perhaps the most patent peculiarity of our Indian Cosmos is its division into two highly political communities: Hindus and Mohammadans. But to these two great divisions must be added a host of minor nationalities, though 'minor' is a misleading term, since most of them may be numbered by millions, who, though some of them are included in the two broader categories I have mentioned, are as completely differentiated from each other as are the Hindus from the Mohammadans; such as the Sikhs, with

[1] An address given to the Blackburn Chamber of Commerce, Lancs., on May 6, 1908, and in Lee's Hall (Blackburn), on July 22, 1908.

their warlike habits and traditions, and their theocratic enthusiasm; the Rohillas, the Pathans, the Assamese, the Beluchees, and other wild and martial tribes of our portions; the hillmen dwelling in the folds of the Himalayas, our subjects in Burmah, Mongol in race and Buddhists in religion; the Khonds, Maris, and Bhils, and other non-Aryan people in the centre and south of India; and the enterprising Parsees, with their rapidly-developing manufactures and commercial interests. Again, amongst these numerous communities may be found at one and the same moment all the various stages of civilisation through which mankind has passed, from the prehistoric ages to the present day. At one end of the scale we have the naked savage hillman, with his stone weapons, his head-hunting, his polyandrous habits, and his childish superstitions; and at the other the Europeanised native gentleman, with his refinement and polish, his literary culture, his Western philosophy, and his advanced political ideas; while between the two lie layer upon layer, or in close juxtaposition, wandering communities, with their flocks of goats and moving tents; a collection of undisciplined warriors with their blood feuds, their clan organisations, and loose tribal government; feudal chiefs and barons, with their picturesque retainers, their seignorial jurisdiction, and their mediæval modes of life; and modernised country gentlemen, and enterprising merchants and manufacturers, with their well-managed estates and prosperous enterprises."

Such is the nature and magnitude of the Indian Empire—a source of envy and admiration to other nations, but neglected by the people of England. You have only to go to election meetings to know the truth of this statement. Every petty detail of affairs at home is spoken of, but very little of the Indian Empire. Pass on to the more serious place—the Parliament—and you will find the same atmosphere of indifference.

I have talked to all sorts and conditions of men, and have received diverse replies. In some cases it has gone to the extent of telling me that England would be better without India. Some have told me that their reliance upon the Government is too great to take any notice of India, and so on. While such is the apathy here, a certain section of countrymen of mine, who are arrayed in opposite political camps, go to declare that they could do without England, and that India would be better without her.

Without any pretence to enforce my opinion, I think that neither the one view nor the other is wise, as neither realises the real significance of his statement. Perhaps they do not know the mutual advantages which accrue both to England and to India.

Without any desire to run down the Moslem rule in India, I think towards the end of the Mogul Empire the diverse races, like the Marhattas, the Sikhs, &c., had created a great deal of confusion in the country. The competition, between rival European nations, was another source of anarchy and disturbance. In the midst of this chaos it is only fair to admit that our connection with England has given us *peace—peace*, the harbinger of everything good. While I say this, I entirely dissociate myself from any extenuation of the tyranny and oppression of the East India Company. I am only speaking of India after 1858.

The late Queen's Proclamation to India has vouchsafed us *civil liberty, justice,* and at least theoretical *equality*. This latter is subject to a great deal of improvement, and it is hoped that whatever distinction still exists will die away. Any one who pictures to himself the feeling against Lord Ripon in Calcutta displayed by the Anglo-Indian community during the course of the famous Ilbert Bill cannot hope its complete realisation without the aid of the people at home, who are ultimately responsible (to God) for the good government of India.

The next advantage we have gained is the *material advancement* of the country. Railways, canals, post-offices, telegraphs, &c., have only been due to our connection with England. Those who are able to understand these benefits fully appreciate them, and only deplore that more is not done to develop the enormous resources, like working the mines, &c., of the country. These will not only enrich the capitalists but will also keep the wolves of hunger from the doors of the poor. The ways in which our officials work are very slow, and hence the ravages of famine, so heart-rending and distressing.

These are a few of the advantages that we have gained by our connection with England. Let me point out to you a few of the advantages which England has on account of her connection with India. To be brief, as I have to deal with several things of great importance,

Firstly, India has converted a *small island* power into a *world-wide Empire*.

Secondly, she has helped in the acquisition of territory like Burmah, helped in establishing trading relations with other countries like Persia, Mesopotamia, and China. It is a matter of considerable doubt whether England could have achieved all these without her great Indian stronghold.

Thirdly, her command of the sea is due to her possession of *coaling stations* and naval bases. Ironclads are of very little use unless you could coal them. Any one who remembers the difficulty the Russians had to encounter on this score during the late Russo-Japanese war will really appreciate the importance of possessing coaling stations. All the coaling stations from the Red Sea to the Far East are directly or indirectly due to India's connection with England.

I now pass on to the *fourth* advantage. It makes England *more powerful* as a *military nation*. India is a great school for military geniuses. In praising Lord Clive, Pitt said: "India has been fertile in heroes." Let me tell you but a few—Stringer, Lawrence, Ford, Eyre Coote, Clive, Warren Hastings, Thomas Munro, Baird, Ochterloney, Mountstuart, Elphinstone, Malcolm, and a number of minor lights—in later times, Charles Napier, Henry and John Lawrence, John Jacob, Herbert Edwards, Donald Stewart, and Lord Roberts—who but for India might have been unknown to fame.

Even the Duke of Wellington received his military training in India. His experiences in wars against the Marhattas stood him in good stead when he fought the Battle of Waterloo.

Again, India supports about 80,000 English soldiers and about 200,000 Indian soldiers—and they must count for something. After the Russo-Turkish war of 1878 over 40,000 Indian soldiers were sent to the shores of the Bosphorus to prevent the Russians from taking possession of it. Again, in the occupation of Egypt, in wars with China, in war in the Soudan, and during the unfortunate Boer war, how England had to fall back upon her resources in India! This is the importance I am speaking of.

In the *fifth place*, India employs so many Civil Servants. About one-third of the revenue is spent in their salary. Surely this is a gain to the nation!

Sixthly and *lastly*, the trading advantages to which I will revert when I would be dealing with cotton growing in India in the later portion of my address. Out of the gross trade of 200 millions, 40 per cent. come to the share of the United Kingdom; of imports about 64 per cent., besides the supply to the Government of India, which is her monopoly.

Now realise for a single moment what would become of these if India—Heaven forbid!—was to pass on to some other nation, or were to become independent *after a war of struggle* with England! Your loss I need not emphasise. You are capable men, and understand it well yourselves. What the other nations did in *Algeria* and *Madagascar*, in the *Black Sea* and the *Balkans*—with promises of "open door," will only be repeated there.

Having shown the mutual advantages between India and England, I am of opinion that there are three ways of effectively dealing with the problem of India in order to retain that country as an integral part of the Empire:—

1. Grant of *Home Rule* to India; or
2. Some kind of *representation* on the various Councils, both in England and in India; or
3. Widening the basis of the Imperial Parliament, and getting the interests of India properly represented there.

Now I hesitate to express my opinion on the first. Supposing India has Home Rule, how the unfortunate problem of existing differences between the various peoples of India is to be solved? The education among the Indians has not made them less selfish, more self-sacrificing, has not made them less offensive to other nations less educated, living in India, but has had a contrary effect. Unless and until they act in a more reasonable manner, unless and until they do not disregard the claims of other peoples, and unless and until the Mohammadans and the other important sections of the Indian people lose their consciousness of strength, administrative capacity, forget their traditions and past history, the question of Home Rule, noble as the idea is, seems to me impracticable, at least at the present time.

The second solution is easy of execution. Attempts have been made both in India and in England to broaden the basis of these

Councils. But as things are done in a great measure by *nomination*, they do not create a bond of sympathy between the Government and the People. [1]The Right Honourable John Morley (now Lord Morley) is, after all, in the hands of those who are supposed to advise him on Indian questions; but all those advisers either do not represent Indian sentiments or think of the problems in an original fashion. I myself know a few who are real friends of India.

These are the defects in the administration of India—apathy at home, officialism abroad, want of sympathy in general, invidious distinction between the Indians and the Europeans in the Government employment. And unless these things make room for a better state of things, such a Council as exists at present will fail to solve the Indian problem.

The *third* solution seems to me a very reasonable one. While the first will not, I am afraid, improve the condition, unless certain important conditions are satisfied, and which, after all, will only weaken the bond which binds India and England together, while the second is not effective enough to cope with the growing needs of the country, the third will meet the case more or less satisfactorily—I mean the representation of *Indian* interests in the Imperial Parliament. No doubt this is fraught with difficulties, but there is nothing good which can be attained without trouble. I have constructed a scheme modelled on what was presented to the Parliament in 1858 by Lord Beaconsfield. It is too long to discuss here, and therefore I leave it for the present. I might say that this principle is acted upon in France with some success.

Whether you approve of my suggestions or not, something must be done to improve your position in India. You read in papers of the things—I mean agitation—going on there, and perhaps you are told that it is only gas. No doubt the Mohammadans have been friendly to the British rule, and nothing serious has happened; but the triumph of statesmanship lies in foreseeing the dangers and providing for them. The Sedition Bill, which has just passed, deprives the people practically of freedom of speech. Whether it is good or bad it is

[1] Since this address was given, various Councils have been introduced in India, while two Indian members have been added to the Council of the Secretary of State for India.

not for me to tell you; but I mention it only to indicate the dangers which beset your path, and which the Government of India regard it as such.

You must do something wiser; you must treat the Indians as *true comrades*. It will be unworthy of you to be connected with them as conquerors to the conquered. You must not forget that India, if conquered at all, was done so by the Indians themselves. I only refer you to history and to the writings of Colonel Younghusband, Sir Charles Crosthwaite, and Sir John Seeley.

At this stage two considerations press me. Taking it for the sake of supposition that the problem of India is seriously taken up, what should be done at the moment (1) to keep peace and order in the country itself, and (2) to defend it from foreign aggressions.

No one can seriously contend that the Government of India is not based upon the goodwill of the people. I am at one with Sir Charles Crosthwaite when he says that peace in India is maintained on account of the goodwill of the people, otherwise "all the rifles that England could maintain would not suffice to keep the people down."

Now to solve both the problems stated it is necessary that the English should not only act upon the principles of justice, toleration, &c., but should also recognise the real value of various communities. While not forgetting other communities I should like to draw your attention to the Mohammadans of India. Their number is about 75 millions; they were the former rulers of the country; they understand the people better; their religion is practically the same as that of yours; they have hitherto arrayed themselves on the side of peace and order; the premier state in India is a Moslem state, *i.e.*, the Nizam's Dominions. It is proper that the claims of the Moslems should be regarded with proper consideration. Let me give you a brief account of the comparative share which the Mohammadans are having in the government of India.

"The East India Company had obtained from the Mohammadan Emperor the function of collecting land revenues of Bengal, Behar, and Orissa, and it was only fair that they were treated with certain consideration to the year 1765. From 1828 the whole thing changed. The result was a gradual depletion of the Moslems in all branches of service open to the Indians.

In 1871 the proportion of Mohammadans to their Hindu compatriots was less than one-seventh; in 1882 it had fallen below one-tenth!

"In lower grades of service the figures are still more astonishing. In the Foreign Office staff, out of 54 officers only *one* was a Mohammadan; while in the Home Department out of 63 officers only one was a Mohammadan. In the Department of Finance and Revenue, composed of 75 officers, is the Comptroller-General's office with a staff of 63 officers; in the office of the Secretary to the Government of Bengal (General and Revenue Department), with a staff of 90 officers of a superior grade, in the Judicial, Political, and Appointment Departments, composed of 82 officers, in the office of the Accountants-General of Bengal, with 181 officers, not a single Mohammadan enjoyed office. In the Board of Revenue, with 113 assistants, only one was a Mohammadan. Similarly in the office of the Inspector-General of Registration in Bengal there was only one. In the Customs Department, with a staff of 130 principal officers and assistants, the Mohammadans were conspicuous by their absence from the muster-roll. In the Preventive Department, in the Calcutta Collectorate, in the office of the Director-General of Post Offices in India, there was not a single Mohammadan. In the Postal Department, out of 2,035 officers, only 110 were Mohammadans. In the Telegraph and the Public Works Department none. Out of 421 officers in the Department of Public Instruction only 38 were Mohammadans. In the High Court of Calcutta, out of 298 officers only 47; and in the Calcutta Court of Small Causes, out of 27 ministerial officers only one was a Mohammadan.

"In Eastern Bengal the Moslem population is considerably larger than the Hindu, in some places forming two-thirds at least of the population. In the Freedpore district in 1882 out of 366 Government employees only 30 were Mohammadans. In Mymensingh, out of 344 only 20; in Midnapore, out of 499 only 39; in Pabna, out of 205 only 26; in Rajshahi, out of 388 only 57; and in Barisal, out of 423 not more than 36 belonged to the Moslem community.

"Now after 21 years in the Provincial Service, out of 42 subordinate judges in Bengal only one is a Mohammadan; out of 75 deputy magistrates in the first four grades, 13 are

Mohammadans. In Eastern Bengal, out of 10 subordinate judges not one is a Mohammadan; out of 10 deputy magistrates only one is a Mohammadan; out of about 261 Munsiffs there are about 14 Mohammadans.

"In other Provinces the condition is just about the same.

"In Bombay, out of 18 first class subordinate judges only one is a Mohammadan; out of 22 deputy collectors only one Mohammadan. In Madras Judicial Service out of 165 appointments 135 are held by Hindus, 26 by Europeans and Eurasians, and only 2 by Mohammadans. In the Punjab out of 44 officers only 12 are Mohammadans, while in the Upper Provinces out of 44 subordinate judges only 13 are Mohammadans.

"Among the 'ministerial staff' the disparity is still more disheartening."

Such is the condition of the Moslems of India under the British rule—a people who are guarantees of peace and order, who are the most loyal of all the peoples of India, and who have exercised extreme self-control under the most trying circumstances.

I notice in brief what part England has played in the Moslem policy outside India. It had been the pet policy of Russia to establish a naval base in the Mediterranean to dispute the English mastery of the sea; to establish a naval base in the Persian Gulf for the same purpose in the Indian Ocean, and to invade India. To counteract the first policy England fought in the Crimean war of 1856, and intervened in 1871 on behalf of Turkey.

To counteract the second design, they have just entered into a convention with Russia. It is not for me to criticise here the soundness of it. (I have already done so in various papers and magazines in London, and Lord Curzon has already dealt with it in the House of Lords in a most satisfactory manner.) But while considering this I should only tell you that you cannot afford to rely upon Russian promises. When she did not scruple to violate the provisions of such treaties as that of Paris and of Berlin, it can hardly be disputed that she will respect the convention recently concluded. Let me remind you of the Variage incident, when the Russian captain bade the Sheik of Koweit to note the Russian colours which she flew—"the colours which," he boasted, "will soon rule the seas."

The importance of this is so great that Lord Lansdowne said on one occasion :—

"We should regard the establishment of a naval base or of a fortified port in the Persian Gulf by any Power as a very great menace to British interests, and which we shall resist with all the means at our disposal."

About the advance of Russia towards India little doubt is entertained. She has joined her frontier with Herat, and constructed railways so far. Experiments have already been made to see how long it takes to bring soldiers to the Afghan frontier in Herat.

Out of true political considerations I would suggest that it will be a very wise step if an alliance between Turkey and England, the two great Mohammadan Powers, having millions of Mohammadans under their banners; Persia, with her great traditions; and warlike Afghanistan, and other Moslem countries, will greatly strengthen the hands of the British Government. By an alliance with Turkey she will keep Russia out of the Mediterranean; by an alliance with Persia, from the Persian Gulf; and by an alliance with the Afghans, from India.

Thus by supporting the Mohammadans in India, which is of course synonymous with the recognition of their claims, she ensures peace and order there, and by allying herself with the Moslem Powers she will keep off her worst enemy in the world.

From the province of political strife I pass on to the more genial, more-to-do-with-individual subject, viz., Trade. It would be simply impossible to deal with the whole subject here, but as Lancashire deals with India in cotton, I shall confine my attention to that commodity. I feel more for this part of England, partly because it was this shire which clamoured for reform for India—mention of which you will find in Lord Beaconsfield's speech delivered in 1858—partly because of some selfishness on my part to help my country in growing cotton more and more, which will only enrich the poor peasantry, and partly because of blind agitation against this shire, the authors of which really do not realise that our connection with other nations like the Germans will be less useful to the country.

Before I proceed with the subject of cotton itself, I may be permitted to encroach upon your valuable time by mentioning in brief the relation and competition which exists between

Lancashire and other countries. The British Cotton Growing Association is alive to those dangers, and has done a great deal towards meeting them. Its efforts deserved better success than it has attained to, and I confidently hope that it will co-operate with the leaders of the Indians in their endeavours to grow cotton in India.

There are three special enemies to Lancashire—Germany, America, and Japan.

Germany has proved a great rival by purchasing Indian cotton, which is generally of short staple, and adapting her machinery to the manufacture of it. Thus she buys cotton in cheaper markets, and therefore can afford to defeat her competitors by selling manufactured articles cheaper.

America supplies very good cotton, but at the present "the cousins across the Atlantic" are constructing more and more factories, and it is only a question of time when all their raw materials in cotton will be consumed in their own factories. Thus they will starve the English mills, and compete with them in manufactured cloths.

Japan also enters the field. The Japanese Government are looking with favour, and lending financial aid to, the development of the cotton industry. China is producing large quantities of cotton, but the quality is not good, and has to be mixed with either American or Indian cotton to produce good fabrics. Japan uses large quantities of Chinese cotton in the manufacture of textiles, and will no doubt seek control of the supply. It is interesting to note the sources from which Japan obtains her raw cotton. From reliable statistics for the half-year ending in June, 1906, it is shown that the cotton mills of Japan used 209,574,662 pounds of raw cotton. Of this amount India supplied the *greatest* quantity, 75,673,683 pounds; China, 67,996,954 pounds; and America, 58,541,589 pounds. Evidence is not wanting to show that the cotton industry in Japan is making rapid strides. Nearly every mill increased its spindles, and enlarged its capital stock, and every mill showed a satisfactory financial condition.

Such is the brief outline of the various campaigns against Lancashire. But the other day I read a speech delivered by a Socialist leader at Nelson, where he was deploring the work done in India by the Lancashire capitalists in erecting manu-

facturing factories, &c. Like other views of party men, be it in England, or France, or Germany, it savoured of the want of due appreciation of the problem. Is it not better that India should prosper rather than any other foreign rival country? Supposing these factories in India did not exist, what would have become of the raw cotton thus consumed? It surely would have gone to strengthen German mills! These arguments, I am afraid, are fallacious and not in conformity with the sympathy which Labour professes to have for India. We should, therefore, dismiss from our minds the consideration of Indian competition. Let us think Imperially, and be free from those ideas which characterise Little-Englanders.

Competition, therefore, cannot be avoided. What are we to do at the present? The Cotton Growing Association has attempted to grow cotton elsewhere, but it is of opinion that Lancashire will have ultimately to fall back upon India for the supply of cotton. What efforts have been made to foster cotton-growing in India?

I will have to rely upon Mr. H. Lawrence (I.C.S.) for my information on this matter. He says that the East India Company turned their attention to the improvement of the cotton trade. In 1788 consignments of superior seed were imported and distributed throughout the peninsula; and steps were taken to compress and pack the cotton in bales. A few years later bounties were offered for improved samples of cotton. In 1813 the first American cotton expert was despatched to India, and took with him a number of New Orleans saw-gins. In 1816 the export of cotton was encouraged by exemption from all the internal and export duties then levied on the transport of produce in and from India. Between 1816 and 1840 various measures were taken; bounties were given for certain qualities of cotton; seed was introduced from all parts of the world, and attempts were made to improve the native methods of cleaning the cotton.

In 1840 ten American planters were brought to India, and were placed in charge of experimental farms in all the three Provinces. Their experiments were extended over a period of ten years, but it was found impossible to acclimatise American cotton to Indian conditions except in a small corner of the Dharwar district in Bombay.

After the cotton famine of the American Civil War, many

of these measures were repeated, but once more without success.

He tells us that during the Vice-Royalty of Lord Curzon impetus was given to the development of agriculture in India. Thus at present there are ten agricultural colleges, and that education is given in English. There is also a Research Institute.

It is generally said that Indian cotton has short staples, and therefore it cannot be used with the same advantage as Egyptian or American cotton.

It is also asserted that for growing American or Egyptian cotton in India they require long periods during which the earth must retain moisture. This condition is not satisfied in India.

The apathy on the part of the cultivators is another difficulty in the way.

Others say that the chief difficulty is the smallness of the quantity produced. While in America the production is about 260 lbs. per acre, in India it is 30 to 50 lbs. per acre, and therefore it really does not pay to grow cotton.

Similar other difficulties are urged. The one urged by the worthy President of this Chamber of Commerce that the Indians mix up their cottons, and therefore cannot get as good price as they deserve, is also deserving of consideration.

Before I suggest the best means of growing cotton in India, and show why attempts have hitherto failed, I would like to answer the objections.

To the first and the fourth objection I cannot do better than quote from Sir George Watt, a great authority on cotton, and an author of a standard work on cotton—The Cotton of the World. He says:—

"I believe the natives of India know something about the cotton staple which Manchester people are entirely ignorant of. From time immemorial the natives have used a short staple; in fact, have failed to produce the same results with the American long staple. It is not a matter of the past; it is a matter of the present. At the Delhi durbar I sold to a number of visitors at the exhibition held in 1903 a number of pieces of Dacca muslin, quite as firm as any of the old historical samples that were to be found in museums. These had been spun and woven from the indigenous Dacca cotton, not cultivated years before, but

the product of that particular year. I am thus inclined to think that the solution of the cotton question of India is not merely one of selecting a long staple, but a closer study of existing stocks and conditions. I do not think Manchester wanted a long staple only. The bulk of the cotton spun in Manchester is not long staples, but Indian. A high-class cotton is wanted, and I have little doubt this could and would be obtained in India."

To the second objection I have only to point out that in Sind, in an experiment made, about 1,000 lbs. of lint per acre was obtained. It created a sensation in Calcutta. If the same conditions are observed elsewhere, I do not see any reason why like results will not be obtained.

To the objection of apathy I have nothing to offer. I fully agree. But I must say that the ways of working have not been proper, and therefore the failure.

Cotton is chiefly grown in Berar, Central Provinces, and Bombay. If we were to include the production in native states, it covers an area of 20 million acres, of an approximate value of £30,000,000. Of this only about 100,000 bales, worth three-quarters of a million, comes to England; and as the whole of the rest of the British Empire produces less than 20,000 bales, Lancashire pays some £52,000,000 to foreign countries for its supplies every year.

Now, why not arrange a compromise between India and Lancashire to the advantage of both? The former will find a good market, while the latter will be dealing only with a member of the same Empire.

I do not doubt the desire on the part of right-thinking people, but how is it to be accomplished? Through the Government of India or how?

Lord Palmerston used to say that whenever you want to be misinformed about a country, go to a man who has lived thirty years in that country, and speaks the language, for your information. This was never truer than when applied to those who claim experience about cotton-growing in India, and try to defend the Government. In a centralised Government like that of India a great deal of initiation must come from the Government, as we find in Germany. To induce the people to believe in the genuineness of a measure one must work in harmony with popular feeling. In India it is just the other way. There is

complete lack of consensus of mind between the Indians and the Anglo-Indian[1] community, except in rare cases. If I am allowed to be candid, the fault lies mainly with the latter. They do many things by way of experiment, but for the most part the knowledge is confined to Blue Books. Very few know anything about it, and so, when an attempt is made to explain to the people, in very rare cases, the people naturally regard it with suspicion. There are ways and ways of doing things. This is equally applicable to the laws of nature as to the laws of thought.

To disseminate the fruits of research and to educate the people in agriculture, colleges have been established, and that education is given in English.

Now, look at this a little critically. Is this the way to work among 300 millions of people? Would five or six colleges all over India answer the purpose? Above all, would instruction in English be useful to the majority of peasants? If so, how in the face of the fact that people are ignorant and more than that, they have little time to go through the long course of college education?

The measures adopted appear to me half-hearted. They have neglected the problems long enough, and now is the time to solve them effectively.

Now, it will be folly to leave such an important matter as cotton-growing, which may become very serious in the future, with the increased activity in other nations, solely in the hands of the Government. In Bengal cotton-growing is nearly a thing of the past, and unless steps are taken it will completely disappear.

The British Cotton Growing Association should take the matter up, and try to induce the agriculturists to grow cotton. This can best be accomplished through the leaders of the people, who command respect and confidence among them.

It should also try to distribute seeds, for the first time without any charge, not through post-offices or hospitals but through important persons of the village.

With a little expenditure, pamphlets bearing upon cotton-growing, its diseases, the nature of the soil, &c., &c., could be distributed among the people in the vernacular of the people

[1] Used in the old sense and does not indicate Eurasians.

of that part of India where conditions are favourable to its growth. This can be better accomplished through the same channel.

The apathy complained of is due to the ignorance of the people at large, and unless this is removed I am afraid no amount of research will be of any avail.

But there are two other real difficulties: (1) Want of co-operation among small land-holders, and (2) need of agricultural banks.

Unless the same kind of seed is sown in all the fields of a district, co-operation will evidently be absolutely necessary. In order to accomplish this—a very difficult task—the distribution of seeds of the same kind will apparently solve the difficulty.

The establishment of agricultural banks will be hailed with delight, and will serve the purpose of depôts for collecting cotton of a district, and also gain the confidence of the people. But you must in this, too, get the support of influential Indians.

The time is passing, and I must finish. I may mention that the All-Indian League (Moslem) and the Moslem Brotherhood of Progress will render you all the necessary help for this purpose. If this suggestion had been made a few years ago, it would have been rather difficult to achieve; but the awakening in the friendly Moslems is a good and helpful sign, and you should derive full advantage of it.

The same societies can render you useful services if you intend encouraging cotton-growing in the Levant. The Sultan of Turkey is friendly to England, and it is our fault if we do not derive full advantage from such a relation.

I have spoken a great deal about various things. I have shown how important it is to associate the Mohammadans more and more with the Government of India; how useful it is to ally yourself with the various Moslem powers, and how you can advance the cotton-growing in India, and score over your rivals in India and various Moslem countries. This accomplished, the Empire will attain to a solidarity not even attained by the Roman Empire, with the representation of India in the Parliament there will be "a Parliament of Man, the Federation of the World," on a small scale. And not only the Britons but also the Britishers shall rule the waves, and shall never be slaves!

II.

THE BALKAN QUESTION AND INTERNATIONAL LAW.[1]

MANY statesmen of eminence have directed their attention to the International relations of the Near East.[2] Disraeli and Salisbury did their best to extricate the Sultan from the unfair terms forced upon him by the Treaty of San Stefano. That the war of 1878 was unjust must be admitted, even by the enemies of Turkey, and that it was forced upon her in order to check an era of universal prosperity and happiness in that country, there is not a shadow of doubt. That the terms of the Treaty of San Stefano were unjust in the extreme to Turkey, and inconsistent with the provisions of the Treaty of Paris of 1856, of which the chief aim was to settle the affairs of the East on a permanent basis, no one questions. Hitherto it has been acknowledged on all sides that Turkey was really the oppressed, and that the Congress of Berlin assembled partly to undo the ill effects of the Treaty of San Stefano and partly to emancipate Turkey from the clutches of Russia; but now some jurists have come forward to put a different complexion upon the whole matter. They seek to justify intervention in the internal affairs of Turkey by the establishment of the financial control in Macedonia, and have invoked the authority of the Treaty of Berlin to justify the act which seems unwarranted by the dicta of International Law. To see whether the conclusion arrived at could be reasonably deduced from the yet accepted principles of International Law, we have to test the arguments on which the conclusion is based in the light of those principles.

First, to the consideration of that part of the argument which deals with the Treaty of San Stefano and the outcome of the

[1] A reply to an article by Professor Westlake (LL.D. K. C. Whewell Professor of International Law, Cambridge University, and President of the Balkan Committee), which appeared in the Nineteenth Century and After.

[2] The Near East, March and April, 1908.

Congress of Berlin, 1878. The provisions of the Treaty of San Stefano were so unjust in themselves and so threatening to the general interest of Europe that it was thought expedient by Austria and England that the entire Treaty should be subjected to the consideration of all the Powers. To this proposal Russia at first demurred, and it was not without some difficulty that it was at last agreed upon. At the opening of the Congress Prince Bismarck explained that the Treaty of San Stefano was in several points calculated to modify "the state of things as fixed by former European conventions," and hence the Treaty was submitted "to the *free* discussion of the Cabinets, signatories of the Treaties of 1856 and 1871"; and at a later stage of the same congress Count Schouvaloff admitted that the Treaty of San Stefano was "a *preliminary convention* having obligatory force only upon the *two* contracting parties, by which Russia intended to let the Turkish Government know beforehand the demands she would formulate before Europe." (Parliamentary Papers, 1879: Turkey, 39.) In presence of these it is difficult to admit the existence of the Treaty of San Stefano for the purposes of interpreting the Treaty of Berlin. It was the latter, and not the former, which, for the *first* time, brought into existence the rights and duties on the part of Turkey. Thus, strictly speaking, the question of restoration of any part of Turkish dominion does not arise, and with that vanishes any duty imposed upon the Sultan or the Powers on that account. The Treaty of Berlin may be called the conditional arrangement of the preliminaries between Turkey and Russia, and therefore subject to ulterior modifications. It becomes evident when we further regard it, that the Treaty of Berlin resulted if in a gain, certainly in a loss to Turkey. Thracia may be called a gain, but the loss of the administration of Bosnia and Hertsgovina[1] was also significant. By Art. X. and XI. of the Treaty of Berlin the "Great Bulgaria" of the Treaty of San Stefano, stretching from the Danube to the Ægean, was divided into three portions, of which the portion north of the Balkans became the autonomous tributary of Bulgaria, the portion immediately south of the range became the province of "Eastern Roumelia" under the direct political and military authority of the Sultan, though with

[1] This view is further justified by the annexation of these provinces by Austria-Hungary in return for a miserable pittance.

"administrative autonomy," while the most southerly portion was *unreservedly* given over, if at all, to Turkey. It is the last portion with which we are concerned at present, and as it was given over *unreservedly*, the point of good or bad administration does not hold there independently of the administration of the whole of the Turkish Empire. So much on the side of gain, if gain at all; but the same Treaty worked to the detriment of Turkey, thus leaving no doubt as to the provisional character of the Treaty of San Stefano. The administrative reform of Bosnia and Hertsgovina in accordance with the scheme previously laid before the Congress of Constantinople in 1876 (Parliamentary Papers 1877 : Turkey No. 2) subject to modifications to be agreed upon by Turkey, Russia, and Austria, was provided for by the latter Treaty; but the Treaty of Berlin adopted a more drastic measure by arranging that the provinces should be "occupied and administered" by Austria. That certain articles of the Treaty of San Stefano were not altogether abrogated, cannot prove its existence apart from the Treaty of Berlin, and whatever value it may seem to possess, it possesses in virtue of the latter.

The provisions of Art. XXIII. of the Treaty of Berlin which runs: "Similar laws . . . should also be introduced into the *other* parts of Turkey-in-Europe for which no special organisation has been provided by the present Treaty," of which the benefit is claimed for Thracia, are only general in their nature and cannot be construed to apply to Thracia specifically and to the whole of the Turkish Empire generally. No doubt what applies to the whole applies to the part, but the *application* cannot be made to concern the part apart from the whole. To argue differently would involve the fallacy of holding good the reverse process of the dictum *De omni et nullo* of Aristotle. Whether "the Vienna and Murzsteg scheme of February and October, 1903, and the establishment of the Financial Commission at the commencement of 1906" can be justified in view of these considerations, must be left to the judgment of fair-minded persons. Art. XXIII. does not create any "duty and accompanying rights" specially for Thracia as distinct from the rest of Turkey-in-Europe.

In the next place we have to consider the legal aspects of the Sultan's stipulations for the good of his country, both in the

light of the Treaty of Berlin as well as Treaties prior to it. That the "spontaneous declaration" of the Sultan, as embodied in Art. LXII. of the Treaty of Berlin, should be cited as binding upon him, seems to me scarcely intelligible, although the Government of the Sultan have acted in conformity with the principles of "religious liberty," "religion as no incapacity for public employment, etc." The representative of Turkey rightly maintained at the Brussels Conference that this was already law in Turkey. This article seems to me an echo of the Hatti Houmayoun of 18th February, 1856, doing away with all disabilities on the score of religion, but in order that this should not be construed as creating rights on the part of any Power jointly or severally to interfere with the affairs of Turkey, Art. IX. of the Treaty of Paris, 1856, respecting Hatti Houmayoun, declares:—

"It is clearly understood that it cannot in any case give the said Powers the right to interfere, either collectively or separately, in relation to H.M. the Sultan with his subjects, nor in the internal administration of his Empire."

Besides, in the eye of the law this cannot be construed to imply that Turkey has contracted herself out of her "fundamental legal rights," "the rights of Sovereignty or property or self-preservation." I am far from advocating any misgovernment, nor do I think that H.M. the Sultan ever desires the continuance of any grievance on the part of his subjects. As a proof of his good intentions we have to note the fundamental reforms in the Government (1876) of the whole of the Turkish Empire, which, alas! were nipped in the bud by Russia, partly on account of her secret understanding with Austria and Germany for the partition of Turkey, and partly because she feared that by acting otherwise the Russian people would demand similar reforms for themselves. Had it not been for the repeated interference of the Powers on the alleged ground of misrule, which denied to Turkey a free hand in her own affairs, Turkey would have been much better governed than Russia or Austria-Hungary, and certainly the term "misgoverned" does not apply to her. Such interferences can have but one result, that of shaking the confidence of the subjects in the strength of the Government, with the necessarily increased difficulty to govern arising thereby. Thus the burden of

responsibility is, in a great measure, shifted from the shoulders of the Sultan.

We will now consider the justification of intervention. Under this head we have to take notice of intervention by the neighbouring states on the alleged ground of misrule in Turkey, legality of the intervention by the Concert of Europe, and lastly of England's participation in such a coercive measure.

We have already seen the fallacy underlying the arguments of the jurists arrayed against Turkey, in respect of various treaties to which Turkey had been a party. We have pointed out that the financial scheme in question could not be legalised if one draws upon the treaties in question for support. We have now to examine other bases upon which the financial scheme might be justified. As it is a question of intervention in the internal affairs of Turkey, we have to regard such interventions in the light of the views held by great jurists. Their statement of the law on this question is known as being unalloyed by any attempt to justify any case in hand. Hall is one of the great Masters of Public International Law, and we should therefore see what he says on the question before us. Speaking of the general conditions of the legality of intervention, he says (Sec. 89) that "the right of independence is so fundamental a part of international law and respect for it so essential, that any action tending to place it in a subordinate position must be looked upon with disfavour, and any general grounds of intervention pretending to be sufficient, no less than their application in particular cases, may properly be judged with an adverse bias." There are, however, he admits, certain grounds upon which it is said with more or less authority, that intervention is permitted. Self-preservation and the restraint of wrong-doing only need concern us at present.

