

NOTES ON THE CONSTITUTIONAL SEPARATION OF TASMANIA FROM NEW SOUTH WALES

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In the year 1824 public opinion in Tasmania first forcibly expressed itself on a political question. The colony had passed the elementary stage of its growth, and a change in the form of government was necessary for its well-being and future development. No longer was it desirable that it should be ruled by a Governor at Sydney, who was possessed of almost autocratic powers. At the very most the Tasmanian Lieutenant-Governors were merely his subordinates, and the colony was feeling the ill-effects arising from the limited scope of local authority.

Fortune favoured the colony in two respects at this period. Firstly, the prominent colonists clearly discerned the nature of their troubles, and were capable of acting together to obtain their removal. Secondly, the British Government recognising that eventually a change in the administration would be necessary, had made provision for effecting it at some future date. The fact that the machinery for the removal of their disabilities had been made, but was placed, as it were, in storage for future use, roused the colonists to action. After preliminary meetings, a petition was drawn up for presentation to H.M. King George IV. The petitioners prayed that the section of the Act 4 *Geo. IV.*, which provided for the erection of the colony of Van Diemen's Land completely separated from New South Wales should become effective. Provision in the Act had also been made for the appointment of nominated executive and legislative councils to assist in the government of the colony. The petition was not lengthy, and was signed by over a hundred colonists, including nearly all the leading settlers, merchants, and magistrates. Within the limits of the following paragraph the petitioners confined the main statement of their case.

"That, although the people of this Island have had "to combat with all the difficulties incident to a new "country, without many of the aids and facilities enjoyed "by Colonists of New South Wales, they have neverthe- "less made proportionately greater advances. But, as, "in Soil, Climate, and Geographical relation, this Island "essentially differs from that Country, as its present "State, moral and physical, cannot be referred to the "same Causes, neither can their future welfare and pros- "perity be identified with or promoted by the same policy "and measures, and which, however applicable and ad- "vantageous they may be to that Settlement, have been "recently felt alike unsuited to the condition and pre- "judicial to the welfare of this Colony." (1)

It is quite plain what the petitioners wanted, but their statements concerning their political disabilities are not nearly so definite. Nevertheless, they satisfied the British Colonial authorities, who were well supplied with official information on the subject. This petition is one of Tasmania's most interesting public documents. The achievement of its object had a far-reaching effect, so naturally we want to know more of the circumstances which brought it into being. An examination of the extant historical documents and papers of the years immediately preceding 1824 does not furnish an adequate view of the position. For this it is necessary to go right back to the foundation of the colony. From a brief review of the relations between the successive Governors of New South Wales and their subordinates in Tasmania this in some measure can be obtained. Owing to the personal nature of the Government, these men guided the destinies of the colony, so their actions were of great consequence.

When Governor King despatched the first party to settle in Tasmania, it was most necessary for him to keep a very close supervision over the Commandant (Lieutenant John Bowen, R.N.). He was acting on his own initiative. The fear of the French annexation seemed confirmed by the presence in Tasmanian waters of Commodore Baudin's ships, and several American sealing ships hovered around the islands in Bass Straits, making themselves a nuisance to the penal settlements. It is not surprising that among other

clearly defined instructions he gave the following to the youthful commandant:—

"You are not to permit any intercourse, or trade, "with any ships or vessels that may stop at Van Diemen's "Land, whether English or of any other nation, unless "such ships or vessels should be in distress, in which case "you will afford them such assistance as may be in your "power." (2)

This is a good example of an application of the great powers that a Governor of New South Wales possessed.

King, as Governor of New South Wales and its Dependencies (including Tasmania), was indeed possessed of very wide powers. He legislated, administered, and almost controlled the judiciary. (3) His successors until 1823 held the same powers, but possibly a little diminished in the latter sphere. So to all intents and purposes their will was law in matters concerning Tasmania.

Colonel David Collins with an expedition from England and Colonel W. Paterson with one from Sydney followed in Bowen's unfortunate steps. Their arrival marks the definite foundation of the colony in the south and north of the Island. King's relations with each of these men were excellent from an administrative point of view. (4) Undoubtedly he fully appreciated the nature of the task of planting a new colony, as he had gained similar experience at Norfolk Island. Collins was in particular allowed a considerable freedom of action, and received every assistance from his superior. This was the only conceivable way that such a system of government could work efficiently and smoothly.

