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Only two years ago the foreign ministers at Peking declared in conclave that 'no faith could be put in the assurances of the Chinese Government.' In face of such disingenuous statements as those of the Tsungli Yamen (Chinese Foreign Office) our true policy is to demand the execution of our treaty rights to the full letter of the law, and to ignore the excuses and evasions with which they invariably attempt to avoid carrying out their engagements." "Forms, which in the eyes of Chinamen are of vital importance, are regarded by the Foreign Offices of Europe as insignificant details, and they (the Foreign Offices of Europe) are apt to consider as trivial and ceremonious that which really involves the weighty matter of national honour."

Short supplementary chapters are added on Architecture, Food and Dress, Amusements, Gardens and Travel, Slavery, Infanticide, Coins, and Art, with a final short essay on Religion.

From this summary it will be seen that Professor Douglas has presented in a concise form a very admirable *résumé* of the leading features of Chinese society, more particularly of such as have a direct influence and practical bearing upon the relations of the Chinese Empire with Great Britain. The book is one which should be carefully read and thought over by all who have at heart the maintenance of the British power in the East.

W. P. MEARS, M.A., M.D.

BRITISH PROTECTORATES AND JURISDICTION.

By D. P. HEATLEY.

ANOTHER *Expansion of England* may soon be in demand. The old forces are still at work, with the addition of some new ones. The Empire lives and flourishes, and it would seem to be almost an inevitable accompaniment of its healthy vigour that it must yet grow, although it has already (we may suppose) reached the prime of life. Commercial companies and their administrative authority may or may not deserve the harsh judgment passed on them by Adam Smith: that depends on circumstances, and Adam Smith wrote when commissions were being appointed and bills drafted to cope with the anomalies of the longest-lived and most fruitful of such companies of which history has the record; (and, we may remark, the anomaly and the fruit were detected almost concurrently). Possibly our Indian empire was not, after all, such a hazardous growth as has been widely and on high authority believed. Else, what do we make of this suggestive resolution of the East India Company, when it had barely as yet passed beyond an infancy at once precocious and precarious? "The increase of our revenue is the subject of our care as much as our trade; 'tis that must maintain our force when twenty accidents may interrupt our trade; 'tis that must make us a nation in India. Without that, we are but a great number of interlopers; and upon this account it is that the wise Dutch, in all their general advices that we

have seen, write ten paragraphs concerning their government, their civil and military policy, warfare, and the increase of their revenue, for one paragraph they write concerning trade." We can only say, perhaps, that it is our British fashion to do things (things even of high administrative and imperial import) with a stout heart and will for the day, so that to-morrow, with excellent effect indeed, may look after itself. Racial advantages, national character, favouring institutions, enterprise and pluck—and, with it all, mere rash adventure—by land and on sea, casual encounters and planned policy, unique maritime opportunity and a half-conscious perception for some centuries of the value of "sea power" (an "abridgment of a monarchy," wrote Bacon), commercial necessity and commercial ambition, imperial entanglements and imperial capacity (the parent of "destiny,"—if we may use the word and still be historical)—these have founded, strengthened, and are like to make relatively enduring our "oceanic empire." The *pax Britannica* may not carry with it the *suprema majestas Romanae pacis*: it has more effective competitors to contend with. But the establishment of it and its triumphs are not less certain than were those of old, and, we may affirm and anticipate, the issues are no less vital.

"The system of protectorates," writes Sir Alfred Lyall in the judicious chapter which forms the last of his lucid and able work, *The Rise and Expansion of the British Dominion in India*, "has been practised from time immemorial as a method whereby the great conquering and commercial peoples masked, so to speak, their irresistible advance, and have regulated the centripetal attraction of greater over larger masses of territory. It was much used by the Romans, whose earlier relations with Asia and Africa were not unlike our own. The motives have been different—sometimes political, sometimes military, sometimes commercial—the consequences have been invariably the same. It is used politically as a convenient method of extending various degrees of power, of appropriating certain attributes of sovereignty, without affirming full jurisdiction. It has become the particular device whereby one powerful State forestalls another in the occupation of some position, or scientific frontier line, or intermediate tract that has a strategical and particularly a defensive value. It is employed to secure command of routes, coaling stations, or trading posts, whenever one nation desires to be beforehand with an enterprising competitor. Under this system, applied in these various manners, the extra-territorial liabilities of England all over the world are rapidly increasing, and our frontiers are rapidly expanding." Hence the true frontier of the British dominion in Asia is determined by the "outmost political boundary projected, as one might say, beyond the administrative border": within that boundary we do not admit rival foreign influence.