Intervention for the purpose of self-preservation naturally includes the cases where the neighbouring state is "too weak to prevent actual attacks upon a neighbour by its subjects, if it foments revolution abroad or if threatens hostilities that may be averted by its overthrow." The state which is subjected to intervention on these grounds has either failed to satisfy its international obligations or has purposely violated them. It has committed or permitted the commission of a wrong for which the intervening State might obtain redress by making war if it

so chooses. If the issues of war are decided in favour of the latter, it may enact as one of the conditions of peace that a government which would respect its international obligations should be installed. And if it may make war, *a fortiori* it may gain the same end by a milder method of intervention. "When, however, the danger against which the intervention is levelled does not arise from the acts or omissions of the state, but is merely the indirect consequence of a form of government or of the prevalence of ideas which are opposed to the views held by the intervening state or its rulers, intervention ceases to be legitimate. To say that a state has a right to ask a neighbour to modify its mode of life, apart from any attempt made by it to propagate the ideas which it represents, is to say that one form of life has a right to be protected at the cost of the existence of another; in other words, it is to ignore the fundamental principle that the right of every state to live its own life in a given way is precisely equal to that of another state to live its life in another way. The claim besides is essentially inequitable in other respects. Morally a state cannot be responsible for the effect of example upon the minds of persons who are not under its control and whom it does not voluntarily influence. If the intervening state is imperilled its danger comes from the spontaneous acts of its own subjects or third parties, and it is against them that it must direct its precautions." (Hall, Sec. 91.) Clearly all these rebut the alleged ground of responsibility attributed to Turkey; and it is only the irony of fate that the consular jurisdiction originally brought to existence out of pure considerations of justice to satisfy people of every nationality, should be used against her. If Turkey were free from the affairs at home, international law gives her a right to put an end to the state of things in the neighbouring states by intervention, alleged to be caused by 'the extreme misgovernment in Turkey, a nuisance to the neighbouring European states.'

"Intervention in restraint of immoral acts as alleged ground in the case in question, stands in a very different position. 'International Law,' which 'professes to be concerned only with the relations of states to each other,' has nothing to do, directly or indirectly, with such acts. It takes cognizance of them, if indeed it be competent to take cognizance of them at all, on the ground that the acts alleged to be of immoral nature are so

'inconsistent with the character of a moral being as to constitute a public scandal, which the body of states or one or more states as representatives of it, are competent to suppress. The supposition strains the fiction that states which are under international law form a kind of society to an extreme point, and some of the special grounds upon which intervention effected under its sanction is based, are not easily distinguishable in principle from others which modern opinion has branded as unwarrantable . . . . Not only in fact is the propriety or impropriety of an intervention directed against an alleged scandal judged by the popular mind upon considerations of sentiment to the exclusion of law, but sentiment has been allowed to influence the more deliberately formed opinions of jurists. That the latter should have taken place cannot be too much regretted. In giving their sanction to intervention of the kind in question jurists have imparted an aspect of legality to a species of intervention, which makes a deep inroad into one of the cardinal doctrines of international law; of which the principle is not even intended to be equally applied to the cases covered by it; and which by the readiness with which it lends itself to the uses of selfish ambition becomes dangerous in practice as it is plausible in appearance." (Hall, Sec. 92.)

"A somewhat wider range of intervention may perhaps be conceded to the body of states or to some of them acting for the whole in good faith with sufficient warrant; but they cannot be held to have a right of control outside law, in virtue of the rudimentary social bond which connects them. More perfectly organised societies are contented with enforcing the laws they have made. They do not go on to impose special arrangements or modes of life upon particular individuals; beyond the limits of law, direct compulsion does not take place; and evidently the community of states cannot in this respect have larger rights than a fully organised political society. Certainly there must always be a likelihood that powers with divergent individual interests, acting in common, will prefer the general good to the selfish objects of a particular state. Still, from the point of view of law, it is always to be remembered that the states so intervening are going beyond their legal powers. Their excuse or their justification can only be a moral one." (Hall, Sec. 95.) To the opinion of M. Rolin Jacquemyns Rev. de Droit Int.

(xviii. 603), referring to the action of the Powers in the Greco-Turkish conflict 1885-6, that the Eastern Question constitutes a case apart, and that within the area of Turkish Empire and the small states adjoining there exists "*une autorité collective, historiquement et juridiquement établie; c'est celle des grandes puissances,*" Hall replies that he cannot see that the case differs from any other in which common action is taken or settlements are effected by the great European Powers, except in the circumstance that danger being great and constantly recurrent, preventive interference may need also be recurrent. He goes on to say that such interference must still be justified on each occasion by the necessities of the moment. Thus the legality of intervention in the internal affairs of Turkey even by the concert of Europe, the recurrence of which is assumed to create a tutelage of Europe over her, passes out of the domain of international law and is clothed in the garb of illegality.

Having been shown that it is illegal to interfere even in concert with other powers, in the internal affairs of Turkey, which satisfies all the requirements for her inclusion into the family of nations, a privilege which she has enjoyed, though not with advantage, since 1856, it may be pointed out that it had been an impolitic act on the part of England, "which has so much at stake in all parts of the earth," to participate in it. The active support of the millions of Mohammadans of India, who still retain belief in the traditional friendship between Turkey and England as during and after the Crimean war, and who without any shadow of doubt are the bulwarks of the Indian Empire in the midst of a discontented population, is hanging in the balance as recent political events show; for they are tied to the Sultan by the ties of the Caliphate—a tie which binds the Afghans and millions of Mohammadans inhabiting various parts of the world. It might cause a general uprising throughout the Mohammadan world in case the safety of the Ottoman Empire be at stake. But after all is said and done let us sincerely hope that the cause of humanity will advance, that perfect peace will reign all over the world quickening the march of progress, and that the much maligned Turks may shake off the political tutelage they are assumed to be under, and ultimately prove a worthy ally to England as immediately before and after the Crimean war.

III.

THE MOSLEM CONSTITUTIONAL THEORY AND REFORMS IN TURKEY, PERSIA AND INDIA.[1]

THE wave of awakening which is now passing over the world has not left the Moslems undisturbed. In Turkey the advent of the New Era has raised grave questions regarding the Caliphate and the legality of the constitutional form of Government. Opinions are divided on the point whether the ex-Sultan still continues *de jure* a Caliph, and whether the present Government is consistent with Islamic laws. In India the reforms which allot separate seats to Mohammadans have given rise to certain misgivings. It is essential that these points should be closely examined for several reasons. First, the unanimous recognition of a Caliph is a necessary factor in the life of the Moslems. Secondly, to see whether progress is sanctioned by Islam. Thirdly, co-operation of all peoples of India with the Government of the country is indispensable for her peaceful economic development, and any measure which would estrange any of her people will be detrimental to her interests. Much light might be thrown upon these points by the examination of the Moslem constitutional theory which necessarily entails the examination of the Caliphate.

In the Near East this will show how far the Caliphate is affected by the present situation, while in India it will demonstrate whether the association of the Moslems with the Government of the country is of any real value. The examination of the doctrine of the Caliphate will be followed by its comparison with the English constitutional theory and its bearings upon the points under consideration.

The Caliphate is an authority vested in the person of the one who represents the Prophet in his dual capacity of defender of the faith and governor of the world. It has been determined

[1] An Address given to the East India Association on November 8, 1910. *Asiatic Quarterly Review.*

by the accord of the Moslems that it is obligatory on their part to elect a Caliph who will exercise authority over them all. The Kharajites, represented by Al-Asam, hold that it is optional, while the Shias, both of the Ismailia and Imamia schools, regard it as not only clothed with an obligatory character, but also in accordance with the will of God, who is under an obligation to appoint an Imam. Neither of these views appear to be correct; the former because it is directly opposed to what has already been defined by the accord of the Moslems; the latter because it lays down an obligation which He never undertook to fulfil.

Whether this obligatory character of the Caliphate is based upon reason or law has been a fruitful source of discussion. Those of the Motazela school regard it as based upon reason. The election of a chief is necessary for the management of the affairs of the State as well as to safeguard and settle the civil rights of the citizens; on the other hand, those of the school of Abul Hassan Al-Ashari base it purely on law. The conditions of the secular world at best point only to the necessity of appointing someone to look after them, but not to the appointment of a Caliph, a part of whose duties is religious in its character. The law, on the contrary, invests that one with the functions of governor who is given powers in spiritual matters. The Koran lays down: "O believers, obey God and obey the Prophet and those whom you appoint to command." The Prophet is reported to have said: "Of those who will govern after me, there will be some good, who will govern with goodness; there will be some who will be wicked and will govern with perversity. Listen to them, and obey them in all that conforms to the law. If they conduct themselves well, the merit will be for you and for them. If they conduct themselves badly, the merit is for you and the demerit will be for them." This is supported by all the jurists of the orthodox school.

The obligatory character of the Caliphate being thus established, it remains to consider the qualifications of the electors and the person elected to the Caliphate.

In order to exercise the power of electors, the people must be possessed of three qualifications. First, they must be just in the widest sense of the term. Secondly, they must possess the necessary knowledge of the things for which the Caliph is

elected. Thirdly, they must be gifted with sagacity and intelligence enough to choose the best man from the point of view of energy and management of affairs. It is evident that property, the basis of suffrage in the West, is not a necessary qualification. The right to vote is extended alike to those who are domiciled in a city or in a province. Custom alone, however, determines priority in the exercise of the right to vote and to elect.

There are seven qualifications the possession of which are conditions precedent to anyone being elected as a Caliph. He must be just in the widest acceptance of the term, and should possess sufficient knowledge of sciences to be able to take part in the determination of the points submitted to him for opinion. His sense of hearing, of sight and speech, must be good enough to enable him to discharge all the duties habitually, and the members of his body in such a condition as to be free from defects of impediment to movement. He must be endowed with that degree of sagacity which is necessary for governing the people and directing the affairs of the State, and that degree of courage and bravery which is necessary for protecting the Moslem territories.

The seventh qualification—that of lineage—requires special attention. The orthodox school confines the Caliphate to the tribe of Qoreish, and bases its determination on two traditions. Abu Bakar, the first Caliph, is reported to have heard from the Prophet; "The Caliphs must be of the tribe of Qoreish." The second tradition is that in which Mohammad is reported to have said to the Ansars, the people of Medina: "Give priority to the Qoreishites, and do not claim it, the Caliphate, for yourselves." These traditions are mentioned by authorities like Ibn Khaldun, the Radd, and the Esbah.

The Shias, on the other hand, declare that a Caliph must not only be of the tribe of Qoreish, but also of the house of Mohammad—that is to say, descendant of Bani Hashim.

Those of the Motazela and Kharajaite schools throw it open to all Moslems, and base their conclusion upon the tradition, "You must listen and obey even though the chief be an Abyssinian slave." This is supported by no less an authority than Dhirar ibn Amr.

Without assuming the authority to decide among these con-

flicting doctrines, it appears to me that the Shia doctrine is quite consistent with their partiality for the House of Bani Hashim, and it is in conformity with this view of the Caliphate that Abu Bakar, who belonged to the House of Taim, is not recognized as having been a Caliph by right. The doctrine of the orthodox school, based as it is on great authorities, is narrow, and excludes all but the Qoreishites. This savours of the same reason as actuated the patricians to keep the plebs at arm's length in Rome. The last view is more in consonance with equity. A faith of which the corner-stone is humanity and equality, which breaks through all the Shibboleths, and which places Bilal, a negro slave who was being dragged through the streets of Medina on terms of equality with any of the highest social standing, can hardly be so parochial as to exclude all but those of the House of Mohammad, or so narrow as to shut out all except the Qoreishites. To bring one within the pale of Islam, to extend the equality, and then to deny the legitimate fruit of it, seems hardly consistent with Moslem equity.

There are three elements in the contract of the Caliphate, viz., (1) Offer (Ijab), (2) Acceptance (Kabul) of the authority, (3) Homage (Baiat) rendered by the individuals. The importance of each of the elements will be apparent as we proceed, while the addition of a third element, unlike any other contract, will appear as a safeguard in certain cases.

There are two modes of concluding the contract of Caliphate. First, by election made by persons capable of contractual obligations; secondly, by nomination made by the preceding Caliph as representing the people at large.

Diversity of opinion exists as to the number of electors. One school lays it down that all capable of entering into contractual obligations should take part in the election, in order to show general consent regarding the authority of the Caliph; but to this rule is opposed the election of Abu Bakar, who was elected only by those who were present.

The other school limits the number of electors to five, all acting together or through a spokesman. This is supported by the validity of the election of Abu Bakar, who received the homage of Omar Ibnul Khattab, Abu Obeida Ibn-ul-Jarrah, Ousseid, Bakar bin Saad and Salim.

Those who represent the school of Kufa limit the number to three electors. They base this limitation upon the analogy of one judge and two witnesses, who alone are essential to the validity of a decision. There are others who take the extreme view and reduce the number of electors to the convenient number of one. They regard the election as binding in the same way as a judgment passed by one judge, and support it by the election of Ali. Abbas rendered homage to Ali, and the nation accepted it as valid.

The second precedent is that of the famous conclave composed of six persons established by Omar. It was laid down that five of the conclave should elect one of them as Caliph. This view is supported by the generality of jurists and theologians of the Basora school.

The candidates must be nominated. The majority of votes then settles the election. The consent of the candidate is necessary. If he accepts the result, which is tantamount to an offer, people are bound to do him homage. If he refuses, the next candidate will be elected. Equality of votes gives way to age, and equality of age makes room for learning. If equality occurs in all respects, according to some authority a lot is to be cast; according to others the people are at liberty to do homage to either.

As soon as these formalities for election are gone through, the contract is complete, absolute, and conclusive, even though the choice falls upon one less fitted for the post. Jahiz of the Motazela school maintains that the conclusion of the contract in favour of the less fitted without valid reasons is not absolute, as people are allowed to choose only the best. Most of the jurists say otherwise on the analogy of the appointment of one as judge in presence of one better fitted. The question arises whether mere possession of good qualities will entitle one to receive homage. One school answers in the affirmative, while the other school regards election and appointment as necessary.

There can only be one Caliph. In cases of conflict the one elected by the people in whose midst the preceding Caliphate was situated has a prior claim; or one of the two Caliphs elect should waive his rights in favour of the other in order to safeguard safety and public order. The better opinion is that the one who receives the homage first should have preference. If

priority of homage cannot be determined, the election is void, and a fresh election is necessary.

The other way in which the formation of the contract can take place is by disposition by the preceding Caliph. This has been sanctioned by the accord of the Moslems, and supported by two precedents of undoubted authority.

The first precedent is the appointment of Omar by Abu Bakar. The authority created by this disposition was recognised as legitimate by the Moslems at large. The second precedent is the creation by Omar of a conclave for the election of a Caliph. The illustrious persons of the age regarded it as valid. Ali said to Abbas: "The question of the highest importance is the affairs of Islam, and I do not believe in abstaining from it." In the eye of the law this mode of election is equally valid and regular with the one in which the people take an active part.

The disposition by the Caliph is equivalent to an offer. It is, therefore, necessary that it must be accepted by the beneficiary. As the Caliph so acting acts on behalf of the nation, he cannot revoke his disposition, unless there appears a flaw in the beneficiary which might endanger the stability of the State.

Does the Caliph represent God or the Prophet on earth? This is answered by the opinion of Abu Bakar. "I am not a Caliph of God," he said, "but that of the Messenger of God." People used to call Omar the Caliph of the Caliph of the Prophet, and afterwards changed it to Amir-ul-Momanin (Commander of the Faithful).

It is obligatory on the part of the people to give up the management of the general interests to the Caliph. Any opposition or separate action is forbidden, so that he may be able to safeguard the complex interests confided to him unfettered. They are bound to obey and to help him in carrying on the affairs of the State; but no personal knowledge of him is necessary, although Ibn Jaries holds a view to the contrary.

Many are the duties of the Caliph. He must defend the faith, provide for the execution of judicial decisions, maintain order and public safety, protect life, honour of women, and property, in such a way that persons can go wherever they choose without any let or hindrance; apply the criminal laws, defend the frontier,

and carry on wars. He is vested with the power to collect taxes, alms and escheats, regulate expenditure, and fix the salaries payable in time neither in advance nor with delay. He is empowered to appoint the functionaries, and to look to the administration of finance. Agreeably to the traditions that "each of you is a shepherd, and each of you is responsible for your flock," the Caliph is under a duty to apply himself personally to the affairs of the State.

The Caliphate is a contract bilateral in its nature. Obedience on one side connotes duties on the other. There are two ways in which the Caliphate comes to an end, absolving the people from allegiance. They are (1) moral defect, destroying in the Caliph the quality of being just and pious; (2) physical defect.

There are two kinds of moral defect: First, impiety the effect of which is complete obedience to passions. Second, the impiety by which he is rendered a prey to doubt. The effect of the first kind of impiety is that he commits forbidden acts, delights in shameless actions, and takes passions as his guide and master. Further, he ceases to be just. This concludes the contract, rendering a fresh one essential. Mere repentance is useless as it is unilateral.

A difference of opinion exists on this point. One school of jurists holds that such a course of conduct, *ipso jure*, deprives the Caliph of his authority; this is judicially sound. The Caliphate is a contract, and therefore the breach of it will put an end to it. The second view is that such circumstances do not cause but only create liability to forfeiture. Sudden cessation of the supreme authority might give rise to grave danger. As happened in England in 1688, everybody would be absolved from allegiance, and all administrative and judicial functions would be paralyzed. It appears reasonable that a formal declaration divesting the Caliph of authority should be made. This is the more approved and generally accepted view.

The impiety of the second kind consists in holding dogmas which are contrary to the principles of Islam. Certain jurists regard this as an obstacle to the continuance of the Caliphate, but those of the Basora school deem it no impediment. The difference is due to the one school taking impious thoughts regarding God and the Prophet into account, whilst the other takes the doubts concerning the Prophet only.

Of physical defects which put an end to the contract of the Caliphate, there are three kinds: (1) Defects of the senses; (2) defects of the members; and (3) loss of the liberty of action.

Permanent loss of reason and total loss of sight operate as forfeiture, as does the loss of members interfering with the discharge of the duties of the Caliph in matters of national importance. The loss of the liberty of action proceeding from a subordinate assuming authority without delegation renders the Caliphate liable to forfeiture. If this happens in consequence of the Caliph falling a prisoner in the hands of a non-Moslem enemy, there being no hope of deliverance in spite of all endeavours to set him free, a new Caliph can validly be elected. So can he be lawfully elected if the Moslem Schismatic under the circumstances elect a Caliph.

It is now easy to see that the Moslem constitutional theory is based upon the considerations of democracy. The Caliphate is controlled by the principle of election. The Caliph has to be elected, and is bound to act in conformity with certain principles, the non-observance of which deprives him of the right to command obedience. The people, on the other hand, are absolved from obedience as soon as he acts contrary to the dictates of his duty. Thus the Caliph and the people are bound to each other by the terms of the agreement, and any conduct contrary to it will be attended by penalties on either side. In order to see how far it tallies with the English constitutional theory, and how far it may have influenced it, we shall consider the doctrine of Social Contract as propounded by Hobbes and Locke in England and Rousseau in France. To understand it clearly, it seems necessary that a brief statement as to how these great philosophers arrive at their theory should be made.

Hobbes' Man in the state of nature was both moral and intellectual. The mere fact of being born a man endowed him with intellectual powers; but he was an egoist, and self was the most dominant factor in his character. He was moved to activities by considerations of self, its enlargements and gratifications, and its appetites, desires, and passions. He was a stranger to any disinterested motives. Further, all men in the opinion of Hobbes were originally equal, and when difference arose it was due to the accidents of education.

Dead to magnanimity and always in pursuit of selfish ends,

such men are not likely to forego their opportunities. "They become enemies and in the way to their ends which is principally their own conservation, endeavour to destroy and subdue one another." Thus, "if one man plant, sow, build, or possess, a convenient seat, others may probably be expected to come with united forces (it being their interest, in spite of their grief in each other's company to unite for aggression), and take from him not only the fruit of his labour, but also his liberty, or even his life." "Diffidence" or distrust, a state of constant fear, vigilance, and cunning wiles, will sway everybody. Makeshifts like the Articles of Peace, or a union of a certain number to conserve the peace, are quite within the bounds of possibility; but they can, after all, afford only temporary protection. A permanent coercive power of the nature of a government would appear an absolute necessity.

The creation of such a coercive power can be effected only in one way. With the concurrence of all, one man or one assembly must be clothed with all powers necessary "to reduce all their wills by plurality of voices to one will." "They" will thus "appoint one man or assembly of men to bear their person; and everyone to own and acknowledge himself to be the author of whatsoever he that so beareth their person shall act or cause to be acted in those things which concern the common peace and safety; and therein to submit their wills everyone to his will and their judgment to his judgment." This is affected by "covenants of every man with every man. . . . As if every man should say to every man, 'I authorize and give up my rights of governing myself to this man or to this assembly of men on this condition that thou give up thy rights to him and authorize all his acts in like manner." Thus the State is created to insure peace and guarantee safety. This State is the sovereign and everybody else is the subject.

By this delegation of authority the people deprive themselves of the power of subsequent creation or alteration without the consent of the Sovereign whom they must obey, and who cannot be interfered with even though he may at times act arbitrarily. The Sovereign is unfettered by any covenant, express or tacit. He is the Sovereign, and therefore any limitation of his power will be contradictory. He represents the people, and so any compact on his part would mean a compact with his own self,

something inconsistent! He is the fountain-head of law, and therefore his acts are never illegal, though sometimes contrary to the laws of Nature or equity. He can make war or conclude peace, make laws respecting property, levy taxes, take the supreme command of the army and choose his councillors, magistrates, and ministers. He has power to adopt means to keep the peace and defend the country, confer honour and dignities, and punish the guilty.

The greatest of English philosophers, Locke, is at one with Hobbes in regarding men as once living in the state of nature without any civil government to regulate their actions, and the social contract or compact putting an end to that state of affairs. He advances three reasons for the origin of civil government. "First, the want of an established, settled, known law received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them." Secondly, "In the state of Nature there does not exist a known and different judge with authority to determine differences according to established settled laws. Everyone is at once judge and executioner of the law of Nature, and passion and revenge will surely carry them too far in their own cases." On the other hand "negligence and unconcernedness make them too remiss in other men's." Thirdly, it is seldom possible for a single individual to enforce his right against his wrongdoer. The offenders, it is certain, "will seldom fail wherever they are able by force to make their injustice good." They will realize the force of these considerations, and will wish for something more permanent and stable. They will unanimously agree to appoint a magistrate, delegated with powers to punish and subordinate their freedom to such laws as would be framed by the common consent of the individual. A stable government or, in other words, a political or civil society will spring into existence, putting an end to the state of Nature. This will be the origin of the Social Contract.

The supreme power is undoubtedly the legislature thus brought into being. It can make or unmake laws, but must aim at the public weal. Powerful as it is, it is not absolute. The very nature of contract implies it. No one can give away what does not belong to him. Evidently "the lives, liberties, and possessions" of others are immune from his control, and

so he cannot invest the legislature with powers to interfere with them.

Beyond what is necessary to carry on the government, the legislature cannot tax without the consent of the people. Anything to the contrary will transgress the fundamental law of property, and frustrate the very end for which the government was instituted. The last limitation is that the legislature transfers its function only with the consent of the people. They being "the original source and depositories of political power," they must agree to any alteration in the government. Thus, if it is vested in the King and the Parliament, it cannot be altered without the consent of the people.

Locke thought that the people were supreme, could change the government at will, and could arm anybody to legislate for them. To Rousseau the supremacy of the people was acceptable, but the delegation of the power to legislate repugnant. The people themselves were the safest depositories of this power, and any delegation of this power will necessarily make the agent more powerful than the principal. Something contrary to reason!

Hobbes advocated absolute monarchy. The Sovereign was unfettered, able to do as he chose, even interfere with the fundamental rights of the people who had contracted to submit to his will. Locke favoured limited monarchy. The Sovereign must recognize the fundamental rights of his subjects. They were bound to obey him as long as he respected their primary rights. The contract was bilateral, and so any breach of the terms by any one party absolved the other. He thus defended the legality of the Revolution of 1688. Rousseau agrees with Locke in maintaining the sovereignty of the people, and in asserting their *summa potentia;* he favours "a democracy of the extreme type, in which the law-making power and the sovereignty is in the hands of all."

Such are the various political theories of different schools of thought, the Moslem on one side, the English and the French on the other. Their survey makes it apparent that the doctrine of Locke coincides with that of the Moslem school of thought. Both take sovereignty as a result of a contract; in the one it is the Caliphate, in the other limited monarchy. The Sovereign commands obedience, but is himself bound by

certain conditions. According to one school he must be just, while, according to the other school, he must respect the fundamental rights of the subject. A closer examination shows that the quality of being just implies the latter. The subject is absolved from obedience as soon as the breach of the terms of the contract takes place. The contract is bilateral, and its terms must be observed scrupulously by both.

The coincidence of Locke's view with the Moslem constitutional theory must appear strange to the critical student, and cause him to seek for an explanation. There can be but three theories as to the source of the idea which must have influenced Locke. He was either influenced by Hooker, who had written before him, or he was compelled to propound a theory to justify the Revolution of 1688, or he drew upon the Moslem system, by no means unknown to him. It has been pointed out that the doctrine of Social Contract is historically unsound, and that all the governments based upon it, the French or the American, have sprung into being long after this doctrine became known. This assertion leaves out the Moslem constitutional theory and the influence it really exercised upon the governments of various European countries.

There cannot be any doubt that the English Parliament is the Mother of all Parliaments, and perhaps the best. However time-honoured it is at present, the first act on the part of the Sovereign, which gave the stamp of recognition to the rights of the people, was the Magna Charta, 1215. It was followed by the Petition of Right, 1628, and the Bill of Rights, 1689. The Moslem system was much prior in date, as Mohammad of Arabia preached his principles early in the seventeenth century. Historians are not silent upon the influence which the Moslems exercised upon the world, and the education which they imparted during the Dark Ages. The Arabian school of thought was eagerly studied, and the Arabian fashion faithfully copied. Its influence was so great and of such an enduring nature that we find the philosophy of Aristotle taught through the medium of Latin as translated not from the Greek but the Arabic, and the philosophy of Averroes, a Moslem, taught in the Universities of Bologna and Padua down to the eighteenth century. Far from asserting that the framers of the Great Charter were actually under the influence of the Moslem political theory,

the influence which it exercised upon Europe prior to this time raises a presumption that they might have been. Locke was fully aware of the Moslem idea of polity. In his works there are references to indicate that it was familiar to him. The coincidence, therefore, strongly points to the influence he might have been under.

At this stage of our inquiry three questions present themselves: first, whether the constitutional form of government in Turkey or Persia is consistent with Islamic principles. Secondly, if the present Sultan of Turkey succeeded to the Caliphate. Lastly, what value can be attached to the separate electorate given to the Mohammadans in the reforms just introduced in India. The Moslem constitutional theory is broader than the English. While in full accord with the principles which are the corner-stone of the English constitution, it also lays down the principles of suffrage without property qualification, that is to say, one man one vote, a state of things which might have delighted the heart of Bentham. Pure democracy being the principle underlying the whole system, Islam cannot but recognize any government as fitting which aims at furthering the cause of the people. The constitutional form of government as it exists in Turkey or Persia is fully supported by Islam. The opinion of the Sheikh-ul-Islam in Turkey is in entire accord with the views of the learned in Mohammadan Law. Some politicians have expressed their misgivings on the enduring character of the New Régime, but if it is quite in harmony with the Moslem views, there appears no real foundation for any doubt on that score. The leaders of the Young Turk party, as it is called in this country, a few of whom I personally know, are pure in character, serious in thought, and peace-loving in action. They are undoubtedly men of great ability and eager to use it for the benefit of their country. No cause for any apprehension should be entertained regarding the lasting character of the New Era. It requires sympathy, and it is sincerely hoped that England will extend her helping hand, being the Power with the largest number of Moslems under her banner, to Turkey, the seat of the Caliphate, and to Persia, the seat of culture and polish.

On the second question there appears conflict of views.

Some Indian Moslems do not regard the Caliphate in the person of the ex-Sultan at an end, and maintain that he continues as Caliph *de jure*. In Turkey the authority of the Sheikh-ul-Islam sets it at rest. He regards the Caliphate in the person of the ex-Sultan as forfeited, owing to his conduct in the past. If we are rightly informed of the high-handed actions of the ex-Sultan, there cannot be two opinions on this question. As soon as he ceased to be just and acted in a manner which was dangerous to the stability of the State, he forfeited the right to command obedience. If life and property for the protection of which he was elected, were not safeguarded, he undoubtedly disregarded the fundamental rights of his subjects, ceased to remain just, and did therefore rightly lose his authority as Caliph. Legally speaking, his formal deposition renders the forfeiture absolutely beyond recall.

On the question of reform in India, it is premature to pass any definite opinion; but it cannot be denied that this reform marks a new era of great importance in the administration of the country, that it is a distinct advance on the previous administration, and that the people have been, to a certain extent, associated with the Government. The educated middle class, as such, have no representation, and the landholders, who are by no means very humane in the treatment of their tenants, have been given an undue amount of representation and power. The Mohammadans have been given separate seats on various Councils, and it is with this portion of the reform that we are chiefly concerned. This has been adversely criticised on the ground that the Mohammadans are foreigners, and that they are of no great importance among the peoples of India. They should therefore receive no separate consideration.

The first objection was answered about forty years ago when the muftis of various schools at Mecca gave their legal opinion, declaring India as Dar-us-Salam, the Land of Peace. India, therefore, is not a foreign country for the Moslems, and they are bound to remain in peace there as long as the peculiarities of their religion remain untouched, and to defend her against any foreign aggression. It is apparent that they cannot be called foreigners, whatever might have been their places of origin.

The second objection is answered by the consideration of the Moslem political theory dominating the whole life of the Moslems. If the constitutional ideals of the Moslems are similar to those of English, it is easy to see the importance of their association with the administration. It is bound to exercise a most salutary influence, provided proper men get on the Council.

It would really have been a great loss to India if no provision were made to insure the return of the Moslem element to the Council. The advantages of the association of the Moslems, with their ideals adapted to the present condition of India, would have been denied to the Assembly, and if any evolution of the Government of India is thought of, it would have been seriously hindered. An India purely Hindu, or purely Mohammadan, or purely Parsi, or purely anything, can hardly commend itself to an Indian patriot, as this is far from ever becoming a reality. What is desired is an India free from any bias of any kind whatever, and this cannot be attained but by the mental welding together of all Indians to whom there would exist no difference on the score of ideals. If, therefore, any important section of the people of India were denied representation in an Assembly which was novel in the administration of the country, it would neither have been just to them nor advantageous to the ultimate good of India herself. The evolution of such an India as a result of the reforms would be more rapid under the circumstances when endeavour has been made to give representation to almost all the various sections amongst the people of India, and when they have a chance of arriving at a common ideal emerging from the separate ideals of all.

Then, and not till then, it is proper to speak of the election of an Indian member, irrespective of his religious views, to an Indian Council or to an Indian Assembly on colonial lines.

It has been further stated that the Moslems have more seats than their proportion allows them. In order to see whether it is really so, we should examine the composition of the Imperial Legislative Council. It consists of sixty-eight members, including the Viceroy and seven *ex-officio* members. It stands as follows:

1. Officials	35	35
2. Non-officials nominated by the Viceroy	4 or	2
3. Non-officials elected or quasi-elected	28 or	30
Total ...	67	67

The thirty-five members represent the Government, and the nomination of four members is meant to safeguard the interests of classes who might have failed to secure adequate representation at the election.

The proportion of the number of seats given to various important sections of the peoples of India is as follows:

1. European Chambers of Commerce ...	2
2. Buddhists of Burma	1
3. Mohammadans	8
4. Hindus	17
Total	28

The Mohammadans have six seats given to them—viz., five elected by the Mohammadans of Madras, Bombay, Bengal, the United Provinces and the Eastern Bengal, one for each province, and one nominated to represent the Mohammadans of the Punjab.

Two other Mohammadans are elected to represent the landholding interests in four provinces where they are in a majority, or form an important minority. They will be returned by different provinces at alternate elections. The first group will return two members at the first, third, fifth, and other subsequent alternate elections, while the other group will return the same at the second, fourth, sixth, and the succeeding alternate elections. The arrangements will be as follows:

(A) One member to represent the landholders in Bombay elected by the zamindars of Sindh, Mohammadans being in the ratio of 2:1;

One member nominated to represent the landholders of the Punjab;

or

(B) One member elected by the Mohammadan landholders of the United Provinces; and
One member elected by the Mohammadan landholders of Eastern Bengal.

The electorates of Group B will come into existence at the second, fourth, and sixth elections, and in those years the Viceroy's power of nomination will be to that extent reduced, and the seats in Group A will go to the Hindus. The special Mohammadan electorates will then be called into existence to adjust the balance.

Further, the Mohammadans have the right of voting in the general or mixed elections. They will thus have double votes.

Let us now analyze the advantages to the Moslems which has been the subject of so much criticism. In the first election, the member for the landholding interest of the Punjab will be nominated, while the member for Bombay must get himself returned by the mixed constituency. However excellent the choice may be, nomination can hardly be called representation; nor is it easy to see how Moslems can be said to receive preferential treatment if the Moslem candidate will be dependent upon the passing mood of the electors in the mixed electorate.

In the second election the Moslems will have two extra seats, so that the number of Moslem representatives will be 8 out of thirty, nomination by the Viceroy being accordingly reduced by 2.

Thus in the first election the proportion of representation is 6 out of 28—that is to say, 21 3/7th per cent.; while in the second it is 8 out of 30, that is to say, 26 2/3rd per cent. Putting together the result of both elections (for India as a whole is fully represented only when both elections are taken into account) the average Moslem representation is about 24 per cent., just 1 per cent. more than what their proportion allows!

The right to participate in the mixed election has its advantages as well as its disadvantages. The apparent disadvantage is that some of the Moslem leaders will not be able to devote themselves exclusively to the welfare of the Moslems. They will be serving two masters. The great advantage, which no one interested in India should ignore, is that it may possibly result in creating good feelings between the Hindus and the

Moslems, and thus render possible their co-operation and harmony in the economic development of the country.

There is very little advantage to the Moslems as such by participating in the mixed elections, not even by the application of the principle of proportional representation, and regarding the whole of India as one constituency. The surplus Moslem population is, altogether, 8 millions, and is located 3 millions in the Punjab and 5 millions in Eastern Bengal. This can hardly exercise any appreciable check or influence over population having a commanding majority. The 2 millions in Madras, together with the surplus hypothetically transferable votes, cannot affect a population of 34 millions; the 6 millions in the United Provinces, together with 8 millions, can scarcely hold their own against 40½ millions; or the 9 millions in Bengal, together with 8 millions, against 39 millions; or in the whole of India 23 per cent., as against, at least, double that number.

There are imperfections associated with the reform. Nevertheless, it is the greatest achievement of the late reign, as it associates the people with the government of the country, and lays down the foundation for greater reforms in the future. It is the duty of all patriotic Indians to receive this instalment in the best spirit, and show their appreciation of it by their hearty co-operation with the existing administration of the country.

DISCUSSION ON THE FOREGOING PAPER.

At a meeting of the East India Association held at the Caxton Hall, Westminster, on Tuesday, November 8, 1910, a paper was read by Syed Abdul Majid, LL.D. (Barrister-at-law), on "The Moslem Constitutional Theory and Reforms in Turkey, Persia, and India." The Right Hon. Lord Lamington, G.C.M.G., G.C.I.E., was in the chair, and the following, amongst others, were present: Lady Lamington, the Right Hon. Syed Ameer Ali, C.I.E., Sir Arundel T. Arundel, K.C.S.I., Sir Horatio H. Sheppard, Sir James Wilson, K.C.S.I., Sir Robert Fulton, LL.D., The Maharajah of Mourbhanj, Mirza Abbas Ali Baig (Member

of the Secretary of State's Council), Mr. C. E. Buckland, C.I.E., Mr. W. Coldstream, Mr. W. Irvine, Mr. R. A. Leslie Moore, the Hon. Mr. Jiwanji, Surgeon-General Evatt, Mr. S. C. Latif, Mr. H. H. Khudadad Khan, Mr. D. M. Siraj-ud-Din, Mr. K. C. Tyabjee, Mr. A. Sefi, Mr. J. H. Brewer, Mr. F. Grubb, Mr. Charles H. Rosher, Miss Halkett, Mr. S. Mohinddin, Mr. W. F. Westbrook, Mr. F. M. Cheshire, Mr. M. K. Ferheng, Mr. M. Ishmail, Mr. M. A. Khan, Mr. A. Raffi, Mr. W. F. Hamilton, Miss S. Chapman Hand, Mr. F. H. Brown, Mr. S. Abdul Razas, Mr. Francis Marchant, Mr. Charles Nissim, Miss Morris, Mr. R. J. Wicksteed, Mr. Y. D. Gokhale, Mr. D. Wiltshire, Mr. R. N. Aiyangar, Mrs. Jardine, Mr. Abdulla Mia Khandwani, the Rev. J. R. Brown, Mr. Pramathanath Banerjea, Miss Gibson, Mr. Asghar Ali Khan, Mr. J. Walsh, Mr. M. D. Malak, Mr. M. A. Hag, Mr. A. Khan, Mr. Shah Mohammad, Mr. E. B. Harris, Mr. S. M. Arif, Mr. S. J. H. Warisi, Mr. R. H. Cook, Mr. R. Knightbruce, Mr. A. Abbott, Mr. A. J. P. Carmichael, Mr. Sydney G. Eridge, Mr. Khaja Ishmail, Mr. C. K. Vyasa Rao, Mr. W. O. Clark, Mr. C. A. Latif, Mrs. A. M. T. Jackson, Mr. R. Vicaji, and Dr. John Pollen, C.I.E., Hon. Secretary.