Captain William Bligh, King's successor, had very little to do with Tasmanian affairs. During the famine of 1808 he assured Collins that the Tasmanian colonists would suffer no more than their brethren in New South Wales. After his deposition he visited Hobart and attempted to govern, but his actions were repudiated by Collins, and have no interest at present.

The Sydney Governors legislated by means of proclamations and general orders. Many of these edicts contained legis-

(1) Memorial to H.M. King: Hist. Rec. Aust., Vol. 3, Ser. III., pp. 578-80.

(2) King to Bowen: Hist. Rec. N.S.W., Vol. 5, p. 76.

(3) King's commission: Hist. Rec. Aust., Vol. 3, Ser. I., pp. 384-90.

(4) King's instructions to Paterson: Hist. Rec. Aust., Vol. 1, Ser. III., p. 601.

lation beneficial to both colonies, but it is not hard to find instances where their application to Tasmania was harmful and even ludicrous. The inability of the Governor-in-Chief to calculate the effects of his legislation, however good for New South Wales, upon Tasmania was one of the worst defects of the system. Unfortunately, the only Governor who had a first-hand acquaintance with Tasmanian affairs (Macquarie) handled them the worst.

From 1813 to 1817 this delicate system could hardly have been in the hands of worse operators. Colonel Lachlan Macquarie was the Governor-in-Chief and Colonel Thomas Davey the Lieutenant-Governor of Tasmania. Macquarie was in many respects a remarkable man. Energetic and efficient in administration, exemplary in private life, but arbitrary in his actions to the point of tyranny.

Davey, his subordinate, differed from him in almost every respect. Easy-going and inefficient in administration, good-natured and dissolute in his private affairs. Macquarie owed his position to ability, Davey to influence. At the commencement of Davey's term of office, Macquarie, being well informed of his subordinate's ways, prepared for him a lengthy list of instructions. (5) In them he narrowly defined Davey's discretionary powers. Every item of Government expenditure had not only to be reported, but justified. Without Macquarie's sanction he was not allowed to charter ships, enter into contracts for supplies, grant lands, erect buildings, or alienate live stock. Two instances will be given to demonstrate how the colony suffered through the inability of these two men to work together and follow the example of their predecessors, King and Collins.

(1) The inability of Davey, or his commissariat officers, to draw bills on the Treasury for payment of supplies purchased was a serious handicap to the colony. It meant that the drafts they gave were only payable at Sydney. Before a settler or merchant received his payment for the produce he had sold, weeks or even months might elapse. In the meantime, his creditors had to wait. This obstruction to commerce had a detrimental effect on the progress of the colony.

(2) It was the misfortune of the colony that just at the period when the wheels of government were not running at

(5) Macquarie to Davey: Hist. Rec. Aust., Vol. 2, Ser. III., pp. 13-23.

all smoothly, a very serious trouble should arise. Since the earliest days of the settlement there had been always a few lawless men, ex-convicts and others, wandering in the bush, living by robbery and practising all kinds of violence. With no Criminal Court in the colony, so that all offenders had to be sent to Sydney for trial, the moral effect of immediate punishment was lost. In 1815 bushranging had increased to such an extent that all the settlements were in danger of being plundered. One chieftain of a band of desperadoes audaciously challenged Davey's authority. To meet the situation Davey took the only course open to him. He proclaimed Martial Law. (6) The results seem to have justified his action, and the settlers expressed their appreciation of Davey's action in the form of an address. (7) Now, although Davey had a good colonial precedent for his action, Macquarie condemned it. Later he admitted that Davey's action was correct.

In this period there were many examples which demonstrated the defects of the Dependency system of government. One of the most outstanding of these is given below. It will be seen that in this case no blame can be laid on the shoulders of Davey. For its revenue, the administration in Tasmania depended mainly upon duties imposed on imported spirits. From this source came the money to pay for developmental work, such as the clearing of land, road-making, and building. Macquarie, probably without considering the effects of his action, deprived the colony of this useful financial asset. He entered into an agreement with three Sydney men, whereby they built a Government Hospital at that place for the privilege of importing all spirits into the colonies for four years. (8) All importing was done through Sydney. Davey strongly protested to the Earl of Bathurst, the Secretary of State for the Colonies, but without result. (9) Development work, so necessary for the young colony, appears to have come to a standstill whilst the monopoly lasted.