It is a policy of would-be limited liability and an illustration of our caution, though of such caution as may lead to far-reaching complications in the future, just because the consequences are obscured and shunned for the time. Individual enterprise we applaud; to companies we may grant a charter; a protectorate we will even declare; but responsibility and greatness must not be sought, only endured. Hardly thirty years

ago, a Parliamentary Committee, appointed to deal with our position in West Africa, reported that it was inexpedient to extend our territory there, or assume government, or enter into treaties offering protection to native tribes: the object of our policy was to be the encouragement in the natives of the exercise of those qualities which might render it possible to transfer to them the administration of all the governments, "with a view to an ultimate withdrawal from all, except, probably, Sierra Leone." The same policy may be seen earlier, as in the conventions with the Transvaal Government in 1852, and with the Free State in 1854. We have, indeed, of necessity, moved away from this impossible position. Still, to quote from a despatch of Lord Salisbury, dated May 30, 1892: "The colonial policy of Great Britain and France in West Africa has been widely different. France, from her basis on the Senegal coast, has pursued steadily the aim of establishing herself on the Upper Niger and its affluents. This object she has attained by a large and constant expenditure and by a succession of military expeditions. . . . Great Britain, on the other hand, has adopted a policy of advance by commercial enterprise. She has not attempted to compete with the military operations of her neighbour." Even more directly and faithfully does the imperial sovereignty of Germany attend on the companies and the subjects of the fatherland. "It is not at present the intention of the Imperial Government," said Prince Bismarck in June 1884, "to establish colonies with official machinery on the French or the English pattern, but wherever private German subjects acquire possessions hitherto without owners, the Government will consider itself under the obligation to give them full protection."

The diverse nature of British and, say, German jurisdiction in protectorates is part of the general characteristics of administration and government. We are fortunate in procuring an exposition of the subject—at least on its British side—from the able hands of Mr. W. E. Hall, the author of the best English work on international law. In his *Treatise on the Foreign Powers and Jurisdiction of the British Crown*, Mr. Hall has a chapter on Protectorates, Spheres of Influence and Barbarous Countries, which is of special importance in view of recent developments and probable contingencies in Africa.

Premising that the term "protectorate" is somewhat indefinite, that in all cases, however, a State or community under the protection of a European State has yielded up its freedom of action in foreign affairs, and that the native States of India do not possess the amount of independence retained by the ordinary protected State, and so form a class apart, Mr. Hall is chiefly concerned with (1) the true nature of the relations existing between the protecting and the protected State, (2) these relations as they are found in British protectorates, and (3) the future of these relations.

Since the protecting Power represents, or rather supersedes, the protected in dealings with foreign Powers, these Powers cannot exact redress for themselves for wrongs inflicted on their subjects by the natives. It is, accordingly, the duty of the protecting authority to safeguard the person and property of a foreigner, and to invest itself with

the powers requisite for securing this end. The necessary equipment will not, need not, be uniform throughout all protectorates. But it must be adequate. It follows that the foreigner, thus protected, must consent to the protection of others against himself: jurisdiction may not be partial in its application. The foreigner who sues may also be sued.

Do the British Protectorates stand the test? Owing to diverse conditions and a corresponding diversity of arrangements, no single answer can be given. In the agreement concluded in 1888 with the Sultan of Brunei, jurisdiction was reserved to British consular officers over British subjects and "protected subjects," but no authority was assigned to the British courts to exercise jurisdiction, either civil or criminal, over the subjects of foreign States. The test, therefore, fails here in its twofold aspect: British subjects receive no protection against foreigners whose governments do not cede jurisdiction, and foreigners are denied a like protection against natives or the subjects of a third Power. It is provided that in a mixed civil case (one, that is, between British or British protected subjects and the Sultan's subjects) the trial shall be conducted in the courts of the defendant's nationality, although an officer nominated by the government of the plaintiff's nationality may take part in the proceedings, without, however, having a voice in the decision. By an Order in Council issued in 1890—subsequently, that is, to the establishment of the protectorate—it is laid down that a foreigner, instituting proceedings against a British subject, or willing to appear as defendant in a British court, must first file his consent to the jurisdiction, and may even be required to produce the consent of a competent authority of his government; and in Zanzibar there is no escape from this latter condition. Similarly, by the Somali Order in Council (1889), causes affecting a foreign European subject can come under British jurisdiction only by consent. The originating ground of this imperfect authority is, says Mr. Hall, "the somewhat pedantic, and certainly erroneous, notion that sovereignty is indivisible:" Zanzibar, Brunei, and the Somali Coast are not completely under British suzerainty; hence for no purpose (the notion implies) can they own that sovereignty in its full force; the powers exercised by Great Britain are delegated powers; and an Eastern State cannot grant jurisdiction over subjects who are neither its own subjects nor those of the State in whose favour the delegation takes place.

The Africa, South Africa, and Pacific Orders in Council, of dates 1889, 1891, and 1893 respectively, provide for the assumption of wider jurisdiction. Through consular instruction, or on the notification of a Secretary of State, the first may be applied to any existing or future African protectorate, where no other Order in Council is already in force. It is thus of prospective importance greater than usual. By it, jurisdiction is made to extend to all persons "with respect to whom any State, king, chief, or government, whose subjects, or under whose protection they are, has by any treaty or otherwise agreed with Her Majesty for, or consented to, the exercise of power or authority by Her Majesty,"—extends then, in effect, to natives and to subjects of European States. This definition tallies with the undertaking entered into by Great Britain at the Berlin Conference of 1884-85, "to protect foreign merchants and