The CHAIRMAN, in introducing the lecturer, spoke of the broad aims of the Association, and pointed out the great interest it took in the affairs of the East generally and of India in particular. He alluded to the great and encouraging success which attended its efforts on behalf of the people of India generally, and drew attention to the fact that forty-three new members had been elected since the opening of the year in May. This, his lordship said, reflected great credit on Dr. Pollen, the Hon. Secretary.

His lordship, speaking of the lecturer, said that Dr. Majid had lived some years in this country, that he was an author of literary and legal works and a practising barrister, and had recently been appointed a lecturer on law to the Colonial Office. He then called upon the Syed to read his paper.

The paper was then read.

The CHAIRMAN: Ladies and gentlemen, I am sure you will desire me to express our thanks to the Syed for his paper. I dare say there are many of you who, like myself, have received a considerable amount of enlightenment as to the manner of

the appointment of the Caliph. Certainly, it seems to present considerable complication, as it is not a matter of agreement amongst Mohammadans as to who is entitled to hold the office. Then there are divergent views as to the method of selection of those who are qualified to fill the position. The complications seem to be so many that I think we ought to congratulate ourselves in this country on still retaining the hereditary principle. On the other hand, when once the Caliph is appointed there is undeviating obedience to whoever is the holder of the office. The lecturer then went on to draw attention to our Constitutional principles and those which prevail among Mohammadans, and he said they apparently both rested on a democratic basis. Although the basis may be the same, he will agree with me, I am sure, that, whilst both the Caliph and our own monarch represent a limited form of sovereignty, still, there is a great distinction between them. The Caliph is himself personally responsible, and can accordingly be deposed, as the ex-Sultan of Turkey was, if he governs improperly; whereas our monarch has no responsibility, but the responsibility attaches to his Ministers. That is a very vital difference. I cannot help referring incidentally to a passage on p. 46, which is a very interesting passage: "The supreme power is undoubtedly the Legislature thus brought into being. It can make, or unmake, laws, but must aim at the public weal. Powerful as it is, it is not absolute. The very nature of contract implies it. No one can give away what does not belong to him." I am sorry Mr. Lloyd George and the other members of the Government are not here to hear that, and then they might reconsider the policy of the present Government. (Laughter.) Then the Syed seems to think that we have learned something from the Moslems. I am not sufficiently a historian to be able to say whether that is the case or not. Perhaps others who are present may be able to say whether it is at all possible that our Constitution might have been a little affected by what has prevailed in the East. Then he referred to another important point—namely, the fact that the Nationalist movements which have taken place in Turkey and Persia rest on a very sound basis, and are in perfect harmony with all the Mohammadan principles. That being so, I think there is a possibility of the new Turkish Constitution being really permanently established, and also the same may be

said of the Nationalist movement in Persia. That, of course, is in a weaker condition than that which obtains in Turkey, but it is very satisfactory to learn, on the evidence of the Syed, that there is nothing contrary in that movement to the religious principles or faith of the Mohammadans, and I hope, therefore, that these two movements that have been brought about will grow and develop, and will become so strong as to be able to give good government to those two countries. The other main point to which the Syed drew attention was with reference to the Mohammadan representation in the Legislative Council of India. I am not quite able to follow all his figures, but as far as I understand it, he says that there is no disproportionate representation of Mohammadans; but be that so or not, we have heard so little lately about the variance of opinion on this point that we may hope that both Hindus and Mohammadans are quite content with the settlement that has been arrived at. I do not think that I can usefully add anything further to the remarks that I have made. I can only again express our obligations to the Syed for having so carefully drawn up his paper. I think it is one quite out of the common compared to what we usually have here, and it is extremely interesting. This is an Association whose main object is to ventilate questions from every point of view, and I thank the Syed, on my own behalf and that of the Association, for his goodness in having read the paper. (Loud applause.)

Mr. Seffi said that, although he was of Arabian descent, his education had been British, and he knew how to appreciate British administration. He looked upon the civilization of the Arabians as being perfect, provided it could be carried through. The country did not want civilization, but security and justice. It was very difficult at present to carry out laws and measures which were necessary for the good government of the country for the reason that it was impossible for anybody to frame laws in acordance with perfect equity and justice. Parliaments were only places to compromise matters, to bring in the law of the majority; they were not for the purpose of making really the best laws, because the best laws could only be made by the master-minds of jurists, divines, and so forth. The reforms in Persia and Turkey were in the right direction, but they did not at the present moment exactly carry out constitutional principles, because they lacked the financial and educational advantages

which were necessary to success. He hoped that in time those countries would be governed as well as England was by the British Parliament. In Turkey education had been a secondary and not a first consideration, as it was with the Arabs. He hoped that the Arabic language would have a first, and not a second, place in Turkey, because that was the power by which to educate the people.

MR. R. VIKAJI said he supposed if a meeting of the character of the present one had been held, say, fifty years after the birth of Christ, that anybody who had been so bold as to prophesy that a new religion was going to take possession of the world would have been howled down or laughed at. Nevertheless, from his own experience, he was able to say that there was a new religion which was going, not to replace Christianity, and Mohammadanism, and the other religions, but to combine them all. He referred to the Bahais, who had not been mentioned by the lecturer. He did not suppose there was anyone in the room who had heard of the Bahais, but at the present moment about one quarter of the population of Persia were Bahais. What was a Bahai? A Bahai was a disciple of Baha'o'llah, who had been prophesied by the Bab, by the Mohammadan scriptural writings, and also by Daniel. If anybody would take the trouble to go through this evidence he was sure he would come to the conclusion that there was more in it than they thought. It had been said by some that Baha'o'llah was the second Christ. This came as a shock to Christians, and also to Mohammadans, and yet, if the subject were inquired into in an unbiassed manner, it would be found that to any fair-minded and right-thinking man there was a great deal in it. He might mention that there were a million Americans, men and women, who were Bahais, and it could not be said that they were a million idiots. They were building a Bahai Temple in Chicago, and they were in great earnest about it. As regards the various religions, there was no reason for division. They all believed there was only one God, and that being so, having so many different religions was a mistake. Baha'o'llah said there was only one God, and only one religion, and the law of the Bahai religion was similar to that of the Christian religion.

With regard to the representation of the Council, he thought that if the various sections of the community were brought

together by such a religion as that taught by Baha'o'llah, there would be no difficulty in getting any representation they wanted from such a fair Government as the British Government.

MR. C. K. VYASA RAO said that, although he was in complete accord with the lecturer in acknowledging with gratitude the reform scheme initiated by Lord Morley, he could not agree with the lecturer's view as to electoral representation in India. If there was one country where the various classes of people were divided from one another by racial differences, by religious differences, and by colour scruples, that country, unhappily, was his own. To divide citizens into sections with a political knife according to their religion would be to forego the advantage of a common political bond in a country so full of differences and distinctions as India. Everywhere representation proceeded upon the principle that a man was a land-owner, or a merchant, or a householder, paying his tax as such to the State. It never proceeded in any country, under any Government, on the ground of the religion professed by a citizen, and it would be to surrender a profound principle that would be for their eternal good to treat India as an exception to the rule, where everyone was equally a British citizen irrespective of his religion, race, or caste. The speaker said that were he a Moslim he would decline the benefit of such a method of representation. Turning to the question of Turkey and Persia, he wondered why the lecturer should have included the reforms in India with the revolution in Turkey and Persia. The lecturer had said that the Turkish revolution was comparable to the revolution in England in 1668, but the 1668 revolution in England was a revolution with the force of Parliamentary institutions behind it for centuries past, whereas in Turkey there had been no Parliament prior to the revolution. Again, it was one thing to accomplish a revolution and another thing to sustain the revolution when it was accomplished. When they found the Turks appealing to the German Kaiser, and saying he was their great protector next to the Caliph, the speaker very much doubted the stability of the revolution that had been accomplished. Then, turning to Persia; Persia was in a worse position than Turkey, since the parallel between the two ended with the fact that there was a deposed Shah as there was a deposed Sultan. Persia and Turkey conveyed a lesson to them that mere discontent ought not to lead

to a revolution in the State. There was discontent everywhere; in the Republic of France, in the dominions of the Kaiser to whom the Young Turks appealed as their great friend and patron, and there was also discontent within the dominions of the Constitutional Monarchy of England. A sharp contrast existed between revolutions which had been accomplished in Persia and Turkey, and the reforms which had been effected in India, and he only wished that those reforms had been accomplished without recognizing a religious basis of political representation. What they wanted was to be British citizens, irrespective of religion, race, caste, or creed.

MR. R. A. LESLIE MOORE, in criticizing what had fallen from the last speaker, thought that there was an obvious reason for giving separate representation to the Mohammadans in India. Not only by religion, but by history and race, they were separate from the Hindus, and in the present state of politics in India if they did not have separate representation they would be swamped. He knew from his own experience that if a Mohammadan and a Hindu candidate were to go up for election in a mainly Hindu municipal electorate the Hindu would get in, and *vice versa*. He did not think anybody with a knowledge of the subject could say otherwise, and he thought that was the reason why Lord Morley ruled that the Mohammadans must have separate representation. The last speaker had said that Hindus were divided among themselves, but they were not so divided as Hindus and Mohammadans. With regard to the remarks of Mr. Vikaji as to the Bahai movement, he had brought forward as a strong argument the fact that a million Americans supported the movement; but he would like to ask him how many Americans supported Christian Scientists and Mormons? With regard to the paper it was most interesting, but he thought the lecturer went a little too far when he gave them to understand that the British political system was taken from Mussulman sources. He would find from history that in Saxon times there was in England what was called the Witenagemot, a more likely prototype of our present Parliament. He would like to ask the lecturer two questions. In the first place he had said that the Caliph was elected by the Moslem people; but he pointed out in his paper that the electors might be five, three, or one. He should like to know who elected those electors. Then, in

pointing out the numbers representing the different communities on the Indian Supreme Council, the lecturer had said that the Hindus had seventeen representatives. He wanted to know whether those seventeen so-called Hindu representatives were representatives of the mixed elective bodies—that is to say, whether they represented not only Hindus, but also a certain number of Moslems. If so, he ventured the humble criticism that just as eight members were specially assigned to represent Moslems only, so seventeen members should be assigned to represent Hindus only. The fact that Moslems had a double vote was a grievance to the Hindus, and probably of little advantage to the Moslems, as the Hindus greatly outnumbered them in the mixed electorates.

The LECTURER, in reply to the criticisms on his paper, said that one speaker had said that there was no justice or order either in Turkey or Persia at the present time; but, without admitting the truth of the assertion, the same sort of thing had occurred in England. The first Parliamentary form of government came into existence about 1265, but, properly speaking, the Parliament, with its rights defined, did not come into existence until 1688. There were civil wars going on from time to time; and that being the case, did they expect either Turkey or Persia to have such a form of government as we had in England at the present time? They could not expect to have the same sort of government within ten years. They had been for a long time under an oppressive rule, and they could not put their house in order in less than that time. Such being the case, the complaints that no justice or order prevailed in those countries were neither justifiable nor correct, and did not give any idea of the general state of things. If there were a few injustices it was not to be wondered at. In the future, no doubt, great things would be accomplished in that part of the world. With regard to what Mr. Vikaji had said in reference to Bahaism, he had been present at a meeting of the Society of Arts where that question had been discussed, and it was pointed out that Bahaism had no principle which it could call its own. If he remembered rightly, the movement came into existence in Persia at the instance of a gentleman whose idea was to introduce a constitutional form of government, and who was against the Kachár dynasty ruling over Persia, and desired that both Turkey and Persia should be

united under one rule. That was the chief reason why Bahaism came into existence. As a matter of fact, there was no new ethical principle initiated by Bahaism, and all their fine and noble sentiments were borrowed from Islam. That being so, if the people of America, or of England, or of any other part of the world, believed in Bahaism, they believed in Mohammadanism.

Then he was surprised to hear the remarks of Mr. Rao. If they had fallen from the lips of an inexperienced man he would have given him the credit of his inexperience; but as he was fresh from Madras, and had been in touch with the political movements of India, he was surprised at the remarks which he had made about Lord Morley's scheme. Each section, being in the best position to voice its wants, should be properly represented. Both the Hindus and Mohammadans should be represented on the Council until the time each understood the wants of the other, and was prepared to look at them with a sympathetic eye. That portion of the reform which dealt with the mixed election would show how far each was prepared to act on the line indicated. It was wrong to say that Lord Morley had treated either the Hindu or the Mohammadan community with any unfairness.

Then he had also been asked why Persia, Turkey, and India were taken together. The reason was because the question had been raised that the Mohammadans were of no importance in India, and the object of the paper was to show, on the one hand, that the Mohammadans held the same constitutional ideals as the English people, and as the English people were the guardians of India, would not the Mohammadans, who held the same view, be a very important factor; while, on the other, it showed how far a constitutional form of government was in harmony with the fundamental principles of Islam, and what measure of hope could be entertained for the stability of the new régime in Turkey and Persia. In answer to Mr. Moore, he would remind him that the assembly to which he had referred (Witenagemot) did not in any sense represent the country. It was merely a consultative body. It was composed of the King and members of the royal household, and some people who were nominated, like the Bishops. It was not a Parliamentary form of government at all. It was not until 1265 that there was anything in the nature

of representation of the people. On the questions asked he was referred to the body of the paper, in which they were sufficiently answered.

On the motion of SIR ROBERT FULTON, seconded by SIR JAMES WILSON, a hearty vote of thanks was by acclamation accorded to the Chairman for presiding at the meeting.

The CHAIRMAN having thanked the meeting, the proceedings terminated.

IV.

THE UNREST IN INDIA.[1]

WHAT is India? "It is an Empire equal in size, if Russia be excluded, to the entire continent of Europe, with a population of about 300 million souls. This population is composed of a large number of distinct nationalities, professing various religions, practising divers rites, speaking different languages, while many of them are still further separated from each other by discordant prejudices and by conflicting social usages. Perhaps the most patent peculiarity of our Indian Cosmos is its division into two highly political communities: Hindus and Mohammadans. But to these two great divisions must be added a host of minor nationalities, though 'minor' is a misleading term, since most of them may be numbered by millions, who, though some of them are included in the two broader categories I have mentioned, are as completely differentiated from each other as are the Hindus from the Mohammadans; such as the Sikhs, with their warlike habits and traditions, and their theocratic enthusiasm; the Rohillas, the Pathans, the Assamese, the Beluchees, and other wild and martial tribes of our portions; the hillmen dwelling in the folds of the Himalayas, our subjects in Burmah, Mongol in race and Buddhists in religion; the Khonds, Maris, and Bhils, and other non-Aryan people in the centre and south of India; and the enterprising Parsees, with their rapidly-developing manufactures and commercial interests. Again, amongst these numerous communities may be found at one and the same moment all the various stages of civilisation through which mankind has passed, from the prehistoric ages to the present day. At one end of the scale we have the naked savage hillman, with his stone weapons, his head hunting, his polyandrous habits, and his childish superstitions; and at the

[1] The Near East, 1908.

other the Europeanised native gentleman, with his refinement and polish, his literary culture, his Western philosophy, and his advanced political ideas; while between the two lie layer upon layer, or in close juxtaposition, wandering communities, with their flocks of goats and moving tents; a collection of undisciplined warriors with their blood feuds, their clan organisations, and loose tribal government; feudal chiefs and barons, with their picturesque retainers, their seignorial jurisdiction, and their mediæval modes of life; and modernised country gentlemen, and enterprising merchants and manufacturers, with their well-managed estates and prosperous enterprises." So said Lord Dufferin in 1888.

In recent days statesmen of "considerable experience and responsibility" have regarded the question of India as "one of the foremost questions that can engage the attention of the British Parliament," and have placed it on a level with the questions of "National defence, the relations with the colonies and financial matters."

When such is the appreciation of the Indians, and such the interest shown in Indian questions, one might naturally ask the causes of the so-called unrest in that country. The attempt to solve this grave problem is attended with great difficulties, but it is none the less important. In Lancashire, only a short time ago, despite the attention recent unfortunate events have engaged, I was asked to explain the "rebellion in India." No doubt the phases in the political life of the Indians of late have been remarkable and rapid; the Hindus have become split into moderates and extremists, while the Mohammadans are still kept in an unsteady political condition by a few with antiquated ideas. Be that as it may, "rebellion" exists not in India, and it is therefore necessary that well-meaning persons should be assured, in the language of truth, of the causes of the display of those feelings in recent days which is called "*unrest*."

First, the treatment of the educated Indians by some officials is by no means of a kind which is calculated to bring about harmony of understanding between them. Secure in their pinnacle of serenity, the officials disregard the great Imperial question by looking down upon everyone who is not a European. If an educated Indian is bold enough to take the liberty of calling upon one, he is soon made to realise that the treatment accorded

to him is not proper. Anglo-Indian clubs, for what they are worth, are not open to the Indians, and in several cases Indians of very high European education, who attained to very high judicial eminence afterwards, were refused admittance into those sacred temples.

Secondly, the differential treatment of the Indians in Government posts. In a country like India, mainly agricultural, there is little room for enterprises of the kind we meet with in England. Naturally the Government posts are looked upon as goals of ambition. And justly so. Born in the country, children of the soil, the people must look to their own motherland for the satisfaction of their aspirations. But when they find that Europeans of inferior ability, whom perhaps they defeated in more ways than one, are given preference, it is hardly fair to blame them if they smart under a sense of wrong, nay, even more, national insult.

Thirdly, India has greatly changed in recent years. The English constitutional ideas are known to every educated Indian. Theoretically he is told that he is a citizen of the Empire, but when he finds his own treatment so vile and those of his countrymen in colonies so wretched, he soon realises the emptiness of the assertion. He gets discontented—the heat of the climate accelerates the movement of his ideas—he is soon in despair.

Complaints are made on the score of his character, and I think, in many cases, rightly. But strength of character can only in rare cases be found under the forces allowed to work in India. Unless and until the people are placed in position of responsibility, the complaints as to character will endure, for responsibility alone can develop high character.

Fourthly, the slowness of the Government machine in developing the economic resources of the country. Instead of adopting the less expensive mono-railways, miles and miles of the old costly railways are yearly constructed, and thus the amount which could have been saved is lost to such useful works as irrigation, canals, etc. Mines still require to be worked; improvements in agriculture are still to come; and vast organizations which are peculiar features of modern civilization are still to be established. The Government is to blame for not taking the initiative, as all centralised Governments have to do, for

not taking the Indians into their confidence in the affairs of their own country.

Fifthly, the defective system of education. The universities in India are based upon the University of London; but while the latter is subject to modifications to suit the needs of the time, the former are allowed to go on year after year without any change whatever. Besides the effect of such an education on youthful minds, it has a tendency to pass into the hands of a few who exercise almost unlimited control, much to the detriment of other peoples of India.

These are a few causes of the present state of affairs, and it is well they should be removed. They are actuated by no party bias, as I belong to no party, and the interests of India and her relations with England are so dear to me, as they ought to be to every true son of India, that I could not support any movement unless I was sure of its usefulness and genuineness.

I now pass on to the remedies.

Lord Morley of Blackburn, who is known in his place of birth as "honest John," while trying to suppress disorders in India, has promised far-reaching reforms after the report of the Hobhouse Commission. The nature of those reforms is not yet disclosed, but the whole body of those people who are interested in the solution of this knotty problem are anxiously waiting the hour. But we sincerely hope that, whatever shape those reforms may take, the interests of the minorities should not be lost sight of. The Mohammadans, though in the minority, are politically of great importance, and should have a fair amount of representation with their Hindu compatriots; while those whose number could only be counted by the million should not be left without adequate representation.

The promise of reforms "to limit successive official interference, to stimulate the formation of independent opinions in local governments and in district governments," and "to give the Indian population in all their grades some formal and authorised opportunity of handling some of their own affairs," have raised hopes in the hearts of Indians; but this, after all, would only be a temporary measure.

The next solution is adequate representation in the Imperial Parliament by broadening the basis of it. The number of Indian members proportionately representing various people of India

should sit at St. Stephen's, representing the interests of India in parts and as a whole. France has successfully tried this in case of her colonies, and there is no reason why the same measure will not succeed in the British Empire. The Indian Members will come into contact with English Members; their exchange of thoughts and ideas cannot but have useful effects and create mutual bonds of sympathy and citizenship. The misunderstandings between the Indians and the English, subject of so much criticism in recent days, will melt away and a desire to consolidate the Empire will spring into existence.

It will not be out of place to say a few words on the external policy of the Indian Empire. No one doubts the value of friendship between Turkey, Persia, Afghanistan, and Morocco as representing the Mohammadan world and England. Not only that England is the greatest Mohammadan Power, and therefore it is advisable that she should keep on good terms with the Moslem States of the world, but also that it is a sure method of guaranteeing the peace in those countries which are proud to be under the banner of England. Thus an alliance between England, Turkey, Persia, Afghanistan, and Morocco will be a statesmanlike act, and will have a great moral force with the Mohammadans both of India as well as of the world.

V.

THE ANGLO-RUSSIAN CONVENTION[1]
(August 31, 1907).

THE Anglo-Russian Convention has at last become an accomplished fact. In the throes of revolution, Russia has wisely suspended all her designs upon other countries in order that she may turn her attention in a calmer mood to affairs at home, while England thinks that she has secured to herself an understanding with her rival in Asia which leaves her unfettered to deal effectively with the Indian problem, if need there be. There is yet another advantage, one may think, to both countries. The pacific settlement of the much-varied question—if, indeed, it proves to be of a permanent nature—between the two rivals, means that Germany cannot now afford to set up in rivalry either in the North or in the South of Persia.

The text of the Anglo-Russian Convention naturally divides itself into three parts: First, relating to Persia; second, to Afghanistan; and third, to Tibet. As to the first, both the Russian and British Governments engage themselves "to respect the integrity and independence of Persia," and Great Britain "undertakes not to seek for herself any political or commercial concessions, such as railway, banking, &c., northward of a line connecting Kasri-i-Shirin, Ispahan, Yezd, and Kakhk, to the junction of the Persian, Russian, and Afghanistan frontiers"; while Russia enters into a similar arrangement with respect to the territory falling to the south of a line extending from the Afghan frontier to Gazik, Birjand, Kerman, and Bunder Abbas.

With regard to Afghanistan, the British Government declares that she has no intention of changing the political position there, and further undertakes to exercise influence in that country only in a pacific sense; while the Russian Government declares it to

[1] The Planet (October, 1907).

be outside the Russian sphere of influence, and agrees to act in all political relations with Afghanistan through the intermediary of the British Government. The Treaty of Kabul, signed on March 21, 1905, stands on its former basis, and equal opportunities are offered to both the Governments in the event of the economic development of that country, with due regard to the sovereign rights of the Amir. To settle local questions of non-political character, the Afghan and the Russian officials especially appointed for that purpose may enter into direct relations without any intermediation of the British Government.

In Tibet both Governments recognise the suzerain rights of China, engage to respect its territorial integrity, and to abstain from any intervention in its internal administration. They further agree to treat with the Tibetans only through the Chinese Government. The provisions of the Anglo-Tibetan Convention of September 7, 1904, is confirmed by the Anglo-Chinese Convention of April 17, 1906, remain unmodified, and bear direct relations between British commercial agents and Tibetan authorities unfettered. The Buddhist subjects of Russia and Great Britain may enter into direct relations, on strictly religious grounds, with the Dalai Lama. No representative of either party is to go to Lhassa. They swear to abstain from seeking any concession in the shape of railway, telegraph, etc.

Such are in brief the provisions of the Convention. It has two aspects—European and Asiatic. In view of historical experience, it is difficult to attach any serious importance to this Convention as the morning star of a new policy. By the Treaty of Paris, 1856, Russia is excluded from keeping any men-of-war and arsenals in the Black Sea, but when her opportunity came she did not scruple to disregard the provisions of a Treaty in comparison with which the present Convention sinks into insignificance, and "below the slopes where lay countless dead of three nations (English, French, and Turks), Sebastopol rose from its ruins, and the ensign of Russia floated once more over its ships of war"! Again, by the Treaty of Berlin, concluded in 1878, Russia had engaged to make Batoum a port open to all, but the result is known as one more broken promise! "Khiva, Merv, Panjdeh, Herat—what monuments of treachery and broken promises these names stand for!" The most that can be said in favour of the Convention is that it makes the best

of a bad business, and time will show that we have lost still more, and that Russia has gained as usual.

In its Asiatic aspect it is equally unsatisfactory. It stands quite unique in diplomatic history in so far as the economic partition of Persia goes, and it is highly improbable that it will win over the goodwill of the Persians. The portion of Persia lying between the two Powers will hardly serve as a buffer, and further leaves it open for another Power to play its game of chance there. The clause providing the control of revenues in case of irregularity in payment of interest on the Persian loan, contracted prior to the Convention, is calculated only to create suspicion in the minds of the Persians, and it is doubtful whether England will, in the long run, score over Russia, and prevent North Persia from becoming a Russian province in all but name. Here Russia has more than she had before, and England openly shuts herself out from advantages not beyond her reach. Equally so in Afghanistan, Russia not only stands where she was, but also makes stipulations for equal commercial advantages with England. In Tibet England has decidedly lost, and Russia has gained, inasmuch as her political agents can penetrate into the Hermit-Kingdom in the guise of Russian subjects of Buddhistic persuasion. Thus it is not difficult to see that the diplomatic victory lies with the Russians, and that England has still to keep a watchful eye for complications which are bound to arise as fruits of Russian intrigue.[1]

[1] The observations have been more than justified by recent events (1911).

VI.

EGYPT AND THE POWERS.

PROPERLY speaking, the history of modern Egypt dates from the time when Napoleon conceived the idea of the conquest of India in competition with England. Professor Seely, in his memorable work, "The Expansion of England," has carefully analysed the motives of Napoleon which induced him to embark upon his venture in the East. To ensure the fruition of his design he arranged to effect a junction with the forty thousand Russian soldiers who were sent by Emperor Paul to the confines of India, while Tipoo of Mysore, who was under the influence of France, was to rise in the Deccan.

On May 20, 1798, Napoleon set sail at Toulon. He captured Malta and landed at Alexandria on July 1. The battle of the Pyramids decided the fate of the Lower Egypt.

The French fleet was destroyed by Nelson, and Sir Sidney Smith joined the Turks to prevent the progress of Napoleon through Asia Minor to join the Russian forces already marching towards India. The fortresses of El Arish, Gaza and Jaffa —all fell before Napoleon, who put to death some 4,000 Turkish soldiers in cold blood. The fortress of St. John of Acre presented a bold and successful resistance. Neither military tactics nor perfidy on the part of Napoleon to assault under cover of a flag of truce was of any avail. Napoleon was convinced that he could not take this fort, and resolved to retreat. He re-took the Castle of Abukir, which the Turks had taken possession of by storm; but the affairs in Europe forced him to return to France.

In the various campaigns which followed, the Turks and the English, fighting side by side, were invariably successful. At last the whole of the French army surrendered as prisoners of war and were carried to the Mediterranean ports. By the Treaty of Amiens, Egypt was handed over to the Turks.

The Turks then desired to consolidate their strength in Egypt. They began by destroying the Mamluk power. Seven of their

chiefs were invited to Alexandria to devise the best means of restoring them to their power, and were received with great marks of distinction. But the attempt to carry them off to Constantinople resulted in an affray, in which Osman Bey (the chief) was slain. They were, however, subsequently released on agreeing to abandon all claims to Cairo and Lower Egypt, and retired to Upper Egypt, establishing themselves at Dongola, the capital of Nubia.

While at war with Russia, the French, either by threats or promises, succeeded in making the Turks take up arms against their adversary. To cripple the resources of Napoleon by forcing the Turks to desist from their attempt to help, the English, as an ally of Russia, sent out an expedition consisting of about 5,000 soldiers to Egypt. On the 17th March, 1807, to the English troops Alexandria capitulated. But General Fraser, who was in charge of this expedition, found himself in great difficulties. All his efforts to ameliorate his position only resulted in his defeat. Finding his troops reduced, he entered into a capitulation, and prisoners were restored on either side.

This brings us face to face with the fortunes of that great and gifted soldier, Mohamad Ali, Albanian by birth, who was appointed the Governor of Egypt in 1811.

From the very beginning he appears to have intended to assert his independence of Turkey, and subsequently history furnishes ample grounds for this conjecture. To realise this aim, two steps were necessary. First, to make himself supreme in Egypt, and secondly, to sever his connections with the Turks.

He started with organising a strong army, which he daily increased under the pretext of quelling disturbances in the Sultan's dominions.

The next step was the destruction of the Mamluks. Discovering that the policy of the new viceroy was hostile to them, they were arranging about his destruction in Cairo during his absence at Suez. But the star of Mohamad Ali was in the ascendant. He was informed of this plot in time to come to Cairo and destroy about five hundred of them at one blow. Orders were then issued to punish with death or otherwise all those who were implicated in it.

Having established his supremacy in the internal affairs of the country, his next move was to rid himself of the Turks.

Cautious not to let out his designs, he started with rendering help to the Turks here and there in pacifying disturbances. His army had reached such a high stage of efficiency that he was able to render valuable aid to the Turks in Greece. When at the point of final reduction, the prey was snatched from the Ottomans by the conjoint action of France and England at Navarino. But these victories of Ibrahim bore fruit in another direction and proved of service to him in moving forward towards the goal of his father's ambition—the independence of Egypt.

Conscious alike of his son's victories in Greece as of his own military strength, Mohamad Ali was simply watching the opportunity of asserting his independence of Turkey. The quarrel with the Pasha of St. John of Acre furnished him with a pretext to realise his aim, and so, in 1832, he undertook to settle the dispute without any reference to the common suzerain. A powerful army was marched against the Pasha. The Sultan's demands to withdraw from the war and to refer the matter to him met with evasive replies, while he directed his son Ibrahim to press the siege of Acre, which, after a brave and prolonged resistance, capitulated in the month of May.

The Egyptian Viceroy ought now to have been satisfied, if the only cause of his action had been to chastise his neighbour. But whether it was that he had entertained more extensive designs from the beginning—or that he had been provoked by the manner in which the Porte had treated his pretensions, or that he was merely seduced by success and opportunity—he determined to act directly against the Sultan as his enemy, and to conquer Syria. Ibrahim, whom the campaigns in Greece had given a great deal of military experience, and fully acquainted him with the affairs of Turkey, continued his triumphal march until the road to Constantinople lay open to him, defeating on his way two attempts to check his advance. Crossing Mount Taurus, he descended into the plains of Caramania.

Now, if ever, was the time to put forth the greatest effort to stop the progress of rebellious Ibrahim. Sixty thousand soldiers, composed of the bravest men in the world, were dispatched against him under the command of Rashid Pasha, the Grand Vizier. Ibrahim, whose army was greatly inferior

in point of number, but hardened to war, accustomed to victory and led by skilful generals, had taken up a position behind the town of Koniah, where the enemy could reach him only through dangerous defiles. There Rashid attacked him on December 21, 1832. The battle raged fiercely on either side, and continued its bloody existence with unabated energy for six long hours. The Vizier had fought very bravely to the very last, but destiny had decreed otherwise. Some of his best soldiers—Albanians and Bosnians—had abandoned him, and thus the day closed with the victory, though dearly purchased, of Ibrahim.

Nothing was left for the Sultan but to solicit the aid of Russia to roll back the tide of conquest by his rebellious vassal. Emperor Nicholas granted the necessary aid. Fifteen thousand Russian soldiers were landed in Secutri, and a fleet was stationed in the Bosphorus. While other Powers could send only ambassadors and dispatches, Russia could, and did, lend the support of her strong arms. Hemmed in with difficulties as he was, the Sultan did not fail to realise the disadvantage of a battle fought with Russian soldiers. It would have only prolonged the Russian protectorate over Turkey. So he determined to get rid both of Ibrahim and of the Emperor Nicholas. To the offer, which was rejected by Mohamad Ali as inadequate, was added the pashalic of Aleppo. Aware of timber-produce, so indispensable for ship-building, Ibrahim immovably insisted on receiving likewise the district of Adana. The Sultan found it prudent to comply.

On May 14, 1833, the Convention of Kutayah was signed. Mohamad Ali received the Governorship of Egypt, Candia, and Syria, and his son Ibrahim the Collectorship of Adana, which he was so desirous of possessing.

On July 8, the famous Treaty of Unkiar-Skelessi was concluded between Russia and the Porte, by which the former agreed to aid the Sultan in repressing all disturbances, while the latter was to shut the Dardanelles in particular circumstances against all other nations. England and France protested against such a measure, but their remonstrance went unheeded and hardly affected the provisions of the treaty.

The arrangements thus arrived at were doomed from the very beginning. The ambitious nature of Mohamad Ali assisted by Ibrahim, who combined in himself experience with youth,

could hardly rest satisfied without complete independence. Agreeably to this object, he neglected no opportunity which he could turn to his own advantage. The relation between master and vassal continued to be restrained. At last it could endure no longer. The year 1838 saw the Pasha refusing the payment of tribute to the Sultan, and all endeavours of the diplomatic representatives of various Powers to heal the breach by trying to induce the Viceroy to yield on point of tribute, proved of no avail. Large preparations were made on either side. In the beginning of the year 1839, a large Turkish army was assembled on the eastern bank of the Euphrates, which menaced the Syrian dominion of the Pasha, while Ibrahim proceeded to concentrate his forces around Aleppo, with instructions from his father to take heed not to become the aggressor.

To stop the provisions of the Treaty of Unkiar-Skelessi being carried out, the diplomatic representatives of various countries, chiefly those of England and France, were instructed to preserve the *status quo*. To their representations the Viceroy yielded, but the Sultan gave no evidence of a disposition to recede. In the course of a conference, which took place towards the beginning of June, the English and the French Ambassadors were acquainted with the circumstances which had made it imperative upon the master to wage war upon his vassal. A similar communication was later on made to the Russian and Austrian Ministers. The reasons put forward were "the usurpation of the Sultan's sacred rights as Caliph and the first Imam of Islam, and of the administration of the holy cities of Mecca and Medina." Being reluctant to take the whole responsibility of a war on these grounds, he sought the opinions of the Ulemas, who, with one consent, declared it the duty of every believer to take up arms against an impious usurper. Armed with this decision, the Sultan issued a manifesto depriving Mohamad Ali and his son Ibrahim of all their functions and dignities, and appointing Hafiz Pasha to succeed Mohamad Ali in the government of Egypt.

Accordingly, a solemn declaration was read in all the mosques. To cheer up the soldiers, the Sultan himself embarked on board a vessel, but being obliged by the state of his health, landed at Cape St. Stephano. The battle of Nezib was fought. The superior strategy of Ibrahim decided the issue of the battle in

his favour. The fatal news of failure of the expedition never reached the Sultan Mahmood II., who died on July 1 at the age of fifty-four, and after a reign of thirty-one years. Turkey was thus deprived of so able a director and fell into the youthful hands of his son, Abdul Mejid, who was only a youth of seventeen.

