

## THE GROWTH OF SELF-GOVERNMENT IN TASMANIA.\*

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The loss of the American Colonies in 1783 did not convince the statesmen of Great Britain that the grant of self-government was the only way to retain colonies; but it had lasting effects on the British colonial policy. Colonies, with rare exceptions, had been founded to increase the commerce of the Mother-Country by providing her with markets for the export of her manufactures. This commercial conception of Empire was still uppermost after the loss of our American colonies, and the discovery that British exports to America increased instead of diminishing after the grant of independence raised doubts about the value of colonies.

In describing the future of colonies Turgot, in the 18th century, said: "Colonies are like fruits which cling to the tree only till they ripen. As soon as America can take care of herself she will do what Carthage did." Twenty years later this prophecy received striking fulfilment in the American War of Independence. Little wonder is it that with the fulfilment of Turgot's prophecy, and the discovery that our exports to America increased instead of diminishing after the grant of independence, grave doubts were raised in Great Britain about the value of colonies. These doubts explain the comparative indifference of public opinion towards colonies during the first thirty or forty years of our own history.

In all colonies after the loss of her American empire, Great Britain adopted a uniform policy in regard to government. This was in striking contrast with what had been practised before, when local legislatures were granted to every colony acquired by cession or by occupation (1); conquered colonies, however, were ruled by governors and execu-

\*For the sake of convenience, the name Tasmania has been used throughout this paper, although the name Van Diemen's Land was official until 1855.

(1) Report of Committee of Trade and Plantations, 1849.

tive councils appointed by the Crown. All new colonies, however acquired, were treated as conquered colonies, that is, they were not granted local legislatures, but coming under the Royal prerogative were controlled by governors and nominated executive councils. This attitude to conquered colonies was in accord with English law, for the Crown had "uncontrolled legislative authority over the conquered or ceded colony" (2). The Crown might govern a conquered colony by means of a governor and a nominee council, or grant representative government.

That New South Wales and Tasmania should be treated as conquered colonies was, at their foundation, quite in accord with this principle of English law. Both were occupied as military posts. The first occupants consisted entirely of soldiers, civilians attached to the military, and convicts. The powers claimed and exercised by the early governors of publishing General Orders, by which they could do anything on their own authority, were all military in character, and were tolerated under the plea that for all practical purposes there was a state of war between the authorities and the convicts; in other words, that the colony was a conquered possession. That a state of war existed between Great Britain and France assisted in the maintenance of a military form of government.

That Great Britain fully recognised and was determined to maintain this arbitrary form of government is clearly shown by the appointment of none but naval or military officers as governors. The names of the early governors—Lieutenant Bowen, Lt.-Colonel David Collins, Colonel Paterson, Colonel Davey, Colonel William Sorell, Lt.-Colonel George Arthur, Sir John Franklin, Capt. in the Royal Navy—give evidence of this, and it was not until the appointment of Sir John Eardley-Wilmot in 1843 that we had a civilian governor.

At first the whole community was in economic dependence upon the Government, which supplied rations, seeds, and tools for farms, and took all the produce at a fixed price; but it is in the administration of justice that the arbitrary military character of the early rule is best shown. The governor was the final court of appeal in all cases. In 1787 a charter for establishing Courts of Civil and Criminal

d. 2. (2) Keith: *Responsible Government in the Dominions*, 1912, Vol. I.,

Jurisdiction was granted, and a Vice-Admiralty Court was constituted. The Court of Civil Jurisdiction was constituted by the Deputy-Judge-Advocate appointed by the Crown, and two fit and proper persons residing in the colony, nominated by the governor. The Court of Criminal Jurisdiction was constituted by the Deputy-Judge-Advocate, together with six officers of the sea and land service nominated by the governor. This Court had jurisdiction over all crimes under the laws of England, but could sentence prisoners to only two forms of punishment—flogging and death. The Judge-Advocate examined the evidence for the prosecution, and decided whether the prisoner should be tried. He then drew up the indictment. Although President of the Court he prosecuted on behalf of the Crown, and in deciding the verdict was one of the seven jurymen. In that members assembled in full uniform, in the duration of the Court and the method of summoning members, there was a marked similarity to a court-martial; but it differed from a court-martial in that, in a court-martial, the Deputy-Judge-Advocate would have neither vote nor voice in the judgment of the Court. The Vice-Admiralty Court was also military in character, the judge being a military officer.