After four years of official wrangling and hard living Davey was succeeded by Colonel William Sorell. The new Lieutenant-Governor was not merely an excellent administrator, but also possessed the qualities of a far-sighted states-

(6) Hist. Rec. Aust., Vol. 8, Ser. I., pp. 133-4.

(7) Address to Davey: Hist. Rec. Aust., Vol. 2, Ser. III., pp. 133-4.

(8) Hist. Rec. Aust., Vol. 7, Ser. I., pp. 401-5.

(9) Davey to Bathurst: Hist. Rec. Aust., Vol. 2, Ser. III., p. 149.

man. He was able to work with Macquarie, and during his term of office the colony advanced at great strides. Nevertheless, Macquarie did not see fit to grant him the same freedom of action that Collins had enjoyed. However, Sorell did manage to effect one partial reform. By an arrangement, the Deputy-Commissary General in New South Wales allowed his subordinate in Tasmania to draw bills directly on H.M. Treasury to pay for supplies bought. This was only a departmental arrangement, and depended upon the degree of trust existing between the two officers; at any time it might be terminated. Sorell estimated that the community was thus saved to the extent of 25 per cent. in its financial dealings. (10)

Macquarie in his turn was succeeded by Sir Thomas Brisbane. This change of Governors-in-Chief did not greatly affect Tasmanian affairs. With the large numbers of free emigrants who were arriving the roundabout method of granting lands from Sydney was becoming more difficult to work and causing much inconvenience and delay. It was Brisbane's misfortune to have to introduce a number of necessary but unpopular reforms. He made sweeping changes in the currency, and introduced a new system of purchasing supplies. These measures gave rise to vigorous opposition in New South Wales. They applied equally to both colonies, so could not be considered a special grievance of Tasmania. No doubt their introduction did help in Tasmania to fan the flames of dissatisfaction with the state of affairs.

To return to the petitioners. A few of them had witnessed the best working of the system in the days of Collins. A far greater number had seen only the days of Davey. Probably many were then new settlers, and in the days of their pioneering struggles had to suffer what was, in many respects, gross misgovernment. Whilst this system remained, no matter what beneficial arrangements for smooth working were made between the authorities, there was always a possibility of a recurrence of that evil.

The prayer of the colonists did not fall upon deaf ears. The British Government took steps to fulfil their wishes almost immediately. When Brisbane retired it was decided that Lieutenant-General Sir Ralph Darling should succeed him. When Darling left England he was given two commissions, one appointing him Governor of New South Wales,

the other one appointing him Governor of Tasmania. (11) On the voyage out Darling called at Hobart, arriving on the 24th of November, 1825. During the next nine days all arrangements were made for the various ceremonies which were officially to mark the change in the system of government. At last the eventful 3rd of December arrived. Darling took the various oaths of office, and so became Governor of Tasmania. He immediately issued a proclamation, which is extant, announcing the separation of the colony from New South Wales. But Darling had no intention of remaining in the colony, and on the 5th of December he left to take up his duties in New South Wales. Lieutenant-Governor Arthur (who had succeeded Sorell) thus became Acting-Governor after taking the oaths of office. On the 12th of December Arthur issued a proclamation appointing the first nominated executive and legislative councils.

The passing of the cumbrous Dependency system of government, of the unchecked powers of the Governors and the growing strength of public opinion, were signs that the little craft of state was entering upon new waters. The old problems of government prior to 1825 mainly disappeared and were forgotten, and the path was cleared for the solution of the new ones which quickly arose. Outstanding among these were the aboriginal question, the freedom of the press, the raising of revenue, and the transportation system. So the citizens of Hobart who illuminated their dwellings and lit bonfires on the night of 3rd December, 1825, were rightly celebrating the birth of a new era in the history of their country.

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(10) Sorell to Bathurst: Hist. Rec. Aust., Vol. 4, Ser. III., p. 577.

(11) Darling's commission: Hist. Rec. Aust., Vol. 5, Ser. III., p. 1.