With the sole view of sparing the effusion of innocent blood, this wise and well-intentioned Sultan offered pardon together with the hereditary governorship of Egypt to Mohamad Ali on condition that he fully conformed to his duties of obedience and submission. But before this offer could reach Alexandria, a severe disaster befell the throne of Turkey by the treachery of a Turkish admiral. Affecting his discontent with the favour shown to Khosro, whom he accused of the death of his late sovereign, Achmet, for this was his name, set sail for Alexandria and was followed by the whole fleet the following day.

The nature of the reply by Mohamad Ali is to be gathered from a letter communicated by him to the English Consul at Alexandria. He declares his intention to forward immediately a letter of congratulation and submission to his Master, Abdul Mejid, but proposes at the same time to be confirmed in the hereditary possession of Syria and Candia, in addition to Egypt. He also showed his readiness to visit Constantinople if the objectionable Vizir Khosro was removed from the Cabinet. "Finally," said he, "if my proposals be not attended to, I shall not wage war, but merely maintain my present position and wait."

Meanwhile the great Powers were preparing themselves to do away with the effects of the Treaty of Unkiar-Skelessi; while the desertion of the fleet had aroused public sympathy for the Sultan in Europe. Accordingly, a conference of the representatives of Great Britain, France, Russia, Prussia, and Austria met in London, and when at the point of yielding the Sultan was encouraged by the receipt of a Collective Note from the Ministers of the Powers at Constantinople, dated July 27, 1839, to the following effect:—

"The undersigned have this morning received instructions from their respective Governments in virtue of which they have the honour to inform the Sublime Porte that agreement between

the five Powers is ensured, and to invite the Porte to suspend any final determination without their concurrence."

France, who had throughout been favourable to the ambitious projects of Mohamad Ali, and had secretly encouraged him in his hostile acts, allowed her policy to diverge from that of the other Powers, which, without her, signed the Treaty of London on July 15, 1840. By this offers are to be made to Mohamad Ali, and in case of his refusal steps are to be taken to reduce him to submission. The Straits of the Dardanelles and of the Bosphorus are to be closed as ever before, against the entrance of ships of war of all Powers. Thus the injurious effects of the Treaty of Unkiar-Skelessi, which had conferred rights upon Russia, were done away with, and Turkey emerged once more from the shackles of only one Power.

In pursuance of this treaty, an ultimatum was sent to the Viceroy of Egypt. He was to have hereditary sovereignty of Egypt, with the possession of the south of Syria, and the command of Fortress of St. John of Acre for life. If within ten days of this offer he failed to accept, the offer of Egypt alone was to remain open for another ten days; and if he still persisted the four Powers were to compel him to accept the settlement. When this was formally notified to him, he endeavoured to gain time to open negotiations with the Sultan. Rifat Bev was despatched with certain proposals to Constantinople. These were not deemed satisfactory, and the Sultan, acting upon hasty and intemperate advice, immediately pronounced the formal deposition of Mohamad Ali from the Pashalic of Egypt, and sent a firman to Alexandria to notify the event. This inconsiderate act was the cause, as we shall hereafter see, of considerable difficulty and delay in the settlement of the dispute. Mohamad Ali now made up his mind for the very worst, and said he would not act as aggressor, but would repel force by force. He made active preparations for the coming storm, and resolutely determined not to yield but to irresistible force.

The first step to compel his submission was taken by declaring the ports of Syria and Egypt in a state of blockade. Captain Napier appeared off Beyrout, and demanded submission, while Admiral Stopford blockaded Alexandria. After a bold resistance Beyrout fell. The Fortress of St. John of Acre also offered a great resistance. The allied squadrons commenced hostilities

against the fortress, which was believed to be almost impregnable. At last it was occupied by 300 Turks and a party of Austrian marines, after it was deserted. The Governor effected his escape, but his engineer, Yousuf Aga, was taken prisoner severely wounded.

The fall of Acre was attended with important results. The Egyptian garrisons in Caiffa and Jaffa evacuated. The Syrian tribes declared for the Sultan, and the inhabitants of Jerusalem returned to their allegiance to the Porte.

Commodore Napier then sailed for Alexandria, and entered into a convention with the Pasha. The hostilities were to cease, and the Turkish fleet to be restored on condition that the Sultan would grant him hereditary Pashalic of Egypt. Fresh difficulties intervened. The Sultan refused to annul the deposition of Mohamad Ali, and Admiral Stopford declined to ratify the convention on the ground that Napier had exceeded his powers.

However, on December 6th, the Admiral made an offer to the Pasha, on behalf of the Allies, that they thought their intercession might secure him the hereditary Pashalic of Egypt, on condition of his evacuation of Syria, Candia, and Arabia, and giving over the Turkish fleet within three days. The terms were accepted on December 11. Syria, Candia, and Arabia were evacuated, and on January 14, 1841, the Turkish fleet was restored.

Some difficulties presented themselves on the conditions of the tenure of Egypt to Mohamad Ali. The reservation of right on the part of the Sultan of selecting the heir in case of vacancy, who would receive his investiture at Constantinople, was objected to. To make the succession depend upon the caprice of the Porte would have opened a wide field to all those domestic crimes which have so long been the reproach of the ruling families of the East, and would indeed have rendered the boon which the Sultan professed to be bestowing upon his vassal a mockery. Through the influence of the Powers this objection was removed, and the firman of June 1 installed Mohamad Ali into the Governorship of Egypt. Thus the long-agitated question was brought to a settlement.

Nothing of very great importance happened until 1867, when the Sultan paid a visit to Egypt, and granted the title of "Khedive" to Ismail Pasha. The firman of the previous year

changes the order of succession in favour of eldest son, eldest brother, eldest son of eldest brother. Ismail is allowed to enter into non-political conventions. The firman of 1873 confirmed the order of succession, authorised the Khedive to make laws, contract loans without permission, keep unlimited number of troops, build ships of war, ironclads excepted, and provided for a Regency during the minority of the Khedive.

A genuine desire of judicial reform swayed the actions of enlightened Ismail. The efficiency of the then existing machinery for the administration of justice to foreigners was explained in a report drawn up by Nubar Pasha in 1867, and communicated to the Powers. A proposal to found International Courts was forwarded to the Powers, consequently commissions of delegates of the Powers sat at Cairo in 1869, and at Constantinople in 1873. The result of their labours was a draft "Règlement d'organisation Judicaire pour les Procès Mixte en Egypte." Art. X. empowers foreigners to bring actions against the Egyptian Government and the estate of the Khedive. The French Government gave its adhesion to the "Règlement" in a Protocol signed in November, 1874. The following Powers have become parties to the arrangement:—Germany, Austria, Belgium, Denmark, Spain, France, Great Britain, Greece, Italy, the Netherlands, Portugal, Russia, Sweden, Norway, and the U.S.A. New codes came into operation on October 18, 1875, and the courts themselves were opened for business on January 1, 1876. The institution of these courts is, indeed, the turning point of recent Egyptian history.

The serious pressure of debts, for which ambitious schemes of Ismail alone were responsible, at last forced him to sell his Canal shares to the British Government. But this was not enough to meet his liabilities. So counting upon the help of England, the Khedive expressed his desire to the late King Edward VII., then going out to India as Prince of Wales, that a financial adviser should be lent to Egypt. Mr. Cave, M.P., was accordingly sent, but his mission was followed by no financial succour to the Khedive. Postponing the payment of the coupon about to become due on April 8, 1876, he established the Caisse de la dette Publique by the Decree of May 2. It was provided that the revenues devoted to the debt should be paid into the Caisse instead of the Exchequer; that the Caisse might sue the

Government before the International Tribunal; and that the Government should not diminish the revenues arising from the taxes hypothecated to the debt, nor contract fresh loans without the sanction of the Caisse.

The Commissioners of the Caisse were to be nominated by the Governments of the countries they were called upon to represent, but were to be Egyptian functionaries. Messrs. de Blignieres, Baravelli, and Kremer were nominated by France, Italy, and Austria respectively. Major Baring (now Lord Cromer) was appointed for England, but not on the nomination of the English Government. The functions of the Caisse were to commence from June 10.

This Decree of May 2 was followed by another on May 7th. It unified the various loans, funded and unfunded, contracted by the Government and the Daereh, into a general debt, bearing an interest of 7 per cent., to be managed by the Caisse, and assigned certain revenues by way of security. The operation of the Mokabelah was also arrested.

The latter Decree was looked upon with disfavour, and was thought to have unduly entrenched upon the interests of the bondholders. Accordingly, Messrs. Goschen (late Lord Goschen) and Joubert were sent as their representatives. Their proposals were embodied in a Decree issued on November 8, 1876, which again separated the debts of the Government from those of the Daereh, revived the operation of the Mokabelah, made provisions for the issue of Preference bonds, and in particular established the "*Dual Control.*" The English Government, however, disclaimed any responsibility for the appointment of Mr. Romain to the post of Controller-General of Revenue and Baron de Malaret as Controller-General of Public Debt and Audit.

The financial system introduced by Messrs. Goschen and Joubert in "this most distressful country" had failed to effect its purpose, and the Government evaded the execution of Decrees granted against it by the International Courts. On March 30, 1878, a Commission of Enquiry was instituted. It consisted of four Commissioners of the Caisse, with M. de Lesseps as President, and Major Baring (now Lord Cromer) and Riaz Pasha as Vice-Presidents. The first report of the Commission was followed by an announcement of the Khedive's purpose to give

up all his private estates to the Financial Commission so as to preserve nothing from the public revenues of Egypt, to establish absolutely the European system of constitutional government, and to make Nubar Pasha, a man of great abilities, the head of the administration, while Mr. Rivers Wilson was to be the Minister of Finance.

This change was hailed with general satisfaction in Europe, except France, which was harping upon the acquisition of Cyprus by England. A compromise was agreed upon. M. de Blignieres was appointed the Minister of Public Works, and the Khedive pledged himself that if he dismissed either the French or English members of his Government he would dismiss both.

A Decree of December 15 suspended the Dual Control, and defined the powers of the Ministers.

The Cabinet, which was thus brought into existence, was not destined to last long. Nubar Pasha had returned to Egypt with two fixed ideas: First, that the Khedive was the main cause of all difficulties—forgetting how far he himself had contributed to his master's policy, system, and conduct. The other, that his was the only hand which could guide the ship of the State. Accordingly, he revealed his designs to reduce the Khedive to a mere cypher, and Mr. Wilson was only too ready to support instead of controlling the Premier. The inevitable followed. The Khedive became the chief of the opposition. At last, on February 20, 1879, he forced Nubar to resign, and demanded for himself active participation in the Cabinet Councils, and especially (1) to have the right to summon it and proposing measures to it; (2) to have all measures submitted to him before being laid for the deliberations of the Council; and (3) to be admitted to preside at all its meetings.

The last measure was strenuously opposed by two European Ministers. However, France and England forced the Khedive to accept the right of the French and English Ministers to veto any proposed measure, and the absence of the Khedive from the Council. Thus for the first time the Cabinet of Lord Beaconsfield, in concert with France, took the direct responsibility of dictating the details of the internal Government of Egypt. This was an entirely new departure in the policy of England, and consequences could not but be most serious. This Anglo-French

alliance substituted official interference for diplomatic influence.[1]

A new Cabinet, of which Prince Tewfik was the chief, in which the two European Ministers still preserved their seats, was formed by the Khedive on March 22, 1879. But it was short-lived. On April 7 he dismissed it. The report of the enquiry declaring the country to be bankrupt had aroused national indignation, and so it was thought necessary to form a Nationalist Cabinet responsible to the Chamber of Notables. This was followed by a counterplan, published in the Decree of April 22, to that presented by the Commission of Enquiry.

The storm which was then gathering burst upon the Khedive from an unexpected quarter. Germany declared her intention not to recognise the Decree of April 22. It was intimated to the Khedive on May 18. Other Powers followed suit. Austria presented a Note to the same effect on May 19, England on June 8, France on June 12, Russia and Italy on 14th and 15th respectively.

Meanwhile steps were being taken for the concurrence of the Sultan to whatever measures the Powers may adopt. On June 26 there came a telegram from Constantinople deposing Ismail and conferring the Government of Egypt upon his son Tewfik. Thus ended the career of a man entitled to the most prominent place in the history of Egypt, and whose great personal qualities, untiring energy and power of hard work, surprising memory, rapid and accurate mastery of facts and details, charm of manners, and power of expression in a language which was not his mother tongue, have earned for him a place among the politicians of his time.

His fate cannot fail to evoke sympathy in his favour. He was deposed by foreign influence in consequence of financial difficulties in which he had involved himself by expenditure incurred some years previously without then attracting a protest, hardly a remonstrance, from those who at last punished it so severely. The two capital glories of Ismail's reign—the Suez Canal and the International Courts—were the instruments of

[1] Cf. What Russia, in concert with Sir E. Gray, is trying to do in Persia. The second ultimatum, which contains the unwarrantable demand that no foreigner should be appointed by Persia without the sanction both of Russia and England, is something quite contrary to the letter as well as the spirit of the Anglo-Russian Convention.

his fall. The one was not only the principal and original occasion which led him into financial difficulties which were the causes of the intervention of the Foreign Powers in Egypt, but also furnished the chief excuse for England's claim to pre-eminent interest in the new highway to India; and the other gave the Powers a ground for treating as a breach of international obligations the arrangements which he proposed to make for liquidating the claims of his creditors.

The firman which installed Tewfik prohibited him from contracting loans without the consent of existing creditors and from maintaining more than 18,000 troops.

The new Khedive did not reinstate the Ministers, but revived the Dual Control. Major Baring (Lord Cromer) and M. de Blignieres found themselves in place of Messrs. Romain and Malaret by a Decree of September 4. They were to have equal authority, to have the right of being present at the Council of Ministers, and were not to be removed without the consent of their respective Governments. Lord Salisbury and M. Waddington at the same time intimated to the Khedive that the establishment in Egypt of political influence on the part of any other Power in competition with that of England and France would not be tolerated.

On December 19 a Decree was issued to the advances of the Rothschilds, and to this all Powers gave their assent.

On March 31, 1880, a declaration was signed by the Consuls-General of the five Powers, promising to accept the decision of a proposed "Commission of Liquidation," and also to consent that the decision of the Commission should be binding upon the International Courts. The Commission was appointed by a Decree of the same date, and consisted of two English, two French, one German, one Austrian, and one Italian members.

A Law of Liquidation in accordance with their report was sanctioned by a Decree of July 17, 1880, and all the Powers interested in the Mixed Courts had accepted it before the end of August. By this, which reduces the interest on the unified debt to 4 per cent., and abolishes the Mokabelah, an international authority, is for the first time given to the Caisse.

The year 1881 opened seemingly with every promise of tranquil progress. The law of Liquidation had placed the financial difficulties of the country on a satisfactory basis. The

appointment of the English and French Controllers-General was a guarantee that the law of Liquidation would be respected, and the necessary reforms in the administration of the country carried out. But as a calm sky is followed by storm, the 1st of February startled Cairo with the news of a military riot, resulting in the dismissal of the Minister of War, Osman Rafik Pasha. The jealousy among officers had been the cause of a strongly-worded letter to Riaz Pasha. The arrest of those officers was the result. Mutiny of the soldiers followed. Any hope of suppression was out of the question. The Khedive had to give way by replacing the Minister of War by Mohamad Pasha Samy. This nomination was favourably received by the soldiers, who retired to their barracks with the shout of "Long Live the Khedive." This incident restored the calm, only to be broken by a more violent storm, which swept everything before it.

To calm the fears of the mutinous Colonels, on February 13th the Khedive addressed them, admonishing them that their first duty was obedience to the Chief of the State. Unfortunately this did not succeed. After the moment of triumph their dread of vengeance forced them to put themselves in secret communication with all those who were for any reason dissatisfied with the political position in Egypt, and the military revolt soon became a nucleus of an agitation which extended itself through a wide political area. The Ministry, although aware of it, took no step to suppress it. A prudent step of inquiry taken by the Ministry proved of no avail. The late Arabi Pasha, whose name will always be associated with involving Egypt into greater difficulties—both financial and political—was the recognised head of this party of agitation. His speeches were of a very unfriendly nature, which, copied by the Arabic newspapers, only created discontent throughout the country. His antagonism to the foreign element was caught at very greedily after the unwarrantable act of annexation of Tunis by France. The authority of the Khedive was practically at an end. He was deservedly popular with the Egyptians. His domestic virtues and sincere desire for the happiness of his people were the two main features in his character. But in face of foreign interference, as well as internal trouble thereby caused, he was powerless. The Prime Minister gained an immense power, so much so that he began thinking himself indispensable.

The Khedive often winced under the yoke of his Minister, but to throw him off was an impossibility, as there was no one to replace Riaz. Nubar, as a non-Moslem, had lost the confidence of the National party; Sherif, on the contrary, was suspected, whether rightly or wrongly, of being a partisan of the system under Ismail Pasha, whose willing servant he had been for so many years.

The summer months were nearly over without a Ministerial crisis when one of those incidents which only hasten the inevitable occurred at Alexandria. A soldier was run over by a carriage, the driver of which was acquitted. His comrades demanded punishment; the Khedive promised it, but the following day they were severely punished. This injustice provoked a great excitement in the army. A letter addressed to the Minister of War was withdrawn. An attempt, without success, was made by the Khedive to regain his lost power for assuming the Presidency of the Council. Riaz would rather resign than agree to it. But the dismissal of the War Minister, who was replaced by Dawood Pasha Zighen, the Viceroy's cousin, shook Riaz's Ministry. He represented directly the formal authority of the Khedive, and assured a firmer attitude towards the leader.

On September 3rd the Khedive unfortunately left Alexandria for Cairo, the headquarters of the military party, among whom the Minister of War and Riaz Pasha contrived within the few next days to create an impression that a sort of *coup-de-état* was meditated by the arrest of the leaders. The attempted removal of Arabi's regiment to Alexandria was thought the first step towards it. This naturally inspired Arabi Bey and his colleagues with grave apprehensions. They appear, as all human beings will, to have connected this with the mission which M. Mallet was at that moment executing at Constantinople, when it was universally thought that he had been sent to concert with the Porte on behalf of England and France a plan for an armed intervention if a military revolt should again break out. Meetings were held on September 7th and 8th, at which it was determined to intimidate the Khedive by a demonstration to dismiss the ministers who had designs upon their life.

Later on the official journals gave out that the Khedive was not ignorant of this design, but that he counted upon the loyalty of the 1st and 2nd Regiments of Infantry, and on the cavalry

and artillery, a force more than sufficient to overpower the mutinous regiment of Arabi Bey whenever the crisis should arise.

At last the storm, which was preparing itself since September 3rd, broke on Friday, September the 9th. Everyone was taken aback by a letter addressed to the Minister of War at 1 p.m., signed by Arabi, that at three o'clock the same afternoon the army would parade itself on the square before the Palace of Abdin, to demand the execution of the political programme which their leader had agreed upon. This was composed of three points:—

1. The instant dismissal of Riaz Pasha and all his colleagues.
2. The summoning of the Chamber of Notables.
3. The carrying out of the recommendations of the Military Commission.

Circulars were at the same time issued that this pronunciament of the army covered no designs hostile to the safety of the lives and property of the foreigners. At the instance of Messrs. Colvin and Cookson, and other Ministers, the Viceroy drove to the barracks of Abdin, where the 1st Regiment of Guards was, and was received so enthusiastically as to leave no doubt of their fidelity. The same reception was accorded to him at the citadel, where the 2nd Regiment was stationed. Had the Khedive placed himself at the head of these two regiments, perhaps everything would have gone well, and the history of Egypt would have been different. But the good intentions of the Khedive to avoid a conflict by driving to Abassieh to meet Arabi's regiment did not result in the good fruits he had anticipated. Never was time more precious than on this occasion. He, together with Mr. Colvin, arrived at Abassieh at forty minutes past three o'clock, and found the barracks empty. Arabi Bey had marched them off just three-quarters of an hour before, taking with him 18 pieces of artillery to blockade the Palace of Abdin! The subalterns and men of artillery had forced their colonels to follow Arabi. Only an hour after the Khedive returned, to find his palace surrounded by 4,000 troops, with cavalry in the centre and 18 pieces of loaded cannon pointed at his windows. The two regiments which had sworn fidelity a moment before had joined the rebels. The Khedive entered the palace by the back door.

Accompanied by his European adviser, Mr. Colvin, he made one personal appeal to the soldiers. The order, "Get off your horses!" was unhesitatingly obeyed. What would have been the response to the order, "Give up your swords!" is difficult to say. Twice the command, "Sheath your swords!" was repeated before it was obeyed. To the Khedive's inquiry of their purpose, Arabi's reply was that he had come to ask for the liberty and the grant of the three points set forth in the letter addressed in the morning. "Have you forgotten that I am the Khedive, and your master?" was answered by Arabi Bey with a verse from the Koran: "The ruler is he who is just; he who is not so is no longer ruler." To carry the interview any further was evidently useless. The Khedive retired under the pretence of consultation. Mr. Cookson remonstrated with Arabi on his conduct in thus intimidating the Sovereign, and the consequences to themselves and the country. Arabi repeated his demands, and said that they were there to defend the liberty of Egypt, which England, as the opponent of slavery, should never crush. After further consultation Riaz consented to resign, and this was announced to the soldiers. The other two demands were put off under the pretence that a sanction from Constantinople was necessary. The clamour of some of those who were around Arabi succeeded in having accepted a further demand that no member of the Vice-Regal family should be chosen. The name of Sherif Pasha was mentioned, and was at once accepted by the Khedive. A letter to Sherif Pasha to form a Cabinet, handed over to and read by Arabi, was acclaimed by the usual acclamation, "Long Live the Khedive!" Arabi and his colleagues then presented themselves before the Khedive, and offered their excuses, and received his pardon. The negotiation had lasted nearly two hours, and at 7.30 the troops were withdrawn to the barracks.

Thus ended the eventful day with so little disaster. What might have been a bloody revolution had apparently been appeased for the moment by the change of Cabinet. No sign of excitement was observable among the Cairo populace, nor in any other part of the country, which was apparently ignorant of what great deeds its professed champions were performing. But the next few days were full of anxiety. Sherif Pasha refused to accept the *damnosa hœriditas* of the Riaz Ministry. The

Khedive without a Minister when he was under the power of the soldiery was placed in an awkward position. The Courts of St. James and the Tuilleries showed no symptoms of intervention. An appeal to the Court of Constantinople to send 10,000 soldiers was equally barren of result. On the contrary, Arabi had believed, and was emboldened by the assumption "That no aid was to come forth from that quarter."

September 10th and 11th passed in negotiating with Sherif Pasha to form a Cabinet, but so long as the Colonels did not remove their regiments he would not consent to take any step in that direction. In the meantime Arabi and his colleagues struck at the idea of summoning the Sheiks of the villages and other Notables for demonstration on their behalf. But never was an idea more happily conceived than that of using this body as a guarantee for the orderly conduct of the army. Having a stake in the country, they all rallied round Sherif Pasha rather than around those who had called them. This made the Colonels realise their critical position. No time was to be lost. Some arrangements must be arrived at before any intervention from outside appeared on the scene. On September 13th a meeting of all the Consuls in Egypt was convened by the Khedive, and an appeal was made to Sherif not to desert his Sovereign at such a critical time, when this was the only solution of the difficulty. He consented once more to open negotiations, relying on the support of the Notables to make something like suitable terms. This proved successful. Alive to their dangers, the Colonels consented to withdraw within a short time, leaving Sherif Pasha to choose his own Cabinet, and forbore to insist upon the immediate augmentation of the army.

On September 14th the Ministry of Sherif Pasha was completely formed. His acquaintance with current politics, his amicable and courteous behaviour towards all foreign representatives, eminently suited him for the post.

At this juncture again France, actuated by a spirit of antagonism towards the Sultan for intervention in Tunis, opposed anything like Ottoman intervention in Egypt. Unfortunately the British Cabinet fell in with the views of France. The mission, composed of Ali Nezam Pasha and Ali Fuad Bey, sent by the Sultan, was received with coolness in Egypt. In making inquiries into the recent military troubles they counselled sub-

ordination to the Sultan and the Khedive. Their presence was so distasteful, primarily to France and next to England, that the usual remedy of ironclads was resorted to. The English ship only arrived outside the harbour of Alexandria in time to salute the Turkish man-of-war as she steamed out.

The conditions on which Sherif Pasha had formed a Cabinet was faithfully carried out on both sides. The two regiments were withdrawn from Cairo on October 6th; Sherif, on the other hand, arranged with the Khedive to summon the Chamber of Notables under the old law of 1860, when Ismail Pasha had first created the body. The electors of the Notables were the Sheiks of the villages and towns, themselves chosen by the inhabitants.

These incidents, initiated by the military, bore their fruit in intensifying a national feeling, always found in Moslems, among the Egyptians. Everyone who was at all able to see into the artificial administration of the country, established under Ismail and consolidated under Tewfik, or had grievances of his own, joined in sharing that feeling. Meanwhile the apprehension of the right-minded English people that England intended to annex Egypt as France had done Tunis, was removed by the despatch of Lord Granville to M. Malet on November 4th. He expressly says:—

"It is scarcely necessary for me to enlarge upon our wish to maintain Egypt in the enjoyment of the administrative independence, secured by the Imperial Firmans. The British Government should be above suspicion in this respect; on the other hand, it is our conviction that the tie uniting Egypt to the Porte is the best safeguard against foreign intervention. Our aim had been to maintain this tie as it actually exists. The Khedive and his Ministers may therefore feel secure that the British Government has no intention of deviating from the paths traced by themselves."

At last December 25th saw a memorable event. The Khedive in person opened the first session of the Egyptian Parliament with a speech in which he commended wisdom and moderation in deliberations, the respect to all international obligations, and the law of Liquidation. The President of the Chamber, Sultan Pasha, then made an address to the members inculcating the same lessons. And one of the members made a suitable reply.

The year 1882 found the most troubled period in the history

of Egypt, and the eyes of all the nations were turned upon the events taking place there. The awakening of political conscience of the people at large found its vent in "Egypt for the Egyptians." This is the most critical time in the history of all nations. If successful, it results in prosperity and happiness. If stifled, it results in misery and unrest. The attitude taken up by Arabi, with his reward of the post of Secretary of War in the new Cabinet, created different views at different times. By some he was thought to be the one in whom national sentiment had found its bodily representation; by others as only an ambitious rebel; while others, of more suspicious nature, believed him to be a secret agent either of the Sultan or of the Khedive. The British and the French Governments at once addressed to the Khedive an Identical Note, in which they expressed their determination "to ward off by their united efforts all causes of external or internal complications which might menace the established *régime* in Egypt"—in other words, they declared their intention to uphold the joint control.

The Chamber of Notables had assembled; the popular feeling was high against any foreign control, and the Sultan had sympathised with it. As a necessary consequence, the Chamber of Notables, as representatives of the ratepayers, claimed to have as its only legitimate right of regulating the National Budget. The controllers demurred. A deadlock ensued. Sherif Pasha resigned. The Khedive shrank from forming a fresh administration, finding the temper of the people to be in the right. However, a Ministry was formed, under the Presidency of Mahmud Pasha Samy, Arabi Bey being the Secretary of War. The President at once assured Sir E. Malet, the English controller, that all international obligations would be respected, while to the Assembly of Notables he promised that as in England Ministerial responsibility would be subjected to the votes of the majority. The control of the Budget at last passed on to the Assembly. In the meantime Egyptian affairs moved on with apparent smoothness. The English and the French Governments protested against this measure, while at the same time an Anglo-French Note assured the Porte, couched in conciliatory terms, that his sovereignty over Egypt would not be questioned or limited.

The discontent felt by the people was so great that it expressed

itself in a deputation to the Khedive, representing the general discontent of the country against those who, under the pretence of administering its resources, were chiefly concerned in providing salaries for themselves. On the other hand, Arabi was created a Pasha, and 17 of his supporters received colonelcies.

But this truce between the Khedive and his Minister was very short-lived. The Circassians, who were very little favoured by the present *régime*, conceived the plan of murdering Arabi, and thus put an end to it in a summary way. On the eve of its fruition the plot was discovered. Forty people were arrested as implicated in it. Arabi, to make an example of them, suggested dire remedies, but found little favour with the Khedive. This caused the relation between Master and Minister to be rather constrained. Next followed the revenge on the part of the Minister. The Chamber was convoked without even consulting the Khedive, who was taken to be but a nominal ruler.

The diplomatic manœuvre, which was hatching in the meantime, assumed its practical shape in the despatch of the Anglo-French fleet to Alexandria. This produced a sense rather of anxiety than of confidence. The Ministers made their submission at once, and in a body tendered their resignation. But public feeling was so high in favour of the Ministers that a memorial was presented to the Khedive to reinstate Arabi and his colleagues to save Cairo from falling a prey to anarchy.

From this moment Arabi, though nominally War Minister, was practically sole Dictator. He was no doubt gifted with rare administrative qualities, and was taken by his friends—both European and African—to be an enlightened patriot. Of the joint control and the financial servitude of his country he was a violent opponent, and he made no secret of his belief that the first step towards Egyptian regeneration was to be found in Egyptian self-government. The presence of the Anglo-French fleet had frightened him, and by his own orders the Alexandrian forts were put in a state of defence. Perhaps the same presence of the fleet was the chief cause of the riot on June 11. The total loss of life was variously estimated at from 40 to 200. But as soon as Arabi's assistance was sought to pacify the place, it was readily given.

International complications, however, resulted in the bombardment of Alexandria. The sudden eclipse of the influence of

England and France by that of Germany and Austria was too much to be endured. Still an excuse was necessary. The progress of the works furnished one of this kind. In spite of persistent denials made to the British Admiral, the works on the fortifications were pushed on with all possible speed, and the orders of the Khedive and the Sultan met with evasive replies. A formal ultimatum was sent to Arabi, and as soon as the Europeans were safely embarked on board the ship provided for them, the bombardment of Alexandria followed.

Without any attempt to adversely comment on the action of Admiral Beauchamp Seymour, his action was unjustifiable. Neither Arabi's conduct in defying the power of France and England, nor the interest of the bondholders of either Power, could exonerate the gallant Admiral from levelling his guns at the unprotected houses of the civil population. Much more is he to blame for such conduct when he had no force to take charge of the place at once. To create confusion without being able to restore order was hardly justifiable. The loss of lives amounted to upwards of 2,000—the loss of property, the disregard of the authority of the Khedive, who had not asked[1] for the intervention either of England or of France—will always be deprecated by historians. This act appears worse when we find that he had no means of following up the anticipated results of the bombardment, and still worse when he gave a somewhat tardy assent to the landing of both bluejackets and marines.

Meanwhile the British Government had been preparing themselves for sending out an expedition to Egypt. Some 40,560 officers and men of all ranks, containing some 7,270 men and officers of the Indian contingent, were at once dispatched. A Turkish detachment, which arrived before any battle took place, was not allowed to take part in the action which followed. On September 9th a short artillery duel took place, with no decisive result. A night attack was arranged by Sir G. Wolseley, Major Graham also playing a distinguished part. At nightfall accordingly on the 12th the camp was broken up, tents struck and packed, and the force silently moved forward. After a short advance the men bivouacked silently in the sand, no light or

[1] It is now claimed that England intervened at the request of the Khedive; but there is no mention of this fact in books of authority on Egypt.

fire being allowed. "Dawn was faintly creeping up the eastern sky when the crest of a ridge some 500 yards in front of the Egyptian left became covered with moving objects telling black against the pale light. It was Graham's Brigade advancing. Then a single shot from the Egyptian lines rang out in the stillness of the morning, and immediately the whole front of the position was broken by jets of red flame from rifle and cannon. The troops down in the shadows were not, however, seen, and the shot was only a random shot. Time was never so precious. A moment's pause, and the Egyptians would have been ready to accord a warm reception! The battalions were at once formed, and the order given to charge with bayonets. The right of Tel-el-Kabir was taken in about twenty minutes; on the left the same good fortune had attended the troops under Sir C. Hamley. The Egyptian army was now thoroughly broken up; the rout was completed by the cavalry, which, sweeping down upon the flying Egyptians, supported by the guns of their adversary, which were left unspiked in the redoubts, harried them beyond all hope of rallying. The Indian contingent, better able to stand the heat, made straight for Zagazig. The total loss of the British troops did not exceed 54 men in killed, 11 of whom were officers, and 342, of whom 22 were officers, in wounded. The Egyptian loss was nearly 10,000 in killed, 3,000 surrendered, and the remaining 15,000 spread themselves over the open country." Thus ended the famous battle of Tel-el-Kabir, which decided the fate of the "national" movement, and furnished to International Law an anomaly in the classification of States.

Arabi realised the full extent of his disaster, and perhaps being secure of his life and fortune, quietly got into a train for Cairo, and proceeded *incognito* to his house. Early next morning he was arrested by the police, and given up to the English commander on his arrival. His trial was to be secret. But Mr. Wilfrid Blunt and others who had maintained from the beginning of the troubles in Egypt that Arabi represented a national feeling, roused public opinion in favour of an open trial. To the principal count of the prosecution, that of firing Alexandria, Arabi loudly asserted his innocence. Pressure was, however, forthwith brought to bear upon the Khedive to stop the trial, and to exile Arabi by a Decree.

In the meantime Lord Dufferin was sent by the English Cabinet to unravel, if possible, the tangled skein of Egyptian politics, to suggest the best substitute for an English Protectorate, and to lay down the basis upon which self-government might be established in the valley of the Nile. He used his influence to bring the trial to a speedy conclusion. Arabi was exiled for life to Ceylon, where a life of peaceful ease was assured to him; his own desire to go there was evinced by his ejaculation that it was the best place after Paradise, and where Adam, the father of all mankind, was dropped from Heaven, according to a Moslem tradition.

Lord Dufferin's mission was not, however, over. The Dual Control was abolished. England, with much tardiness, accepted it; while France still protested against the claim of Egypt to manage her own affairs. Without regard to the feelings of the French Government, Lord Dufferin was able to sketch out his plans for the reconstruction of Egypt and its finances.

In eloquent language, Lord Dufferin set forth a scheme for administrative and social reform, including the germ of a national representative system. The weakness and the corruption of the Egyptian Government were exposed. Practical measures necessary to bring out of the existing chaos, the desired transformation in the material, moral, and political condition of the country, "to erect an Egypt peaceful, prosperous, and contented, able to pay its debts, capable of maintaining order along the Canal, and offering no excuse in the troubled condition of its affairs for interference from outside," were proposed. The proposed system of representative institutions comprised: (1) The Village Constituency; (2) Provincial Councils; (3) the Legislative Council; (4) a General Assembly; and (5) Eight Ministers responsible to the Khedive.

The whole of Europe was at this time in a state of suspense. The steps taken by England to uphold the existing *régime* were so quick and effective as to allow no time for reflection. Expectation alone was the reigning idea. This was removed by a Circular Note issued to the Great Powers by Lord Granville early in January. It was formally submitted to the approval of the Porte, and it is noteworthy that the Sultan never attempted to complicate the existing difficulties in Egypt by interfering in the capacity of Suzerain. The Note indicated the future policy

as (1) free navigation of the Suez Canal, and its neutrality in time of war; (2) strict economy to be observed in the management of the Diareh State; (3) the treatment of foreigners on the same footing as natives with regard to taxation; (4) the continuance of the Mixed Tribunal; (5) formation of a small Egyptian army, officered by British officers; (6) some new arrangement in lieu of the Dual Control; (7) the introduction of representative institutions in some form adapted to the present political intelligence of the people, and calculated to aid their future progress.

