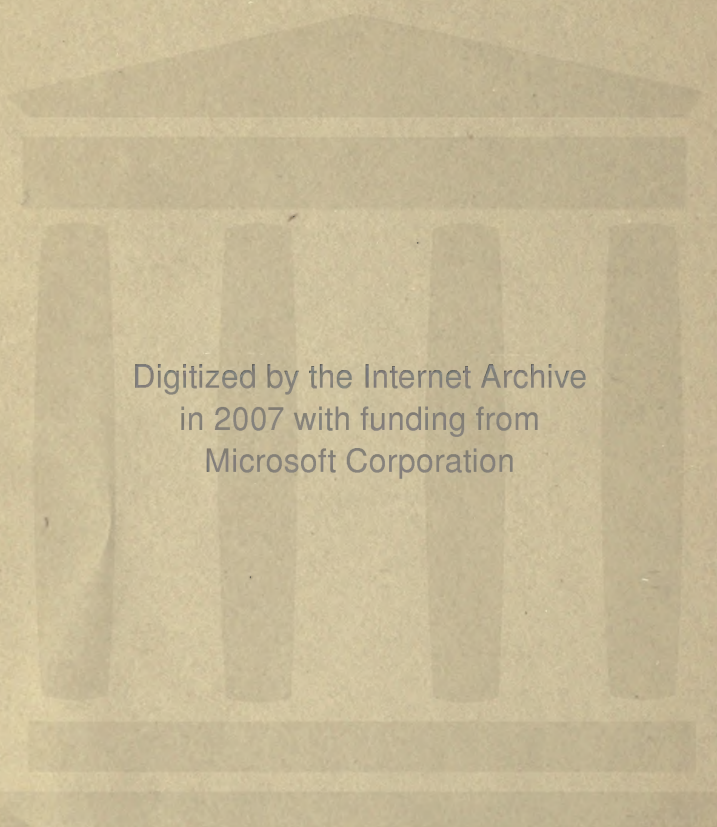


BRITISH CITIZENSHIP

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BRITISH CITIZENSHIP

A DISCUSSION INITIATED

BY

Edward
Beale
E. B. SARGANT [ed.]

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BRITISH CITIZENSHIP.

WE peer at Liberty and know her not,
Compute her stature like surveyors, mete
Each span of earth ennobled by her feet,
Appraise the goddess as an image. What!
Is this the cunning of men's hands, begot
Of stone and chisel? Or do we admit
Some antique form, once living, exquisite,
Now backward facing like the wife of Lot?
England! This is not she, the glowing maid
Who breathes into thine ear her word of power,
Citizenship! In other tones and hour
To Greek and Roman state that word was said;
For still the goddess grows, and still must he
Grow with her, who would mate with Liberty.

From "THE CASKET SONGS".

PREFACE

WITH the approbation of the Council of the Royal Colonial Institute, arrangements have been made for this reprint of the recent discussion in "United Empire" on the subject of British Citizenship. It began in the last November number of the Journal of the Institute with the article that stands first in this small volume, and after calling forth contributions from Mr. James Bryce, Prof. Westlake, Sir Samuel Griffith (Chief Justice of Australia), Mr. Malan (Minister of Education, United South Africa), and other notable jurists and men of affairs throughout the Empire, it came to a conclusion in the present month with a review of the whole subject by the initiator of the discussion.

In the opening and concluding articles no opinion whatever is expressed about such controversial questions as devolution of government within the British Isles, the enfranchisement of women, or the status of non-European British subjects in various parts of the Empire. But from the absence of any such references it would be unfair to conclude that the writer of the articles in question has no decided opinions of his own in regard to current political subjects bearing upon citizenship. On the contrary he was drawn into the consideration of this subject by very special anxieties (which are for the most part still unallayed) as to one at least of these topics, nor from the earlier drafts for an article did he altogether eliminate controversial matter. But as his view of British citizenship enlarged, he became more and more impressed by its continuous evolution throughout our Empire and by the merely temporary nature of the obstacles that oppose themselves to such a growth. It seemed to him of chief importance to dwell upon that organic connexion, rising from the affairs of the city to the affairs of the nation and beyond, and either in its lower or higher forms affecting a larger and still larger number of British subjects. Indeed, he came to regard the mere percentage of British subjects who possess the municipal franchise as in itself not an unfair test of the ripeness of any British community for responsible government.

Advantage is taken of this Preface to make clearer a point that

has already led to misapprehension. On page 50 there is no intention to suggest that when the House of Commons first came into existence the cities of England were equal in power or in wealth to the rest of the country, or that the representative citizens and burgesses associated on equal terms with the knights of the shire. Yet of the political ideals which were brought together in that House, it was citizenship that ultimately adapted allegiance to its own uses.

It is no doubt difficult at first to give full attention to the internal processes of our citizenship rather than to the mere externalities of constitutional form. But as soon as any considerable part of the population is able to comprehend how vital those processes are, the old controversies as to the future of the Empire will pass into Limbo. To spread widely such an understanding of British citizenship is one of the political necessities of the times. It can only be accomplished if each of us lends a hand to that part of the work for which he is best fitted. Those who have an intimate knowledge of our constitutional history can add fresh elements to the discussion, and for such additions to and corrections of the views here expressed I shall be profoundly grateful. There are those, too, who through their command of public attention can emphasize this or that aspect of the subject, either on the platform or in the press. The subject is also well adapted to the activities of debating societies for this reason amongst others, that in debate the impartial attitude, so hard to attain, is naturally flung aside by individual speakers, and yet the debate as a whole may be quite devoid of partiality. The form of motion suggested on page 58, "That the responsibilities of British citizenship for the common affairs of the Empire should no longer be confined to citizens of the United Kingdom," lends itself to every kind of amendment, and it is therefore suggested that all motions on this subject should for the present be made in those words.

Finally I am persuaded that a congress of representatives of the cities of the Empire, such as is suggested on page 57, would do much to strengthen and accelerate the deliberations of the Imperial Conference.

E. B. SARGANT.

HEDLEY, NEAR EPSOM,
May 16, 1912.

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BRITISH CITIZENSHIP

I

What do we mean by British Citizenship? My own observation leads me to believe that even the most practised speakers and writers use these words with quite different connotations.

I might not have been spurred to write upon this theme, had not the proceedings of the recent Imperial Conference shown that its members were no more in agreement than the rest of us as to what makes a British citizen. Anyone who takes up the Blue Book, and reads the report of the discussion on Naturalization, will be convinced that some of His Majesty's Ministers ignored altogether any difference between a British subject and a British citizen, while others felt that confusion of these terms would make it impossible to bring the discussion to a successful issue. The Minister who drew the most careful distinction between the subject and the citizen came from South Africa.

In explaining to the Conference the difficulties experienced by Canada as regards the present laws of naturalization within the Empire, Sir Wilfrid Laurier said :—

“In Canada, where we receive annually at the present time some 100,000 American citizens, who generally take out letters of naturalization as soon as it is possible for them to do so, we are in this condition : those 100,000 American citizens are British subjects in Canada, but if they come to Great Britain they are still American citizens. . . . I think this principle may be laid down as an object to be ultimately reached—a British subject anywhere, a British subject everywhere. . . . A measure ought to be adopted whereby it should be universal that if a man is made a British subject somewhere in the British

Empire under authority delegated by this Parliament of Great Britain, then legislation to that effect should carry the power of naturalization not only in the country in which naturalization has been granted, but all over the British Empire, or, indeed, all over the world. In other words, *civis Britannicus* is *civis Britannicus* not only in the country of naturalization, but everywhere.”¹

All the difficulty lies in the last sentence. It might be understood to include the proposition that adult British subjects, women no less than men, coming to Canada from Australia, should have as full political rights in the former Dominion as in the latter. Moreover, the use of the Latin words suggests, though it does not affirm, the right of all British subjects as citizens, whether inhabitants of a self-governing Dominion or not, to move freely within the Empire. We cannot suppose that the then Canadian Prime Minister intended to convey these ideas to his colleagues, but that his words were open to a number of such constructions is clear from the statement of the South African point of view by Mr. Malan, in which he tries to guard against any possible confusion between the status of subject and the status of citizen.

“ Provided that it is clearly understood, and clearly expressed, that ‘British subject anywhere, British subject everywhere,’ means subject to the local laws which obtain as regards the right of British subjects, whether of citizenship or of admittance into a country, we think that the principles as laid down by Sir Wilfrid Laurier are correct and sound ones.”²

Sir Joseph Ward's remark “that no reasonable objection could be offered, so far as New Zealand is concerned, to the exercise of power by the Imperial Legislature in defining for the whole Empire the conditions of British citizenship”³ was made before this speech of the South African Minister. On the contrary, Mr. Churchill was in possession of the views of all present when he used the same phrase in connexion with the proposed general certificates of naturalization:—

“Therefore I welcome with the greatest satisfaction the strong

¹ P. 252, Cd. 5745.

² P. 256, Cd. 5745.

³ P. 254, Cd. 5745.

statements made by every one of the representatives of the Dominions present here to-day in favour of the desirability of securing a uniform and world-wide status of British citizenship which shall protect the holder of that certificate wherever he may be, whether he be within the British Empire or in foreign countries.”¹

These are clearly no loose or hasty utterances. They show that, in the highest conclave of our Empire, British citizenship had an essentially different meaning in the mouths of different speakers. My first suggestion, then, is that the Editor of “United Empire” should invite both past and present Ministers of the Crown, not only in the United Kingdom but also in the Dominions overseas (including the Crown Colonies and India), to define the term as carefully as may be, especially in connexion with the relation between a British subject and a British citizen. The replies to this question might throw an unexpected light upon modern thought in regard to the political development of the Empire.

But uncertainty as to the use of the term does not end with statesmen. Writers upon political institutions are in no closer agreement than they as to the difference between a subject and a citizen. Let me first take two statements valuable for the comparison made between British citizenship and the citizenship of the Greek States and of Rome. Freeman, in his “Greater Greece and Greater Britain,” says:—

“The Greek would have deemed himself degraded by the name of *subject*. To him the word that best translates it expressed the position of men who, either in their own persons or in the persons of the cities to which they belonged, were shorn of the common rights of every city, of every citizen. We use the word ‘subject’ daily without any feeling of being lowered by it.”²

Gibbon, in “The Decline and Fall of the Roman Empire,” commenting on the laws which were finally superseded in the reign of Justinian, remarks:—

“But in the eye of the law, all Roman citizens were equal, and all subjects of the Empire were citizens of Rome. That inestimable char-

¹ P. 256, Cd. 5745.

² P. 23, edn. 1886.

acter was degraded to an obsolete and empty name. The voice of a Roman could no longer enact his laws, or create the annual ministers of his power."¹

In connexion with both these quotations, it should be observed that we have to take account of an element in the population lower than the subject, namely, the slave. With the abolition of slavery, the relations of the citizen to the subject could not but acquire new values, though I do not here propose to say anything about this side of the question. But now let me refer to a work dealing with more modern aspects of political government, namely, Bluntschli's "Theory of the State" :—

"Full citizenship (Vollberechtigung) implies membership in the nation, but more than that, it implies complete political rights; it is thus the fullest expression of the relation of the individual to the State . . . Women and minors are excluded."²

If by British citizenship we mean this full citizenship, ignoring such compound terms as citizen-elect and citizen-subject, then not only would women and minors be excluded, but also every British subject with electoral rights in the overseas Dominions, since as a colonial citizen he may not join in the making of laws inconsistent with any Act of the British Parliament.³ We should thus have to speak in a descending scale, first of parliamentary electors within the United Kingdom as alone possessed of British citizenship, then of those in the self-governing Dominions overseas as Canadian citizens, Australian citizens, etc. Next would follow various classes of Crown colonists, distinguished as citizens of Jamaica, etc., then a group of British Indian citizens (since the word "citizenship" is used in the Indian proclamation of the late King-Emperor), and, lastly, women electors, who would be merely citizens of London, Montreal, etc., unless they were domiciled in Australia or New Zealand, when they would rise in the foregoing scale. Finally would come the class of unenfranchised (and disfranchised) persons and minors, who, if not aliens, would, like all the classes already mentioned, be British subjects.

¹ Chap. xlv.

² P. 217, 3rd edn. (English Translation).

³ P. 191, "Hogan's Government of the United Kingdom," 1910.

Such would be the result of not recognizing that British citizenship is multiform in character. On the other hand, if we agree to include more than one status of citizen in our definition of the term, at what point are we to stop?