As Tasmania was a dependency of New South Wales until 1825, it came under the jurisdictions of these courts, and, in fact, was much worse off than New South Wales, for, as there were no separate courts of justice for Tasmania, all cases arising in Tasmania were summoned for trial at Sydney. In spite of universal condemnation this civil jurisdiction was maintained until 1824.

In 1814 the first step towards freedom was granted Tasmania, when independent courts of civil jurisdiction were created. These were of two kinds, the Supreme Court, which held sittings in New South Wales and in Tasmania, and heard all cases involving more than £50, and the Governor's Courts, one in New South Wales and one in Tasmania for the trial of less important cases. The Tasmanian Court, known as the Lieutenant-Governor's Court, was constituted by the Deputy-Judge-Advocate of Tasmania and two fit and proper persons inhabiting Tasmania nominated by the Lieutenant-Governor. There still was no trial by jury, and whatever may be its defects, an Englishman is not satisfied to have the criminal law administered in any other way. The position of the Judge-Advocate was still unsatisfactory, for he continued by virtue of his position to set in motion

Crown prosecutions, and at the same time to act as a judge of their validity, to prosecute the prisoner, and to vote in deciding the verdict.

Between November, 1807, and December, 1808, the population of Tasmania was more than doubled by an influx of 554 free settlers from Norfolk Island (3). This, however, while changing the character of the State from mainly convict to mainly free, did not affect the dependence upon the Government, for the community had to be fed and clothed from the Government stores. In 1813 a number of disbanded marines took up land, and in 1815 the first immigration ship with free settlers arrived. A stream of immigration now set in (in one year there were 600 immigrants), and Tasmania attracted far more settlers than the mainland. In 1818 the applications for land grants were so numerous that all grants were suspended for a year. A period of great prosperity now ensued, and Tasmania grew rapidly. The population which in 1811 was 1,500 had grown to 7,400 by 1821. The Hobart of 1823 contained "about 600 houses and 3,500 inhabitants, while new buildings were rising every day" (4). The value of Tasmanian exports rose, and material prosperity was visible on all sides. In 1816 the first newspaper appeared.

The growth of New South Wales, the reports that were continually reaching England of maladministration by arbitrary governors, and colonial dissatisfaction with despotic rule, roused the British Government to review their policy. At first a London barrister, J. T. Bigge, was sent out in 1819 to examine the laws, regulations, and usages of the settlement, the mode of government, the treatment of the convicts, and every other matter connected with the transportation system. As a result of his inquiry, which took two years, a beginning was made in constitutional government.

New South Wales had by 1819 become in reality a settlement colony, for the convicts were outnumbered by the free settlers, and some change had to come. Consequent upon Bigge's report, the British Parliament in 1823 passed an Act to provide for the better administration of justice in New South Wales and Van Diemen's Land and for the more effectual government thereof. While this Act did not bring representative government, it was a substantial gain towards freedom. British Ministers had not yet forgotten

(3) James B. Walker: *Early Tasmania*, p. 162.

(4) Edward Curr: *An Account of the Colony of V.D.L.*, p. 5.

the excesses of the French Revolution, and their tardiness in granting representative government is thus explained. By this Act the Judge-Advocate and his military assessors disappeared; Supreme Courts for New South Wales and for Tasmania respectively were established with civil, criminal, and ecclesiastical jurisdiction; trial by jury was permitted in civil cases if both parties agreed; if no agreement the Chief Justice and two magistrates gave the verdict; in criminal cases the decision was given by a Judge and seven officers of the army or navy, but the prisoner had the right of challenge. The Crown, by an Order in Council, might extend trial by jury as it thought fit. For the more effectual government of the colony a Legislative Council was established of not more than seven nor less than five members, with power to make laws "for the peace, welfare, and good "government" of New South Wales, provided that they were not repugnant to the laws of England. Clause 54 allowed Tasmania to be erected into a separate colony independent of New South Wales, and upon such foundation the 1823 Act was to apply to New South Wales and Tasmania alike.

In 1823 Lieutenant-Colonel George Arthur was appointed to administer Tasmania, and assumed office on the 14th of May, 1824. A clause in his commission is noteworthy, for it shows there was no doubt in the official mind as to the status of the colony. "You are to observe such orders "and instructions from time to time as you shall receive . . . "from any superior officer according to the rules and discipline of war."