Little occurred in the meantime to define the International position of England beyond the repeated assurances of the English Government that their forces would be withdrawn at an early date. In 1884 it became evident that the revenues of the country were insufficient to meet the expenditure. The dignified silence of France was broken by a proposal to a conference in London. On June 28 the conference of the Great Powers took place there to discuss the Egyptian question, chiefly in its financial aspects. The conference, however, broke up without arriving at any conclusion. Although it was resented by the French Press, in England it was felt that the British Government had recovered its freedom of action; and the feeling of satisfaction was increased when, a few days later, the Cabinet sent out Lord Northbrook as High Commissioner to enquire into its finance and condition.

On the recommendation of Lord Northbrook, the operation of the sinking fund provided by the Law of Liquidation was suspended by a Ministerial Letter dated September 18 till October 25, and the money applied to the more pressing needs of administration. The representatives of Germany, France, Austria, and Russia protested, and the Caisse commenced an action against the Government. The operation of the sinking fund was renewed after only a suspension of six weeks, but the action was persisted in, and the Mixed Court of First Instance gave a judgment in favour of the plaintiffs. The Egyptian Government gave a notice of appeal, and nothing was done towards carrying out the judgment up to the end of the year.

The scheme of Lord Northbrook, which was submitted to the Powers, comprised a guarantee of loan by England of five millions at 3½ per cent., while a further loan of four millions

was to be added to the Preference Debt, and the interest on the unpaid debt was to be reduced to 3½ per cent.

This scheme was not accepted, and steps were taken by several of the Powers indicating a wish to substitute something like a "Multiple Control" for the existing British supervision of Egyptian reform. On December 11, Prince Bismarck, who was dissatisfied at the attitude of England towards German colonial policy, obtained the support of Russia in claiming a right to nominate a Commissioner each for the Caisse. The French counter-project, forwarded to the Foreign Office, received the support of Germany, Austria, and Russia, and became a basis for fresh negotiations. At last a Declaration was signed at London on behalf of Great Britain, Germany, Austria-Hungary, France, Italy, Russia, and Turkey, embodying a draft convention and a draft decree to be issued by the Khedive. This took place on March 18.

Under this arrangement a loan of nine millions was to be sanctioned by the House of Commons, and was to be authorised by the Porte, under the guarantee of all the Great Powers jointly and severally; the unified and Preference coupons were to be taxed only for two years; an Act was to be drawn up providing for the freedom of the Suez Canal.

In order to secure the recognition of the occupation of Egypt by Turkey as Suzerain, a diplomatic and clever act was needed on the part of the British Cabinet. To meet with fairness the Turkish protests against introducing innovations in the internal administration of Egypt a convention was signed, not without considerable difficulty, between England and Turkey. By it, two Commissioners were appointed—one by England, Sir H. Drummond Wolff—and the other, Mukhtar Pasha, by Turkey. They were to supervise the introduction of reforms in the Egyptian administration. But the primary object of England was to secure the recognition of her position in Egypt by the Suzerain. By the arrival of Mukhtar the chief object of the mission was accomplished, inasmuch as it implied a recognition of the fact that British authority in Egypt was supported by the acknowledged Suzerain of the country.

The year 1887 once more attracted the attention of Europe towards Egypt. The ultimate evacuation of the country was still a matter of indefinite future, but the British Government

showed signs of a desire to redeem their pledges, and to come to an agreement with the Sultan and other Powers. In January the army of occupation was reduced. In the beginning of February the negotiations assumed a different aspect. Sir H. D. Wolff went to Constantinople, and submitted the following proposals:—

(1) The autonomy of Egypt should be acknowledged, while the sovereignty of the Sultan remained intact; (2) the privilege of the foreigners to be tried by their own courts should be abolished; (3) Egyptian territory and the Canal should be neutralised under the guarantee of the Powers; (4) majority of the officers in the Egyptian army should be appointed by England; (5) England should have the right of re-occupying the country in case of necessity; (6) and England would evacuate the country after all the Powers had given their consent to the terms of the convention. These proposals met with little favour. The last two clauses appeared to be particularly objectionable. After much delayed negotiations the last clause was so far modified by the English Government as to fix the date of withdrawal to within three years, but on the last clause but one they remained firm, as it went to the very root of the matter. However, this met with so much approval with the Porte that the Grand Vizier signed it on May 22. The Sultan's ratification was to be secured. Here again jealousy played a very important part. The representatives of France and Russia redoubled their efforts to bring about the failure of the negotiations. They remonstrated against English re-occupation in case of necessity; but Sir W. White and Sir D. H. Wolff remained deaf to any modification on this score. Time dragged on slowly without any result. The time fixed for ratification was several times extended. At last, unable to extend it any longer, probably convinced that the Sultan would never bring himself to sanction it owing to the French and Russian intrigues, Sir W. White and Sir D. H. Wolff left for London on July 16. Lord Salisbury refused to re-open negotiations on the subject. The French politicians rejoiced at the diplomatic defeat of England, but public opinion in England was made to console itself that everything which was consistent with national safety was done to evacuate the country.

This brings us face to face with England in Egypt. It is a

history of some 25 years, and I do not claim first hand knowledge, except in two cases, of the state of affairs there. For the sake of brevity I shall divide them into the following heads:—

First, the economic development. My English friends tell me that Egypt has greatly progressed since 1884, and I think it cannot be denied. But the great defect is that the Egyptian capital has not been utilised, and therefore the Egyptians themselves have no voice in its control. A policy of nationalisation of all the forces which develop a country will be of great advantage both to Egypt and to England. The elimination of foreign bondholders cannot but have a most salutary effect, and should always be the goal of policy there.

Secondly, Education. There is a great complaint on this account. Upon the authority of my friend, Dr. Ziauddin Ahmed (M.A. Cantab., Ph.D. Gottingen), Professor of Mathematics at Aligarh, the standard of education is that of the first year at Cambridge or Oxford. Two Egyptian friends of mine (one a Moslem and the other a Christian) tell me that there is no universal free education there, and that the cost of education is by no means so small as to place the boon within the reach of men of moderate income. If it is really so, it is a matter of great pity. I have observed the effect of education upon persons of extreme views, and I am led to believe that in the majority of cases it has had a most desirable effect. From irreconcilables they have at any rate either entirely rejected their former opinions, or if they retained their former view, they have at least reasons for it. They are no longer blind tools in the hands of a few. This in itself is a great advantage to a State, irrespective of the controlling power. If the interests of the Egyptians are really desired by their rulers, they must be educated on modern lines. The Jama Azhar is a great seat of learning, but the education given there is legal and theological. The modern scientific knowledge which is instrumental in controlling or utilising the forces of nature with such ease, is not taught there. True, endeavours are being made to translate works on science into Arabic, and it is no doubt a step in the right direction. But a European language for the purposes of acquiring scientific knowledge does not take long to learn, and as the spirit of the modern mechanical world can with difficulty be perceived or appreciated through the medium of any other language, those

who have the interests of the people at heart will do well not to ignore this side of the question.

The next grievance, that of appointment of teachers from Europe, is one on which I can speak with some experience. It is really bad. Persons who are appointed to an Egyptian post in the educational line are selected without due regard to efficiency. An English friend of mine, who has had a long course of experience of Egypt, and other Moslem countries, had acted as an engineer in several countries with great success, and in England itself had introduced an improved system of baths, a system which is largely used in this country, applied for the post of a lecturer on engineering at a college in Egypt. I have not the slightest doubt that he would have studied the interests both of Egypt and of England in so far as a teacher is supposed to interest himself with the administration of a country; but the persons who had the power to make the appointment had not even the courtesy to let him know of the appointment of another person.

The legal education is by no means satisfactory. Roman law, a system by no means so complete as is given out to be, is taught at the Khedival Law School. If English law, side by side with the Mohammadan law, were taught, it would have been much more beneficial. To speak of only two institutions—Trusts and Equity—the English and the Moslem legal systems are much more in advance than the Roman system. In both, Equity was resorted to to mitigate the hardship of the Common Law, and not to provide the basis of a law for the foreigners as in Roman law. Next the wholesome institution of Trusts. It is known to the English law and to the Mohammadan law as wakf or habs, underlying which we find the idea of legal and beneficial ownership. The late Professor Maitland, the great jurist of Cambridge, was very much struck to find that Trust was not only known to the Mohammadan law, but existed in a very highly developed stage. The Roman law, of course, does not possess this institution.

To teach law, then, the proper course would have been to appoint either Egyptians or members of the English Bar, but unfortunately highly distinguished members of the English Bar, with University distinctions, have been passed over in favour of members of a foreign Bar!

Thirdly, the administration of justice. If I am to judge from the report of judicial trials, I am afraid it gives very little indication of being either just or pure. The codification which has taken place there is far from being satisfactory. The unfortunate occurrence of Denshawi brought to light that the technicalities of the procedure were utterly disregarded. As a member of the English Bar, I had had many opportunities of watching the effect of technicalities in procedure in criminal matters. Only the other day a man who was sentenced to be hanged for murder was let off by the Criminal Court of Appeal on account of the presiding judge wrongly allowing to be admitted certain confessions by the prisoner. If justice requires that certain principles must be strictly followed in the trial of prisoners, it must be done. The Mohammadan criminal law, of course, shorn of the harshness of punishment which suit the modern requirements no more than hanging would suit for theft of a small sum in England, is much more suited to the life of the people there, and therefore it should be enforced after proper revision and modification, especially of the punishment. It will not be against Mohammadan law, which is a living system, and always in favour of change to suit the needs of the time. It may take the form of Ijma or Istehsan or Isteslah, but all aim at one thing, *i.e.*, progress.

The jurisdiction of Consular Courts, with its antiquated and unjust capitulation, leads to grave miscarriages of justice. I know of a case in which a European killed an Egyptian. He was handed over to his own Consul. After the absence of a couple of months he made his appearance at Cairo once more, and the first thing he did was to thrash the witnesses, and then settled down to work as if nothing had happened! Thus an Italian black-leg, or a French apache, or a Greek thief can violate the sacred rights associated with life and property with impunity. With due regard to the preservation of the Suzerainty of the Sultan, this intolerable state of things must be put an end to without any loss of time. Capitulations should at once be abolished.

Lastly, the administration of the country. We hear a great deal of the prosperity which has befallen the fellahin, but the people appear to be discontented all the same. They are kept down by means of the army of occupation, the payment for

whom is a drain upon the Egyptian exchequer, while their services cannot be utilised for the purposes in which Egypt is directly concerned. No doubt the English occupation is much better than the occupation of any Moslem country by France. The French give theoretical equality, but do nothing to improve the condition of the people; on the other hand, they systematically crush life out of them. As, for instance, in Tunis, a great seat of Arabic learning in the past, there is only one shop of Arabic books, and that kept by a non-Moslem. In Algeria the case is the same. But the benefit, however great, conferred upon the people cannot exonerate England from responsibility according to her own ideas of justice and equity. The appointment of persons like Lord Cromer as virtual rulers, who cared little for the feeling of the people, and wrote against the Koran and Islam without a knowledge of Arabic, cannot but have most disastrous effect; on the other hand, the suspension of the constitution is not calculated to beget confidence. True, the people must be educated up to it, but if there is no education of the kind which alone would befit them for the constitution, it appears to be rather hard. It is the sincere wish of all lovers of England that she will lose no time in doing her duty to the people of Egypt by withdrawing the bar at present existing against the only form of government which is suited to the Moslem and English ideas—the Constitution.

II.

LEGAL

I.

A HISTORICAL STUDY OF MOHAMMADAN LAW.[1]

"THE laws of a nation form the most instructive portion of its history",[2] and the history of the law adds to the interest and importance by unfolding the stages through which a nation must have passed. The science of the history of law requires most scrupulous care and exactitude, and restricts the play of imagination in a most rigorous fashion.[3] That the infancy of a nation is generally unknown and the legends invented to fix a date are usually of doubtful origin render the task more difficult.

The Mohammadan Law as such dates from a fixed period; but when an attempt is made to write its history and trace the institutions back to early Arabia in order to ascertain how far they were modified and how far originated by the introduction of Islam by Mohammad of Arabia, one is confronted with two difficulties. There is no systematic written record which would throw much light upon the subject, and that whatever information could be gathered must be gleaned from the overwhelming mass of writings of the jurists, the historians, and the Commentators on the Qoran. But however difficult the task may be, a clear understanding of the Mohammadan Law cannot be attained without even some slight imperfect knowledge of the conditions of laws in the Arab society, as there is little doubt that some institutions existing among the early Arabs still remain in the Mohammadan Law. "The Arabs have laws of their own," says the great work *Sabáek-udh-dhahab*,[4] "which they practised. Islam recognized some and repudiated others. They set their faces against marrying the mother and daughter, and this was recognized. The marriage with the father's

[1] An article published in the *Law Quarterly Review* (January, 1911).
[2] Gibbon's Decline and Fall of the Roman Empire, ch. 44, *ad init.*
[3] Législation Romaine, par Ortolan, vol. i.
[4] pp. 100-2.

widow, which was looked at askance, was forbidden. The practice of cutting off the right hand of a thief received the support of Islam." "Partnership is lawful," says the *Hedaya*,[1] "because the Prophet confirmed the people in their practice of it."

Roughly speaking, the Arabs were divided into two large sections according as their fictitious ancestor was Adnán[2] or Kátán. Those claiming their descent from the former inhabited northern Arabia, while the descendants of the latter occupied the south. Each was divided into a number of tribes, each tribe being headed by a Sheikh or Said elected for the nobleness of his birth, wisdom, and character. Each tribe in its turn was divided into a number of families. Sometimes a few of the tribes used to arrange themselves into groups and elect a supreme Chief called the Emir. He was assisted by the heads of the tribes who had grouped together. This council was a consultative body, and the Emir invariably consulted it on matters of importance. The decision thus arrived at was invested with an obligatory character.

The tribe of Qoraish, a section of the Adnánites, was the noblest in Arabia, and in charge of the Temple at Mecca called the Caabá. They were, for a brief period, deprived of the custody by the Khuzáites, but towards the middle of the fifth century Qusáye is said to have re-secured the superintendence for them and brought together the Qoraishites who had dispersed over a wide area into the Meccan valley, and was therefore called Al-Mujammi (the Congregator). He built a House of Assembly (Dár-ul-Nadwa) where matters affecting the public weal were discussed. It was composed of the Elders of the tribes, representing the various families of which they were the heads. In this respect they might be compared to the Patricians of Old Rome.

The position of a father in an Arab family, notably among the Qoraishites, appears to be much the same as that of a father in a Roman patrician house. He had the power of life and death over the members constituting his household. The hateful practice of burying alive infant girls was much in vogue,

[1] Vol. ii., pp. 829-30.

[2] Genealogische Tabellen der arabischen Stämme und Familien, von F. Wüstenfeld.

and although a feeling of antipathy was growing against it, there was no external check to control it.

The institution of slavery with its horrible incidents was not unknown to them, nor was that of *clientage* which played such an important part in the history of Rome. Those who did not belong to the same tribe, and sought the valuable protection of a certain family noted for its "pelf and power," could attach themselves to it by the permission obtained from the head of the family. They, then, had to adopt the name of the tribe to which the family extending its protection belonged.

Of union there were six kinds which created mutual marital rights and duties of the parties. The first four are mentioned in the well-known work called *Kashf-ul-Ghummah an Jáme-il-Ommat;* the first is reported in *Latáef-ul-Menan* to have been in vogue in Pre-Islamic Arabia; while the sixth is noticed in the pages of the *Fath-ul-Qadir,* the famous commentary on the *Hedaya*. The suitor used to apply to the father or guardian for the hand of his daughter or ward, who used to ask the woman for her consent. If she accepted the offer, he used to settle the amount of dower and make arrangements for the marriage. This form of marriage was subsequently confirmed by Islam and used to be called Sefah. The second form of marriage was when the husband used to ask his wife to bear him a child from some one generally noted for something special and extraordinary. The third kind was when some persons, less than ten in number, used to have intercourse with a woman. If she conceived and gave birth to a child, she would call them all together and attribute paternity to one of them, who was bound to accept it. The fourth kind was when the woman, a common courtesan, used to fix a flag at the entrance of her house or tent as the sign of her calling. If she became enceinte, all those who used to frequent her house or tent had to come together for the physiognomist also to determine who was responsible for it. This was called Baghayá. The form of union called the Macte used to take place when a son or a relation threw his cloak over the widow of the deceased. Mutá, or temporary marriage, was the last kind. When a man paid a temporary visit to a strange place and had no one to look after his household, he was allowed to marry some one for the time that he intended staying there.

The degrees of relationship within which a marriage was prohibited were very narrow. A marriage[1] was not lawful between mother and her son, between father and his daughter, between mother-in-law and son-in-law. Barring these an Arab was free to marry any one he chose.

An Arab was unrestricted in the number of wives he might have. Polygamy of the worst type was universally recognized and practised.

Inimical as the Arabs were to the rights of women, they were not likely to do without an institution to get rid of an unsuitable wife. They very much practised taláq or divorce. Sometimes they treated it as a mere farce, and after pronouncing[2] it many a time resumed cohabitation, thus introducing an element of grave uncertainty in the lives of the fair sex. The form of divorce known as Ilá, which consisted in swearing the severance of the marital tie, was fully practised. Swearing, to which highest sanctity was attached by the Arabs, rendered the separation irrevocable. Sometimes it was effected by pronouncing the back of the wife as that of his mother. This was called zahár (lit. back). At other times the wife was simply asked to leave the house and "rejoin her family."

Corresponding to the right of putting an end to the nuptial tie on the part of the husband, there existed in certain tribes a right by which a woman could free herself from the loathsome company of an obnoxious husband. She had but to stand with her back turned towards the entrance of the house and the marriage was irrevocably annulled. In cases of good families, especially of the noble tribe of Qoraish, the conjugal rights were extinguished by mutual consent. This was termed Khulá. Being aware of the unbearable life which the wife led in the house of the one to whom she was married by mistake, her relations used to intervene and arrange with the husband for a divorce in consideration for foregoing the right to the dower, partial or otherwise.

In a state of society where the number of males denoted the strength of a particular family, it is natural to expect adoption as a mode of affiliation. It flourished in early Arabia and extended to the adopted all the benefits enjoyed by a son born of a lawful wedlock. There was no limit of age, nor was the

[1] Latáef-ul-Menan. [2] Táfsir-e-Ahmadi.

instrumentality[1] of the father necessary. The legal relation was established by *Ahd* or pact, each engaging to fulfil his part of the transaction. The common formula repeated by the adoptor and the adoptee was: "My blood and yours is one; my house and yours is one; my acquisition is yours and yours mine; I shall avenge you and you will avenge me."

Succession was strictly based upon two principles: (1) Parentage and (2) *Ahd* or pact. Females,[2] as a rule, were excluded from inheritance, and so were the children of tender years. The male relations alone could inherit, as they only could wield arms, ride in battle, take booty, and afford protection to the deceased. Those who inherited by virtue of a pact were either the adopted, or those who had entered into reciprocal rights and duties as when immigrating together, or those who had simply agreed to inherit from each other.

Side by side with intestate succession an Arab was at liberty to dispose of what he possessed by will.[3] Nor was he restricted in point of persons to whom a bequest either of entire property or of part could be made. Thus he could bequeath all his belongings to a perfect stranger, excluding his near relations, leaving his parents in want and his own children unprovided for.

The law of property had reached a fair stage of development. There existed both real and personal property, though no fine line of demarcation separated the one from the other. Excluded as were the women from inheritance there were practices which prevented them from owning through other modes of acquisition.

Dedications in favour of an object of public utility or a place open to public worship were frequently made. Corporations in the form of partnership or company existed in Medina long before it came within the pale of Islam. Even private settlement of the form of *Wakf* was not unknown to them. In cases where an Arab desired to leave his property to his womenfolk as a departure from the ordinary rules of exclusion of females from inheritance, he created what is now known in Mohammadan Law as Wakf. After the Qoranic legislation on points of inheritance doing away with the aforesaid disability under which

[1] Cf. The Hindu Law of Adoption as set forth in Dattaká Mimánsa and Dattaká Chandriká.

[2] Tafsir-e-Ahmadi. [3] Ibid.

the womanhood was groaning, Mohammad is reported to have said that there was no need for *Wakf* to the same extent as before.

In obligations created by contract an Arab was as keen as could be expected from a people given to trade and commerce. Perfect freedom of contract was recognized in all centres where throbbed the pulsation of commercial life. There were no fewer than twenty kinds of sale with every shade of variation in the terms. Hypothecation took the form of sale with a condition to re-purchase. Having no principles of equity to mitigate the rigour of transaction by the establishment of the doctrine of Equity of Redemption, the contract was strictly interpreted, the sale becoming absolute on the expiry of the period stipulated for. The exorbitant rate of interest commonly known as usury, condemned by Aristotle and altogether abrogated by Islam, was generally practised, especially by the Jewish section of the population of large cities like Medina.[1] The contract of commodation (Ariyat) was resorted to where necessity demanded. The property in land had given rise to the relation of lessor and lessee, of which two forms—when the seed was supplied by the lessor or by the lessee—were known.

Of crimes only three forms were recognized, viz., that of homicide,[2] of dangerous[3] wounding, and of theft.[4] The penalty was death or money composition in cases of homicide. If the tribe of the victim was nobler than that of the culprit, and the victim was either a woman or a slave, the blood of one person was demanded; but if the victim was a free person, then two persons had to answer for his death. On the other hand, if the victim belonged to an inferior tribe, the parents of the deceased used to go to the slayer and demand satisfaction in the following terms:

"Give us one of three things; either revive our child or fill our house with stars or leave all to go to death yourself; without these there is no compensation."

The amount of blood money varied with different tribes. From two camels it rose to one hundred in the tribe of Qoraish.

The procedure[5] adopted was various. In cases of homicide,

[1] Tafsir-ul-Kabir.
[2] Amsal-ul-Midáni.
[3] Faker-el-Razi.
[4] Al-Nafhah-ul-Meloukia.
[5] Al-Nafhah-ul-Meloukia.

theft and wounding, provided the parties belonged to the same tribe, they used to resort to the device, very much like the ordeal, of *El-Kiafa*, that is to say, by following traces, &c. On the contrary, if the parties belonged to different tribes under the same Emir, the reference to the Emir was purely a matter of choice, as the case might as well have been tried by a chosen arbiter of the nature of *unus judex* of the Roman Law, whose decision settled the amount payable by way of compensation. But if they happened to be under different Emirs, the injured party used to submit the grievance to the tribe of the transgressor. If it fell dead on unheeding ears, war was the only umpire. If, on the other hand, an arbiter was chosen to settle the dispute, his judgment[1] was binding.

There was a curious procedure in existence, resembling the so-called compurgation of mediæval Germanic law, which was of equal force under the latter circumstances. It was called the *Kasamah* (*i.e.*, oath), which consisted in fifty persons of the same tribe swearing to the innocence of the accused. The great traditionist Al-Bokhari cites a precedent. A man named Khadish of the tribe of Bani Amir employed a man belonging to Bani Hashim to accompany him to Syria. The latter happened to give away a piece of rope to somebody on the way, which so enraged Khadish that he struck the employee with a stick, causing his death. On his return he gave out that the man had died of a mortal disease on the way. But the deceased had communicated the cause of his death to a man from Yemen (Arabia Felix) and commissioned him to speak of it to Abú Taleb.

Having heard of the real story, Abú Taleb went up to Khadish, formally charged him with the commission of the crime, and demanded by way of satisfaction either that Khadish should give one hundred camels or get fifty men of his tribe to swear to his innocence, or to pay by his own death. The matter was ultimately referred to Walid ibn-ul-Moghaira, who decided in favour of the second alternative. One person chosen to swear got off by the intercession of his wife, who offered the oath of her son in place of that of her husband. Another man abjured from it by giving away two camels in lieu of his oath. The rest swore to the innocence, and the case was accordingly settled.

[1] Tabári.

The Arabs regarded an oath with special sanctity. A place called the Hatim,[1] outside the Caaba, was set apart for the purpose. A perjurer was supposed to be destroyed by the presiding deity.

In the absence of an organized powerful machinery of a state, the execution of a sentence was entrusted to powerful families like that of Noman ibn-ul-Moghaira, who used to have a number of retainers. But a great difficulty sometimes used to stand in the way if the criminal was harboured by an equally powerful family. Under normal circumstances, however, it was possible to have an adjournment of the execution provided proper sureties were forthcoming who would hold themselves responsible for the reappearance of the guilty.[2]

The state of affairs in Pre-Islamic Arabia was far from satisfactory. Not only was there an absence of an organized powerful state, which would be the guardian for the preservation of lives and the protection of property, but there were also laws which were decidedly hostile to the rights of the weak, the women and the children. The apparent inequality of the law of inheritance, the polygamy uncontrolled by any sense of decency, the recognition of polyandry or prostitution as a regular form of union, establishing paternity, and having recourse to inadequate procedure in matters which affected the very existence, do not show a very happy state of things. They appear to be just emerging from a state of barbarism. The great and highly organized empires of Rome and of Persia, whose confines extended over to certain portions of Arabia, had left, perhaps intentionally, the Arabs uninfluenced by their laws or institutions. The intercourse in trade and commerce, actuated by human wants and the acquisition of wealth with its accumulations, had rendered them alive to the necessity of abiding by the terms of a contract solemnly entered into, and brought into existence certain institutions peculiar to the law of property to answer for the preservation or increment of the acquisitions, or to make up for the gross violation of the dictates of justice or of natural affection. But such law of property was not at all systematic and lacked sanction to enforce its proper observance.

Such was the condition of Arabia when an event of great moment, which changed the history of the world, happened.

[1] Qastalani, vol. vi. [2] Amsal-ul-Midani and Akd-ul-Farid.

Mohammad was born! "He sprang[1] from the tribe of Qoraish and the family of Hashim, the most illustrious of the Arabs, the princes of Mecca, and the hereditary guardians of the Caaba." "Mohammad was . . illiterate . . . ; his youth had never been instructed in the arts of reading and writing; . . . . he was reduced to a narrow circle of existence and deprived of those faithful mirrors which reflect to our mind the minds of sages and heroes." If his private life is dispassionately examined it is impossible to picture to one's self a character[2] simpler, purer, and more genuine than he was, utterly devoid of any weakness which flesh is heir to, devoted to his womenfolk, faithful to his friends and generous to his foes. During his youthful years he was called Al-Amin by all alike. He preached the religion called the Islam (lit. right path). This drew the ire of the people of Mecca, who were either hardened in the worship of the idols or were jealous of him. He had to migrate to Medina. There was no peace in store for him, and he had to fight sanguinary battles of Beder, of Ohud, and of the Nations (or the Ditch, Khandaq) before anything like safety to him or to his companions was assured at the hands of the Qoraishites, instigated by his relative and implacable enemy, Abu Sofyan.

It was now, when he won victory over the Qoraishites leading up to the submission of Mecca, that the Mohammadan Law replaced the idolatrous régime. During the preceding ten years he had little time to turn his attention to legislation. The first trace of an attempt in this direction is noticeable when he entered into a pact with the deputation on behalf of the people of Medina, who came to welcome him into their midst. The deputation, consisting of twelve persons, agreed to observe the following terms: (1) that they will worship only one God; (2) that they will commit no theft or robbery; (3) that they will not kill their infants; (4) that they will commit no adultery or fornication; and (5) that they will not commit any crime forbidden by Mohammad, above all, will never outrage the modesty of a woman.

After his settlement at Medina he began organizing something like a state. He instituted zakát or impost, which con-

[1] Gibbon's Decline and Fall of the Roman Empire, vol. iv., pp. 336, 339, quoting from Abul Feda and other historians.

[2] Carlyle's Heroes and Hero-worship: essay on Mohamad.

sisted in paying annually a certain proportion of the net savings by every Mohammadan to improve the condition of the poor; and later on laid down the laws of war and of peace, which correspond to the provisions of the modern International Law. The next ten years he seems to have given full attention to legislation. There is hardly any subject which directly or indirectly did not receive his masterly touch. It took two forms: (1) revelation from God, and (2) his conduct, approbations and disapprobations and opinions on cases submitted to him. The first is called *Wahy* and the second *Sunnat*. These are the two original and principal sources of the Mohammadan Law.

He used to deal out justice for himself and to delegate this important function to the savants of Medina who had embraced the Moslem faith, whenever he was compelled to absent himself. The famous book called the *Bedaul-Dohur,* which was written before the eighty-fifth year of Hijra, but found circulation only about 280 Hijra, says:—

"There existed in Medina savants who had embraced the Moslem faith. The Prophet entertained a very high regard for them. Whenever he absented himself, he charged them with the function of the judge."

The procedure adopted was very simple. The presence of the parties at dispute was necessary. The burden of proof lay upon the asserting party, and if no evidence could be adduced the party denying the claim had to take the oath. Possession was regarded as a proof of right to hold, as happened in the case of two persons claiming the same beast of burden and producing evidence in their own favour, the Prophet deciding in favour of the man in possession. Sometimes lots were cast. The evidence of an adulterer, one noted for dishonesty, or of a slave was not admissible.

When Mohammad found his end approaching, he addressed the assembled Moslems from the mount Arafat, declaring his last words on the close of legislation in the following terms:—

"O people! Listen to my words as I may not be another year with you in this place. Be humane and just among yourselves. The life and the property of each are sacred and inviolable to the other. Render faithfully every one his due, as

you will appear before the Lord and he will demand an account of your action. Treat the women well: they are your helpmates and can do nothing by themselves. You have taken them from God on trust. O people! Listen to my words and fix them in your memory. I have *revealed* to you everything; I have left to you a law which you should preserve and be firmly attached to—a law clear and positive, the Book of God and the Example (*i.e.*, conduct) of His Prophet."

Of these two sources of the Mohammadan Law the Book of God, *i.e.*, the Qoran, contains all that was revealed to Mohammad, just like the Old and New Testaments revealed to Moses and Christ. It contains about 132 chapters (Suras), of which seven deal with the law, viz. Al-Bakar, An-Nisa, Ale-Imran, An-Nur, At-Talaq, Al-Maida, and Bani Israil. They deal with the questions relating to persons and personal status —birth, majority, marriage, divorce, inheritance, slavery, and crimes. As already pointed out, the legislative activity found its full play at Medina, and therefore the bulk of the Qoran was revealed there.

An account of the compilation of such an important code will not be out of place. At the time of revelation Mohammad used to fall into a state of ecstasy, in which condition he communicated the will of God—the same language as was revealed to him. These literal words of God used to be committed to memory by a great many of his companions and were dictated at first to Moáwia, who was the son of his traditional enemy Abu Sofyan, and acted as his private secretary, and afterwards to Zaid ibne Sabit who was noted for his beautiful and correct writing. Al-Bokhari, the great traditionist, relates that once Abu Bakar, the first Caliph, sent for Zaid ibne Sabit, acquainted him of the fear which Omar (who became the second Caliph) entertained of the likelihood of errors creeping into the Qoran, and requested him to compile the book before it was too late. All the portions of parchment, of papyrus, of bones, &c., on which the revelations were written, were collected, and all the people who had committed them to memory brought together. Among them Abi ibne Keab and Ali stood foremost. Next in importance came Abdullah ibne Abbas, Abdullah ibne Omar, Abdullah ibne Zobeir, and Abdullah ibne Masood. Others who took

prominent part in the compilation were Zaid son of Abu Bakar, Mohammad, Khalid ibne Walid, Talha, and Saad ibne Obeid. Thus the first copy of the Qoran was compiled. It is needless to say that no pains were spared to make it most accurate.

For the sake of safety this copy was deposited with Abu Bakar, the first Caliph, and after his death passed on to Omar, the second Caliph, who, prior to his death, consigned it to the care of Hafisa, his own daughter and a widow of Mohammad. Osman, the third Caliph, had had three copies of this first copy made, of which one is still in Damascus. He himself wrote out one which was in Kufic character. The next step which he took was to consult Zaid in order to revise the first edition, and after the work of revising was accomplished, he caused the authorized edition to take the place of the first edition.

The second original source of the Mohammadan Law is the conduct of the Prophet, his approbations and disapprobations, technically called the Sunat or Hadith (tradition). The Qoranic legislation was rather insufficient and required something else to supplement it. This was supplied by the Sunnat or Hadith (tradition) dealing with the conduct of the Prophet. Its importance was soon realized, and before long the zeal of many to collect the traditions got the better of their discrimination. There sprang into existence a great many traditions of doubtful authenticity. Omar was compelled to intervene and stop their collection for a time. But the tide of the study of tradition, stemmed for a time, rolled on as time went on.

To forestall,—the great jurist who much relied upon the traditions for his judicial notions was Malik ibne Ans. He lived in Medina from where Islam spread all over the world, and was therefore in a better position to collect and make use of the most authentic traditions as embodied in his immortal work *Al-Mowatta*. A practice soon arose of collecting those traditions which were supported by the best of evidence, but without any systematic arrangement as to the subjects. The first collection of this kind which deserves notice is by another great jurist, Ahmad bin Hambal.[1] Such a collection is called *Musnad*.

[1] This work extends over 2,885 pages, contains some 30,000 traditions, and has recently been printed in six large volumes at Cairo; but prior to this publication a manuscript copy in four volumes existed in the family library of the writer at Khizerchak in the district of Monghyr in Bengal (now Behar).

that is to say, the one supported by the authority of those who could vouchsafe to their genuineness. But a want for a collection arranged according to subjects was soon felt. This deficiency was supplied by the imperishable and monumental work of Abu Abdallah Mohammad bin Ismail Jafi al-Bokhari (who was born in the village of Jaf in Bokhara and died in 256 Hijra), called Sahih-al-Bokhari. This work contains 7,395 traditions and is regarded as the most authentic of all the works of this nature. The task of compilation called forth Herculean energy and labour, but Al-Bokhari unflinchingly continued collecting the traditions which stood his test for authenticity and rejecting those which appeared doubtful in any essential particular. The classification which he adopted is based upon legal principles and affords ample scope for a system of jurisprudence complete in itself. The next work of this class, *i.e.*, of Sahih, unrivalled in point of importance except by the former work, is that of Hafiz Muslim bin Khawja Karshari Nishabori, who died in 261 Hijra. It is called the Sahih-al-Muslim and contains about 7,275 traditions. These two collections are called the *Sahihain* and are *Jáme*, that is to say, contain traditions on almost every topic mentioned under various heads. They are deservedly held in great estimation all over the Moslem world.

There are other collections which are of great value. They are (1) Ibne Majá, (2) At-Tirmizi, (3) An-Nisái, and (4) Abu Daood al-Sajistani.

These six collections are called *Sahah-Sittah, i.e.*, six Sahahs.

Although Medina was the home of traditions, their study was not neglected in other great Moslem centres. Ibne Masood taught the traditions in Kufa, and was succeeded by his pupils Alkamah and Aswad. Ibrahim-al-Nakhai, the jurist of Irák, carried on the work afterwards and made a collection of traditions which was in possession of Hamid with whom Abu Hanifa, the great jurist, studied the first principles of law.

There can be no shadow of doubt that the two principal and original sources of the Mohammadan law, viz. the Qoran and the Hadith or tradition, are the most authentic and have been handed down without any intermeddling. What scrupulous care was bestowed on the compilation of the Qoran during the Caliphate of the three immediate successors of Mohammad, we have already seen, and how fastidious the collectors of the

various collections of the traditions were, we have already noticed.

The attitude of Mohammad towards the study and the administration of the law was most favourable. He encouraged the study of it in two well-known traditions: "If God favours one of his creatures, He gets him to study the law and make him a lawyer"; "A lawyer is a proof against the devil who tampers with the ignorant in the prayer." In the beginning of Islam he used to invest a governor of a province with judicial powers; but later on he used to appoint a judge independently of any political or administrative considerations. After the conquest of Arabia, when a large number of people came under the sway of Islam, he had to appoint various functionaries for various parts of the Arabian peninsula. Whenever he appointed a governor and a military commander, he used to take good care to appoint a judge as well who was invariably placed above any control by these officials.