all the trading nationalities in all those portions of the Niger which are or may be under her sovereignty or protection, as if they were her own subjects;" and tallies also with the first Article of the General Act of the Brussels Conference, July 1890, whereby the Powers, including Great Britain, enjoined, as the most effective means of counteracting the slave-trade in the interior of Africa, the "progressive organisation of the administrative, judicial, religious, and military services in the African territories placed under the sovereignty or protectorate of civilised nations." Mr. Hall remarks that "it would be impossible for the signatories of agreements pointing so clearly to the establishment of whatever jurisdiction may be found necessary or advisable by a protecting State for the attainment of prescribed objects, and pointing moreover to a development of organisation as an end in itself, to deny the grant of implied consent to the exercise by Great Britain of civil and criminal jurisdiction over their subjects in British protectorates duly set up upon the coasts of Africa; and as the conditions under which protectorates can exist upon the coast and in the interior parts of the continent, to which the agreements do not extend, differ only in the greater difficulty of maintaining effective jurisdiction in inland places, the signatory governments are morally precluded from objecting to the assumption of equal powers in the one case to those which they have given in the others."

The Pacific Order (applying to the following groups of islands: the Union, the Phoenix, the Cook, the Gilbert, and the Southern Solomons), in "an indirect and confused, but sufficient manner," asserts jurisdiction over natives and over foreign subjects independently—herein differing from the African Order—of the consent of European States. Under an Order in Council of December 29, 1887, the Legislative Council of the Gold Coast Colony would seem to be empowered to extend the operation of the principle of the Pacific Order throughout the Gold Coast. Foreigners, as well as natives, are also brought under the jurisdiction of the protecting courts by the South Africa Order, establishing the South Africa Protectorate, and by the Charter of the Royal Niger Company, which exercises protectorate authority in the Niger Territories.

It will appear that, though there is a definition of the jurisdiction in all cases, there is an absence of that uniformity, that systematic directness and comprehensiveness, which we are wont to associate with the law as a machine. That system and uniformity will be found rather in the protectorates of Germany and France. All persons, irrespective of nationality, come under German jurisdiction; the protectorate assumes a distinctly territorial character, and foreigners settling within the jurisdiction may even be naturalised, and rank as German subjects. As Germany, so France, wherever she finds it practicable, as in Annam and Cambodia, but not Madagascar (where prior treaties with Great Britain and the United States preclude the French from exercising jurisdiction over all foreigners), and not in Tunis. As a rule, France and Germany but give effect to the general enunciations accepted by all the Powers, except Britain, at the Berlin Conference, that a protectorate carries with it the right of administering justice over the subjects of other civilised States.

There is no need of a rigid uniformity. The British are not as logical as the French (and fare not worse). The nature and amount of the jurisdiction are properly determinable by reference to the circumstances of each case. But (1) there are cases—*e.g.*, that of the Somali Coast—where the jurisdiction assumed is not adequate to meet the requirements of foreign subjects, and where, accordingly, foreign extra-territorial jurisdiction may intervene, and, intervening, may clash with the nominal protecting authority; (2) have we municipally legalised and safeguarded such protectorate jurisdiction as has been assumed by the Crown and recognised by international arrangement? Would a foreigner bent on conducting an appeal find the protectorate jurisdiction confirmed by the English courts?

Dependence would be placed on the Foreign Jurisdiction Act of 1890, which, however, according to Mr. Hall, does not afford the required security; it is a mere consolidating statute, and, as such, cognisant only of the extra-territorial jurisdiction over British subjects to which the successive consolidated Acts had referred. Still, other sources are available. The Powers signing the Berlin and Brussels Acts might have their attention directed to the extent of the jurisdiction claimed and controlled by this country over foreigners in protectorates. Or, that jurisdiction might be affirmed by legislation. Or, it may meanwhile be possible to maintain that jurisdiction without statutory enactment. In this way argues Mr. Hall: The doctrine of the indivisibility of sovereignty is exploded; the British Crown, in the exercise of its prerogative, can acquire a portion only of the *territorial* sovereignty of a state, just as, through conquest and cession, it can acquire the whole; the powers exercised in a protectorate are really territorial, and it may accordingly be concluded that the English courts will decide that the Crown in assuming a protectorate is invested with powers which resemble in kind those exercised by it in a conquered territory. It follows, from the same general reasoning, that when natives of protectorates are in foreign countries they are not (as usually regarded) foreigners, but fall, of right, under the same category as persons habitually protected by Great Britain; subjects of foreign Powers entering British protectorates have security guaranteed to them; the same amount of security must be accorded persons of a protected community when they are in a foreign State.

GEOGRAPHICAL NOTES.

By THE ACTING EDITOR.

EUROPE.

Place-Names of Sutherlandshire.—Mr. John Mackay, C.E., Hereford, contributes a couple of papers on this subject to Vol. xviii. of the *Transactions* of the Gaelic Society of Inverness, in which he discusses the names of localities in the parishes of Reay, Kildonan, Loth, and Clyne. Mr. Mackay appears to have overlooked the fact that the Sutherlandshire portion of the parish of Reay has been included by the Boundary Commissioners in the parish of Farr, and that Reay is