I should like to be able to quote from Thorold Rogers' "British Citizen". But while with admirable skill he traces the citizen historically, he avoids any definition of the term at any period in the development of our institutions. He does, however, say that although there is no date assignable to the liberties and self-government of London, it was probably a municipality from Roman days, and that it had never lost the form which it then had.¹ If this be true, one element in British citizenship is directly connected with the political institutions of the greatest Empire which preceded our own. Upon the whole, it would, I think, be fair to quote Rogers as associating citizenship with electoral rights, though not to the exclusion of other privileges and duties.

Dicey, in his "Laws of the Constitution," lays especial stress upon those other attributes of citizenship, when he speaks of personal freedom and of freedom of discussion and public meeting as "in fact the chief advantages which citizens hope to gain by the change from a despotic to a constitutional form of government".² If it were necessary at this stage to range the author upon one side or the other, I should enter him as opposed to any distinction between the citizen and the subject. But he is able to speak for himself, and I trust that he may be induced to state his own views on the subject.

It would be possible to give extracts from several minor works upon citizenship, written in the last few years, which do not hesitate to define the citizen, either simply as a member or subject of a State or more precisely as a subject of a State as distinguished from a resident who is an alien. I might also give quotations (many of them conflicting) from various encyclopædias and dictionaries, but these, or some of them, are doubtless ready to the hand of most of your readers. The new edition of the "Encyclopædia Britannica," however, directs

¹ Chap. x.

² P. 280, edn. 1908.

the inquirer to two articles by Salmond on "Citizenship and Allegiance" in the "Law Quarterly Review".¹ These cannot lightly be dismissed. The author finds the origins of citizenship and of subjectship or subjecthood—whichever term we prefer to employ to mark the status of a subject—the one in Roman, the other in feudal conceptions. He points out that under feudalism place of birth was substituted for descent as the chief title of state-membership. But it is clear that, in his view, "subject" and "citizen" are now used in current speech as interchangeable words:—

"This use of 'subject,' as the modern equivalent of 'citizen,' is awkward because in a wider, earlier, and still permissible sense, 'subject' includes any person *subject* to the power and jurisdiction of the State, and therefore a resident alien no less than a subject in the narrower sense. A subject who is a citizen may be distinguished, when distinction is necessary as a *natural subject*. One who is not a citizen may be termed an *alien subject*."

One of the chief obstacles to ascertaining the views of writers from their works is that many of them deal with forms of government rather than with citizenship itself. They are experts in political institutions, but they do not give the same careful consideration to the individual subject and the realities of citizenship. The framework is all. In a mere account of institutions, how much there is to admire in the arrangement for a double citizenship, Roman and provincial, which in the later Empire was designed to embrace the free population of the civilized world within a corporate whole. Yet Dill, in his "Roman Society in the Last Century of the Western Empire," shows, with a few quiet touches, how the unhappy citizens of provincial towns sought escape from their onerous burdens and unreal privileges by taking refuge in the hermitage or hiding themselves among charcoal-burners and serfs.²

In the same way, the problems of our own Empire, looked at from the point of view of the individual citizen, acquire fresh significance. Numbers as well as political power, begin to tell. We are reminded

¹ July, 1901, and January, 1902.

² Book III., chap. II.

that our Indian fellow-subjects, with their exiguous citizenship, form a large majority of all British subjects, and that in South Africa it is the exception for a British subject to be so descended as to be able to claim electoral privileges. We note the different status of women subjects as they pass from one part of the self-governing Dominions to another. We realize that the same man is an elector in various capacities in the same territory, and that his citizenship is a complex whole subject to internal strains.

I shall fail in my object if this inquiry be treated as a plea for one among the various meanings which have been attached to British citizenship. It is a many-sided discussion of the question that is my desire. Is British citizenship to be regarded as progressive in character and multiform, or is only the full political status in the British Isles intended thereby? If progressive, can we extend the term to adult males among the Basutos, for example, whose political institutions are quite rudimentary, but who are all equally citizens or no citizens? Are the Maoris with an inferior political status to British subjects of an European descent within the same Dominion, or women in England with the municipal franchise only, properly within the pale of British citizenship? Upon the special problems which arise within the Union of South Africa I will not enlarge, lest it should be thought that my intention is to compile a formidable examination paper. On the contrary, I hope to elicit the broad views of those who have already been led to think and speak upon matters of citizenship, and not to narrow the discussion to any special issues.

E. B. SARGANT.

II

Every schoolboy might be expected to know what is meant by British Citizenship. But the fact is that the answer to this seemingly elementary question is far from easy. In an interesting article which we publish this month ("United Empire," November, 1911) Mr. E. B. Sargent points out how loosely the terms "British citizen" and "British subject" are used and interchanged even by the Empire's leading statesmen, and how unsatisfactory is the guidance of learned

authorities in the matter. It would be easy to extend his selection of illustrations, and also to emphasize the practical importance of the question, by dipping into the mass of documents in which, for instance, the grievances of British Indians in South Africa or British Columbia have, from time to time, been set forth. Such phrases as the "rights of British citizenship," or the "rights of British subjects," or the "liberties" of one or other, are frequently used in protest against legislative or administrative action which the responsible parties uphold as perfectly legitimate. Those who argue, not without reason, that the first essential of Imperial thinking is to define the meanings of conventional terms, and to call things by their right names, might more usefully occupy themselves in elucidating the significance of "British citizen" and "British subject," than in seeking a substitute for "British Empire". What *are* the rights, privileges, liberties, or responsibilities of a British subject? Is a citizen the same as a subject? If not, what is the difference? And does "British" applied to citizen mean the same as "British" applied to subject? As Mr. Sargant reminds us, subject and citizen are terms inherited from ancient conditions of society widely dissimilar to those of to-day. Conventionally speaking, the instinct of democracy associates "citizen" with a right of voting, in regard to which there is little prospect of uniformity within the Empire; while the idea of Imperial unity postulates a certain status held in common by all "subjects" who are born or naturalized under the British flag. On that view, all citizens would be British subjects, but all subjects would not be citizens; and British citizens would mean citizens of Britain only, which seems unsatisfactory. In point of fact, a common status of British subject has not yet been established, though lately a strenuous effort has been made, by the machinery of the Imperial Conference, to rectify the anomalies whereby a British subject in one part of the Empire may be a foreigner in another. Simple as the problem seems at first sight, it is vastly complicated when statesmen come to deal with it, largely owing to differences of opinion in various parts of the Empire about the colour question, and the specification of undesirable immigrants. The records of the Imperial Conference, especially those of

the last two sessions, certainly seem to show that the effort at improvement has been embarrassed by the absence of any definite understanding as to what constitutes the rights of a British subject within the Empire. In foreign countries a British subject, when he finds himself in danger or trouble, may realize with precision both the privileges and the limitations of his status; but not as a migrant within the Empire. It is to be hoped that some of those who have studied this most important question will follow up Mr. Sargant's observations.

[Editorial Comment in "United Empire".]

III

(a) NATIONALITY

The fact from which to start is that the civilized world, including countries of Mahomedan, Buddhist, or Mongolian as well as of Christian civilization, is parcelled out into States claiming to be independent of one another, which claim is mutually recognized in theory though often disregarded in practice. The parcelling out is both territorial and personal. Just as every acre belongs to one State alone for the normal exercise of public force on it, so every person belongs to one State alone for his normal protection by public force and for the normal public responsibility for his actions. The tie thus existing between an individual and his State is nationality, national character, or subjection; the latter term having been handed down from the time when most States had monarchical constitutions, but now in its international sense meaning subjection to a State sovereignty, which is not even presumptively monarchical.

There is, however, no universal agreement as to the conditions or tests which determine to what State sovereignty each individual shall be subject. Different States claim persons as their nationals on different grounds, and thus there arises what is often, but incorrectly, called double nationality. What is really double is the claim to A B's nationality. State C claims him as its national on one ground, State D on another, but each State makes an undivided claim to him. The difficulty so arising is largely met by a growing practice for one

State not to interfere with another which, in its own territory, treats as its subjects those persons whom it claims to be such. A man whose nationality is claimed by a State to which he does not wish to belong should avoid entering its territory.

The notion that Britain does not accept the singleness of nationality in principle, but has by the Naturalization Act, 1870, conferred on the Colonies the power of granting a naturalization which is not a full naturalization, has arisen from the obscure wording of that statute. It was probably intended merely to prevent the Colonies, of which all may not be equally advanced, in abolishing the disabilities of aliens, as to holding land for example, from encroaching on one another's internal rights. Much of the best opinion holds that such is its only effect—that is, that naturalization obtained in one colony shall not enlarge the internal rights in another colony of the person so naturalized. I do not know whether the Dominions are now prepared to pay any further deference to one another's legislation, but certain it is that the Foreign Office gives no restricted international effect to colonial naturalization. It grants passports to persons who have received it, and protects them everywhere except in their old country, where even those who have been naturalized in England would not be protected, by reason of the practice above mentioned. And the Merchant Shipping Acts allow persons naturalized in British possessions who have taken the oath of allegiance to become owners of British ships. Therefore Sir Wilfrid Laurier, as quoted by Mr. Sargant, was in error in stating that the American citizens who have become British subjects in Canada are still American citizens in Great Britain. But the obscurity of the Naturalization Act of 1870 ought to be cleared up by an Imperial Act of Parliament.

(b) CITIZENSHIP

Citizen is a word of no international use or meaning. It is always, except in its rhetorical use, a term of internal law, generally expressing a higher grade among the subjects or nationals of any State. Thus the Algerian natives are French subjects but not French citizens, and the Filipinos are not citizens but subjects of the United States.

In England it has no legal meaning except that of the burghers of a municipal corporation which enjoys the purely honorary rank of a city. Its rhetorical meaning may be any which the writer who uses it likes to give it, and as long as in the differing constitutions of different countries it is employed with different legal meanings, it must be hopeless to expect any agreement in its rhetorical meaning.

J. WESTLAKE.

IV

It would appear from Mr. Sargant's article that the only term that can be made applicable to everyone dwelling within the confines of our Empire is that of British subject. Even Professor Dicey's statement that the attributes of citizenship consist in personal freedom and freedom of discussion and public meeting would suffice to prevent British Indians being included as citizens, whilst they have their grievances in South Africa and elsewhere; but if citizenship implies also complete political rights, then it is obvious that the term must be restricted to those living under their own immediate constitutional government.

The only uniform status common to all dwellers within the Empire is that of subjects of the crown. The designation, to the minds of some, may not be quite satisfactory, but I am not aware of any other that would be correct.

LAMINGTON.

V

The article (British Citizenship) is interesting, and the subject of great and rapidly growing importance.

In my view full British citizenship, "good" for any and every part of the Empire and entitled to recognition by foreign States, cannot be given to British subjects of colour, though their present position by some system of give and take might, and most certainly ought to, be improved. I should give full British citizenship to all born under the British flag and of pure white stock. Aliens of pure white stock should be entitled to full British citizenship after a continuous residence in a British possession of (say) six years.

PLUNKET.

VI

British subject anywhere is British subject everywhere, with all rights and privileges. He bears as a shield the certificate of citizenship. He must conform to local laws.

BRASSEY.

VII

The British Government, as by law established in England, is the sovereign power throughout the Empire. All persons born under the Flag are "subjects" and are entitled to its protection either by law or power. The British Government can delegate its powers either at home or in its possessions, but cannot by any means divest itself of ultimate responsibility. All British born or naturalized subjects are also "citizens," and have a right to equal laws and liberty subject to such limitation as may from time to time be considered advisable by the British Legislature. Subject races are not necessarily "citizens". All aliens desirous of naturalization in a colony should become naturalized throughout the Empire, and thereby acquire equal rights. Without this the British Government can have no obligation to protect their interests with foreign Powers.

It is the highest duty of every "citizen" to use his privileges and influence to constrain the Government to a rule of righteousness, and jealously to watch the exercise of their delegated powers, and to accord to their "subjects" equal justice and the fullest amount of liberty which, from their advance in civilization, may be beneficial to their progress. To remember that our success as a nation must depend upon our success in guiding the progress of our backward "subjects" rather than of increasing our own wealth and possessions.