Independence from New South Wales was, however, not long delayed. Mr. Bigge suggested to Lord Bathurst that the control of Tasmania by New South Wales should be limited and specifically stated. "Without positively stating "it is my opinion that the two Governments ought immediately to be separated and made independent of each other," he goes on to say, "I conceive that it is a measure that "should be kept in view" (5). On the 2nd of August, 1823, a petition signed by twelve leading residents was sent to Lord Bathurst asking for independence. The effect of the petition and Mr. Bigge's statement is shown clearly in the powers of the Lieutenant-Governor as set out when Arthur was appointed. Although Lord Bathurst wrote that it was "not "at present deemed expedient to effect a separation" (6), yet

(5) Bigge—Bathurst, 11th February, 1823.

(6) Bathurst—Brisbane, 28th August, 1823.

with the appointment of Lieutenant-Colonel Arthur a change came. Tasmania was for the first time recognised as an entity which required special rights and privileges. The control of the Governor at Sydney over the Lieutenant-Governor in Hobart was now limited. These measures were tentative and experimental, but the experimental stage did not last long. Arthur found Tasmania suffering disabilities, for the Council at Sydney put New South Wales first, often to the detriment of Tasmania, and advised the appointment of a local Council, and suggested members (7). He was prompted to this by a desire to free himself from irksome control rather than by a desire to serve the interests of the colonists. In November, 1824, a petition was again forwarded to Lord Bathurst by the colonists asking for independence, this time with 101 signatures. Moreover, it had the support of Colonel Sorell, the late governor, who carried it to England. The effect of the governor's advice and the colonists' petition was seen in an Order in Council of the 14th of June, whereby Tasmania was accorded self-government under the terms of the Act of 1823. This independence was proclaimed by Governor Darling at Hobart on the 3rd of December, 1825. The Governor of New South Wales was also the Governor of Tasmania, Lieutenant-Colonel Arthur was to be Lieutenant-Governor responsible to him, but Tasmania was to be quite independent of New South Wales. Governor Darling wisely let the overlordship remain nominal, and Arthur administered Tasmania unhampered.

By the same proclamation a nominee Legislative Council was instituted, and the following six members appointed:— John Lewis Pedder, Chief Justice; Dudley Montagu Percival, Colonial Secretary (these were to be succeeded by their successors in office); Edward Abbott, late Deputy-Judge-Advocate; William Henry Hamilton, Naval Officer; Adolarius William Henry Humphrey, Police Magistrate; and Edward Curr, chief agent of the Van Diemen's Land Company. An Executive Council, consisting of the Lieutenant-Governor, the Chief Justice, the Colonial Secretary, A. W. H. Humphrey, and Jocelyn Thomas, Colonial Secretary, was also appointed. The next year the Legislative Council was enlarged by the admission of Thomas Anstey to represent the agriculturists (8).

(7) Arthur—Horton, 28th October, 1824.

(8) Arthur—Bathurst, 21/4/26. Bathurst—Arthur, 2/10/26.

The colonists regarded this as a mere stepping-stone to better government, but Arthur, autocratic by nature, and a strict disciplinarian by reason of his military training, failed to be the least sympathetic with their aspirations. Moreover, he regarded the colony as established for convicts. He was pledged to the convict system, and held that the colony was founded for the regeneration of criminals and for the benefit of their descendants. He looked upon free immigrants as a means to this end, rather than as the settlers for whose benefit the island was to be administered. Any interference he resented. In consequence, the press, which criticised his administration, fell under his ban. He appointed a licence by ordinance, and made the continuation of a paper dependent on his pleasure.

Since the Constitutional Act of 1823 terminated on the 1st of July, 1827, the colonists held a meeting early in that year, and authorised a deputation to petition the British Government, through Governor Arthur, for trial by jury and a voice in the legislature. Arthur was hostile to the proposals, but was wrongly charged with slighting the deputation. The existing evidence entirely vindicates him (9). The British Ministers were adverse to the colonial request, but the Constitutional Act, which became law on the 25th of July, 1828, differed widely from the earlier one. The Legislative Council was increased to not less than ten and more than fifteen members, all nominated by the Crown and residents of the colony; any vacancy was to be filled by the Governor; two-thirds of the Council constituted a quorum; its President was the Governor, who had a deliberative and a casting vote; no law could be passed by the Crown or the Governor alone, but must be approved by a majority of the Council. The Chief Justice lost his power of absolute veto. If he declared a law invalid because it was repugnant to the laws of England, the Council must reconsider it, but if it still held to its decision the law became operative until vetoed by the British Government. The Council was authorised to institute trial by jury under such limitations as it deemed fit, but twelve years were to pass before trial by jury was adopted in criminal cases. This Act was to terminate in 1836, but it was extended until 1850.