It is impossible to do any justice to the estimate of the effect of legislation by Mohammad in the pages at our command. Sufficient will it be to point out that he left no subject, directly or indirectly, untouched. The steps which he took to ameliorate the condition of women and children are too well known to require any mention. It is truly said that "he breathed among the faithful a spirit of charity and friendliness, recommended the practice of social virtues; checked by his laws and precepts the thirst of revenge, and the oppression of widows and orphans".[1] It is no less true to say that he found the women of Arabia as chattels of men, but left them their helpmates; found them without any legal status, but left them in full enjoyment of legal rights as complete as those of men themselves. He checked unrestricted polygamy and gave them prior rights in the inheritance left by their husbands, fathers, and sons.

The second period of legal development begins from the time Abu Bakar was elected to the Caliphate and continues to the time when Ali the fourth Caliph fell at the hands of an assassin. The characteristic of this period was the strict adherence to the Qoran and the Sunnat. But the times had changed; a new spirit was breathed into the Arabian life which rapidly became

[1] Gibbon, vol. iv., p. 399.

complex. A need for an expansive system was felt. Happily this want was supplied by the conduct of the Prophet himself who used to consult his companions, not only on matters which had had no support from the revelations, but also on questions as to the application of the revelations themselves. In the hands of the second Caliph, Omar, it became the third source of the law and was known as *ijmá-e-ommat, i.e.*, consensus of all. To solve the difficult questions which presented themselves to him, he used to convoke an assembly of the Moslems in order to settle them by their unanimity. They had to decide these points with reference to the spirit in which certain traditions were handed down by the Prophet, and with reference to the necessity of the moment and the interests of Islam. They had to determine what modifications, if at all, would be introduced. The result of their deliberations on the solution of the problems submitted to them formed a valuable addition to the fundamental provisions of the law.

An example will make the importance of this source of law, which only aims at revealing the exact sense and precise import of a tradition, clear. On the conquest of Syria, Omar was confronted with the difficulty of distributing the land there. The practice of Mohammad was to divide the land of a conquered area among the warriors with a single exception of the land at Khaibar, in the distribution of which he had deviated from settled practice, by leaving it in the hands of the original Jewish proprietors in return for a rent. Realizing the grave disadvantage of such a step, he determined to leave the country in the hands of the original owners. This gave rise to an agitation on the part of the Companions of the Prophet, Bilál, the guardian of the Mosque, taking a most active part against the proposed measure. An assembly to settle this point was called together. The conduct of the Prophet with respect to the land at Khaibar was submitted to them. The question was discussed and a decision was arrived at in favour of leaving the land in Syria with the owners before the Conquest. This brought into existence the mode of tenure known as Kharaji (rented) as distinguished from Oshari (tenth part of the produce).

Relying upon the permission of Mohammad to modify the law to suit the exigencies of the time, this body thus convoked sometimes gave decisions solely on the consideration of humanity and

even directly opposed to the settled practices of the law established by the conduct of the Prophet himself. An instance of this appeared on the question of punishment for unlawful intercourse with the opposite sex. The Qoran had laid down the punishment of a hundred stripes to be administered to the guilty parties. To this Mohammad added the pain of exile. During the Caliphate of Omar, one Ibne Saar was found guilty of the offence, received the stripes ordered and went into exile, where he renounced Islam in favour of Christianity. The assembly convoked decided to abolish the penalty of exile under such circumstances.

The analogical reasoning of the jurist being another source of the law, was unquestionably established by the precedents of the Companions of Mohammad. It was a legal method, and therefore a source of the law. It consisted in the determination of a fresh point not yet judicially settled with reference to a similar point previously decided in accordance with the provisions of the recognized law. The principle involved in the precedent—*ratio decidendi*—was the actual determining factor. As for instance a Moslem is strictly enjoined upon not to touch wine, the reason for this being that it is an intoxicant. The principle is applied as against everything producing intoxication, whether in the form of wine or any other liquid or solid.

Like the doctrine of *ijmá*, analogy as a source of law is based upon a tradition of Mohammad. When Moaz ibne Jabal was being sent to Yemen he was asked as to the rules for his conduct. He answered that he would in the first instance act according to the Qoran, then according to what has been laid down by the conduct of the Prophet himself, and in the absence of any available guidance from either, he would act according to his own judgment. Mohammad approved of it, and this established the legality of analogy as a source of the law.

Of the four sources of the law, viz. the Qoran, the traditions, the *ijmá*, and analogy, the first two are the source of the source, *i.e.*, *asl-ul-asl*, while the latter two are only supplementary and based upon the other two.

The system of administration during this period gradually took a definite shape. Like Mohammad, Abu Bakar used to deal out justice himself, but when the pressure of work became too oppressive, he invested Omar with judicial powers. Judicial

officers were appointed for other parts of the country which had come under his sway, who were but rarely dependent on the executive or the military. The foundation for the first prison was laid and the convicted persons were incarcerated in it.

The election of Omar to the Caliphate was a signal for a stricter and more vigorous régime. Not only was the banner of Islam successfully carried to the confines of China and to the extremes of Africa, but also there was a marked change in the administration of justice. To vindicate the majesty of law he dismissed the Cadi who rose from his seat out of respect for him when he was appearing before him in the capacity of a suitor, and to vindicate the supremacy of it, he had his own son, Abu Shahma, flogged for the offence of drinking and unlawful intercourse.

Ali, the fourth Caliph, was no less a firm supporter of the reign of law. He tamely submitted to a manifestly wrong judgment given against him purely on a technical point of evidence.

The fortieth year of the Hijra saw Ali fall under the ruthless dagger of a misguided assassin, and with him closed the second period of legal development and the glorious age of benignant influence of the "Just Caliphs" (Kholafa-e-Rashdin).

II.

WAKF AS FAMILY SETTLEMENT AMONG THE MOHAMMADANS.[1]

SIR RAYMOND WEST, in introducing the lecturer, said: "This I believe is the first occasion on which a paper has been placed before our society by a native of our great dependency in the East. This makes it a most interesting occasion to me and to others who are interested in India and in Indian progress. But an equal interest must be felt by those who desire the furtherance of juristic studies by English-speaking people along practical as well as scientific lines. We cannot but derive advantage from the discussion of jural questions such as arise from time to time in actual experience by those who are themselves subject to the actual laws which our Courts and judges have to learn, conscientiously of course, but as it were at second hand. When, therefore, a gentleman so qualified as Mr. Majid comes forward to give us his views and the views of his co-religionists on the subject of wakf or endowments—a subject which so deeply affects the feelings and interests of the Moslem community—we must accord him a hearty welcome. I see here, besides, several gentlemen who I trust will by their observations afford us still further enlightenment on what is certainly a rather controversial subject. It is one on which English and Oriental ideas are a good deal at variance, and which requires consideration from many various points of view.

"I hope as time goes on that Mr. Majid will be succeeded by other lecturers from all the chief dependencies of the British Crown. London ought to be, as Rome was in its day, the greatest centre in the world of jurisprudential learning. No other empire than the British can know so many different systems of

[1] An address delivered at a meeting of the Society of Comparative Legislation held in Gray's Inn Hall in February (1908).

N. A bill is now before the Imperial Legislative Council to make Wakf as Family Settlement valid.

law; in none perhaps have they so free a development. The jural principles evolved at Rome from the clash and conflict of different systems have remained to our own times the greatest and most abiding monument of the Roman genius. History in time to come may have a similar tale to tell of an expanded, all-embracing British jurisprudence, and to this I hope to-day's proceedings of our Society may make a material—perhaps memorable—contribution."

Mr. Majid then proceeded to deliver his address as follows:—

WAKF AS FAMILY SETTLEMENT.—The word "wakf" means, literally, detention or tying up. It is synonymous with the term "habs," which signifies detention or imprisonment. The Prophet is reported to have said,[1] "The wakf in its exact signification is equivalent to al-habs, that is, detention, as the people say, 'The beast stopped (*wakafat*) and I stopped (*wakaftoha*) her." Some Arabic scholars have translated it as immobilisation, appropriation or settlement.

In its legal aspect wakf has been regarded in two different ways. Abu Hanifa defines it as detention of ain, *i.e. corpus*, in the property of the wakif, *e.g.* dedicator or settlor, and the giving away of the use or the usufruct for the benefit of the poor or for some good object like things given by way of commodatum or loan.[2] On the other hand,[3] the two disciples, Abu Yusuf and Mohammad, hold that it is the detention of ain, *i.e., corpus*, in the employed property as that of God, the Almighty, in such a manner that the use or usufruct reverts to human beings, and that ownership is absolute and can neither be *sold* nor *given* nor *inherited*. This latter view is more approved than the former.[4]

There are two arguments which the two disciples advance. First, "When Omar was desirous of bestowing in charity the

[1] Hedaya (original Arabic): "Al wakfo logatun howal habso yakoolo wakafat addabto wa awkatoha."

[2] Kafi (Arabic): "Habsul ain ala milkil wakife wattasudduq bil maufaate alal fokarae aw ala wajhin min wojoohil khair ba manzelatil awari."

[3] Hedaya (Arabic): "Inda hooma habsul ain ala hookme milkillah ta-a'la ala wajhin taoodo manfaatun elal abade falyalzam wa la ubao wa la yuhabo wa la uraso."

[4] *Yoyoon* and *yotimato* (Arabic both). Abu Yusuf was really very advanced in his legal conceptions. Germs of equity are frequently met with in his views. Perhaps the same reason which brought into existence the Roman equity acted upon his thoughts with like results. Therefore his views are generally approved.

lands of Simag, the Prophet said to him, 'You must bestow the Actual Land Itself in order that it may not remain liable to be either *Sold* or *Bestowed* and that Inheritance may not hold in it.'" Secondly there is a necessity for the appropriation being absolute in order that the merit of it may result for ever to the appropriator; and this necessity is to be answered only by the appropriator relinquishing his right in what he appropriates, and dedicating it solely to God.[1]

To constitute a valid wakf no prescribed formula or word is necessary if it is clear from the general nature of the transaction that a dedication was intended. Thus it is laid down in the Fatawa Alamgiri[2] and has received recognition of the Privy Council[3] that "according to the Mohammadan law it is not necessary in order to constitute a wakf endowment to religious and charitable uses that the term 'wakf' be used in the grant if from the general nature of the grant such tenure can be inferred."

WHO CAN CREATE A WAKF?—As a general rule any person who is capable of making a valid gift is entitled to create a settlement. He must be free as distinguished from a slave; and must be gifted with intelligence enough to understand the effect of his own action and the nature of the transaction. To guarantee the observance of the latter condition some care has been shown by the Moslem jurists by the addition of another specific condition. At the time of making the wakf the settlor must not be suffering from mortal disease,[4] that is to say, of which he dies subsequently to the creation of the wakf. Persons who are so suffering might be influenced by some people, or might have their intellect wholly or partly impaired, or might consent to it without properly realising the nature of the settlement. A settlement, therefore, made at such a period of one's life is wholly void unless assented to by all the heirs, if in favour of an heir, and is limited to one-third of the property subjected to the settlement, if made for the benefit of any pious or charitable purpose.[5] The settlor must have the power of disposition over the property

[1] Hedaya (Hamilton), p. 232.
[2] See Fatawa Alamgiri.
[3] *Jewan Das Sahoo* v. *Kabeeruddin*, 3 Mac. Div. A.
[4] Fulton, p. 345. Fatawa Alamgiri.
[5] Fatawa Alamgiri, ii., p. 526.

and must not be a minor, as being legally incapable of transacting any business not materially beneficial to himself.

In this respect the jurists of all the schools are in entire agreement. "And of the wakif," says the Shiah Sharia, "it is required that he be of full age, of sound understanding and unrestricted in the use or disposition of his property." Following Badaia, the Fatawa Alamgiri lays down "among the conditions of wakf understanding and puberty on the part of the appropriator, as an appropriation by a boy or an insane person is not valid."

For the purposes of wakf "an insane person" is strictly interpreted. It corresponds to the *furiosus* of the Roman law or *non compos mentis* of the English law. Thus a person only of weak intellect is not wholly disqualified. The great authority of the Rud-ul-Mukhtar sets this question at rest: "If a person who is imbecile makes a wakf upon himself and after him upon some other purpose which does not fail, it is valid according to Abu Yusuf, but the latter will take effect only upon its being sanctioned by the judge."

A wakf by an insolvent person to defeat or delay his creditors is void.[1] This is clearly mentioned in the Fatawa Alamgiri on the authority of the Nahr-ul-Faiq. But this rule will be enforced only so far as there is no other property to discharge the debts to the extent of 20s. in the pound. The remainder will remain subject to the dedication. Following Bahr-i-Raiq, Rud-ul-Mukhtar lays down that this rule is applicable to the debts incurred prior to the settlement and that a dedicated property is free from any liability with respect to the debts incurred subsequent to the creation of the wakf. *Prima facie* it may appear to clash with the two statutes passed in the reign of Queen Elizabeth, *i.e.* 13 Eliz. c. 5[2] and 27 Eliz. c. 4, the principles of which have been held to apply to India, but we must bear in mind that all wakfs are trusts for consideration and not voluntary, *i.e.* without consideration, and the party in whose favour they are made, that is, God, is not privy to fraud if there is any on the part of the settlor. The transaction being between the settlor and God, it was natural that the Moslem law-giver and subsequent jurists took rather a wide view of consideration. A

[1] Fatawa Alamgiri (cf. bankruptcy laws in England).

[2] *Abdul Hye* v. *Mir Mozaffar Hossan*, I.L.R. 10 Cal. 616.

return in the next world, as mentioned by the Prophet, was held to be a good and valuable consideration by the Prophet, his successors and the jurists. Of this we shall see more in subsequent pages while discussing whether the meaning of wakf has been misunderstood in a way that really accounts for decisions contrary to the Mohammadan law, and that the word "wakf" properly meant "tying up," whether in the form of strict family settlement or in the form of religious dedications solely, or in the form partaking of both.

The power to create a wakf was not confined to the Moslems. Zimmis or non-Moslem fellow-subjects, indeed even enemies (*hostes*) within the territory by a special permission, were allowed to create wakfs with the same stipulations as Moslems. Indeed, this power was of such an extensive nature that one hears of the free choice of the non-Moslem settlor in the objects of wakf unrestricted by any law applicable to Moslems. Thus it is laid down in the Fatawa Alamgiri upon the authority of Fetah-ul-qadeer that "verily Islam is not a condition for creation of a valid wakf, so that if a Zimmi or non-Moslem fellow-subject were to create a wakf in favour of his son and descendants with an ultimate benefaction to the poor, it will be valid. It will also be lawful if he were to give it to the poor both Moslem and non-Moslem or if he were to specify the non-Moslem poor."[1] The observance of the conditions stated by the settlor was carried to its farthest extent. Such settlors could lay down that any of their descendants who should embrace the Moslem faith should be excluded. Although apostasy rendered a validly created wakf void, an apostate was perfectly at liberty to avail himself of the institution after his renunciation of the Moslem faith.[2] On the other hand, a wakf by a woman who reverted from Islam remained intact in spite of her apostasy.

These considerations lend colour to the theory to be discussed presently, that the institution of wakf formed a part of the customary law of Arabia prior to the time of Mohammad. Whether this was taken from the Roman law, in which perpetuity had reached a recognised place, is a matter of considerable doubt. Jurists hold that Mohammadan law was greatly influenced by the Roman law through the intercourse between

[1] Fatawa Alamgiri; cf. Christian Converts Act (India).
[2] Bahr, Rad-ul-Mukhtar, vol. iii., p. 557.

the Arab merchants and the various law institutions existing on the coast surrounding the Roman lake, the present Mediterranean Sea. The analogy in many institutions is so startling that it makes a critical student ask himself whether it was really so in the light of the incontestable existence of a celebrated law school at Berytus, that is, Beyrout, down to the time of Justinian. Had it not been for considerations which militate against this theory I would have readily accepted it, and in face of those considerations one can but hesitatingly affirm that the Arabian law, in spite of its various similarities to the Roman law, was of independent growth and was no more influenced by the Roman law than the English common law shorn of all equitable doctrines.[1]

The subject-matter of wakf must be certain. Any uncertainty which exists in respect of the thing or things meant, and which cannot be cleared up by attending circumstances, will have the effect of rendering the wakf void. Nor can a wakf be maintained if its creation or operation be subject to any contingency. The dedication must be free from any such conditions as would put the creation of wakf upon the uncertain happening of an event. It is dedication, and therefore must be unconditional as a gift.

The authorities are in entire agreement as to the creation of wakf of immovables, but there is some conflict of opinions among jurists as to the creation of wakf of movables, though the majority seem to be in favour of the view in the affirmative. I cannot do better than give a translation of the passage of a most authentic book, the Rad-ul-Mukhtar, as the authorities for and against are mentioned therein with great lucidity. "There is no divergence of view," says the Rad, "regarding the validity of wakf of horses or instruments of warfare, nor of those movables and chattels which are constituted wakf by implication, when included in a wakf of land, as for example cattle. This is according to ahadis-e-mashhura, *i.e.* notorious traditions. With reference to the lawfulness of a wakf of other kinds of movables the views are conflicting. According to Abu Yusuf

[1] On further reflection one sees that a singular coincidence exists between the Moslem and the English notions of Equity. Unlike its origin in Roman Law, in each it is meant to mitigate the hardships of the Common Law. This equally applies to the idea of *ownership*—the basis of the Law of Property—in both systems. The institution of Trust is peculiar both to the English and the Mohammadan Law (Wakf).

the wakf of movables is invalid, whereas Mohammad holds that a wakf of all articles which form the subject of barter, trade, or business is lawful. And this view has been adopted by the majority of jurists, as is mentioned in the Hedaya; and in the Asaaf it is mentioned to be the correct doctrine. In the Mujtaba also it is mentioned after the Siyar that, according to Mohammad, the wakf of movables is absolutely valid. According to Abu Yusuf, the wakf of such movables as form the subject of business transactions is lawful. In the Kholasa the views of Ansari have been adopted; Ansari was a disciple of Zuffer; and in Kazi Khan it is mentioned that Zuffer agrees with him. Belaliah also mentions that Zuffer has held so. In the Manah it is stated from the author that in our times the wakf of dirhems and dinars (money) is customary in the countries of Rum (Turkey), etc., and such wakf would come within the meaning of Mohammad's doctrine upon which rests the fatwa (general concordance of the jurists) that the wakf of all movables which form the subject of transactions between people is valid. Consequently, it is not necessary to depend alone on the dicta of Imam Zuffer reported by Ansari for the validity of a wakf of dirhems and dinars (money). "Verily, the Moulana, the Saheb-i-Bahr (the author of the Bahr) has given a fatwa that the wakf of dirhems and dinars (money) is lawful and has not stated any contrary doctrine. And the opinion which is given in the Manah is the view of Ramli. . . . The wakf of a cow in order that its milk be distributed among travellers is lawful wherever it is customary. And Ansari was asked if the wakf of dirhems and such things as can be weighed and measured would be valid. He answered 'Yes.' On being questioned how that could be, his reply was, 'By turning it to account, *i.e.* investing, in the way of shirkut-i-muzaribut' [partnership in which one partner supplies capital and the other labour and skill]. And things which are capable of being weighed or measured will be sold and the proceeds invested in shirkut-i-muzaribut or commerce!"

The above leaves little doubt that a wakf not only of immovables, but also of movables of reasonably permanent nature is valid.

PERPETUITY.—The next point I intend examining is whether

perpetuity is the necessary condition of a valid wakf. "Eternity without end [perpetuity]," says the Fatawa Alamgiri, "is a condition [of wakf] according to the opinion of all [the jurists], but the express mention of this is not a condition [for a valid creation of a wakf] according to Abu Yusuf, and this is correct. This is on the authority of the Kafi."

The authority of the Rad-ul-Mukhtar also goes in the same direction. Concerning wakf, it says that it must be intended to be eternal (perpetual), but eternity (perpetuity) need not be mentioned. Wakf implies eternity (perpetuity), consequently if the wakif were to declare that a particular property of his was wakf for his children and say nothing further, it is valid, and after the children the income will be applied for the benefit of the poor, who never fail.

The Moslem jurists classify wakf into two divisions: first, public, for masalih-i-amma, that is to say, public works of charity or utility; secondly, private, for any other object besides the first. The latter may be subdivided into two classes—viz. wakf which partakes of both a public and a private character, partly devoted to public works and partly devoted to works of a private nature, and wakf exclusively devoted to objects of a private nature.

All these three kinds of wakf are amply supported by authentic books on Mohammadan law, and in practice by history and the writings of jurists all over the Mohammadan world. Little doubt is entertained by those who have tried to investigate the law[1] that wakfs of all three kinds are perfectly valid, existed, and were acted upon by the Prophet himself, his immediate successors, associates, and Moslems of various Moslem countries at different periods of time.

As to the beneficiaries under a wakf, the greatest latitude is given to a settlor. He can create a wakf upon himself, a disposition upheld by the English Courts. "A wakf upon one's self," says the Rad-ul-Mukhtar, "amounts to a pious act." The Hedaya is also emphatic on this point:[2] "The design in appropriation is the performance of an act of piety, and piety is consistent with the circumstance of a person reserving the profits to his own use, as the Prophet has said, 'A man giving a sub-

[1] Bailie, Morley, Kemp J., West J., Petheram C.J., etc., etc.
[2] Hamilton's Hedaya, tit. Wakf.

sistence to himself is giving alms." He can settle a property upon his children, generation after generation, but as a family is subject to becoming extinct in the natural order of things, the ultimate beneficiary would be the poor, who are always amongst us. If no mention of it is made in the deed, it will be so by necessary implication. In short, there is no limit to the objects in favour of which a wakf may be created provided the ultimate benefaction is to the poor, to satisfy the condition that a wakf must ultimately be in favour of an object of perpetual nature.

There are three effects of a valid wakf: first it renders the property subject to the wakf incapable of alienation;[1] second, the property cannot devolve save as mentioned in the deed; thirdly, the property becomes imprescriptible, that is to say, it is not subject to alienation, or to forfeiture by the sovereign as private property.

A few words on the point of alienation. The fact that a wakf property cannot be alienated means that it cannot privately be vended by the motawalli, *i.e.* the trustee or manager. But the property itself may not be withheld from free circulation provided it is done with the sanction of the judge, and the proceeds re-invested. It can be sold,[2] it can be exchanged with the authority of the cadi or judge. This exactly tallies with the powers vested in the Court of Chancery to deal with trust property, or powers given to the tenant for life according to the Settled Land Acts in the English law. The High Courts in India are Courts of equity, and therefore may exercise this power[3] either on the application of a motawalli, or through the mediation of the Advocate-General by allowing the motawalli or trustee to sell or exchange the property under a wakf so long as the purchase-money can be re-invested, thus causing a reintegration of the *corpus*. This formality of receiving a sanction is no doubt very wholesome, as otherwise a trustee might dissipate the property without being accountable to any one.

HISTORY.—The origin of wakf as family settlement dates back to the hoary antiquity of the time of Abraham. He purchased the cave of Macphelah in Kirjatharba about 1860 B.C., which

[1] See Tableau Général, also Sir R. West in the Journal of the Society of Comparative Legislation, vol. v.

[2] Kazi Khan; Fatawa Alamgiri, vol. ii. (original); Baillie, Pt. I. p. 587.

[3] See Charitable Endowments Act, 1890.

remained in his family ever afterwards. There is every likelihood that such an institution found favour among the people of Arabia and other adjoining countries. Mohammad, who always appreciated what he thought to be of any usefulness in anything Jewish or Christian, recognised it as a beneficial institution for the clannish Arabs. This has led some writers on Mohammadan law to trace the existence of wakf during and after Abraham's time.

But whether we are prepared to accept it as a fact or not, there is evidence to prove that wakf in the form of family settlement existed at least prior to the time of Mohammad, and was so embedded in the customary law of Arabia that it has continued to exist in full vigour down to the present time. It was thought to be such an essential part of the Moslem law that it was carried without modification to various countries which basked in the full effulgence of Islamic glory.

To enter into the details of the evidence the scope of this paper does not permit: we shall mainly relate three facts recorded in the most authentic books on Mohammadan law, which sufficiently support the view adopted. First, the creation of family settlement by way of wakf was not confined to the Moslems. It was open to a non-Moslem fellow-subject, nay, even to those enemies (*hostes*) who had sought refuge and were given the protection of the State. This fact suggests very strongly that it was a recognised institution among the pre-Islamic Arabs.

The great lawgiver recognised the usefulness of the system or perhaps found it such an integral part of the existing custom of universal force in Arabia that he felt chary of interfering with it. If it were purely Mohammadan there seems little reason in allowing the use of it to the non-Moslem fellow-subjects and to strangers.

Secondly, a mention of the fact in the Hedaya (Hamilton's, p. 232) and other books that it existed in pre-Islamic Arabia in the form in which it has found its way into Mohammadan law: "Shirah says 'the Prophet determined the sale of a wakf property to be lawful,' which is as much to say that '*before* the promulgation of the law by the holy Mohammad appropriation was absolute,' but our law has rendered it otherwise." But the most authentic opinion is that it is absolute, which agrees with the submission that wakf existed in Arabia before Mohammad

and that it was incorporated into the Mohammadan law as it then existed.

Thirdly, Prof. Nauphal traces the full legal recognition of wakf as family settlement from the time of Haroun-al-Rashid, as at that period many such settlements existed in Mecca. But the very existence of them at that time shows that the sentiment of the Arabs, as well as the actual tradition of the Prophet, supported them. They probably therefore formed part of the land laws of Arabia which existed in a more or less developed stage even before Mohammad.

So far with respect to the evidence of family settlement in early Arabia; let us next see how it was received by Mohammad himself and his successors. It is mentioned in Bokhari[1] (Bombay edition, p. 384), the great and most authentic collection of the traditions of the Prophet, that a wakf upon one's children and relations is valid. The much-questioned tradition[2] that Omar the second Caliph actually created such a wakf with the sanction of Mohammad is also recorded there.

The institution of wakf as family settlement is mentioned in Fath-ul-Kadir. Imam Zailey corroborates and supports Fath-ul-Kadir. He also gives a copy of the deed of Arkam (a companion of the Prophet) by which he created the wakf of a house in favour of his children without any express reference to the poor at all.

The earliest collection of decisions contains those given by Imam Abu Yusuf, one of the greatest jurists of recognised authority, who was the chief kadi (chief judge) under the Caliph Haroun-al-Rashid. It is called the Fatawa Baramika. It is quite clear from it that a wakf was held lawful in favour of any lawful object, and would after its extinction go to the poor, who are supposed to be the ultimate beneficiaries of all benefactions.

The Fatawa Hawi, by Kadi Jamal Uddin Ahmed, who flourished about A.H. 600 and who was a celebrated cadi of Ghazni, also lays down that a wakf in favour of one's children—in short, in favour of any inoffensive object—is valid.

The great collection of fatawas which is contemporaneous in point of time is the Fatawa Kazi Khan. The author, Imam Fakhruddin Hassan Bin Mansur al uzjandi al-Farghani,

[1] Bokhari, 277, vol. ii., translated by W. Marcans, Directeur de la Medersa d'Alger.

[2] 22 I.A. *post.*

flourished about A.H. 572 (A.D. 1195). As the book is of great authority and has been frequently referred to by the Sudder and Supreme Courts, it will be of advantage to quote the passage *in extenso*:

"Abu Yusuf [Cadi of Irak, who flourished after Mohammad; see Morley's *Digest*, Introduction, p. cclxv.] has laid down that when a man makes a wakf in these terms—this, my land, is a sadaka mawkoofa or mawkoofa and its produce will be for me so long as I live and after me for my children and children's children and their descendants in perpetuity as long as my posterity exists, and on their extinction for the poor—it is lawful."

The Zakirat-ul-Fatawa, a collection of precedents of the thirteenth century, emphatically supports the laws stated above. Nor does the Khazanah-al-Muftiin, a collection of precedents of the fourteenth century (about 1339), lay down the same law in less unequivocal terms. So does the Fath-ul-Kadir, a book of great authority, whose author, Kamaladdin Mohammad as Siwasi, flourished in Irak about the middle of the fifteenth century.

The same view is supported in Al-Issaaf, a book written by Bourhanuddin Ibrahim-al-Taraboulis (Tripoli), who drew his information from the writings of Abu Bakr al Khassaaf and Helal Ibne Yehya, celebrated authors of great authority. This work was completed about A.D. 1488 (A.H. 905).

The Bakrur-Raek, compiled about 1562, lays down the same law. The Fatawa-Alamgiri, compiled in the reign of the great Mogul Emperor Aurung Zebe (1656), declares this to be sound law as practised in India. A book of undoubted authority, the Fatawa Durr-ul-Mukhtar, compiled about the same time; the Fatawa Rad-ul-Mukhtar, whose author is best known as Shami, compiled later on; the Fatawa-ul-Ankiravi of the same seventeenth century (1686); and the Majura-ul-Anwar, compiled in the eighteenth century, support the same view and leave absolutely no doubt as to the validity of wakf as family settlement if there be an ultimate benefaction to the poor.

There is another work which was brought out in 1841, towards the middle of the nineteenth century. That it is a book of great authority there is no doubt. Its author, Ibn Abedin, a lineal descendant of Mohammad, born in Damascus (Syria), has really

brought out a revision of the collection of decisions given by Hamid Ibne Sulaiman, under whom Abu Hanifa studied law about a hundred odd years Hijra. It is called Al-Okood-al Durria-Fi-Tankih-il-Fatawa-il-Hamidia. This institution of wakf is expressly mentioned to be valid in favour of one's descendants with ultimate benefaction to the poor or any object of a permanent nature. It also leaves little doubt that it formed an integral part of Islamic law as early as A.H. 100 if not earlier.

As shown above, this ultimate dedication may be express or implied, and therefore a settlement without any mention of the poor will be valid. The statement of law above shows that for family settlements by way of wakf from the time of Mohammad down to the present time there is an unbroken chain of evidence to show that this law existed in Arabia, Central Asia, Persia, Afghanistan, and India, at periods when these countries successively came to share in the advantages of Mohammadan laws. The Turkish practice, a century ago, as described by D'Ohsson in his Tableau Général, was substantially the same. The Shafeite[1] and Shia[2] authorities (Persia chiefly) go to support the view of the jurists of the Hanafi school by being in full accord with them. The Mohammadan law under this head has been sufficiently dealt with in so far as the scope of this paper allows.

I now propose to quote four judgments of the Privy Council, two of which, it is submitted with great respect, are unacceptable because of not being in accord with Mohammadan law, however their soundness might, apart from this, be justified on the ground of public policy and equitable considerations.

The first case is *Jewan Das Sahoo* v. *Shah Kabiraddin* (2 M.I.A. 391). It is laid down in that case that according to Mohammadan law it is not necessary in order to constitute a valid wakf or endowment to religious and charitable uses that the term wakf be used in the grant, if from the general nature of the grant such tenure can be inferred.

The second case I beg to draw your attention to is *Ahsanullah Chowdhery* v. *Amarchand* (L.R. 17 I.A. 28). In that case their lordships of the Judicial Committee of the Privy Council had in view the judicial opinion of Justice Kemp in *Mazharul Haq* v. *Mahapattar* (13 W.R. 235, 1870), and their decision, although

[1] Minhaj, p. 187. [2] Baillie ii. 226, Sharaya.

not in conformity with Mohammadan law in one essential, clearly recognises the point under consideration that a wakf by way of family settlement is not invalid. They purposely withhold their opinion on certain points which, if decided at that time, would have saved a great deal of discontent afterwards. It will not be out of place to quote the passage: "Their lordships do not attempt in this case to lay down any precise definition of what will constitute a valid wakf, or determine how far provisions for the grantor's family may be engrafted on such settlement without destroying its character as a charitable gift. They are not called upon by the facts of this case to decide whether a gift of property to charitable uses which is only to take effect after the failure of all the grantor's descendants is an illusory gift, a point on which there have been conflicting decisions in India. On the other hand their lordships think there is good ground for holding that provision for the family out of grantor's property may be consistent with the gift of it as wakf" (L.R. 17 I.A. 36, 37).

Then their lordships approve of the view taken by Kemp J. on family settlements (13 W.R. 235): "We are of opinion that the mere charge upon the profits of the estate of certain items which must in course of time necessarily cease being confined to one family, and which after they lapse will leave the whole property intact for the original purposes for which the endowment was made, does not render the endowment invalid under the Mohammadan law."

But they proceed to lay down a proposition which is hardly supported by the Mohammadan law, and perhaps the reason is, as their lordships expressly say, that the case was not properly argued. "On the other hand, they have not referred to nor can they find any authority showing, according to Mohammadan law, that a gift is good as a wakf unless there is a substantial dedication of the property to charitable uses at some period of time or other. . . . But no authority has been adduced for that proposition. . . . The observations of West J. are extrajudicial, as the case in which they were uttered did not raise the question."

This, it is submitted, is not Mohammadan law. So long as there is an ultimate benefaction to the poor, either express or implied, the wakf is good. It is not necessary that there should

be an immediate benefaction to the poor: "at some period of time or other" might be construed to mean the proposition that if there be an ultimate benefaction to the poor, the wakf is good; but the actual decision in the case does not admit of this construction. It therefore leaves us where we were.

The next case is *Nizamuddan* v. *Abdul Gafur* (L.R. 19 I.A. 170). This case really adopts the correct view of Mohammadan law, and had it not been for an oversight of a principle, it would have put an end to any difficulty cropping up afterwards. Their lordships quote from the preceding case (19 I.A.) that "according to Mohammadan law there can be no valid wakfnama without a substantial dedication of property to religious or charitable uses at some time or other. In this case the so-called wakfnama makes no gift of the lands in question, either immediate or ultimate, for religious or charitable purposes. . . . It was plainly not his intention to create a series of life-rents, a kind of estate which does not appear to be known to Mohammadan law, but to make the fee devolve from one generation of his descendants to another without its being alienable by them or liable to be taken in execution for their debts."

This is good law *pro tanto* but for an oversight of a principle. It leaves out of account the principle that the ultimate benefaction in a case of wakf is *always* to the poor, whether it is expressed in the deed or not. This case at the very worst lays down the principle that such ultimate benefaction must be express. If it had been brought to the notice of their lordships that this element need not be express, that it is so by necessary implication, it is quite evident that judgment would have been otherwise.

The fourth and the last case is *Abulfata* v. *Rasmaya* (L.R. 22 I.A. 87). Their lordships really decided this case contrary to Mohammadan law and disregarded the authorities brought to their notice. Before I proceed to put my humble opinion in respect of this case I propose to quote the passages from the judgment as it materially affects the Mohammadan law:

> The opinion of the learned Mohammadan lawyer is founded, as their lordships understand it, upon texts of an abstract character and precedents very imperfectly stated. For instance he quotes a principle of the Prophet Mohammad himself to the effect that 'a pious offering to one's family to provide against their getting into want is more pious than giving alms to beggars. The most excellent of sadakah is that which a man bestows upon

his family.' And by way of precedents he refers to the gift of a house in wakf or sadakah of which the revenues were to be received by the descendants of the donor Arkam. His other old authorities are of the same kind. As regards precedents, their lordships ought to know a great deal more in detail about them before judging whether they would be applicable at all. They hear of the bare gift and its maintenance, but nothing about the circumstances of the property—except in the case cited the house seems to have been regarded with special reverence—or of the family, or of the donor. As regards precepts, which are held up as the fundamental principles of Mohammadan law, their lordships are not forgetting how far law and religion are mixed up together in the Mohammadan communities, but they asked during the argument how it comes about that by general law of Islam, at least as known in India, simple gifts by a private person to remote unborn generations of descendants successions, that is, of inalienable life interests—are forbidden, and whether it is to be taken that the very same dispositions, which are illegal when made by ordinary words of gift, become legal if only the settlor says that they are made as wakf, in the name of God, or for the sake of the poor. To those questions no answer was given or attempted, nor can their lordships see any. It is true that the donor's absolute interest in the property is curtailed and becomes a life interest, that is to say, the wakfnama makes him take as motwalli or manager. But he is in that position for ever, he may spend the income at will, and no one is to call him to account. The amount of change in the position of the ownership is exactly in accordance with a design to create a perpetuity in the family, and indeed is necessary for the immediate accomplishment of such a design. It is suggested that the decision in *Ahsanullah Chowdhery's Case* (17 I.A.) displaced the Mohammadan law in favour of English law. Clearly Mohammadan law ought to govern a purely Mohammadan disposition of property. Their lordships have endeavoured, to the best of their ability, to ascertain and apply the Mohammadan law, as known and administered in India, but they cannot find that it is in accordance with the absolute, and as it seemed to them extravagant, application of certain precepts taken from the mouth of the Prophet. Those precepts might be excellent in their proper application. They might, for all their lordships knew, have had their effect in moulding the law and practice of wakf, as the learned judge said they have. But it would be doing wrong to the great lawgiver to suppose that he was thereby commending gifts for which the donor exercised no self-denial, in which he took back with one hand what he appeared to put away with the other, which were to form the centre of attraction for accumulations of income and further accessions of family property, which carefully protect so-called managers from being called to account, which seek to give to donors and their family the enjoyment of property, free from all liability to creditors, and which do not seek the benefit of others beyond the use of empty words.