H. L. GEARY.

VIII

My answer to Mr. E. B. Sargant's interesting question, "What is a British citizen?" cannot be better put than in the immortal phrase of Betsy Prig—"I don't believe there ain't no sich a person". In spite of the occasional use of the term by Cabinet Ministers and others,

“British citizen” has no intelligible meaning except as a synonym of “British subject”. The word “citizen” is itself ambiguous. It is often used to denote a subject who possesses the right to vote; but the possession of the franchise is not necessarily connoted, or we should not speak of a “citizen of the world” or of a “citizen of the Heavenly Jerusalem”. And in the United States “citizen” is not synonymous with “elector,” for it has been held that women and minors are “citizens,” and the Fourteenth Amendment to the Constitution declares that “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are ‘citizens’ of the United States and of the State wherein they reside.” (See cases cited in *Cyclopædia of Law and Procedure*, v.o. “Citizen”.) The old letters-patent issued to the discoverers and the later Colonial charters contained clauses giving the colonists the right of British subjects—e.g. the letters-patent of Sir Humphrey Gilbert, in 1578, say they shall “enjoy all the privileges of free denizens and persons native of England, and within our allegiance” (see many examples in *Collections of the Federal and State Constitutions*, published by the Government of the United States, Washington, 1909, edited by F. N. Thorpe). But it is needless to say that a “British subject,” whether born or naturalized, has, as such, no right to the franchise. In *Cunningham v. Tomey Homma* [1903], A.C. 151, the Privy Council held that, though a Japanese had been naturalized under the Act of the Dominion of Canada, the law of the Province of British Columbia was *intra vires* which enacted that no Japanese should be entitled to vote. The Lord Chancellor (Earl of Halsbury), in giving the opinion of the Board, said, “The right of protection and the obligations of allegiance are necessarily involved in the nationality conferred by naturalization, but the privileges attached to it, where these depend upon residence, are quite independent of nationality.”

At the present stage of our constitutional development there is no such thing as “British citizen,” if we are to use the term “citizen” to imply any rights of franchise. There is no harm in giving it this sense if we understand what we mean, and the term “British citizen” might be appropriate enough in either of two hypothetical cases:—

- (1) If there were an Imperial franchise in the sense that every per-

son entitled to vote in Canada, who transferred his residence to England or New Zealand, would, on proof of his Canadian franchise, be entitled, without more, to vote in his new home; but the British Columbia case just referred to illustrates clearly enough how jealously every community guards its power to determine the conditions of franchise, and an Imperial franchise in this sense is unthinkable.

(2) If a new Imperial Parliament or Imperial Council were created which would include representatives of all parts of the Empire, "British citizen" or "Imperial citizen" might be a suitable term for the electors of such a body.

The claim for such an Imperial franchise is strongly put in a letter to the "Montreal Gazette" of 25 November, 1911, by Mr. C. H. Cahn, K.C., and I cannot do better than quote one or two passages from his letter: "There exists to-day a striking inequality between the elector residing in Canada and the elector residing in the British Isles. A London cabman may cast his vote for or against a foreign policy that may vitally affect Canada, while a million and a half of duly qualified electors in Canada, of at least equal intelligence and patriotism, are utterly deprived of that privilege. Why should white men in the overseas Dominions not enjoy equal political privileges with the inhabitants of the British Isles? Why should the exercise of an Imperial franchise be restricted to the residents of the United Kingdom? Why should Imperial citizenship depend merely upon domicile?" . . . "Can British statesmen hope to retain the Canadian people within the Empire if they insist that Canadians shall change their domicile to the United Kingdom as a condition precedent to obtaining a voice in the control of Imperial destinies? Will colonials be content to suffer the additional humiliation of being deprived of votes in Imperial affairs if an Imperial franchise is freely granted by Mr. Asquith and his colleagues to the energetic and vivacious suffragettes who are now parading the streets of London?" To create an Imperial franchise of this kind, and to give to "British citizen" a real meaning is, perhaps, the greatest task which confronts the statesman. In the meantime a beginning might be made by removing an anomaly in regard to the status of "British subject". Sir Wilfred Laurier, in the passage cited

by Mr. Sargant, at the Imperial Conference put his finger on a practical grievance in regard to the want of extra-territorial recognition of Canadian naturalization. It is certainly irritating for an American who has been naturalized in Canada, and has become a subject of the King, to find that in England he is still an American. Every subject of the King surely ought to enjoy an equal share in those rights of protection, and so forth, which are correlative to the obligations of allegiance. It is in the highest degree anomalous that a British Consul abroad should have to treat a large class of Canadian subjects of the King as foreigners. This source of dissatisfaction and annoyance might be removed by an Imperial Act declaring that anyone who had been made a British subject in Canada or elsewhere in the British Empire should enjoy that status in all parts of the Empire. Such an enactment would, of course, leave the local Governments complete autonomy as regards the political effects within their respective territories of the status of British subject.

Yours truly,

F. P. WALTON.

IX

Although I cannot claim to speak with authority, either as a lawyer or a practical man, on the important question opened out by Mr. Sargant's interesting article, there are some reflections with regard to it which occur to the average outsider. In the first place, it seems to me that there need be no ambiguity about the term "British subject". The word subject, in its ordinary meaning, suggests the idea of relation to a personal king. It was dislike of the idea of the *tyrannus* that made the Greeks repudiate the word subject; and though in a sense one may be the subject of a republic, in fact the word is, I believe, carefully eschewed by American citizens. I do not assuredly agree, in spite of its high authority, with the view that subject includes "any person *subject* to the power and jurisdiction of the State, and therefore a resident alien". Because, when travelling in Germany, I am, of course, amenable to German laws, I do not surely, therefore, become, for the time, a German subject. In common parlance, and,

I imagine, in law, the link which binds subjects together is the loyalty to a common Crown, and in this sense Englishmen, Canadians, Indians, and Basutos are on the same footing as fellow-subjects of King George.

It is when we come to the second term discussed by Mr. Sargant that the difficulty begins. What is meant by British citizenship? If by fellow-citizenship is meant community of civic rights, then it seems clear that, as yet, there is no such thing as general British citizenship. Indeed, so difficult is it to agree on a common definition that you will find in the same country the same people citizens in one province, and refused citizenship in another. For instance, in the Union of South Africa a Kaffir may be a citizen in Cape Colony (except that he cannot be elected to the Union Parliament), but is unable to become one in the other provinces. Citizenship, in democracies consisting of white men, must greatly depend upon the law with regard to naturalization. A new country, with an urgent need for population, may well adopt a system of naturalization which would be wholly uncalled for and inexpedient in a small congested country, such as is Great Britain. If the quotation from Sir Wilfrid Laurier means that naturalization in Canada should at once carry with it the full consequences of British citizenship, if the immigrant chooses to transfer his domicile to England, it seems to me that it would be as unfair as if the British Parliament could dictate the conditions of naturalization to be fulfilled in the Dominion. If we regard the matter closely, I think that we are forced to the conclusion that the absence of a system of common citizenship is a necessary consequence of the formless and chaotic character of the British Empire as a whole. The existence of separate nations under a common Crown seems to necessitate the existence of separate types of citizenship.

But, though the day may still be distant when *Civis Britannicus* shall possess the same meaning throughout the Empire, we can, at least, make sure that British citizenship in any portion of the Empire shall entail the same rights *qua* the outside world. It has been recently shown in Parliament that the same person may be a British subject, according to British law, and a Russian, according to Russian. Such a difficulty, were it to arise in the case of an alien, who had become

naturalized in a Dominion, might give rise to much complaint and criticism. It behoves the British Government, by means of friendly negotiation, to endeavour to remove from the path all such possible stones of stumbling.

H. E. EGERTON.

X

There is no such word as citizen used, so far as I can find, in any law, either of the United Kingdom or of the Colonies as denoting British subjects. The only mention of the term is in Sub-Section 3 of Chapter 14 of 33 and 34 Victoria in relation to "foreign subjects or citizens" who may desire to divest themselves of their status as such subjects.

Every person born in any part of the King's Dominions is a British subject, and, as such, is entitled to British protection in his legitimate dealings with foreign countries, and every such subject is entitled to full political privileges in the United Kingdom in the same degree as persons born in the United Kingdom. Aliens naturalized by Act of Parliament are accorded an identical position, but aliens who have been naturalized through the Secretary of State must have spent five years in the country and declared their intention to continue to reside therein as a precedent to naturalization being granted. A *denizen* is an alien born, but who has obtained *ex donatione regis* letters-patent to make him a British subject to a certain extent; such a denizen could not, for instance, be a Privy Councillor.

From time to time power has been given to Governors of British possessions to grant letters of naturalization to aliens within the particular colony for which such naturalization has been granted. Such naturalization confers full political rights within that Colony, and extends to him British protection everywhere except in the country of his birth, but it does not make him a naturalized British subject with full political rights in other portions of the Empire.

It follows that while all naturalized subjects are protected in their dealing with foreign countries, the Imperial Government does not interfere with the local laws of the Colonies as regards internal

political rights or powers of exclusion. A little consideration will show the prudence of this attitude. Among the quarter of the human race found within the British Empire are peoples in every stage of civilization, and in many cases the least civilized and advanced are the most prolific. Were all British subjects to have the right of perfect freedom of movement between all British Colonies it is conceivable that certain Australasian Colonies might be locally controlled by an influx of natives from Fiji or other of the British South Sea Islands. The powers of exclusion are enacted by various Colonies for the protection and encouragement of white labour.

Broadly speaking, all British subjects are divided into two classes—those who possess the franchise and those who do not. The franchise differs in different parts of the Empire, and the possession of such political rights in one Colony does not qualify the emigrant from Great Britain to a Colony, or from one Colony to another, except in so far as he satisfies the conditions of the division of the Empire to which he has emigrated. To obtain the same status for the naturalized British subject, the preliminary must be identical conditions of naturalization. Now, it is evident that in young Colonies it may be important to secure desirable immigrants and to enable them to practically assist in the development of the Colony by giving them political rights at the earliest possible moment, hence in most Colonies the term of residence necessary before the oath of allegiance is taken is considerably shorter than that laid down in Great Britain. The difficulty discussed at the Conference might be surmounted by authorizing the Government of a Colony to submit and recommend to the Secretary of State the name of a naturalized British subject who, after five years' residence in the Colony, and the declaration demanded in Great Britain, desired the unrestricted naturalization as granted by the Secretary of State under the statutes at home.

HENRY A. BLAKE.

XI

There would be little need to discuss the subject were it not for the special disabilities as regards franchise, admission to certain

portions of the Empire, and so forth, under which certain categories of British subjects suffer. There is no prospect of these disabilities being removed, and so long as they exist, so long will general naturalization, except under restrictions of the nature indicated by Mr. Malan, be impossible. Meanwhile, I think it would be a grave mistake to label British subjects who suffer under such disabilities, with a name, connoting inferiority, different to that borne by their fellow-citizens: to say to them, in effect, "You are not a British citizen; you are only a subject".

Apart from these disabilities, which seem likely to be permanent, the question will probably settle itself, sooner or later. It is to be gathered from Mr. Churchill's declaration that steps may be taken shortly to secure "a uniform and world-wide status of British citizenship which shall protect the holder of a certificate wherever he may be," and the difficulties arising from differences of franchise amongst persons of European descent will certainly be overcome if there should be any general desire to overcome them.

WALTER HELY-HUTCHINSON.

XII

In the admirable article and illuminating note on the above question, which you have circulated amongst the Fellows of the Royal Colonial Institute, an issue is raised of perhaps wider interest than any hitherto considered in the Journal, or discussed at the meetings of the Corporation. Mr. Sargant's reference to the Crown Colonies is my excuse for the following remarks:—

In putting the question, the authors of the article and note foreshadowed the inevitable reply—namely, that the term British citizenship, whatever it may have conveyed in the past, has at present no sustainable meaning in any general application.

Time was when every Briton—every Briton who gave thought to such things—prided himself on the world-wide value of his rights as a British subject; and, whilst no useful purpose would be served in attempting to define those rights here, it will surely be admitted that, for a length of time, they included freedom of movement amongst,

and the right of domicile within, all British places and possessions. Now, however, enactments can be found in more than one statute book legalizing expulsion from the State or place concerned, not only of undesirable aliens, but of unwelcome British subjects. Persons migrating or seeking to migrate from one portion of the Empire to another, although they may hold the status of British subjects in virtue and by right of the domicile of their origin, and although they may possess all requisite means, may, and do, find themselves denied admittance into, and the privilege of domicile in, portions of the British Empire; and this for some cause beyond their control: let us say, for the sake of example, on account of their complexion.

I hold no brief for either side in, or party to, the question of colour, and I wish to disclaim every intent to reflect on the policy under which the coloured man is held to be unwelcome in certain circumstances; but I regard it as none the less patent that British citizenship can carry no general meaning or value as long as any British subjects—apart, of course, from those forming the mendicant or criminal classes—can be legally refused admittance into, and domicile in, any portion of the British Empire.

For generations the term British subject has been held in honour, and without semblance of reproach. The words have been taken as indicating a condition of subjecthood, not servitude, under

Britain's laws and Britain's Crown
And Britain's flag of old renown.

They have been deemed sufficient to describe a position which is still regarded by a very large section of the human race as the best in the world. They have so far fulfilled their purpose, and they seem to require neither addition nor qualification. But the introduction of such expressions as British citizen and British citizenship have led to an appeal to the highest intelligence in the ranks of British statesmanship—an appeal for the definition of terms at present undefined, and for the solution of questions of world-wide interest, but of admitted complexity—and that appeal will not surely have been made in vain, whilst the responses which will be received from such high sources must prove of immediate, of Imperial, and of historic value.

Pending their receipt it would evince a captious and combative spirit to go further than the expression of a hope that the ennobling and inspiriting effect of the term British subjecthood may be maintained, and that to those who think to find advantage in the substitution of the expression British citizenship may be left the privilege—or task—of working out their own salvation.

CAVENDISH BOYLE.

XIII

SIR,—In reply to your question, I have always felt that the term “British citizen” applies to citizens of the United Kingdom only. *Civis Britannicus* must, I think, be a citizen of Great Britain.

In British Colonies, British India, etc., etc., I consider there are British subjects, either born or naturalized; and the others are—speaking broadly—non-British, the subjects of other nations.

FRANK SWETTENHAM.

XIV

The strength of the British Empire seems to me to consist in the freedom of self-government of its constituent parts, which are, indeed, “sister nations”. The members of each of these nations are its citizens, and all are British subjects, with a claim on British protection against foreigners. I think we confuse our minds if we think of the Roman Empire and of the British Empire as of the same character. Rome was supreme over all parts of its Empire, and by the gift of citizenship gave to all it chose equal right. Britain is not supreme, and cannot give citizenship in any of its constituent parts. A British subject entering into any of the sister nations must, like a foreigner, obey its laws, and I cannot see how any law made elsewhere could override these laws. My own opinion is that the Empire will cohere just in so far as each of its members develops its own nationality.

Yours, etc.,

SAMUEL A. BARNETT.

XV

For many years I have, as a newspaper editor, recognized a useful distinction between the terms "British citizen" and "British subject". I submit that "citizen" should mean an adult, wherever living, whose country of domicile is any land possessing self-government, and whose peers in that country are enfranchised. (It is no longer enlightened to classify Dominion peoples as "subjects," nor women with minors.) Every one in the Empire—except aliens—is a subject. The term carries no suggestion of voting rights. About one-sixth only are citizens in the Imperial sense.

F. CROSBIE ROLES.

XVI

With reference to Mr. E. B. Sargant's paper dealing with British subjects and British citizenship, you invite my views, and I will briefly give them to you.

I see no reason why the term "British subject" should be mixed up with that of "British citizen". Difficulty might arise if the Empire became a Republic, which may be dismissed from present considerations. All subjects of the King, without distinction of race or colour, should have a *primâ facie* right to receive the protection of the flag. I presume that subjects of the King are persons who have been born so and have not abandoned their rights, as well as those who have become formally, and in a duly authorized and legalized way, naturalized, and have legally abandoned their allegiance to any other Power. The ultimate end to be aimed at would seem to be that such persons, wherever naturalized, should be deemed to be British subjects throughout the Empire by common legislative arrangement between the Mother-country and her possessions, and that no person should be permitted to be naturalized in a Colony, who does not definitely enrol himself under the flag of the Empire.

A Commission on the question would naturally direct their special attention to any detailed difficulties which there might be to this, in respect to various countries; the greatest stumbling-block being prob-

ably Canada, where immigration is introducing so cosmopolitan a population. The idea, however, that British subjects should have an absolute right to move about freely within the Empire, receiving full citizen privileges as of right, seems to me to be unworkable. The right of self-governing communities to define who shall enter into citizen privileges within their borders is, in my opinion, undoubted, so long as they do not transgress against the rights of their neighbours. It is the essence of the local control which we profess to accord.

The term "citizen," as ordinarily used in the British Empire, has a far different meaning to the term *civis* of the Roman Empire, and, for the matter of that, to the term "citizen" as used in the United States. No one claiming the protection of the flag to-day would say, "I am a British citizen," but "I am a British subject," and he would thus say because the difference would be instinctively apparent to him. I see no very distinct reason for common citizen privileges, though they might be sentimentally desirable. They would be a galling bond far more likely to disrupt than to bind the Empire. The conditions of its several units vary greatly, and we recognize this by giving self-government to those of our own possessions fitted to possess it. Exclusion of British subjects who do not comply with the requirements of any particular Dominion may be, and indeed is sometimes, enforced unwisely, but the principle is not therefore to be condemned.

Coloured races are an inevitable difficulty. Few with much knowledge of the subject would advocate that an unlimited immigration of a coloured race should be forced upon a country other than the land of their birth and original habitation simply because they were British subjects. Individual hardship may occur, other parts of the Empire may be affected, but the broad principle remains that, subject to reasonable compromise in the interests of all, each unit of the Empire, if not otherwise unfitted and if endowed with a twentieth-century civilization, can best be left to manage its own local affairs.

In fine, my view is that the term "British subject" should be defined on the lines I have stated, but that the term "citizen" should be left to the Mother-country and to each self-governing Dominion to define and to legislate upon according to the wishes of those within

their several borders ; while, with regard to those possessions of the Empire which have not got responsible government, the "citizen" should have just such privileges as may be decided upon by those who, in the wisdom of the British Parliament, control their legislation.

RALPH WILLIAMS.

XVII

To solve the interesting but rather complicated problem which Mr. E. B. Sargant has set in "United Empire" for November, and on which others have commented in the December issue of the same Journal, it seems necessary to ascertain three things: (1) What is the nature of the status which, as Mr. Sargant shows, is often loosely and somewhat indifferently referred to under the terms "British subjectship" and "British citizenship".

The status really meant seems to be that which essentially differentiates each and every member of the British Empire, as such, from all other persons whatsoever—i.e. from all "foreigners". It is, in fact, the status of all who, either by birth or adoption, owe to the Sovereign allegiance in return for which they are entitled to expect from that Sovereign protection of their personal rights, not only within the Imperial territory, but also wherever else they may happen to be, but everywhere only in accordance with the laws of any place—Imperial or foreign—at which question as to the rights of those subjects arises.

The word "subject," in the one of its several meanings which is here intended, is defined, in the recently published "Concise Oxford Dictionary," which happens to be nearest to my hand, as "person subject to political rule; any member of a State except the Sovereign". This—though not very full and explicit—seems aptly to apply to the "status" which I have above attempted to define. But because the word "subject" has another meaning, because, for instance, it may also connote subjection as by conquest or some other form of force, and because this is distinctly distasteful to free people, the use of the word "subject" is often avoided by Imperialistic orators, and the word "citizen" is substituted.

Turning again to the Oxford Dictionary, it will be found that

“citizen” is defined, in one sense, as “burgess, freeman, of city; townsman,” and again, but in a different sense, as “member, native or naturalized, of a State”. Of these two senses, the first is the original, and, for our purpose, true one, and the other is quite secondary—i.e. it is rhetorically applied to a member of a State, as though that State were a “city”.

It should here be noted that the familiar phrase *civis Romanus* is right, in that the whole territory of Imperial Rome was technically annexed to the city which was the origin and centre of that Empire. But in our own Empire there are no corresponding conditions to justify the use of the term *civis Britannicus*; or, if used, it should be translated as British subject, not citizen. It is true that in parts of the British Empire there are places, generally unimportant, which have been specifically attached not directly to the central British sovereign power, but to some provincial centre of British administration in something like the same way that all the parts of the Roman Empire were attached to Rome—e.g. the little Cocos Islands, isolated in almost the centre of the Indian Ocean, are thus now technically a part of the “city” of Singapore in the Straits Settlements; so that a Cocos islander might fairly call himself a citizen of Singapore, but not of the British Empire.

In short, all persons—I here purposely avoid using the words “all men”—who owe allegiance to our Sovereign are British subjects, and only some of these—and that by a separable accident—are citizens of anywhere; and none are “British citizens” except by a misuse of language.

But there is possibility of further confusion of thought as to the proper status of “British subjects” in that it is often only half realized that this status of subjectship gives to those who hold it duties and rights only as between themselves and the actual Sovereign power—be it King alone or King and his Parliament—of the Empire, and does not in itself in any way affect the relation of the holder to the State or city or other place of his domicile. For example, all persons born or naturalized in New South Wales are British subjects, but not British citizens, though they may be—probably always are—citizens of

Sydney or of some other town in the same State, or even, by a slight stretch of language, of that State itself.

From all this it follows that "subjectship," in any legitimate sense, must be a relation between the actual Sovereign of the British Empire—i.e. the King with his Imperial Parliament—and each individual subject; but, on the other hand, the quite different rights of citizenship are dependent on the relation between the citizen—quite independently of the accidental fact that he is also a British subject—and the ruling Power, not of the Empire but of the State, city, or definable place within which that right is enjoyed.

EVERARD IM THURN.

XVIII

Thank you for reminding me of Mr. Sargant's article "British Citizenship". In the pressure of my work here I had not yet found time to reply to your request for an expression of opinion. The subject of Mr. Sargant's article is one of great difficulty, and I think he has rendered a service by calling attention to the confusion which exists in many minds on the subject, and to the desirability of arriving at a clear and definite conception regarding it.

The Roman lawyers drew a definition between different kinds of citizenship—"civitas"—which might help to elucidate the subject. They distinguished between private rights and public rights. The position of citizenship for the purpose of PRIVATE rights included "*commercium*" and "*connubium*," that is to say, all the rights connected with property and trading, and all the rights connected with the family relations. Citizenship, for these purposes, was not only enjoyed by all Romans in the strict sense of the word, but was extended to a very large number of the inhabitants of the countries which from time to time came under Roman authority. The possession of PUBLIC rights of citizenship authorizing a man to participate in the Government included "*suffragium*" and "*honores*," that is to say, the right of voting and the right of being elected to a public office.

This distinction is a useful one to bear in mind for our purposes.

Every British subject, all over the world, whatever his race, colour or religion, possesses under our Government private civil rights. To be a British subject is to have the benefit of British law, with all the protection it implies, and to be the object of British protection in any country in which that subject may be residing. This possession of British rights rests upon allegiance to the Crown, which is the same for every British subject everywhere.

Participation in Government, whether it be through the right of voting or through that of being eligible to office—and in the British Empire these two things practically go together—is quite a different matter, and depends to a large extent upon local laws. A British subject residing in one of the self-governing Dominions may be by local law debarred from the exercise of political rights in that Dominion, but that will not affect his position in respect of his private rights as a British subject. It is remarkable that the United Kingdom seems to go further than most of the self-governing Dominions, in extending political rights in the United Kingdom to all, whether Britons or not, who are British subjects ; for instance, as you know, natives of India have more than once been elected to be members of the House of Commons, and I am not aware of anything in our law to prevent a Parsee, for instance, or Hindu, or a Chinese British subject from Singapore, from being a Minister of the Crown. Upon this subject I think I have written something in an essay upon the British Empire in India, in a book called “Studies in History and Jurisprudence” published some years ago. (I have not a copy by me at this moment.) The anomaly referred to by Mr. Sargant that a man may be a British subject in Canada and not in the United Kingdom, is altogether opposed to sound principle, and the remarks made by Sir Wilfrid Laurier, which Mr. Sargant quotes, seem to be entirely apposite and correct. I apprehend, however, that in practice any man who is a British subject in Canada, would receive the protection in a foreign country of the British Government, acting through the Foreign Office, just as much as if he were a British subject in England also. As respects the use of the words “subject” and “citizen,” “subject” (I think) is the technical term which is always used in our statutes, and which is

rooted in the conception of allegiance, but of course, there is no reason why we should not use the term "citizen" if that is preferred.

The really essential point seems to me to be that we should dwell upon the fact that the citizenship which gives a man or woman full private rights, entitling him to be treated everywhere in the British Empire as equal in respect of all private rights to all his fellow subjects, is the basis of our whole imperial conception, and is the really great service which our law is rendering to every inhabitant of the British Empire who owes allegiance to the Crown. Political rights are a totally different matter. They may vary according to the competence which the British subject is deemed by law to possess for taking part in the Government of the country where he resides, and the distinction between the private side and the public side of a subject or citizen ought always to be kept clearly before our mind.