First, their lordships consider the "texts" brought to their notice as of "an abstract character" and "precedents very imperfectly stated." In Roman law as in Mohammadan law the texts deal with the principles of the law. The repeated writings of jurists of various countries for nearly thirteen centuries leave little doubt that a uniform practice of creating family settlement (wakf) existed in various Moslem countries. Indeed, in India the compilation of the Fatawa Alamgiri,

during the reign of Aurung Zebe, the Mogul emperor, is evidence enough that the practice was common there. To expect reports of cases as we have in England is too much. The art of printing was not known to them, nor were they fond of recording cases, which is peculiar to English law. It was enough for their guidance as valid if anything, as in this case of wakf, had received the sanction of the Prophet.

Even in England as late as 1300 the precedents were little used. Glanville cites one single case. Bracton (Henry III.) indeed does cite many cases, nearly 494, but it was peculiar to himself. Subsequent writers until about 1500 rarely quote cases. Lord Coke tells us that it was only about his own time that counsel quoted individual cases. The subsequent change was due probably to printing.[1] And after a course of year-books, we come so late as 1756 before we have anything like continuous reports of what took place in the King's Bench Division, and even then many of the reports are very inaccurate. It was only in 1865 that a council of law reporting was organised which has ever since published the authorised reports revised by the judges.

In the light of the preceding, it is really too much to expect authorised reports of cases in Mohammadan law before printing came into vogue, if we are prepared to disregard the writings and practice of jurists of various Moslem countries. The precedents about the time of the Prophet are based upon such irresistible proof that we cannot ignore it, but at the very best it is a matter of historical interest. It is enough to sustain our contention to show that it did exist and does exist even to-day in various countries.

The second objection their lordships urge appears difficult to answer—that of inconsistency between ordinary gift and wakf if we leave out of account that the transaction is between God and man in one case, and between man and no one in the other. But this objection, apart from the answer given above, really leaves the law unaffected. Perhaps, as gift was peculiarly subject to misconception, it must be immediate and not at a remote period of time. There is another apparent inconsistency in the law of gift itself; still, it was never contended that such was not the law. Hiba is associated with hiba-bil-ewaz and

[1] See Pollock and Maitland, *History of the English Law.*

hiba-ba-shartul-ewaz. Hiba means transfer of property for an indefinite return, while the two others mean for a definite return.

A glance at one of the great systems of law, Roman law, will show that such inconsistencies occur and really do not question the existence of such laws as such. Take for example usufruct (by will at least), which was created on condition precedent or to begin at a future time—*ex certo tempore* (D. 7. 1. 4, 34, 54, D. 7. 3. 1). It is said in the Digest that a usufruct may be granted to a man and his heirs (D. 7. 4. 5, etc.) and that his heirs took a distinct usufruct *licet diversi sint fructus* (D. 45. 1, 38, 12). John Voet questions this and relies upon a constitution of Justinian (C. 3. 35. 14): "a legacy is burdened with a usufruct in favour of the testator's heir; this usufruct shall come to an end at the death of the heir and not pass to heir's heir." Windschied considers it to be fair that it should be so in order that the legacy might have some effect, but contends that the constitution cannot be considered as prohibiting the devise of a usufruct to a man and his heirs. Windschied adds that though to allow a usufruct to go to heirs was in contradiction to the conception of a usufruct as a personal right, and to call the heir's interest a new usufruct was merely a formal reconcilement with the original doctrine, yet this step was a necessary consequence of the other personal servitudes, the emphyteusis and the superfices having become heritable.

Thus certain inconsistencies in law really cannot support a question of the existence of the law in face of overwhelming proof as to its existence. It will indeed be in an ideal polity to have a system of law every part of which would be logically deducible from a few principles.

The third objection is that by this device the donor exercises no self-denial. It is apparent that he at least exercises a strict prudential control over himself by renouncing his right of alienation of the property subject to a wakf, besides giving it away to a cause of charity, though deferred.

The next point I should like to consider is the *Rule Against Perpetuities*, which is responsible for the above decision. In India this Rule as applied to wakf has been used in its primary sense[1] as meaning "indestructible, inalienable interest." This view, it is apparent from the preceding, disregards one element

[1] Markby J., 12 W.R. 347.

in the institution of wakf, that the property can be alienated provided it is sanctioned by the judge and the proceeds re-invested. Thus the ground that the property is taken away from free circulation, the basis of the rule, does not stand. Even if it were so, the economic condition of India, mainly an agricultural country, will require serious consideration before rules beneficial to a commercial country like England can be incorporated without any modification into the Indian law.

But, a step further. The Rule itself. The first reasoned discussion of the rule appears in the *Duke of Norfolk's* case,[1] in which Lord Chancellor Nottingham laid down that there was nothing unnatural or absurd in a "possibility upon possibility and a contingency upon contingency." But this case decides that a future interest might be limited to commence on any contingency which must occur within lives in being. Sixteen years after came the case *Lloyd* v. *Carew*,[2] which laid down the validity of a devise which was to take effect within a reasonable time after lives in being. But it was left for *Stephens* v. *Stephens*[3] to decide the validity of an executory devise to an unborn child of a living person when he should attain the age of twenty-one, and for *Cadell* v. *Palmer*[4] to finally lay down that the period of twenty-one years was to be in gross.

Thus it was not until 1833 (nineteenth century) that the Rule Against Perpetuities took its present shape. Lord Brougham, who delivered the opinion in *Cadell* v. *Palmer*, made no secret of his dissatisfaction at the illogical process by which the decisions settling the rule as it exists at the present day was arrived at. Thus in *Phipps* v. *Akers*[5] he said: "The Courts and even this House have sanctioned what even plainly appeared to be erroneous principles, introduced and long assumed as law, rather than occasion the great inconvenience which must arise from correcting the common error, and recurring to more accurate views. Accordingly, when *Cadell* v. *Palmer* was argued in this House, I advised that your lordships should abide by the received extension, which has for a great length of time been given to the period within which an executory devise might be held good." Again, in *Dungannon* v. *Smith*[6] he

[1] 3 Ch. Ca. 1 (1681).
[2] Shower 137 (1697).
[3] De G. & J. 62.
[4] Cl. & F. 372 (1833), Tudor's L.C. 424.
[5] 9 Cl. & F. 533, 598.
[6] 12 Cl. & F. 546, 629.

observed: "The rule of law is the term in gross of twenty-one years after the life or lives in being; that was clearly laid down by your lordships upon my recommendation. . . . I have a strong opinion, which I believe is joined in by the profession at large, that it arises out of an accidental circumstance, out of a confusion—I may say a misapprehension in confounding together the nature of the estate with the remedy at law by fine and recovery, which could not be applied till a certain life came to twenty-one years." Similar is his remark in *Cole* v. *Sewell*[1]; he says: "The rule that you can take a gross term most certainly arises from a mistake," etc., etc.

Such is the short history of the Rule. It does not affect the ultimate reversion of a fee simple to the landlord, nor does it affect easement by custom, nor does it concern itself with contracts: one may validly promise to pay A or his heirs or administrators a sum of money at a future event which may not happen within twenty-one years after lives in being.

Again, if the rule is so beneficial as it is thought to be, it is rather inconsistent to allow charitable endowments to go out of its operation. The arguments with equal force apply to the latter. Moreover, *Christ's Hospital* v. *Grainger*[2] and *In re Tyler*[3] make it quite possible that by laying down a condition that charity A was to enjoy a certain property so long as it paid a sum to the then living heir of the donor every year, and in case of failure the property to go to charity B, a perpetual provision could be made for one's descendants!

That the Rule is by no means very just is shown by the experience of other highly developed systems of law. In Roman law the doctrine of *fidei commissa*[4] laughs to scorn the Rule. So does the usufruct which passed generation after generation.

The Scotch law again, had a most strict form of settlement on account of the express enactment of the Scotch Legislature in 1685. The "irritant and resolutive clauses" satisfied the most exalted views as to the extent of prospective control. The Act of 1848, c. 36, which allows the disentailing of a settlement, seems to have altered the law with respect to realty, while the Act of

[1] 2 H. L. C. 186, 233 (1848).
[2] 16 Simon 83.
[3] 3 Ch. C.A. 252 (1891).
[4] Hunter's *Roman Law;* G. Bowyer's *Comment on the Modern Civil Law*, pp. 150-2.

1868, c. 84, allows only the creation of a life-interest in favour of a party living with respect to movables. The law of France does not recognise the Rule in its entirety, and it is possible to make such an interest as would defy the Rule in England within certain limits.[1]

OBJECTIONS TO THE RULE AS APPLIED TO INDIA.—The introduction of the rule in India is open to grave objections. First,[2] the introduction of the principles of the English law into the Mohammadan law would create the greatest inconvenience. It would be a composite system wholly unknown to the Mohammadan law and would cause such uncertainty that no man would know what his rights are and no lawyer could safely advise him upon the subject. Religion and law are so mixed up among the Mohammadans that any such introduction of new principles would necessarily mean the incorporation of principles at variance with their religion.

Secondly, the Rule Against Perpetuities in its English form owes its origin to pure accident, and a glance at its history will show that its development was neither logical nor harmonious. To adopt a rule so complicated and involving such logical inconsistencies is most undesirable.

Thirdly,[3] "the general principle of public law in British India is that of supporting the private customary law of each of the principal classes, except where it has been distinctly superseded by the statutory rule (Charter of Supreme Court of Bombay, s. 29, 41 Moo. I.A. 423). The law and the opinion of the Mohammadans undoubtedly regard a trust (wakf) such as the one in question as a charity, and granting this is a charity the objection to a perpetuity fails according to the principle of the English law."

The judgments embodied in the preceding pages are not in strict accordance with Mohammadan law, but they may perhaps be supported on the grounds of public policy[4] and equity. In the event of legislation the wholesale adoption of all forms of wakf may not suit the present progressive time, and therefore to avoid the Scylla of infraction of the Mohammadan law and

[1] Code Civil, 896, 897, 1048.
[2] *Tagore* v. *Tagore*, per Sir Barnes Peacock, 4 B.L.R. 103.
[3] *Fatima Bibi* v. *Advocate-General*, per Sir Raymond West, 6 Bom. 42.
[4] Blackstone.

the Charybdis of fraud, etc., on the part of settlors, the suggestion of Sir Comer Petheram, K.C., late Chief Justice of Bengal —"to create an office dealing with wakf with ultimate real benefaction to the poor, put under the control of judges"—might prove very beneficial. The settlors should thereby be placed under the restriction to fully specify their intention to create the wakf to the judge, who after due investigations should formally sanction it. This will do away with any fraudulent intention on the part of settlors as well as express their real intention. As this in a great measure falls in with the view of Abu Hanifa as well as with practice in Egypt and Turkey, there can be no objection on the part of the Mohammadans.

The recognition of a limited kind of family settlement for the Mohammadans might solve the difficulty. They may be allowed to create family settlements, say, for a period of two or three generations, with power to the then existing motawalli to create another similar wakf if he so chooses, subject to a similar restriction. This in the main coincides with what Sir R. West (I am thankful to him for allowing me to mention his name) had suggested to Lord Northbrook on the subject. This reform will satisfy the Mohammadans as well as not go quite against the Rule Against Perpetuities. We must remember that in the East the family forms the unit, while in the West the individual, and legislation, whether direct or indirect, should aim at the various states of things in different countries which it is meant to affect.

Sir ROLAND K. WILSON expressed a hope that the paper would be printed, as he had only been able to follow the reading of it very imperfectly, and it was evidently the result of extensive research. Addressing himself to the remarks of Mr. Ameer Ali, he expressed agreement with the criticisms passed by that learned writer in his books on the judgments of the Privy Council invalidating family settlements by way of wakf. He had been convinced by his arguments that such settlements were held valid by all schools at least as far back as the date of the *Hedaya*, and probably several centuries earlier, which was a

sufficient reason for their being held valid by the British Courts administering Mohammadan law, though he did not think it proved, or likely, that Mohammad himself had had his attention directed to the practice and had given it his sanction. Still less could he agree with the lecturer that it was an institution of Pre-Islamic Arabia, seeing that it presupposed social conditions which did not then exist.

Where he differed from Mr. Ameer Ali was on the question of public policy. However erroneous, the rulings of the highest Court of Appeal must stand until reversed by legislation, which was the course advocated by that gentleman. He, on the contrary, considering the rulings in question to be sound from the point of view of public utility though wrong in law, would like to see the irregularity cured by confirmatory legislation—provided always that this could be done without seriously offending Mohammadan sentiment. Whether the general opinion of Indian Mohammadans (including the landless as well as the land-owners) was so strongly in favour of subjecting the living to the wishes or caprices of the dead that it could not be safely disregarded, could only be ascertained by a commission of inquiry and some system of vote-taking, and this was the course that he himself had advocated, in an article which appeared some time ago in *The Nineteenth Century*.

Sir R. West, in closing the proceedings, said: "Mr. Majid well deserves the thanks of the Society, and all present will, I am sure, concur with me in acknowledging the valuable contribution he has made to our transactions in the paper he has read. The subject is one of some difficulty and one that has given rise to considerable differences of opinion even among Mohammadan jurists. It is hardly to be wondered at, therefore, if our Anglo-Indian Courts and the Supreme Court of the Privy Council, coming to the consideration of Mohammadan settlements in the form of wakf with a set of preconceptions somewhat incongruous with Mussulman ideas, should have arrived at conclusions not quite acceptable to the general body of the

believers in India. The difficulties of the case were not peculiar to our own Courts. There had been an almost equal clashing of principles and decisions under the French rule in Algeria, though the variances there were of a different kind, as they touched on the divergent doctrines of the Hanifite and Malekite schools of Islamic law and the patent inconsistency between the sacred inspired rule of family succession and the recognition or supposed recognition by Mohammad in practice of a system of dedication shading off into a law of entails or substitutions by which property could be tied up in mortmain for a long series of generations. The Arabian prophet found a system prevailing of strict agnatic succession. This he modified considerably and humanely in favour of females and cognates. The rules thus laid down by him had a divine sanction and admitted *prima facie* of no exception on grounds of mere human policy. But according to the traditions he approved in one or two instances a dedication during a founder's life of property such as to defeat the expectations of the heirs. He recognised too the principle of religious merit acquired by *sadakah* or gifts designed for that purpose, a view quite in harmony with that which suggested many Christian dedications in the earlier ages of our Church. Moreover, it was declared that no bounty could be more meritorious than that by which a benefactor's own descendants profited. Hence side by side with a rigid rule of inheritance a system of dedications and substitutions was evolved by the Moslem jurists—not without much controversy—by which, provided there were some clearly indicated ultimate bequest to the poor or the public, a series of successions might be constituted entirely superseding the ordinary descent in virtue of family connection. There is no abhorrence of a perpetuity, nor indeed in ordinary cases of any strict prescription under the Mohammadan law, but the conflict of principles as between wakf and inheritance could not escape attention; and the Mohammadan rulers, even those of the highest integrity, were embarrassed by finding a large proportion of the land placed *extra commercium* and exempted from fiscal contribution by the sacred impress of dedication. The unquestioned rule of inheritance was not opposed by any equally clear and complete pronouncement in favour of testamentary dedications or wakfs, and the conflict of doctrines which divided the schools of jurists

made the subject one most appropriate for imperial and thence also for judicial determination. Thus our Privy Council might on purely Mohammadan principles have found their way to conclusions not widely different from those at which they have actually arrived. As matters stand it may, I think, be said that while the doctrine, broadly expressed, as to the unlawfulness of perpetuities is repugnant to Mohammadan ideas and sensibilities, yet a moderate law of entail limiting the right of disposition to two or three generations and not impairing the rights and capacities of the poor would be gladly accepted by our Moslem fellow-subjects as a reasonable compromise between tradition and public policy. A practical enforcement of the law of interdiction and guardianship as against prodigals would be no less acceptable and would be quite conformable to the sacred law. A wakf duly constituted is regarded as a gift to God for the benefit of some class of His creatures. It takes immediate effect through the mutawalli's acceptance, and the beneficiaries may, according to Mohammadan principles, be preferably the descendant of the settlor or wakf just as well as in England a first claim on certain endowment may be constituted in favour of a founder's kin.

III.

THE MOSLEM INTERNATIONAL LAW.[1]

WITHIN seventy years of the death of Justinian the wave of Saracenic conquests rolled on the Empire from deserts which had never endured the sway of any ruler of old Rome. The successes of the Saracens were far from being barbarian conquests; on the contrary, they represent the Saracens in their occupation of the provinces of the Byzantine Empire in Asia and Africa with a far higher civilization than ever belonged to the Persians and Parthians.

In international practices the Saracens never represented the ruthless destroyers, the savages of the world, offering the alternative of Islamism or death, whom Western chroniclers describe. No doubt there are solitary instances of barbarity, but they are mere exceptions. In general the Saracens appear to display a civilization, and humane treatment of their enemies, which compare favourably with those of the Greeks and the Romans.

The charge with which Abu Bakar, the first Caliph, sent forth the Moslems for the conquest of Syria, establishes once for all the place of the Saracens in the History of International Law. It runs as follows: "When you meet your enemies in the fight, behave yourselves as befits good Moslems, and remember to prove yourselves the true descendants of Ishmail. In the order and disposition of the host, and in all battles be careful to follow your banners boldly, and be ever obedient to your leaders. Never yield to, or turn your backs on, your enemies; it is for the cause of good that you fight. You are incited by no less noble a desire than His glory; therefore fear not to enter into the fight nor let the numbers of your foes alarm you even though excessive. If God should give you the victory, don't abuse your advantages, and beware how you stain your swords in the blood of him who yields; neither touch ye the children, the women,

[1] The Law Quarterly Review.

nor the infirm old men whom ye may find among your enemies. In your progress through the enemy's land cut down no palms, or other fruit trees; destroy not the products of the earth; ravage no fields; burn no dwellings; from the stores of your enemies take only what you need for your wants. Let no destruction be made without necessity, but occupy the city of the enemy; and if there be any that may serve as an asylum to your adversaries, them do you destroy. Treat the prisoners and him who renders himself to your mercy with pity, as God shall do to you in your need; but trample down the proud and rebellious, nor fail to crush all who have broken the conditions solemnly entered into. Let there be no perfidy nor falsehood in your treaties with your enemies; be faithful in all things, proving yourself ever upright and noble, and maintaining your word and promise truly. Do not disturb the quiet of the monk or hermit and destroy not their abodes, but inflict the rigour of death upon all who shall refuse the conditions you may impose upon them."

The charge of Abu Bakar was adopted by later Saracen generals. Tarik, the first invader of Spain, commanded that no offence should be offered to the peaceable and unarmed inhabitants; that only those who bore arms should be attacked; and that plunder should be confined to the field of battle and to towns carried by assault.

Compared with some of the war practices of the contemporary Franks, those of the Saracens were most merciful. Conquered monarchs, such as Cahina of Barbary, or Dastaro of Scind, were indeed put to death; rebels were cruelly handled, beheaded or impaled; but such harsh sentences were confined to important personages, the general mass of the people being treated by the Saracens with peculiar mildness. The heavier "contribution of blood" or ransom from the sword was exacted only when terms for peaceful settlement were refused, and slaughter was resorted to only when actual forcible resistance was offered.

Devastation was strongly condemned. It was only on rare occasions, and then with the strong disapproval of good Moslems, that even in civil strifes Saracen commanders ravaged fields, burned cities, slaughtered unarmed men, and carried off into captivity the wives and children of the unresisting. Even spies were offered the alternative of embracing Islam or death.

Ali, the fourth Caliph, and the cousin of Mohammad, forbade the Moslems in their civil strife to slay a fugitive after he had escaped from the battlefield, or to pursue him beyond a single mile, or to continue a siege beyond a set period. The characteristics of contemporary Frankish war practices—to destroy crops, plunder open towns without mercy, burn houses, cut down all trees—were regarded as "barbarous extravagances altogether unknown to regular warfare" among the Saracens; and the Northmen who ravaged the coasts of Spain as they ravaged the coasts of England and France were regarded as little better than utter savages.

The toleration of religious opinions was another factor in the Saracenic laws of war. The Christian inhabitants of a conquered town were invariably protected in the enjoyment of their own lands, and were allowed the free exercise of their religion. Cordova, Toledo and other Saracenic cities were full of Christian and Jew merchants, who were treated with marked consideration.

Good faith was expressly enjoined by the Prophet: "Be faithful in the keeping of your contracts, for God will require an account of such at your hands" (Koran, c. xvii. 36), was rigidly adhered to by the Saracens, whilst the Casuists had laid down the doctrine that no faith need nor should be kept with the Saracens. Safe conducts were freely granted and scrupulously observed. In the year 797, in a treaty concluded between Haroun-al-Raschid and the Eastern Empire, the former introduced a clause binding the contracting parties to release in return for a fixed payment per head the supernumerary prisoners remaining after an exchange.

During the Middle Ages the war practice of the conquering Arabs supplied an object-lesson to the whole of the civilised world, and it is often a relief to turn from the rude warfare of the West to the belligerent doings of the Arabs. On occasion, by way of reprisals or under stress of necessity, the Spanish Emirs had recourse to measures of severity; but in general, alike in his faithful adherence to engagements and in the method of waging war, the Arab contrasted brightly with his Visi-Gothic and Frankish opponents.

Compare the treatment of the Moslems at the hands of their foes in the battle of Tolosa, where no quarter was given, and in

Ubeda, where every Moslem was slain, "great or small," in the battle of Guadalate, where Moslem prisoners were killed in cold blood, and the entrance of Ferdinand of Castille into Belma, where all the Moslem inhabitants were put to death without distinction of age or sex, with the instruction given in 963 by Al Hakam Bin Abdurrahman as to the duties of Moslems going forth to war, and one cannot fail to appreciate the value of the humane injunctions given to the Saracen leaders.

His instructions were given in the following terms: "It is the duty of every good Moslem to undertake willingly the Aldjehad against the enemies of our Law. They are to be required to embrace Islam except when, as now, the invasion has been commenced by the Moslems; but in every other case the proposal to become a Believer is to be made, and if refused, they are then to pay such an amount of tribute as hath been settled and arranged for those living under government.

"If the enemies of the Law be not twice as many as the Moslems, he who turns his back upon them in the battle hath proved himself to be a vile coward; he sinneth against the Law and hath offended against our honour. When taking possession of a city, let no man slay women, children or old men; neither shall any man attack monks vowed to a life of solitude save in cases where the latter are making a defence injurious to the Moslem cause. Do violence to none to whom you have given promises of security, but be careful to keep all engagements and fulfil all contracts.

"The safe conduct granted by the generals shall be respected by all; none shall disturb or offend any who have obtained such."

Even the Al-Mansoor, who adopted a harsh war-practice and repudiated the treaties entered into by Al Hakam, forbade violence to pacific and unarmed populations.

The war practices of the Saracens appeared to have assumed a harsher aspect in the hands of the Almorades. Yusuf Bin Taxfin offered the ancient alternative of Islam, tribute, or war; he chivalrously appointed a day to commence hostilities with Alfonso VI., and it was the latter who broke the terms of the agreement, and, possibly to gain strategical advantage, began war before the fixed time. However, the cruelty of his generals did not pass uncensured by the Spanish Arab and contemporary

Cordovan writers, and were banned as "violation of all justice and compact." The Almorades, recruited from among the rough mountaineers emerging from their rock-hewn holds, were but half-civilised, and their war-practice was, in fact, that of the semi-civilised Africans.

The protection of women, of children and of the aged was strictly enjoined. Whenever an expedition was sent against an enemy the Prophet used to say:—

"March in the name of God, and by His aid and by the religion of the Prophet; don't kill an old man who is not able to fight, nor young children, nor women . . . be good to one another; because God loves the doer of good." He seems to be particularly considerate of the poor, and his command to Khalid Bin Walid was: "Do not kill any woman and do not kill any labourer."

Protection to prisoners of war was another feature of the Arab belligerents. When Khalid put to death the captives of the tribe of Jad Himah, the Prophet could not help expressing extreme displeasure at his conduct. He is reported to have ejaculated when he heard of it: "Oh, Lord, I tell you my displeasure at what Khalid has done." The confirmation of the protection given by Oma Hanifa, daughter of Abu Talib to two relations of her non-Moslem husband, is also characteristic of him, and breathes a spirit of humanity only known to the present advanced stage of International practices.

Of the two remaining portions of International Law—Peace and Neutrality—there does not seem to be a very high stage of development among the followers of Mohammad of the Desert. But there is enough evidence to show that they always respected their obligations, and in consequence forebore from many practices which at present are condemned as an offence against Peace or Neutrality.

After the treaty of Hudaibiya, Mohammad enjoined upon the Moslems the following precepts for the guidance of their conduct towards the Meccans: "Be faithful to your oaths . . . because in Islam there is great fidelity to oaths and agreements." . . . "Beware, whoever shall oppress a promisee, or break his promise with him, or put him to do more than he is able, or take anything from him without his pleasure, then I am his enemy in the next world."

The precepts had the force of Law and were strictly adhered to. The obligations created by treaties were unflinchingly observed; and sometimes led them to go to war with the enemies of their friends. Thus there does not seem to be much indication to show that the present idea of neutrality had acquired a meaning for them, however excellent these precepts might appear in time of peace. The respect, however, shown to the persons of ambassadors of non-friends, does but slightly suggest that they were just on the threshold of realising that there was a middle position of being neither a friend nor an enemy, and the law of neutrality was, after all, the application of the Law of Transference to the idea of Sanctity, from the persons of ambassadors to the hosts of belligerent nations.

A MOSLEM VIEW OF THE OTTOMAN CONSTITUTION.[1]

THE complicated state of affairs in Macedonia on account of international intervention was causing a great deal of anxiety to the Moslem world; for, whatever might be said to the contrary, H.I.M. the Sultan of Turkey is regarded as Supreme Caliph or the Religious Head of the Moslems. The Indian Moslems, who on more occasions than one have supported the maintenance of law and order in India, and have always dissociated themselves from the elements of anarchy and confusion, were viewing the participation of England in coercion and unsympathetic measures against the Sublime Porte with astonishment. They were in a state of suspense; they did not know how to take the British attitude. But the darkest hour is before the dawn, and suddenly it was announced to the world that the Turkish constitution, held in abeyance for so long, was revived. The banks of dark clouds which were gathering on the Moslem horizon were at once dispelled and gloom gave place to brightness. The sympathetic words uttered by the British Foreign Minister inspired confidence and hope that closer relations might be established between Great Britain and the Ottoman Empire. The advantages attached to such a step are manifold and cannot be exaggerated. The strength of Japan has brought into existence an Anglo-Japanese Alliance; the strength of Turkey should conduce not only to an Anglo-Turkish Alliance, but also to an era of peace and prosperity in the Moslem world as well as in England.

The idea of constitutional government was not alien to Islam. Mohammad recognised the benefits to be derived from a system of representative government, and had it not been for the jealousy and breach of faith on the part of the Omayyads, which culminated in the battles of Siffin and Nahrawan, that representative polity would have been the parent of representative government. The life of three decades was not long enough to

[1] The Near East, 1908.

develop all the noble principles embodied in it, nor were the Arabs, in whom independence, as in the English, formed the chief trait of character, sufficiently welded together to appreciate fully the inestimable value of such a form of government. As Aristotle would have foreseen, the result was disastrous—the break up of the organisation—a Monarchy. But the principles of equality and of universal brotherhood constitute such an essential part of the training of a Moslem, that the Monarchy—at least in theory—was never qualified by the word "absolute." Attempts were made to introduce the conception of Divine Right after the conquest of India as a necessary consequence of the influence of Hindu conceptions of polity, but they were of little use outside the length and breadth of Hindustan.

Such being the case, the re-establishment of a representative polity in an Empire which is regarded by the Moslems as the heart of the Moslem world, must bring real joy to every Moslem. The quiet manner, the honest method, the appreciation of justice and equality which the Ottomans have adopted are guarantees for the stability of such a *régime*.

The draft of the constitution, simple as it is, shows a wealth of wisdom and foresight; but as there has been a prolonged period of trying transition since the appearance of the constitution in 1876, a few suggestions may be worthy of consideration.

Happily there are three elements in the Turkish constitution which find a place in the constitution of the British Parliament: the Sultan (the Crown), the Senate (the House of Lords), and the Chamber of Deputies (the House of Commons). In order that a measure should pass into law it is necessary, as in England, that it be sanctioned by both Houses and receive the assent of the Sultan. This condition of things necessarily establishes the principle of "checks and balance." All the parts of it form a mutual check upon each other. In the legislature the people are a check upon the nobility, and the nobility a check upon the people, by the mutual privilege of rejecting what the other has resolved; while the Crown is a check upon both, and preserves the executive power from encroachment. This very executive power is again checked and kept within due bounds of the two Houses, through the privilege they have of inquiring into, impeaching and punishing the conduct, not of the Crown, which would destroy its constitutional independence,

but of its evil and pernicious counsellors. Thus ministerial responsibility is established side by side with the principle of "checks and balance" applied to the two bodies.

The prerogatives of the Ottoman Crown can be divided into two classes: 1. The Sultan's *royal character*, and His royal *authority;* and 2. His royal income and revenue.

First as to the royal dignity, that is to say, the character and attributes with which the constitution invests the Sultan. The chief attribute which the law ascribes to the Sultan is sovereignty. "The Sultan is the vicar and servant of God on earth; everything is subject to him, and he is subject to no one except God." He has the *imperial* dignity; his crown is *imperial* and the realm is an *Empire*. From this supreme dignity it follows that the Sultan is amenable to no tribunal, because no tribunal can exercise jurisdiction over him. His royal person is declared (Article 5) to be sacred.

Secondly. In his political capacity the Sultan is *perfect. He can do no wrong.*

Thirdly. He may reject what bills, may make what treaties, may declare what war, may coin what money, and may create what Ministers, and may pardon what criminals he chooses.

Fourthly. He is the fountain of justice. He has to see that both the shaire (religious) and secular laws are properly administered, and has the right to create courts of justice and can pardon or commute penalties.

Fifthly. He represents the Turkish nation and therefore has the power to appoint ambassadors. He can enter into relations of friendship or otherwise with the representatives of other nations. He has to guarantee the liberty of the foreign merchants in so far as it does not clash with his sovereignty.

He is the constituent part of the supreme legislature; he is the generalissimo; while further he is the Caliph or the supreme religious head of the Moslems.

Let us next see what the Sultan's duties are. He being the supreme head of the State this consideration may not commend itself at first sight, but it is nevertheless correct to say that his chief duty is to *govern* according to *law*.

The members of the Chamber of Deputies, as has been held in the British Parliament, are bound by no instruction or promises. *Each represents the whole nation* and must debate

in Turkish, and wisely so, as this will have a great unifying effect, and will be a source of strength.

The Senate, corresponding to the British House of Lords, is composed of members nominated for life endowed with certain qualifications. At one blow this arrangement removes the objections so often urged in England, to the sitting of incompetent members of the Ottoman nobility in the Senate. But the restriction of number to one-third of the members of the Chamber of Deputies, together with the limit of age to forty, at least is open to criticism. To restrict the number is to keep out many able men whose services might prove useful. Vacancies occur by death. In order that the Senate should fulfil its proper function as a revising body, both the objections should be removed and the practice of the British Parliament adopted.

The next point to consider is the payment of the members. Several objections to such a system have been urged from time to time. First, that payment to members encourages people to regard politics as a source of profit. But the same objection might apply to the payment of Ministers. Secondly, poor Senators who would be solely dependent upon such a payment would be more open to corruption. But instances are not wanting to show that the rich are equally open to such an objection. Education alone can raise the moral tone, and by universal education, as the constitution provides, this objection will have only a superficial force.

The chief objection is the increase of the burden of the taxpayers. Besides a strong navy Turkey requires many other things. The payment of members will impoverish the Exchequer, but, on the other hand, non-payment of members will prevent able men who are poor from doing their duty to the country. Thus, to have a happy solution, the German system, that the Deputies should be paid if present and should be fined to the extent of payment if absent, should be adopted; while to the members of the Senate, who of necessity will be well-to-do, impartial patriotic service to the country should be a stronger incentive to work than payment.

A word now on the Articles relating to justice. The judges should be appointed for the period of their good behaviour. This power of appointment necessarily vests in the Crown, as by Article 7 the Sultan has to see that the laws are carried into

execution. His supreme authority invests him with the dignity of supreme magistrate of the nation, and therefore he is the fountain of justice. The judges are but the mirrors to reflect his power and dignity.

The provisions of Article 85 should be modified. Suits against the State should not be treated as ordinary suits. As in England, they should be done by *petitions*.

Greater reliance on the rules of Equity will prove extremely useful. The opinion of Abu Yusuf is preferred in cases of conflict in Mohammadan jurisprudence, because of his views being based upon equity. The *jus gentium* of the Romans was also preferred for the same reason.

Again, provisions should be made for the establishment of a strong Bar. Justice is better administered if both the Bar and the Bench are equally strong. The adoption of the English system will ensure a good legal training as well as a high sense of professional honour. Perhaps the word "imperial proctors" in Article 91 might be construed for this purpose.

The last point I will touch upon refers to the primary rights of the Ottomans. As in England, their primary rights are three-fold. First, personal security. Secondly, personal liberty. The individual liberty is absolutely inviolable, as long as the subject does not interfere with the rights of others. All Ottomans are equal in the eye of the law and their homes sacred. Thirdly, the right of property. Both movable and immovables are guaranteed as inviolable by Article 21. There is to be no illegal expropriation, nor is confiscation allowed. This latter clause of confiscation is even in advance of Indian laws, as confiscation is sanctioned by the Indian Penal Code, though for grave offences.

We find that rack and torture are absolutely prohibited. This is in strict accordance with the English principles of justice.

Want of time and limitation of space prevents me from dealing with the constitution exhaustively, but whatever defects it may have—and there is no human institution that is perfect—our sincere wishes are that Turkey and the Ottomans may endure to the end of time, and that the future may show that the influence of Islam is always based on considerations of justice and humanity, whatever may be said to the contrary by its opponents.

III.

SOCIAL

I.

MARRIAGE IN THE EAST.[1]

INDIA is so varied in its manners and customs that it will be difficult to say anything on any phase of life there which would be of general application. Different people have different habits, language, manners and customs. But there is nothing more interesting than the social life among the Moslems. It presents itself in its double aspect, a blending of the pure Arabian with the pure Indian customs. It is instructive, too, to a student of history, inasmuch as it shows the action and reaction of two different forces with the resultant which is more interesting than either. To illustrate we shall choose the matrimonial relations on the present occasion.

HYMEN: I bar confusion.—*As You Like It,* Act V., Sc. 4.

Whoever has attended the marriage ceremony among the Mohammadans in India, and has observed the capture of the bride, and knows anything of early civilisation, discovers a relic of the matrimonial struggles of primitive times. The Tyrolese peasants follow the custom even in the twentieth century in the same way as the struggle which was waged between Gunther and Brunhild in the time of Nibelungen.