JAMES BRYCE.

XIX

When we speak of "British citizenship" we unconsciously assume that the context will enable our audience to understand the meaning of the phrase; in using the words "subject," or "citizen" we also make the same assumption, and usually find that the context has defined with sufficient accuracy for practical purposes. It would of course be a great assistance if there were separate words to distinguish Imperial citizenship, and local citizenship, but until the needed phrases are found we have to content ourselves by remembering that words are only tokens or counters, which mean that which they are intended to mean by the speaker, and that which they are understood to mean by the hearer.

One reason for the vagueness of the token sounds which we utter when we speak of "British citizen" is that several sentences—indeed almost an essay—are needed to distinguish the unique confederacy known as the "British Empire" from those organizations (such as the Roman or German) to which the term "Empire" can be accurately applied; and, as this difficulty exists with respect to the British Empire as a

whole, it is but natural that there should be no clear-cut token to represent the rights which the Empire gives to its citizens.

The rights attached to this much-prized citizenship are not at present uniform. There is a mechanical convenience about uniformity which is very alluring in the study ; but the worthy citizens in the street would abandon their staid gait and break out in open riot if threatened with universal uniformity. Their action might, perhaps, be regrettable, but it would be very natural ; and the same disturbing prejudice will continue throughout the Empire, because climate, race, and local conditions affect men's aspirations so greatly that what is held to be a much-prized right in one latitude would be regarded elsewhere as an unjust and insupportable burden.

Thus in England a man's house is regarded as a castle which is impregnable to any force save a warrant issued with due solemnity by the law ; and a citizen of London would feel that sacrilege had been committed upon the rights of citizenship were he to find, upon returning home from business, that during his absence his house and cellar, store room, and other locked places, had been broken open by a constable under the ridiculously inadequate pretence that an undesirable alien might be hidden upon the premises. In Australia, however, the local conditions are such that the citizens would not consider such action as an invasion of a sacrosanct right, but would applaud the constable's conduct—especially if the Chinaman was caught—because they would regard the whole incident as an indication of a zealous determination on the part of the Executive to enforce the provisions of the Immigration Restriction Act of 1910, and thus ensure that the Commonwealth shall ever remain a home for white races.

There are, however, certain rights and ideals concerning which there is but little shift of opinion, and the general nature of these is made plain if we remember the main reason why the British Empire is so called, and why people who have never been in England, Wales, Ireland or Scotland are prone to claim the rights of British citizens. Our Empire is called British because those who made it came from the British Isles ; and the expression British citizen has acquired Im-

perial usage because the founders of the Empire invariably cherished two principles : loyal allegiance to the Throne, and zeal for certain rights and ideals which are always associated with British citizenship. Long before the Habeas Corpus Act the people considered that the accused had a natural right to fair trial, and thus we find that throughout the Empire strenuous efforts have always been made from the first to establish a judiciary which is separate and distinct from the Executive ; and if the administration or the legislature of a colony proposes any reform which is regarded as conflicting with the system thus established, a tumult is certain to arise ; and the premier argument of the objectors will be : " We demand that this unjust proposal shall be dropped. It is unconstitutional, because it is against the sacred rights of British citizenship."

Another traditional right is the claim by the people to be consulted in matters which affect their pocket or their purse. The War of Independence, indeed, was brought about because the settlers in America considered that their rights as British citizens were violated by the proposal to tax where there was no proper machinery for representation ; but since the rupture those in authority have ever been ready to admit that the inhabitants of every land over which the flag flies possess this right of British citizenship ; and that consequently they ought to have their say—indirectly if direct representation is impracticable—in all matters which concern them or the country in which they live.

Those in authority make this admission spontaneously, because they are guided by the instinct of traditional citizenship, and consider it to be a fundamental rule of Imperial policy that the rulers should consult those over whom they rule. Examples of this habit of thought have been frequent in the Protectorates of West Africa. The Protectorates form no part, in a technical sense, of His Majesty's dominions, and they contain many places in which, until stopped by force of arms, human sacrifice, the murder of twins, and similar atrocities, were habitual practices. No place would seem more unsuited to the growth of British citizenship ; yet the first step taken by the civilian officer entrusted with the charge of such a district has been to summon the

chiefs and the principal men of the tribes, in order that they might be consulted as to how the country may be made to prosper ; and the reality of this consultation, as well as its magical value, are shown by the fact that in the Protectorates—I speak with special knowledge of Sierra Leone—the inhabitants have learnt the value of British citizenship. They mourned at the death of King Edward, and would desire to help His Majesty, King George, should the Empire, of which they consider themselves to be citizens, have to pass through a time of stress and strain.

Freedom of conscience, a claim to be allowed to live under conditions which are not derogatory to self-respect, the right to resist arbitrary action, are also included in the general qualities that tradition attaches to the birthright of British citizenship ; and it is unnecessary to exhaust the list, because those enumerated are sufficient to show that the rights of citizenship are based upon broad principles, and that consequently they cannot be accurately defined in detail. It is, indeed, inevitable that in our widespread complex Empire the accurate speaker should be compelled to limit his choice to words of wide and general meaning, when he desires to refer to those rights which all citizens claim, or to those obligations which rest upon all subjects. This limitation is not a defect due to the meagre character of Imperial phraseology, because a similar restriction in choice is imposed when we discuss law, science, or theology ; and, even if we could create an apt word which would describe accurately all that we now mean when we speak of British citizenship, it is a matter of certainty that within a very short period—probably less than one year—some change in the rights, or status, of that citizenship would occur which would make the recently created word no longer an accurate token of thought. Such changes are due to the vital force of the component parts of the Empire, and, if an Act of Parliament was passed with the object of attaching a permanent and detailed meaning to the words used in Imperial phraseology, this vital force would make it necessary for the legislators at Westminster to pass an amending Act before copies of the parent law could be distributed at the outposts of the Empire. This assertion may appear discouraging, but if we look at

the detailed working of the Merchant Shipping Laws—one of the few examples of Imperial legislation—it will be found that, contrary to the express intent of Parliament, the rights attached to a British ship are no longer universally identical,¹ and consequently proof is afforded that in matters of detail the rights attached to British citizenship would show an irresistible tendency to diverge from those enumerated and defined in the most skilfully drafted Imperial code.

It would, however, be a mistake to suppose that it is useless to consider what is meant by the expression “British citizenship,” and the other conventional phrases which are used in discussions concerning Imperial affairs. As a result of the Merchant Shipping Acts the general meaning of the term “British ship” is now known not only to experts, but to the whole community; and the advantages which are thus gained are only slightly lessened by the variance that exists in some of the rights and obligations which are attached to the registered vessels. Similarly, investigations of the kind suggested by Mr. Sargant’s article in the November “United Empire,” tend to so stamp the tokens which compose the Imperial vocabulary that the users can readily distinguish between words of constant meaning—a rare class—and those terms which are only accurate when applied in a broad and general sense. Such investigations have a further value in that they disclose the remarkable similarity which exists between the claims and qualities that are esteemed throughout the Empire to-day and the ideals which were cherished by the British citizens in olden times. The reason for this similarity is that the character of a people determines the nature of the rights which are most prized. Character is an infecting force, and thus we find that the value which the founders of the Empire set upon certain ideals has so affected succeeding generations—irrespective of creed and colour—that their most cherished creed is to acquire and retain the traditional rights of British citizenship. It is in this that the Empire is fully homogeneous; and the reason why the co-operation for Imperial purposes will grow stronger without in any way weakening local independence, is that the citizens of all the

¹ A striking example of this divergence is described in the “Journal of the Society of Comparative Legislation” (vol. 24, N.S. p. 295).

component parts of the Empire resemble the traditional British citizen in character and general ideals. The common phrases of a people blazon their character, and the widespread usage of such expressions as "shoulder to shoulder," and "pull all together," prove the common instinct for co-operation and show that the citizens of the Empire will, if need arise, stand doggedly in fight against a common foe.

The ideals which are valued throughout the Empire were defined by Lord Grey at the dinner which was recently given in his honour by the Council of the Royal Colonial Institute. Fair play, freedom, duty, and an ungrudging recognition of the equal rights of others, were cited; and it was pointed out that not only were these ideals the outcome of the "highest practical manly" religion, but also that it is on account of them that the denizens of the Empire regard it "as a privilege which no wealth can measure" to be able to call themselves British citizens. The mere mention of these ideals irritates many people. Some scoffingly say that sentimental folk had nothing to do with the winning of Trafalgar, and that ideals in business lead to bankruptcy. Others allege that the theory that such ideals exist is nothing but hypocrisy; they point to the portrait of John Bull, and say it rightly depicts a stolid, food-loving person who would dub all ideals as "stuff and nonsense," and who wants plain contracts made which will ensure that a just contribution is given by each part of the Empire towards meeting the Imperial expenses. The first class—those who deny the potency of ideals—forget the stimulus which ambition gives to a man, and do not understand that such ideals take the place of ambition and are the soul of an Empire which, as Lord Grey stated, does not stand for aggressiveness or for the wanton, arrogant, or unscrupulous exercise of force. The other class—that alleging hypocrisy—forget that the British citizen clamoured until he gained the right to read the Bible in his own language; they forget the abolition of slavery, the payment of the Alabama claims, and the many other occasions on which John Bull—in spite of his portly form—has unselfishly placed the rights of humanity before pocket, and this forgetfulness prevents them from understanding that narrow selfishness would hinder, and probably destroy, a policy of Imperial co-operation;

but that an antidote against such disintegrating selfishness exists in the virile faith of those who believe that the Empire will be looked upon with favour by the Lord of Hosts as long as its members cherish and seek to attain the ideals of the "British citizen".

L. PROBYN.

XX

The article on "British Citizenship" in the November number of this journal suggests two questions. The writer begins by asking "What do we mean by British citizenship?"—that is, what is the sense in which the words citizen and citizenship are actually used or ought to be used? But it is clear that he also has in his mind the further question, which is not a mere dispute about a word, "What are and what ought to be the rights and obligations of a British subject by reason of his status as such?"

It is useless to ask what are or ought to be the rights and obligations of British citizenship, or to talk or argue about the position or dignity of a British citizen or a *civis Britannicus*, unless we first settle what we mean by those terms. And Mr. Sargant shows that they are used very loosely. Some people speak and write of a "citizen" when they mean a subject; but most of us would say that a British subject is not necessarily a British citizen; that, for example, a native resident of British India is a British subject but is not a British citizen; that an Englishman born and domiciled in England is a British citizen although he may not have a vote for the election of a member of Parliament; and that a white Canadian subject domiciled in Canada is a British subject and a Canadian citizen but is not a British citizen. On the other hand, the term "British subject" is, in spite of Salmond's opinion, sufficiently clear and free from ambiguity and well established. It does not include a resident alien; but it includes all who owe allegiance to the Crown.

In considering, therefore, what are or ought to be the rights and obligations of a British subject it is well, in order to avoid ambiguity and misunderstanding and misleading analogies, to keep to the term "subject," and to avoid the vague and ambiguous word "citizen".

When Sir Wilfrid Laurier spoke of the *civis Britannicus* he meant "British subject"; and when Mr. Churchill spoke of "the status of British citizenship" he meant the status of a British subject; but when South African statesmen discuss, as they are now doing, the policy of making military service compulsory on "every citizen," they do not mean every British subject in the Union, but only those white residents who have certain political rights.

Sir Wilfrid Laurier thought that an American citizen who has entered Canada and taken out letters of naturalization there, and so has become a British subject in Canada, is still an American citizen if he goes to Great Britain; and the editor of this journal, who speaks of "rectifying the anomalies whereby a British subject in one part of the Empire may be a foreigner in another," appears to assent to that opinion. But, as Professor Maitland has pointed out, that is a mistake; the man is no longer an American citizen but is a British subject in whatever part of the Empire he goes to; his status as such is clear; nor is there at present any great difficulty about his rights in virtue of that status, if he is a white man. If, however, a man of colour who is a British subject seeks to enter and settle in Australia, for example, he finds that he is subject to certain disabilities by reason of his colour; his rights as a British subject do not include the right to enter and remain in every part of the Empire on the same terms, as if he were a pure white. And it is impracticable to prevent a self-governing Colony from imposing disabilities on persons of colour seeking to enter it, whether they are British subjects or not.

J. T. HUTCHINSON.

XXI

I have to acknowledge the receipt of the interesting and illuminating article of Mr. E. B. Sargent, on "British Citizenship". In answer to your invitation for an expression of opinion on the question "Is a citizen the same as a subject? If not, what is the difference?" I submit the following:—

Apart altogether from the matter of terminology, I think a distinction exists, and ought to be recognized, between the *natural*

and the *political* status of every individual who owes allegiance to the British Crown.

The *natural* status is acquired either by *birth* or by *naturalization*. As regards birth the rule is general and applies to British soil, wherever it may be found and in whatever state of development its political institutions may be: "British born subject anywhere, British born subject everywhere". This rule, however, does not hold with regard to naturalization. Each self-governing portion of the Empire claims and exercises the right of fixing its own terms of naturalization, whether the applicant has been naturalized elsewhere within the Empire or not. This gives rise to serious anomalies and complications, and the question is: How can these be overcome, without interference with the rights of the self-governing Dominions?

Two ways suggest themselves: (1) The Parliaments in the Empire should legislate to put persons naturalized anywhere in the Empire on the same footing as born subjects; or (2) the Imperial Parliament should pass a Naturalization Law applicable to the whole Empire, which could then be adopted by the self-governing Dominions. In adopting such Imperial Act for persons who have been naturalized elsewhere in the Empire each Dominion will have to decide whether it will continue its own naturalization law for the admission of aliens, or whether it will apply the Imperial Act generally. The Imperial Conference of 1911 adopted, whether wisely or not time will show, the second much more complicated alternative, involving as it does the probability of double naturalization laws and certificates in each Dominion that adopts the new system.

Coming now to the consideration of what I have called the *political* status of British subjects, it is quite obvious that in this respect there can be no question of uniformity, since such status depends entirely upon the local laws of each self-governing community. The Earl of Crewe, speaking at the last Imperial Conference, said: I fully recognize—as His Majesty's Government fully recognize—that, as the Empire is constituted, the idea that it is possible to have an absolutely free interchange between all individuals who are subjects of the Crown—that is to say, that every subject of the King, whoever

he may be or wherever he may live, has a natural right to travel or still more ~~more~~ to settle in any part of the Empire—is a view which we fully admit, and I fully admit as representing the India Office, to be one which cannot be maintained. As the Empire is constituted it is still impossible that we can have a free coming and going of all the subjects of the King throughout all parts of the Empire. Or to put the thing in another way, nobody can attempt to dispute the right of the self-governing Dominions to decide for themselves whom, in each case, they will admit as citizens of their respective Dominions.”

As to the use of the terms “subjectship” and “citizenship,” to express *natural* and *political* status, I see no objection, provided that the difference is clearly understood and the rights falling under each are correctly defined.

F. S. MALAN.

XXII

The first condition of intelligent discussion is to define your terms, or, at least, to form a clear conception of what you mean by the terms that you use. In the course of time words often acquire new significations by way of accretion, what is at first an accidental attribute coming to be regarded as essential. While the old concepts are thus modified, the same terms are still used, sometimes in the original, sometimes in the altered sense, with consequent confusion of thought. This is the key to a confusion manifested in some of the expressions of opinion quoted by Mr. Sargant.

The fact is, that with the expansion of the British Empire and the new forms of relationship that have grown up between the Sovereign and the dependencies the old nomenclature has become inadequate for the new purposes to which it is applied, although discussion still goes on with the old names as counters.

I will take first the term “British subject,” which is generally defined as meaning a person who owes permanent allegiance to the British Crown. Every human being must, of necessity, “belong” at birth to some country. (I need not define that term.) The original use of the term “British subject” was to distinguish persons of whom

it was used from aliens, that is, persons who belong to some other country. It was a term denoting status, and is expressly so treated in the cross-headings to the Naturalization Act, 1870. That status confers on the holders of it, *inter alia* but principally, the right (correlative to the duty of allegiance) to claim the protection of the Sovereign Power as against other nations. In some instances it is a condition of the capacity to enjoy certain rights or privileges within the Empire. But, for the most part, the right to enjoy and invoke the protection of the laws of the realm and to acquire and hold property arises, not from that status, but from the mere fact of being a human person within the realm.

It is a right of every Sovereign to exclude aliens from his dominions. But the notion of a Sovereign excluding a subject, except by way of punishment (banishment) was so inconsistent with their mutual relations, as commonly understood, that it did not occur to anyone. Hence it came to be thought that the status itself conferred the right of free entry into any part of the dominions. It was, indeed, true in fact that a British subject enjoyed such freedom of entry, since there was not in any part of the dominions any law which authorized interference with his freedom as a human being in that respect. It is not material whether this freedom of entry is called a right or a privilege. Whatever it is called, it was subject to be controlled or abrogated by legislation. The term "British subject" thus came to connote, more or less distinctly, this right or privilege.

The framers of the Constitution of the United States of America naturally rejected the word "subject," which was inapt when the only Sovereign was the collective people, and adopted the term "citizen". The term "citizen of the United States" accordingly has a very definite meaning. Freeman, indeed, uses the word "citizen" to denote the people of a Republic as distinguished from the people of Monarchies, for whom he retains the word "subject".

But the terms "British citizen" and "British citizenship" are, I venture to think, with all respect for the high authority for their use, inapt and misleading. The term *civis Romanus* had a definite meaning, connoting both status and privilege. There has never actu-

ally been in the British dominions a corresponding status extending to the whole Empire, but the term "British citizen" more or less distinctly connotes, or at least suggests, such a status, and has given rise to consequent confusion of thought.

Another term has, however, of late years come into use to denote the people of one Sovereignty as distinguished from those of another. I mean the term "national". This term has not attracted to it any of the subsidiary attributes which have come to be connoted or suggested by the terms "British subject" or "British citizen," and I will use it, as I have before now felt myself compelled to do, for the purpose of avoiding such confusion.

The real question for consideration is, What are the rights of British nationals, as such, within the congeries of Sovereignties which now constitute the British Empire? What they ought to be is another question, which is not easy of solution, and with which I am not now concerned. But it is well to start with a clear conception of the law as it is.

I have already said that the right or privilege of entry into any part of the Empire is subject to be controlled or abrogated by legislation. Of what Legislature? The answer must be—The Parliament of the United Kingdom, or the Legislatures of any of the Dominions, Possessions, or Dependencies of the Crown on which authority to deal with the matter has been conferred.

In the case of the Immigration Act of Natal that Colony, which claimed the right to legislate on the subject, was—strangely enough from one point of view—invited to put British nationals on the same footing as aliens, and this, too, by way of concession. The power to pass laws dealing with the subject has now been frequently asserted by the Dominions and exercised without challenge from Downing Street, and it is too late to deny it. The exercise is, of course, nominally subject to the Royal Veto, but that prerogative is not in these days lightly put in force.

I submit the following propositions as correctly expressing the existing state of the law:—

1. British nationality confers upon the holders of that status the

right to claim the protection of the British Sovereign as against Foreign Powers.

2. It does not, of itself, entitle the holder to any political rights or privileges within any part of the Empire, but it may be a condition of the enjoyment of such rights or privileges.

3. In the absence of any positive law to the contrary a British national is, probably, entitled to claim the right of entry into any part of the British Empire.

4. A competent Legislative Authority of any part of the Empire may by positive law restrict or deny that right of entry.

I offer no opinion upon the vexed and difficult question of the extent to which naturalization under the law of one part of the Empire confers the status of British nationality in other parts, a question which cannot be definitely solved, except by the Parliament of the United Kingdom. I conceive, however, that such naturalization confers the right to claim the protection of the Sovereign (Prop. 1).

If it is said that in this state of the law a British national is not much better off than an alien so far as regards other parts of the Empire than that to which he belongs, I would reply (1) that it is not a small thing to be a member and to enjoy the protection of the might and prestige of that Empire; and (2) that the existence of a power and its exercise are very different things, and that, although the power stated in my fourth proposition undoubtedly exists, yet, for practical purposes, it is likely to remain a negligible quantity so far as regards a very large portion of nationals.

After all, "Things are what they are. Therefore, why should we deceive ourselves?"

S. W. GRIFFITH.

XXIII

The extreme difficulty of the subject is best illustrated by the fact, that the statements of so learned and careful an authority as Mr. James Bryce must be qualified before we can arrive at an exact understanding of the position.

Mr. Bryce says, for example, that "every British subject . . .

possesses under our Government private civil rights". This is no doubt true, in the sense that no British subject, not even a convict, is wholly without civil rights of some kind. But it is largely qualified by the undoubted fact, that the civil rights of British subjects differ immensely, according to the part of the Empire in which they may respectively be residing, and even to a certain extent according to their racial origin. Again, Mr. Bryce says that "to be a British subject is to have the benefit of British law". Now there may in the future be such an entity as "British law"; but at present it is hardly possible to say such a thing exists. There are, as a glance at any issue of the "Journal of Comparative Legislation" reveals, a large number of British laws, varying almost infinitely from place to place within the British Empire; and many of them are based on common principles. But they all differ infinitely in practical details; while some, in South Africa for example, are based on principles wholly alien from those of the majority.

Again (though here, of course, Mr. Bryce freely admits the local differences), even such a statement as that in the British Empire the right of voting and eligibility for office go together, is subject to important exceptions. In Australia, for example, though adult women have generally the right to vote in federal and State elections, it is assumed that they are not eligible for federal or State office.

On the whole, however, there is certainly such a thing as British "nationality," i.e. the condition of allegiance to the British Crown. And, as Mr. Bryce points out, this condition entitles its bearer, unless he forfeits the right by misconduct, to the protection of the Imperial sovereignty both within and without the Empire. Thus, for example, he is entitled to question the arbitrary exercise of executive authority, while the foreigner is not (see the well-known case of *Ah Toy v. Musgrove*). This condition of nationality also renders the bearer of it liable to be called upon, in the last resort, for military service (at any rate if he is an adult male), and subjects him to full taxation; while it involves the Imperial Government in a certain undefined responsibility for his conduct towards a foreign Government. The difficulty of terminology in connexion with nationality is, that there

is no ideal term for the individual bearer of it. The term "nationals" is known in diplomatic correspondence; but it is unfamiliar to the general public. While to the term "subjects" there are sentimental objections.

I agree with the majority of your contributors that at present it is quite hopeless to attempt to attribute any definite meaning to the phrase "British citizen," beyond the meaning that the person described by it is the bearer, actual or potential, of active legal rights in some definite unit of the British Empire. But even then we have to remember, that in every such unit there are different grades of citizenship, and that these grades may receive only partial recognition in other units. Historically, I believe that "citizenship" implies subjection to, and enjoyment of, a common system of law; and in the later Roman Empire such a status did, I believe, exist, so far as private rights and duties were concerned, for all the free subjects of that Empire. Hence the well-known title, *civis Romanus*.

But before such a phrase as "British citizen" can acquire a corresponding meaning, a great centralizing change, amounting almost to a revolution, will have to occur; and this change may prove to be wholly alien to the tendency of British development. At any rate for the present, federalism, or devolution, would appear to be a more popular ideal than centralization.

The truth seems to be, that the British Empire has the symbols of unity—the Crown, the Imperial Parliament, and the Privy Council—but not the reality. For the Crown, though it governs throughout the Empire, governs according to local law; the Imperial Parliament very rarely (and only under strict limitations) legislates for the self-governing Colonies; while the Privy Council, through its Judicial Committee, decides cases, not according to one but many systems of law. It is easy, however, to underrate the value of symbols.

EDWARD JENKS.

XXIV

(a).—THE CITIZEN AND THE SUBJECT

What do we mean by British citizenship? Many of the readers of "United Empire" who have followed the discussion of this question, which began in last November's issue, are not unlikely to declare that

the confusion of thought upon the subject is still just as great as when the question was first raised. I said in my opening remarks that the most practised speakers and writers used these words with quite different connotations, and with no generally acknowledged line of demarcation between the citizen and the subject, and the subsequent contributions to the discussion not only confirm the instances which were then given but even extend the field of contradictory ideas. Were this all that had been achieved, it would still have been worth while to bring to light such divergencies of thought in regard to a term which is in constant use and has a high political value.

But on myself at least the effect of this many-sided discussion has been to confirm one guiding principle, namely, that, in the evolution of their rights and duties, citizens are to be regarded primarily in their political association with one another, subjects in their individual relation to a single person who is their ruler. The national rights and duties of the citizen tend to become as simple in their legal expression as they are complex from the point of view of the social and political considerations which govern them, while the rights and duties of the subject are as simple in their ethical aspects as they are complex upon the legal side.