There are two parts in the marriage laws of every people; betrothal and civil contract. The importance of the former is great among the Saxon races, while the latter is emphasised among those who adopted the Roman system. The development of marriage laws in Germany amply bears out the observation. Among the Moslems, who were more like the Romans, the second part was regarded as important, and the existence of the former part of the ceremony was most likely taken from those who were Aryan in their habits.

Generally speaking, the parents have their sons and daughters engaged with the tacit consent of the actual parties. The period of engagement lasts a year or so. Great preparations are made

[1] The Near East, 1908.

on either side for the approaching marriage, and although the engaged couple do not meet they learn enough of each other through various channels. At length a day for the celebration of the second part, that is, civil contract, is arranged between the parents. A great many people are invited to participate in the ceremony, and on the day fixed, all in their best attire, electing the bridegroom, so to say, as their "New King," they proceed to the house of the bride's parents. To complete the analogy, everyone who takes part in it pays a sum of money perhaps by way of tribute, or perhaps to help the people in their heavy expenses. Nothing is spared to make the procession as grand as possible. They are met by the reception party on the bride's side, when they assemble to settle the other part of the ceremony. The bride is given away by her father or someone representing him, and an actual contract with offer and acceptance is ratified between the father or his representative and the bridegroom. There is always a struggle on the point of dowry which the bridegroom pays or will have to pay in future, but as soon as it is settled the contract is complete. The actual marriage is over, though the bride and her groom have never seen each other. After congratulations they then arrive at the place fitted out for them for the occasion.

Then follow the customs. The bridegroom, as if he were imprisoned, is conveyed by his brother-in-law, bound in gossamer thread, to the female compartment. He is accompanied by maids-of-honour to take charge of the bride, and carries with him as many presents as his purse will allow. Later he sits with the bride in front of a large mirror in which the pair are only too pleased to catch a glimpse of each other. Then follows the fun with other ladies, guests or otherwise, in the house. They play balls with flowers, they try wits, they tease the bridegroom, who is always protected by the ladies on his side. He is supposed to be as modest as possible and appears so mild that butter might not melt in his mouth. To him, in short, is extended the suffrage of being in the household, and all the ceremonies are calculated to give to the bride an upper hand in everything.

Afterwards he goes back to his party and the merry-making begins. Dancing girls, musicians, etc., are engaged to entertain them. This is always the most entertaining part of the whole

affair, as in the majority of cases only the best dancing-girls are engaged. The night soon passes away, and the music in the morning is most delightful.

Breakfast and dinner in a very elaborate fashion are provided for. There is always a kind of struggle in settling things between them. Either party, with a view to teasing, create difficulties in the way of the other.

At last in the afternoon the hour of departure arrives. The bride's father hands in a list of things he has provided for his daughter to start a home. The bridegroom goes into the sacred precincts once more to take leave of the female relations of his wife. He then, and not till then, is accorded the honour of seeing his bride, and after suitable presents to her and other ceremonious indication of wishes to put completely the bridegroom under the bride's power, he bids them farewell, and, accompanied by his attendants and a certain number of those who went with him, returns to his father's house, his wife accompanying him, attended by the maids-of-honour.

Marriage, though over, is followed by other ceremonies. The bride, with the bridegroom, is taken back to her father's house after four days, then again she goes back to her husband's house after ten days' stay, and then after a stay of twenty days returns to her father's house for at least six months. Thus instead of having a short period of honeymoon they make it last almost a year.

These ceremonies, simple as they are, indicate a struggle at first to catch the bride, then a struggle on the part of those who have lost her to win her back, and so on. The custom has lost its former significance, and though it may appear empty, it is nevertheless a harbinger of goodwill at least between two families.

II.

WOMEN IN THE EAST.[1]

WE have seen how a marriage ceremony takes place in the houses of the well-to-do in India, and what an important part is played by the daughters of Eve in the celebration of it. We have now to see them as wives, as mothers, and as hostesses. Conditions of life as it is in the East, with the seclusion of women, with the interest attached to the so-called harem in the West, one who has only his imagination to guide him to unravel the mysteries of life in that part of the globe, would naturally regard it partly with abhorrence and partly with astonishment at its long continuance. We need not judge him too harshly; he is, after all, a human being, and to err is only human. We shall only tell him how women behave in their different capacities in the Orient.

First, as wives. In spite of their seclusion from association with men other than their own relations, they are gifted with such an extraordinary power of imagination and such delicate taste for things that they hardly require any suggestive cause to decorate their mirror of vanity. True it is that they are not used to beauty doctors, but they hardly require any. Nature has endowed them with gifts which no art can supply. They have the vivacity of the Celt and the domesticity of the Saxon, sometimes the adventure of the Dane, and always the dignity of the Norman. Unlike their German sisters they are the darlings of their husbands. Housekeeping is much praised, but is never an ideal of womanhood—but like Orlando's mistress—'The fair, the chaste, the unexpressive she." Nor is the husband's wedding present to his bride a cookery book. Although they have never seen each other before marriage, they are so unsophisticated, so inexperienced in the ways of the world, that they love each other at first sight. They grow fonder and fonder of each other till it is apparent that she is the real ruler of the household. She is

[1] The Near East, 1908.

not devoid of tact in her dealings with others, and if she does not feel inclined to do anything at the request of others, she generally attributes it to the unwillingness on the part of the husband whom she pretends she does not feel inclined to offend. The husbands, on the other hand, feel quite happy with their wives, and in the majority of cases consider it a boon to have some one to guide their steps through the mazes of social struggles. It reminds one of the complete control exercised by Omphale, the Lydian Queen, over Hercules, the Grecian hero of antiquity. Her influence is for the most part exercised for the good of the family, but sometimes it is carried to such an excess that she thinks of playing the part of stateswoman at home, and in this attempt makes wrong uses of it. But here very often the wisdom of the husband comes into play and corrects the mistake on her part. Thus they live a life full of happiness and harmony.

As mothers, they are very affectionate. The children are generally obedient, affectionate, and well brought up. They pay respect to the aged and care for the youngsters. They grow up in these ideas and carry them throughout their lives. Thus the hand that rocks the cradle rules the world both in the East as well as in the West.

But it is as hostesses that they are at their best. Rulers of the household, it is natural that one should expect them to entertain their guests as well as they can. Born and bred up in the idea of proverbial Eastern hospitality, they spare no pains to do their utmost to send the guest, if male, back to speak of the wife of a friend to his own, and if female, to speak to her husband how nice Mrs. So-and-So is, although she did not quite care for the earrings she wore or for the colour of her dress, of course thereby giving him a gentle hint on her own behalf, for some occasion in the near future.

The word "guest" is not used in the sense it is used in the West. Not like the West, "where every door is barred with gold and opens to the golden key," any one can become the guest of any person, unasked and uninvited, and if he is in want of some money he will generally be given a little to go on with after he has left. Never to turn a needy person from your door nor a guest from your house are maxims on which an Oriental acts; and it is considered to be a great breach of the privilege

of playing the host, if the guest returns even slightly displeased. This no doubt is in a great measure responsible for a class of professional guests who should rather be starved than entertained, but perhaps I am speaking under the influence of Western thoughts. There are some so-called guests who are even bold enough to dictate what they will have for their meals, and before preparations are made for them, they speak them out in such a tone as to indicate their unwillingness to put the host upon whom he has billeted himself to any great trouble, but as a matter of fact to make sure what he would like to have. One would naturally get displeased with such a brazen-faced man; but his wishes are satisfied to the best of the ability of the person who has fallen a victim to his shamelessness without a murmur, simply because he is a guest, and, more, that no pains are spared to be as kind to him as is within the bounds of possibility. Such is the form of hospitality in the East.

Before we finish with the subject we should have a peep into the zenana or harem. This word is greatly misunderstood in the West. It does not signify, as is usually supposed, the place where many wives are kept like playthings. A critic only half informed will tell us of the Hafte Paikar (seven beauties) of Bahrámgore, or even in our own times of the ex-Shah of Persia, but they wielded or wield the crown, and their lives are by no means happier than those of the middle class. Their mode of life is not held as an example, and they do not set the fashion as our gracious Majesties do in England. Zenana or harem means, pure and simple, a place where ladies live. Ladies include wife, sister, mother, grandmother, etc., with their appurtenances. Now this might appear too much to those who are born and bred up in the modern English idea of female emancipation; but they must bear in mind that history is not silent on this question. Ancient Greece furnishes us with an example where a similar system prevailed. The word corresponding to harem was Gynaiceum or Gynécée. The harem itself is always the best part of one's house. The best paintings, the best furniture, the best decoration which his purse could buy you would find there. The life of the inmates is always happy, harmonious, affectionate, full of little self-sacrifices, and full of those social virtues which go to befit one for "how to live with others."

What is wanting at the present time is the gradual emancipa-

tion of the fair sex. The man will get more polished, while the woman will be strengthened. With this change, "she will be the very ideal of what a woman should be—sweet, self-contained, humble, tender, with good common sense, and the gentlest of hearts. She will be the most lovable. She may not possess the self-consciousness of the English damsels, the coquetry of the French, the lusciousness of the Italian, the dignity of the Spaniard—she may not, perhaps, be lively enough, she may not be *espiègle* enough, not dazzling, but she will be maidenly, simple, sweet and modest." An Indian proverb says that "every Indian woman with her eyes beautified is a witch." "The witchery is that of Isabel in *Measure for Measure* and not of Circe.

> "Can it be
> That modesty may more betray our sense
> Than woman's lightness."—Act II., Scene 2.

It is the witchery of a pure heart, great self-sacrifice, and great self-diffidence."

III.

CULTURE IN THE EAST.[1]

IN our preceding issues were described the "ever fresh and ever bright" houris of the East. In this article we deal with the effect of the mode of life on the culture of men, dissociated as it apparently is from those softening influences which are the necessary outcome of free emancipated social intercourse between the sexes, and which go to make English men and women so cultured in society.

Before we proceed to discuss the condition of society in the East—the real society—as distinct from that described by tourists, it seems almost imperative that we should touch upon the past. The peninsula of Arabia, though full of bare mountains and sandy deserts, was the home of perfumes as it was that of chivalry. The germ of the latter is to be met with in Pre-Islamic Arabia, but it reached its full bloom after the heathen Arabia became converted to Islam. The Prophet of the desert always enjoined kindly feelings towards women and children. His precepts were literally acted upon, so much so that the Moslim warriors protected the fair sex even of their enemies, and even of those barbarians who were miscalled crusaders. These traditions bore fruit in later days, and the Moslem carried the rules of chivalry, no matter where he went. Be he a Moslem of India, or of Turkey or of Egypt, uninitiated into the modern civilised ways, a Moslem is bound to show the highest respect to Eve in her troubles. It is to the sex as such that he is respectful, and not because of the lady's social rank or power, beauty or pelf. The honour of men is tied to the respect which they must show to women.

These general rules of conduct lost their healthy tone towards the end of the Mogul Empire in India. With the weakness of the central Government the Moslems, coming into contact with different civilisations, and born in the lap of luxury, got

[1] The Near East, 1908.

estranged from those virtues which characterised them. The degeneration had reached such a stage—perhaps because of their association with their Hindu compatriots—that one blushes even at its mention. In the north of India, as well as in the south, or in Bengal, society had completely lost its centre of gravity. Disrespect by the wealthy of the fair sex was the rule, and this, one cannot help thinking, was owing to the introduction of alien thoughts into those inculcated by Islam. The numerous petty courts both of the Hindus and the Mohammadans vied with each other in their display of vices, and prided themselves on their success in directions to which they should have been ashamed to refer.

At last, and not a moment too soon, there came a bolt from the blue. Ahmed Shah invaded India and put an end to rude Marhatta aspirations in the third battle fought on the memorable Plain of Panipat. His power being shaken, the road was laid open for the English. Their dangerous enemy had fallen, and they could arrange with the Mohammadan rulers of India for a better condition of affairs. This brings us to modern times.

Change of government, loss of power, had an unpleasant effect on society. The people found that their ways were not healthy enough, and it was too late, or possibly they had forgotten, to revert to their former principles. The fever of imitation of European ways seized them, and in their delirious state they plunged into blind emulation of the West. To pick and choose, as practised by the Turks under the guidance of H.M. the Sultan, would have proved very useful, but unfortunately they had no leader to warn them of the pitfalls in their path. Imitation is beneficial in many ways, and perhaps by the law of transference becomes a powerful psychological law; but imitation without any conception of the end which presupposes intelligent guidance is purely mechanical and wholly devoid from that inner harmony which goes to make a man. It is said of a prince that "he had a great admiration for European methods, and in his moments of ecstasy realised that what his European professor did was to be recommended. He then started taking an air bath every morning. He walked in his walled garden, wearing only his hair and boots, but armed with a catapult for bringing sparrows down. One day, whilst thus invigorating himself, inhaling ozone at every pore, like Adam, he saw a cock

seated on the wall of his Paradise. He discharged a dart, and the bird fell into the adjoining precincts. With his natural activity he scaled the barrier and alighted in the neighbouring garden, where a party of ladies and gentlemen were breakfasting *al fresco*. The prince, in no way discouraged, bowed, apologised for his intrusion, went after the bird, picked it up and clambered over the wall again."

On another occasion a prince was paying a visit to a church He had mistaken the reserve of our islanders, who bear such a high repute throughout the continent for their sociableness, for a virtue which went to form the nation, and in consequence practised insolence and arrogance in every walk of life. It so happened that on that very occasion the preacher gave out the first verse of a hymn.

The Prince thought he was alluded to, grasped a stick and rushed at the preacher to thrash him. The pastor screamed to him, and asked for mercy.

These are only a few instances of blind imitation, and it is a relief to find that forces are working to enlighten the people of the true value of apeing. Society is now recovering fast under the healthy influence of those who combine in themselves both Eastern and Western culture. The former principles of chivalry, which had lost their meaning during the period of confusion, are again guiding rules of conduct among the Moslems. Education of females on modern lines is the foremost plank in their campaign, and their gradual emancipation will follow in due course. Happily the degenerated families who have little recommendation but the names of their ancestors are being replaced by better ones, who are alive to the necessities of the poor; and the time is not far distant when all classes will meet in general sympathy.

IV.

EDUCATION IN THE EAST.[1]

"Seek learning even tho' it may be in China."—*Mohammad.*
"There is no darkness but ignorance."—*Twelfth Night,* Act IV., Sc. 2.

SOME of the social problems of the East have already been dealt with in these columns, and before proceeding further it seems desirable that we should treat of that most important of all questions—Education. The present time was appropriately described by a correspondent whose letter appeared in THE NEAR EAST as the period of Renaissance. In India Educational Conferences are held annually to discuss education among the Moslems; but unfortunately no attempt has yet been made to study the serious forms of education in different countries and to arrive at a solution as to which is the most suitable for Moslems. Resolutions are passed but not carried into effect; one learns with lively satisfaction that a college for the training of girls has recently been set up, but from what I have heard of it, I am afraid that it is not likely to be run on the soundest of principles. I do not doubt the sincerity or enthusiasm of the founders; on the contrary, I congratulate them on the commencement of a noble task. But what I wish to point out is, that as the whole system of education has not been studied their efforts can scarcely be crowned with success. With regard to Egypt, the several European systems of education, none conducted for the sole benefit of the people, have utterly failed to accomplish their pretensions.

The position being as it is, it is essential that steps should be immediately taken to educate the Moslems in order to fit them for the race of life. Before suggesting means for the attainment of this end, it is proper that we should state what was the condition of education in the past, and what it is at present. No one denies that formerly the Moslems were great at civilisa-

[1] The Near East, 1908.

tion and education. The Universities of Cordova and Granada kept alight the torch which burnt in the Middle Ages, and but for them the Dark Ages would have been darker still. The Nezamia University attracted the best intellects of the time and sent abroad the "perfume of Arabi" of light and learning.

To-day there are some large Madrasas in India like that of Deobund, Lucknow, Cawnpore and Calcutta. In Egypt there is the famous Jame Azhar. But these institutions have a very lengthy course, and the books used are chiefly of a legal or religious character. However willingly one would support them, one cannot fail to be impressed by the fact that they are not marching with the times.

On the other hand there have been attempts to establish colleges in India and Egypt to give education on modern lines. But the originators of these projects have either been tools in the hands of ambitious men, or have been dominated by officialism, or have been influenced by defective models. No one can contend that their efforts have been futile. Far from it. They have done much that is praiseworthy; but they could have done more had they been free from the faults I have referred to.

What is most peculiar in the system of education is that no attention is paid to primary education. There are private classes provided by some well-to-do person, who has employed some one to look after the instruction of his sons and naturally enough desires to have a certain number of boys to be playmates to them, while receiving some kind of tuition. There is no organisation for imparting primary education, however, and there is no compulsion. In such circumstances one cannot expect to find anything but bad premises, unqualified teachers, and utter confusion.

Strange to say, the Governments are apathetic. Appeals are submitted by the educated, but they are branded as agitation, "Egyptian Nationalism," "discontented Service Mongerism," etc. In the case of every centralised Government, initiative must, in a great measure, emanate from the Government as it does in Germany. The people have so little to do with the Ministry that they do not develop the feeling of self-support. In India the Moslems want a university[1] of their own; but the Govern-

[1] A Moslem university at Aligarh may soon become an accomplished fact.

ment will not grant the charter. In Egypt reform in the educational system is required, but any demand to this effect is ignored as the vapouring of a small section of the people. The situation is a pitiful one. The Governments extend their protection to the safety of the homes of the people but allow the crippling and distorting of their moral and mental faculties. Such is the condition of education in the East, and had it not been for the influence of Islam a gigantic portion of the Moslem world would have been enveloped in the darkness of ignorance.

I will now pass on to the systems of education in England, France and Germany. The French system is similar to that of Germany with slight variations, and therefore it will be enough to speak of the latter. In Germany education is supervised by the Government just like the post-office and the Army. The education is divided into primary, secondary, and the 'varsity. The primary education is compulsory, every child from the age of six to fourteen being obliged to attend school. Regular attendance is enforced, if necessary, by the police. The instruction is restricted to what is purely elementary, but is remarkably thorough. The masters for these schools are supplied from colleges and Government establishments where they are trained. Of the secondary schools there are two types, the classical and the commercial. The classical schools are the "Progymnasium" and the "Gymnasium," leading directly to the university and to the learned professions. The commercial schools are the "upper Burger-Schule" and the "Real-Schule," leading to trade. The Gymnasium has six classes counted from the above. The pupils have at least thirty hours' schooling per week.

In the higher schools in Germany there is no special training for a particular profession. The precise object of education is to broaden the mind, the contention being that specialisation, if embarked upon before a firm broad basis is established, dwarfs the mind. The special studies must be undertaken after a general and solid basis of culture has been laid. Of Real-schulen there are several kinds. That with nine classes is the Real-schule *par excellence*. That with six classes is called upper Bvrger-schule. The education of girls has also been vigorously prosecuted. But this is not all. The German teachers have the knack of making their teaching interesting to the students. They aim at developing the reasoning powers in

the boy, so that he may become a thinking man. He is not crammed with a multitude of facts, though on the other hand no pains are spared to train his mind to build something out of any number of facts put together, and to teach it to analyse, compare and classify.

Let us now very briefly survey the universities to which the boys destined to follow a learned profession pass when they leave school. There are twenty-one universities in Germany, and if we include Braunsberg, a Catholic theological and philosophical establishment, twenty-two. In German universities there are no colleges and the students lodge wherever they choose. There is no academical dress and there are no "bull dogs" or proctors. The lectures are of two kinds: The "Publicum" and the "Privatum," the former for all and the latter for special students. One degree only—that of doctor—is conferred. Students can pass at will from one university to another.

Of the primary and the secondary education in England I need not speak. But as regards the English national universities, Cambridge and Oxford, they have decided advantages over similar institutions in Germany. Men of all ranks are thrown together, which is not the case in Germany. The "cad" necessarily sloughs off much of his rudeness and acquires a refinement of manners foreign to the parental back-parlour. Thus men of birth find among their middle-class fellow collegians individuals of ability, excellence and perseverance. This intermingling rubs down self-conceit, and many a bumptious boy when he comes to an English university, drops before his freshman's year is out to a sober estimate of himself. The German system emphasises priggishness. By dining in the same hall, rowing in the same boat, speaking in the same debating society, one learns how to give and take; while in a German university, by association with a few, nesting in his lodgings alone, a youth becomes suspicious of offence, and is ready to take umbrage at a trifle and ready to fight wherever he harbours an impression that he has been treated with disrespect.

If academic training be designed to form the mental eye on one portion and on one point in that portion of the field of science, then the German system is the best. The students' attention is withdrawn from all distracting interests. They are

supposed to look at nothing but what is under their noses. A friend of mine told me, at Cambridge, that it was his favourite trick to mesmerise cocks, by placing them on a black-board and drawing a line of chalk from the beak to the edge of the board. They then lay entranced for a long time gazing at the chalk-line. This is precisely the system of German universities; the student is given his chalk-line, along which alone he may look and in the absorbed contemplation of which he is to be lost all his life. This is the case in every branch of study. Lord Dufferin met in Ireland a professor from the Fatherland, hunting moths. He was in pursuit of one particular order of moths, and to discover varieties in this he was ranging round the world, the subject of moths in general being too wide. Thus he had all his interests detached from the *litteræ humaniores*. This *modus operandi* has no doubt its advantages. Those trained under this system become masters of their special subject unapproachable by those who are instructed under a more liberal system.

These, in short, are the various systems of education in the most organised parts of the world. One might ask himself what should be done to educate the Moslems for the changed affairs of the world. Their ethical teachings, their religious system, are splendid, and they need no modification. What is needed is the training of their intellect for secular purposes. After examining the various methods of education, it occurs to me that it would be best to have the German system for the primary and the secondary education,—of course with the addition of sports,—and for the 'varsity training their model ought to be Cambridge and Oxford. As to the theory of education, the German is preferable for the former and the English for the latter. The learning of English should be made compulsory. The bulk of the books used for study should be in the vernacular, be it Arabic, Turkish, Persian, Pashto, or Wrdu, as no work of originality, at least literary, is possible but in one's own mother tongue.

Here one is forced to ask where the money for this purpose is to be found, and, secondly, how the various Moslem countries can be persuaded to adopt one and the same system. If the Governments of Moslem countries agree to the proposed change they will only be substituting one form of education for another.

The well-being of a people depends to a vast extent on its culture. The culture of a nation should therefore be a matter of unremitting concern to its government. If their majesties King Edward VII. and the Sultan of Turkey put their heads together, and if the Shah of Persia, the Ameer of Afghanistan, the Sultan of Morocco, and the Khedive of Egypt, are also consulted, reform is easy of accomplishment. A commission composed of competent men drawn from Moslem countries can be appointed to investigate the question of education among the Moslems, and their report should be acted upon. Hence the importance of alliance between England and Turkey.[1]

[1] Alas! The secret treaties and understandings in Europe leave hardly any room for the realisation of any ideal like what is advocated in this paragraph.

V.

RELIGIONS IN THE EAST.[1]

IN previous issues we have afforded a glimpse of the various phases of life in the East. The East has always been, and will always be, a fascinating study from the point of view of religion, and it is interesting to analyse the effects of the same form of beliefs upon different peoples and *vice versâ*.

Religion, broadly speaking, may be classified into two groups, viz., Natural and Revealed. To the first category belong the two powerful religions, Hinduism and Buddhism; while to the second belong Judaism, Christianity, and Islam. In order to give a somewhat consistent, though not exhaustive, idea, we shall treat of them in the order mentioned before.

A natural religion identifies the Supreme Being with the sum total of the universe. It differs from Pantheism, inasmuch as the latter regards the Supreme Being as something more than the Cosmos. Hinduism is, perhaps, the earliest exponent of this class. Among the highly intellectual people of India, where grew the arts of arithmetic and logic, this form of belief prevailed. Conformably to this principle of identification, the lives of the people were moulded, their forms of worship shaped, and their idea of the future determined.

As everything is a part of a whole, Hinduism, true Hinduism, ordains the practice of several great virtues. Forgiveness, after bad treatment, kindness to others, and consideration for everything, animate or inanimate. In its pure state it was a very good system, but the Brahmins, the priestly caste, brought their influence to bear upon it, and as they were the sole arbiter on points of religion, they always did modify it by interpretation for better, for worse. This led to the formation of various classes, usually called caste. And then the real spirit was lost! Hinduism became synonymous with conservatism and unprogressiveness! The caste system necessarily led to stagnation,

[1] The Near East, 1908.

and very often to degeneration. It was precisely at this point, as Bagehot pointed out, that civilisation among those who professed Hinduism was arrested.

Their form of worship consists in paying homage to various forces of Nature. Thus the sun, supposed to be the greatest of all, was held in greatest admiration. Then came the moon and the stars, in proportion to the images they formed on human retina. The great rivers of India, the large, wide spreading trees, the cows, etc., were held in reverence in proportion to their utility.

Logically deducible from the first principle, it believes in the transmigration of the soul. It might be regarded as a phase of the theory of evolution, but the latter deals chiefly with the materialistic side of existence; the former with the spiritualistic. But one might ask, How long is this process to go on? And what, after all?

It was Buddhism that essayed an answer. It broke the barrier of the caste, placed everyone on the same pedestal, considered the highest bliss attainable to be dependent on one's own action—of course, good. But "good" in this case is synonymous with what is agreeable or pleasant or what gives happiness. It is without any conception of Supreme Being, and therefore its only sanction for "good" action is the penalty of being delayed in the path of attainment of the bliss. Noble in isolation, but incomplete in a system, are the enjoinings of Buddhism. But, by the common agreement, its theory and practice of kindness to all is the most admirable; and, in spite of metaphysical speculations in Hinduism, Buddhism, though an evolution from the latter, is decidedly better of the two. Transmigration of the Soul has a retrograde step in Hinduism, while in Buddhism it has a different meaning.

The effect of these two religions is different. Hinduism, chiefly prevalent in India, has, on the whole, led to isolation, conservatism, intolerance and bigotry. Buddhism, chiefly existent in China, has at least unified the people, and done away with intolerance to a very great extent.

Let us next take a glance at the other form of religion, viz., Revealed. It is communicated to mankind by the Supreme Being through the medium of someone. It has two parts in it: Intellectual and Moral.

The intellectual part deals chiefly with the conception of the Supreme Being as Supreme Intellect. From the presence of marks of design, and by an analogy to our own mode of action, we think of a designer or cause. This is teleological argument for the existence of a Supreme Intellect.

The moral side deals with the Supreme Being as Supreme Conscience. Men hold communion with Him through their hearts; but conscience is capable of development. Hence the place for prophets as those in whom conscience has reached its highest development. Thus Moses, Christ, and Mohammad were prophets.

But what is conscience? Easily said. It is a faculty for judging right from wrong. But what is right, and what is wrong?

To avoid mazes of intricate expressions and unintelligible phrases, we might say that when two springs of action are presented to our mind, one stands higher than the other. The one which stands higher is right, the other is wrong, and the faculty which intuitively perceives it is the conscience. It is universal, inasmuch as every person, of whatever nationality or mode of life, if confronted with the same set of springs of action, will come to the same determination. Thus in Sparta of old killing of weaklings was a virtue, but in our age it is not so. They were confronted with the preservation of the nation and the killing of weaklings, while we have to face the killing and not killing of our weak children. The conclusion must be the same now as before, according as we judge one set of springs of action or another. Conscience is just like a balance, and the springs of action like things weighed.

Thus no act in itself is right or wrong. It becomes so in comparison with other actions.

We have, therefore, in revealed religion, a system of morals which presupposes a Supreme Conscience and Intellect, a life in a hereafter, and necessarily the immortality of the soul.

Applying these to Judaism, Christianity, and Islam, we find that all these religions are based upon the same philosophical conceptions, have the same code of morals, and have the same intuitionistic theory of the perception of conscience. But Judaism has one effect upon its followers, Christianity another, and Islam a third. It is a fact noteworthy that Islam is very

uniform in its effect upon the people of various countries. After a great deal of analysis it seems to us that the chief merit of it consists in the practice of that brotherhood which is really universal. Once within its pale, and all the barriers, social or otherwise, are broken through. This is why a Turk, an Egyptian, an Afghan, a Moor, an Arab, or an Indian will meet on terms of equality, and will not object to inter-marriages, a great test for the practice of brotherhood. It shows its tolerance of the former two by allowing a Jewish or Christian wife of a follower of Islam the rights of a Moslem wife without any change in her belief or worship.

What is said is said in purely philosophical strain, and is free from bias of any kind; for, after all, there is little difference between one form of belief or another, so long as one's life is useful to his fellow-beings, and he himself is a good man.

VI.

THE LABOUR QUESTION IN THE EAST.[1]

LIFE in the East is a subject of inexhaustible interest. It presents itself again and again in all its charming varieties, it knows no age, lacks no freshness and keeps rash critics at a distance. Complicated as life is in the West, that in the East is no less so. The influence of these two kinds of highly-developed civilization upon each other will become very marked during the next few years, and for this reason it is essential for the general welfare that a knowledge of the actual conditions of life in the East should be spread far and wide.

The labour riddle is always before us. It is not a question of to-day only; it is not, as is generally supposed, a creation of the modern system of manufacture, the result of wholesale production. It existed before the wholesale business was known. During the Middle Ages it cropped up again and again, attended with more or less violence. From the moment that slavery ceased, free labour entered the field. The problem is one which is very closely connected with the rise and fall in the price of food and the growth in the complications of life, as cause and effect. The moment the artisan is allowed participation in the good things of life, and does not depend as a slave on the will of his master, and does not receive from him everything as an unmerited gift, this question springs into existence and importance. The workman being free, he becomes a contracting party. His time is his own, his hands are his own, his skill is his own, and he may demand what price he chooses.

These are, then, matters which, if settled satisfactorily, will in a great measure reduce friction between the employer and the employed. They have yet to obtain significance in the East, and therefore those interested in the welfare of the people should pay heed to them. The causes which gave rise to unpleasant contention in the West should be eliminated so that the advantages of experience should not be altogether lost. They are:—

[1] The Near East, 1908.

1. The right of the master to import foreign labour in order to keep down wages.

2. The number of hours which the workman is to work.

3. The wages he is to receive for his labour.

The first-named will not come to the front in the East as it has done in England or America. The workman can travel all over the country, even all over the world, working wherever he can find employment. The labour market is open to all, and it is only in rare instances that murmurs of complaint are heard if foreigners have completely ousted the children of the soil.

The second is of more importance. The wives are deprived of the company of their hen-pecked husbands in proportion to their working for shorter or longer hours. They would, if they could, keep them at home to help them to look after the household, but they must go out to win the bread. It will not injure them to rise earlier and work late, but they are afraid of breaking the immemorial custom of implicit obedience to the mother of the children, which is, of course, sacred.

This state of affairs has given rise to piecework in certain parts of the East. Instead of paying for the whole day, irrespective of whether the workman works five hours or nine hours, or whether he works with a will or not, the master has to pay only for the work done. In the former case the loafer was a loss to the master; under the piecework system whatever loss ensues falls upon the idler. The piecework system encourages application and technical skill. But very little uniformity exists, as it is an impossibility in many branches of trade.

The principal objection to the piecework arrangement is the deterioration in the quality of the output which it entails. The artisans scamp their work and they seek more wages by quantity rather than by excellence of quality. As the quality declines, the price of goods diminishes, and thus the honest artisan suffers for the dishonesty of the other. Moreover, it does not sufficiently unite the interests of the master and the employed for the production of good work.

In some districts, but very rarely, *tantième* partnership or co-operation prevails. The co-operative principle has fewer evils than either the piecework or time system. The net gain is divided among the workers instead of finding its way into the

pockets of the master. If the price rises, so do the wages; one regulates the other. The receipts are thrown into a box and the contents divided according to the contract. Theoretically no system can be fairer or more calculated to promote activity, interest in the work, contentment among the associates. It seems to be an ideal condition, but unfortunately it is little known and still less acted upon.

Referring to the third point, in recent years attempts have been made in India to organise associations which, roughly speaking, might be compared with guilds. But they lack power and their laws are not without appeal. They are entirely devoid of those characteristics which belonged to guilds in the Middle Ages. They exercise no control except in trade affairs, and can inflict no punishment. They are strong enough, however, to determine rules and privileges, and if their growth is not retarded in the interests of the poor workers, they might become Republican despots. The oppression of labour by capital will then reach an intolerable state.

As a set-off against such organisations of the masters we notice the existence of the unions of men who endeavour to escape the subjection of the former. But, unfortunately, these unions are not properly organised, nor do they work on sound principles; hence the recent strikes in India. No doubt strikes are the ultimate weapons in the hands of the workmen, but they completely disorganise trade, and therefore they should be resorted to only when other means of peaceful solution of the questions have absolutely failed. The establishment of the Court of Compulsory Arbitration will be very beneficial.

Such, in brief, is the condition of labour in the East, and before it is too late wise legislation should prevent the recurrence of events which have happened in the West.

VII.

INDIA'S HIDDEN MILLIONS.[1]

". . . . the wealth of Ormuz and of Ind."—
Paradise Lost, Book II.

MUCH has been written in the Press of late concerning the buried wealth of India. Though famine has ravaged the country, though the plague has thinned the population and ghastly poverty prevails for miles and miles, it has been stated that three hundred million pounds' worth of treasure, which works out at the rate of a pound per head of the population, lies hidden in India. Wide of the mark as this estimate probably is, there is no doubt that the treasures concealed in India would if their owners consented to part with them realise an enormous sum.

It is interesting to inquire into the causes which lead a section of the inhabitants of India to hoard up their valuables. In the first place the practice of hiding articles of value prevails in every quarter of the globe where the banking system has not developed. It existed in England, and years must elapse before the custom dies out in India. The mania of accumulation is also attributable to the vanity of the fair sex, who stow their treasures in old clothes, kitchen utensils, etc. A third reason is the bad time experienced by the Hindu widows. Hindu husbands regard their tenure of life as so uncertain that in anticipation of the wants of the future they load their wives with ornaments and cash—when they can get it. Again, Mohammadans are forbidden to accept or pay interest: hence there is no incentive for them to lend their capital. This regulation is, of course, based upon the teaching of Aristotle. Fifthly and lastly, money is kept lying idle because the owners fear to risk their savings by depositing them in the custody of individuals of whose integrity they are uncertain.

[1] The Near East, 1908.

All manner of devices are resorted to for the purpose of ensuring the security of treasure. An old gentleman, accustomed to attend a place of worship, habitually remained in his seat until the rest of the congregation had departed. Unfortunately for himself he fell under observation and was seen to proceed to a corner of the edifice and dig out a purse heavy with gold. Naturally enough the purse disappeared eventually. A woman for years carried her savings in her shoes. Thieves discovered her secret and deprived her of a sum that would have kept her in tolerable comfort for the remainder of her days.

Several thousands of pounds were recently found in a hole in one of the walls of a house that was in course of demolition, while not long ago an aged gentleman had occasion to deplore the washing of a waistcoat which was surely the most valuable waistcoat on record. He wore it practically day and night, and in the lining were bank notes to the value of £2,500. The precious relic, laid aside in an unfortunate moment, was promptly seized by an over-affectionate nephew and despatched to the laundry.

One night a burglar, visiting an Indian farmhouse "lifted" some hundreds of gold coins from a corn-bin; and it was only some months ago that a lady, supposed to be in needy circumstances, was found to be in possession of a diamond salt-cellar which ultimately fetched £4,000.

Instances of a similar kind can be multiplied without end, but no amount of persuasion will bring about an alteration in the condition of things until India is a very different country from what she is now.

Countless baits have been thrown out by company promoters and others with a view to acquiring the wealth which lies buried in the Empire, but every attempt has met with failure. As to the provision of a remedy by the officials, the Government can never by itself inspire that confidence which must be forthcoming before the people will consent to disgorge their accumulations. By working through the leaders and guaranteeing the safety of investments some degree of success could be obtained, but not otherwise.