First, however, it may be well to clear the ground of an element which is not vital to the discussion. Constant allusion has been made to alleged defects in the Naturalization Act of 1870, and this was to be expected since in my original article there occurred several quotations from speeches at the last Imperial Conference upon that very subject. My object was merely to show how completely the Ministers of the various self-governing Dominions were at cross purposes owing to the fact that some of them ignored altogether any difference between a British subject and a British citizen, while others consider that difference to be of fundamental importance. The most that any new Imperial Act in regard to naturalization can do is to make it clear that an alien naturalized in any part of the Empire has everywhere the same claim to be a British subject. If he has other claims as a citizen these would in no way differ from the claims of natural-born British subjects placed under the same conditions.

The truth is that the chief advantages of being a British subject are experienced in foreign lands. In regard to many private rights, he is not much better off in his own country than is the actual alien. As Sir Samuel Griffith observes, in his contribution to this discussion, the right to enjoy and invoke the protection of the laws of the realm arises, for the most part, not from the status of a British subject, but from the mere fact of being a human being within the realm. Indeed, in certain parts of South Africa there are aliens who have never been naturalized, but who can trade and acquire and hold property more freely than most British subjects. It is the local laws which determine such rights as these, as well as the right to enter the country; and in practice the effect of such local laws and of the consequent regulations is to draw a much broader distinction between persons of European and non-European descent than between subject and alien. Mr. Jenks points out with great truth that this distinction on the ground of racial origin diminishes immensely the force of Mr. Bryce's observation that every British subject, all over the world, whatever his race, colour, or religion, possesses under our Government private civil rights. On the other hand, I am not aware that in any part of the Empire the alien who has no declared intention of being naturalized is better off than the British subject as regards rights of citizenship, though among the many varieties of municipal institutions such cases may occur.

Where there is no kingship, and where there are no subjects in the ordinary sense, the word citizen is of general application. Dr. Walton points out that even minors are held to be American citizens. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. These words—which are those of the fourteenth amendment to the Constitution—have a special interest because they set forth two kinds of citizenship, one of the State and the other of the Commonwealth, in addition to that municipal citizenship which everybody recognizes as the original and elementary sense of the word. It would be impossible to give such an extension to the meaning of British citizenship as to include minors within its scope.

But the question of real importance suggested by the American analogy is this. Does our own conception of citizenship include three separate notions—a municipal citizenship, a national citizenship, and a federal citizenship?

Prof. Westlake says definitely that in England the word has no legal meaning except that of the burghers of a municipal corporation which enjoys the purely honorary rank of a city, but that its rhetorical meaning may be any which the writer who uses it likes to give it. This still leaves to us the task of separating that rhetorical use of the word which belongs to ordinary speech from the less familiar and exaggerated use which is commonly understood to be rhetorical. At this point Sir Everard im Thurn helps us by opening the Concise Oxford Dictionary, and finding that "citizen" is defined in one sense as "burgess, freeman of city; townsman"; and again, but in a different sense, as "member, native or naturalized, of a State". The first definition (with the omission of the colloquial meaning of "townsman") gives room for a municipal citizenship, which passes beyond the limits of the city proper, though it does not extend to the whole area of local government. The other sense, embracing a national form of citizenship, is, as Sir Everard remarks, quite secondary; but with all due deference to his opinion, I believe it to be no less important for our present purposes. In not excepting the ruler of the State, it stands in marked contrast to the definition of the subject—which he also quotes from the same source as a "person subject to political rule; any member of a State except the Sovereign".

This secondary meaning of a citizen as a member of a State (not *any* member) includes a growth from membership of a part of a State which was once separate to membership of the whole. The question is at what point in this process we ought to stop. The United Kingdom is certainly a State. But it is not possible so to speak of the British Empire with its many and varied forms of government, merely because the authority of the Crown is all-pervasive. There is only one person who is necessarily a member of every State within the ambit of the Crown, and that is the Sovereign. Yet it is owing to such an unwarranted extension of the idea of citizenship,

under the protection of the epithet "British," that much of the confusion between the status of the citizen and of the subject occurs. Just as British subjects everywhere owe allegiance to the Crown and receive the benefits correlative to that allegiance, so it is assumed rhetorically that as British citizens they have certain common rights and duties throughout the Empire. When hardly pressed, the orator will admit that there are subjects who lie under the most complete legal disabilities as citizens even in their own country. But at this point he takes refuge in the argument that Sir Walter Hely-Hutchinson has used in this discussion, namely, that it would be a grave mistake to label British subjects who suffer under such disabilities with a name connoting inferiority, different to that borne by their fellow-citizens—to say to them, in effect: You are not a British citizen; you are only a subject.

This is the rhetoric that would for ever prevent us from disentangling the thread of citizenship. It ignores disabilities due to racial origin, it ignores disabilities due to sex, it ignores disabilities due to youth or mental incapacity or offences against the law. It speaks of things not as they are but as we would wish them to be. It increases the difficulty of such great constructive efforts of federal statesmanship as still lie before us, and it injures most decisively the very persons in whose supposed interests it is habitually used. We have a choice of methods. We can go to those who have inquired with studious care and reverence into the full meanings of citizenship that are afforded by the history of constitutional development in England, and this not only for our own guidance but with the object also of leading other British subjects of other origins upward by paths not wholly dissimilar. Or we can speak as if, without effort on their part, all British subjects were already at the same goal—as if a mere general certificate of naturalization, placing its holders upon a level with the least civilized of the natural-born subjects of the King, could secure to them, in the words of Mr. Winston Churchill, a uniform and world-wide status of British citizenship.

Rather than give this meaning to the term, I should agree with those contributors to this discussion who assert that there is at present

no such person as a British citizen, and no such quality as British citizenship. But as soon as we begin to inquire separately into the the meanings of municipal, of national, and of federal citizenship, as these have grown up and are still spreading organically within our Empire, we are forced to acknowledge that there are certain political qualities, common to them all, and quite distinct from the qualities pertaining to the condition of a British subject, which need a generic term. Let us do this, however briefly, and at the end of these separate inquiries let us ask ourselves whether the name which we have associated, consciously or unconsciously, with these essential qualities is not British citizenship.

(b) THE CITIZEN AND THE CITY

In whatever directions British ideas of citizenship may have become enlarged in the course of centuries, at any rate they passed through a stage in which the city was the dominant factor. When the Saxons colonized England, the municipalities and strongholds of Roman origin had to be taken into account, and even if for a period they became waste places, while the invaders settled outside the walls in their regular village communities, yet the pressure of fresh invasion, as well as of internal struggles for supremacy, forced much of the political and military power of the new colonists within Roman fortifications. Before the country as a whole received a king of Danish origin, London was not only a busy commercial centre but was strategically capable of holding even Canute at bay. That there may have been some continuity of municipal administration from the time that the Roman power was withdrawn, it is not possible to deny, but at any rate the leading feature of civic life in later Saxon times was the gradual adaptation of village and tribal institutions to the great city wall and to its surrounding territory.

Our municipal liberties were thus Germanic in origin, but they were poured into a Roman mould. So protected they were able to survive the impact of feudalism and to take their full share in preparing the way for free national institutions. Rights and duties of members of the community which, in their larger administrative aspects,

came to be obliterated outside municipal boundaries, were preserved, adapted, and enlarged within those limits almost up to the Tudor period. Increase of trade with the Continent made our merchants sufficiently familiar with the revolutionary changes in government of the cities of Italy, France, and Germany, and from the thirteenth century onwards a large number of constitutional experiments were tried all over the country. It is probable, however, that the popular judgment only approved such experiments in city government as were thought to be in accordance with those traditional ideas of liberty which so many centuries later inspired the words of Abraham Lincoln : "Government of the people, by the people, for the people".

Without doubt citizens were often in error in regard to the antiquity of their liberties. Thus, while freedom of speech and of assembly, with some general participation in deliberative, judicial, and administrative affairs, belong to the village institutions of the Saxons, the peculiar sanctity of the Englishman's house can probably be traced to immunities within the city appertaining at first only to the specially privileged residences of the great lords. The rights of conscience could scarcely have been mooted till much later still ; and so far from liberty of the person having been at first a general right, we know that there were both slaves and freedmen among the Saxons, in the country of their origin, as well as freemen and nobles. Under feudal law, villenage was no less a process of levelling up the slaves than of depressing the freemen, so that the part played by the cities in securing personal liberty lay chiefly in resisting any lowering of the status of the higher class.

As the power of the King prevailed over that of the Church and Baronage, and grew to be despotic in character, the charters that had nominally confirmed, and in practice extended the liberties of the city, became instruments of repression and tutelage. This process seems to have been delayed for a time by the knowledge, so tardily acquired in England, of democratic city life among the ancient Greeks. Even at the end of the sixteenth century the judges gave an opinion that town councils could by by-law determine laws for the government of the town regardless of the terms of the charter. But in the eighteenth

century the judges decided to the contrary. During part of the interval in time municipalities, from a constitutional point of view, were no more than pawns moved by a legal hand, and this is as true of the Commonwealth as of the reigns of the Stuart kings. Only when James II pushed this hand too far, in pursuance of his religious policy, did popular indignation oblige him to give back to the cities and boroughs their ancient charters. To a few, and among these to some of the greatest of our cities, democratic government was thus restored; but by far the larger number remained close corporations until the nineteenth century.

Now at what period in the history of municipal citizenship in this country did the citizen feel that his rights and duties were simply the rights and duties of a subject? Was it when London by turn acknowledged the overlordship of such petty rulers as those of Kent and Essex, and thereby established for many centuries her claim to a separate voice in the election of the King? Was it when the Conqueror, fresh from his victory at Hastings, waited to negotiate with the citizens of London from as far away as Berkhamstead? Was it when she threw open her gates to the Barons before they marched to Runnymede? Was it when a citizen could boast in 1194, "Come what may, the Londoners shall have no other king but their mayor?" There was, in fact, no such confusion of obligations. In ordinary circumstances the freemen of the mediaeval city (who are not to be confounded with its mere inhabitants) were bound together by ties which were of an entirely different character to their obligations of allegiance. On the other hand, London, like other English cities, knew what it was "to be taken into the King's hand". Those who have had experience of martial law are able to realize how much the bonds of citizenship can be relaxed under such conditions. But the very fact that the obligations of citizenship may thus be temporarily weakened, while the obligations of allegiance remain what they were, or are even heightened, is the clearest proof that the rights and duties of a citizen are distinct from those of the subject.

We may take it, then, that so far as municipal citizenship enters into the making of a British citizen there is no possible confusion with

the British subject. The two classes of members of the State have generally included many of the same persons, but even where the individual is the same, the obligations are different and not infrequently conflict.

(c) THE CITIZEN AND THE NATION

Any successful attempt to deal with the secondary meaning of the citizen as a member of a State must be founded on some consideration of how in our own country that meaning grew out of the primary sense. We must remember that the age in which the constitution of Parliament gave a new and more adequate expression to the growing national consciousness was precisely the age in which the above-mentioned constitutional experiments were being made within municipal areas. The greatest of English cities were then in reality hardly less than subordinate States, and for their internal government tended to revert to the primitive institutions of elective chief magistrates and representative councillors. Prominent citizens of the class that was accustomed to represent wards of the city in the municipal council now found themselves, however unwillingly, representing the city in the national council. Of course we must not picture any kind of election to any of these positions by the counting of votes. But it is impossible to resist the analogy to the election to a municipal office, or to refuse to speak of those persons who chose the parliamentary representatives as possessing a kind of citizenship higher in degree than the municipal. Since these representatives were to have "full and sufficient power for themselves and for the community" throughout their "consultation and meeting" with the King, the rights and duties of the citizens who elected them passed into another sphere of action, which was the national. Thenceforward the two kinds of citizenship, municipal and national, acted and reacted upon one another in men's minds, so that it is difficult to say to which progress was chiefly due. But, perhaps, the most decisive step forward was taken in the first Parliament in which the knights of the shire associated themselves with the representative citizens and burgesses to form the House of Commons. This at once gave such an extension

to the meaning of national citizenship as to include the whole area of England ; and ultimately it reacted upon local government by restoring, to the parish and the county, elements of popular control over administration which they had lost during mediæval times, and which had only been preserved in the municipalities.

Thus, while at first there was nothing in national citizenship comparable with the popular control over civic administration, we find little difficulty in extending the meaning of citizenship so as to include the choice of representatives to sit in the national assembly. These higher powers might be so exercised as to diminish the obligations of personal allegiance, but never wholly to extrude them, so long as the Crown itself was maintained. Obligations of allegiance, on the other hand, might encroach upon but could never entirely replace the ties of national citizenship, so long as there was a deliberative assembly which in some fashion represented the nation as a whole. This condition was temporarily restored after the failure so to manipulate the charters as to control the parliamentary representation of the cities and boroughs, but the point to be specially noted is that it was only finally secured as the result of an actual transfer of allegiance. Thus with us the national rights and duties of the citizen ultimately took precedence of the rights and duties of the subject.

The unlikeness between municipal and national citizenship has not been wholly removed by our modern constitutional development in the direction of responsible government. What has been gained upon this hand is chiefly a sympathetic control of the permanent Civil Service, a control which does not so often or so completely place the political ideals of the citizen at variance with the assumed legal obligations of the subject as did an irresponsible executive.

But responsible government has quite a different significance for those British communities beyond the seas to which it has been granted. There it means the unhampered development of national citizenship. For the chief guarantee that the wishes of the younger nation, as expressed in her national legislature, shall not be overwhelmed by the Imperial Parliament or Executive is that no Minister can be found locally willing to carry out the instructions of the

Governor sent out from home. In point of fact, our own past dread of autocratic acts on the part of the Sovereign has gradually given place overseas to a fear of equally autocratic acts on the part of the Mother of Parliaments.

(d) THE CITIZEN AND POLITICAL UNIONS AND FEDERATIONS OF STATES

Still dealing with the extended use of the word citizenship, we can find as little difficulty in accepting the idea of a citizen of Great Britain as of a citizen of England or a citizen of Scotland. But whereas there could be no British citizens until there was a common State of which the members were associated with one another in the Parliament of Great Britain, presentatively or representatively, British subjects came into being as a class as soon as the same ruler wore the two crowns of England and Scotland. Owing to the direct relation between the Sovereign and each individual subject involved in allegiance, British subjects are the sum total of English and of Scotch subjects. It is true that the law of the two countries is not the same; but allegiance affords only the protection, and requires nothing but the obedience, due to the law of the land, and the Scotch subject has as good a right to seek the legal remedy against any arbitrary exercise of the authority of the Crown in Scotland as the English subject has in England, while in neither realm has the actual alien a similar claim. Moreover, the King, just because he is the Sovereign of two countries, is in a stronger position to support his subjects in foreign parts against the arbitrariness of other rulers. This last consideration may have had much to do with the general acceptance of the term British subject.

When Ireland enters the Union, no new crown is added, nor is any new executive created, and the subjects, therefore, remain British in name. But the Irish citizens, having formally consented through their own legislature to a single parliament for England, Scotland, and Ireland became thenceforward citizens of the United Kingdom. At the same moment, and in no less a degree, was the British citizen swallowed up in this larger political union, leaving us with the name and quality of British citizenship, either to cast on one side, or

to use in such a generic way as seems best to us, but with no one class of persons to whom the term can specifically be applied in the sense which was appropriate during the eighteenth century.

The federations of the oversea Dominions in the nineteenth and twentieth centuries differ from the federal union of England and Scotland, not only because nations are thereby created rather than politically united, but also because the more extended form of citizenship does not wholly absorb the citizenship of the component territories. In Australia, as in Canada, the two varieties are modelled upon this same plan, and the only question that arises is as to the greater or smaller obligations which by the Act of Constitution are assigned to each variety of citizen. There is this difference, however, in the case of the South African Union, that the original Colonies are now left with representative institutions, but without responsible government.

Nowhere else in the self-governing Dominions do the citizens form so small a proportion of the population as in South Africa, and in fact from this Union we pass easily to those British territories in which there exists municipal citizenship of the usual type, but in which there is no full national citizenship in the sense that the people are ultimately associated with their ruler in the control of the executive government. These States are all alike in having a very small number of citizens, even with municipal rights, compared with the number of British subjects that they contain. They are capable of federation among themselves, and have, indeed, achieved considerable success in this direction, yet their higher forms of citizenship are not of such a nature as to blend with the citizenship of the self-governing Dominions. British India stands foremost among possessions of this type. Her cities are of the first rank in point of size, and have a highly organized, if not completely democratic, municipal organization. But when we compare the small percentage of British subjects in India who have had the political training of being municipal citizens with the large percentage in Great Britain, and when we consider further the degree in which the political life of the cities prepares the whole country for self-government, we see how far India still stands removed from true national conditions.

Accordingly, in the development of our Empire, the next higher type of federal citizenship can only result from a federation of the self-governing Dominions. Such a union would not indeed give a full Imperial citizenship, but it is the highest form which the spread of civilization at present brings within our ken.

(e) THE CITIZEN AND THE EMPIRE

In summing up what has already been said, let me begin with an indisputable proposition. Wherever there are cities throughout our Empire, there are citizens. The municipal institutions of those cities extend to their burgesses rights and duties which are distinguishable from those of British subjects as a whole. Those special rights and duties involve the defence of characteristic liberties which for the most part were preserved or developed in the mediaeval cities of England and Scotland. Shall we then speak merely of citizens of London or Edinburgh or Montreal or Sydney or Cape Town, or do we need a generic name to describe all British subjects who are legally citizens?

To this it may be answered that similar institutions to ours were developed in the mediaeval cities of other countries: that the mayor is not even English in name: that the famous saying which has been rendered "Town air makes free" was uttered in Germany: that the constitutional developments of Florence and other Italian cities were at one time closely watched in London and affected her municipal institutions: and therefore that those attributes of citizenship which were already to be discovered in our mediaeval cities are not specially British.

What appears to be peculiar to our own country is the part that was played by its municipalities in the development of the national life. Their attachment to the person of the King and to the hereditary principle in general was much less strong than to those attributes of kingly authority which tended to mitigate the severity of feudal custom and to protect the growth of a free nation. Thus, speaking of a civic revolt at Bristol in 1316 in which the burgesses expelled the royal judges and actually stood a siege before they would submit, Prof. Oman says that while such revolts of great towns were normal

in Germany or Italy, they were almost unknown on this side the Channel. Now, if we add to so great a veneration on the part of the subject for the law of the realm, the growing national experience of the citizen (derived from his municipal institutions), that law could be shaped anew by the community, and so administered as to provide for liberty of speech and of meeting, for protection of private property and of the person and even of conscience, we are coming close to the foundations of British citizenship.

Yet it can still be urged that all these liberties, and the constitutional means to develop them for the benefit of the nation, belong as fully to American citizenship as to British. How should it be otherwise, since the chief differences between the two kinds of national and federal citizenship could only have been developed in connexion with the separation of the American colonies? Those differences are to be found not only in limitations to the free constitutional development of the United States inherent in a written document, and in a Supreme Court of Law to interpret that writing, but even more in the constant resort of its framers to modes of government characteristic of the city. With us national citizenship has produced new instruments for its expression in the responsible Minister and the Cabinet, and yet the relation of allegiance to a personal ruler still places the rights and duties of the subject in so clear a light as to make British forms of government no less applicable to India than to Canada.

In my view, as may already have been gathered, British citizenship is fundamentally and organically municipal, but except in strict legal phrase this fundamental quality cannot now be restricted to cities alone. It permeates the whole sphere of local government. Upon this broad foundation are established other rights and duties which culminate in national citizenship, but which are still expressed through the local community. These rights and duties form also a part of British citizenship, but not all British citizens have them all. There is, however, no State in which the number of municipal electors is considerable in comparison with the total number of British subjects where there is not a tendency to acquire national citizenship. No

doubt other elements have to be considered also, such as geographical conditions and external political pressure, and these attendant circumstances grow in importance in the case of federal citizenship. Looked at in this light, British citizenship not only continues to spread over a larger field and to affect an ever-increasing part of the population within that field, but for each individual citizen it tends to become multiform in the process. Under one form or another it still advances until it more and more nearly fulfils its purpose of providing government of the people by the people for the people. Yet at any given time the limits of its action in any given country are determined by those necessities of law and of order which are as much the concern of the liege subject as of the liege lord. To the constitutional lawyer it must be fascinating to watch how the line of demarcation between allegiance and citizenship may at any moment be changing anywhere within our Empire in consequence of some new Act of the local legislature or of some new decision of the courts of law as to the meaning of previous Acts. In most instances, however, the broad division between the position of the citizen and the subject is clear to the thoughtful man, and helps to maintain that reverence for law and that cheerfulness of allegiance which, upon the whole, are two of the most remarkable characteristics of the many communities living under British forms of government.

There is still something of the full meaning of British citizenship that has not been expressed in this analysis. We think of a quality in that citizenship which will enable us to overcome the difficulties of a yet higher union of British communities than has been achieved up to the present time. If new instruments of government be needed for such a union, we believe that British citizenship is capable of finding them. If, as is almost certain, that union at first includes only the communities that have reached a full national or federal position, we believe that British citizenship can find the means to make such a union serviceable not only to its own needs but to the advancement of the more backward races. This, indeed, may be taken as the clearest proof that, in speaking of British citizenship, we are not

thinking only of this or that form which it assumes, but of the underlying liberties which are present in each and all of them.

Through the Imperial Conference of Ministers of the Crown, we have already begun to achieve the higher union which lies before us. But it would be easy to overrate what has already been accomplished by such means. There are in the constitution of the Conference certain defects which seem only too likely to develop as time goes on. It is an assembly composed of party leaders. As far as may be, I have been careful in this article to avoid all considerations of sex and colour, and in like manner I put on one side party distinctions of every kind. But the effect, upon successive conferences, of political changes in the constituent elements is sufficiently obvious even if every individual member be doing his best to represent the whole community rather than that section of it for which he stands in his own legislature.

Some much bolder solution of the difficulties attending a higher union of the self-governing Dominions might be expected from a conference which stood for the interests of the municipal citizens of the Empire. Even if the privilege of choosing delegates were limited to cities in the technical sense, they would not unfairly represent the greater Dominions of the Crown. Such a conference should be entirely informal: the various municipal councils might nominate its members: the body that issued the invitations ought to be as non-party in character as possible. If neither the Corporation of the City of London nor the London County Council were in a position to convene the conference, then the Royal Colonial Institute itself might undertake the duty. Whether admission should be accorded to delegates from the cities of British India and of some of the larger Crown Colonies is a matter that the conveners would have very seriously to consider. The advantage of including those cities is that adequate expression would thus be given to the effect, upon the fortunes of the dependent races of the Empire, of whatever proposals for federation were put forward at the conference. In this way the lead might be swung into only partially known depths of political thought and feeling, and the course of the next Imperial Conference be made much

clearer. Let us suppose that such a motion as the following were put forward by some delegate: "That the responsibilities of British citizenship for the common affairs of the Empire should no longer be confined to citizens of the United Kingdom". How would it be received? What amendments might be looked for? In what ways would the term "common affairs" be defined by such amendments?

This responsibility for the common affairs of the Empire is the tap-root of British citizenship. The artificial arrangement which we tolerate at present is no true solution of the difficulty. That the United Kingdom should have charge of the common affairs of the Empire and that each self-governing Dominion should have charge of its own affairs—what could be more plausible and what more unsound than this? The direct consequence is that the individual affairs become more numerous and more important, and the common affairs dwindle away. Canada has barely escaped a continental fiscal policy; Australia is pre-occupied with the white man's future in the Southern Seas; South Africa, perplexed by her own native problem, has obtained the sanction of the Imperial Parliament to a constitutional distinction as to race which must henceforward accentuate the difficulties of the Imperial Executive in regard to Indian and Crown Colony administration.

"Let all common affairs disappear except common defence," says a certain school of thinkers—in other words, revert to a condition of common allegiance to one ruler, but forgo British citizenship. Canon Barnett, in this discussion, even asserts that we have reached this point already when he says that the members of each of the "sister nations" are its citizens, and that all are British subjects, with a claim on British protection against foreigners. Yes, but how long can that claim be made good when British citizenship is no longer a living whole? If we welcome to our minds thoughts of Canadian and Australian citizenship which do not grow out of, and remain organic parts of our common heritage, will not defence and allegiance go the way of all other common affairs? Admittedly, British citizenship, including its municipal, national, and federal branches, is a lop-sided growth at present, but our task is to balance and invigorate the living

tree, not to destroy life. Through the Imperial Conference alone we shall hardly find the ultimate remedy. The matter has to be debated wherever debate is possible, and the results brought home to that or any other supreme conference of British statesmen. From a human point of view, it is not in their hands, but in the hands of British citizens themselves, that the destinies of the Empire are contained.

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