Arthur's position was rendered more difficult by conditions in the world outside as well as by local developments. In 1825 the free settlers in Tasmania outnumbered the bond,

(9) Arthur—Bathurst, 23rd March, 1827, and enclosures.

and in 1829 a movement for colonial reform began in England. The leader of a very able group of men who had developed theories of colonisation with special reference to Australia, was Edward Gibbon Wakefield. Wakefield is well known as the propounder of a social and economic policy for colonisation; but too seldom is it realised that responsible self-government was one of the theories of colonisation propounded by him and his followers (10). Wakefield was imprisoned in Newgate for abduction in 1826. While there he "read with care every book concerning New South Wales "and Van Diemen's Land, as well as a long series of newspapers published in those colonies" (11), and became interested in Australia. The term in Newgate was the turning point in the career of this clever young scapegrace. From now on he bent his energies towards the colonisation of Australia on rational lines, and in 1829 published in the *Morning Chronicle* his "Letters from Sydney," eleven in all (12). These letters purporting to come from a farmer in New South Wales were widely read and eagerly discussed in the literary and political world of London. So graphically written were they, that not only people in England, but even the colonists considered them authentic (13). In them he gave a vivid picture of the social, economic, and political conditions of New South Wales, and suggested a remedy. His views were adopted at once by many able and influential men, among whom were Charles Buller, Sir William Molesworth, R. S. Rintoul, editor of the *Spectator*, Colonel Torrens, and Lord Durham; and gained the approval and support of John Stuart Mill. After his release he worked indefatigably for the realisation of his schemes, writing pamphlets, supplying various papers with articles and letters, giving evidence before Parliamentary Committees, and winning men over to his views by his personal fascination and his all-persuasive tongue. Although debarred from Parliament by his notorious early life, he was "the friend and bosom adviser of "Republicans and Radicals, Whig and Conservative Peers, "Low Church and High Church Bishops. Five Secretaries "of State for the Colonies—Lords Glenelg and Stanley, "Monteagle, Aberdeen, and Grey, were more or less his

(10) For Wakefield's views, see his *View of the Art of Colonisation*, 1849.

(11) *Punishment of Death*, 1831, p. 194.

(12) These were republished in book form before the end of 1829 under the title of *A Letter From Sydney*.

(13) *The Tasmanian*, 7/5/30 and 14/5/30.

"pupils" (14). His influence both at Home and in the colonies was enormous, and to him is due an awakening of interest in colonies among the British public.

Wakefield's value to Australia cannot be overestimated. Men began to consider emigration as a cure for social ills. Colonisation now proceeded on systematic lines. Instead of a land exploited by capitalists for their own advantage, filled with cheap coolie labour when the supply of convict labour failed, to which responsible self-government could never have been given, we find a stream of free immigrants bringing with them a hatred of oppression and tyranny, and demanding as inalienable rights—trial by jury and legislative assemblies.

The thirties found the countries of Western Europe thrown into turmoil by the members of the middle class demanding a voice in the government of their respective countries commensurate with their wealth and importance. An echo of the tumult was heard in Tasmania. To obtain redress of wrongs a Political Association was formed, and public meetings were held in Hobart for the purpose of bringing under Royal notice the condition of the colony; but all was vain. In 1835 the Political Association appointed a committee to take definite action. This body wrote to Governor Arthur and asked that he intercede with the Crown on behalf of free institutions. He was entirely unsympathetic, and replied that "he did not feel authorised without the express sanction of His Majesty to enter into any correspondence with such an organisation." Again outside events were to have important results upon the Australian colonies. In 1837 the Canadians, after years of struggle with the Executive, broke into open revolt. English statesmen were in despair, and disposed to think Canada would go the way of the earlier American colonies. Lord Durham, a disciple of Wakefield and a powerful supporter of his theories, was sent out by the Whig Government as "High Commissioner for the adjustment of certain important questions . . . respecting the form and future government" of Canada. The upshot of his appointment was the Durham Report, an epoch in colonial government. This report, the most valuable document in the English language on the subject of colonial policy, recommended that "the responsibility to the Legislature of all officers of the Government, except the Governor and his Secretary, should be secured by every

(14) *The Three Colonies of Australia*, Samuel Sidney, p. 95.

"means known to the British Constitution: The Governor should be instructed that he must carry on his Government by heads of departments, in whom the Legislature shall impose confidence: and that he must look to no support from Home in any contest with the Legislature except on points involving strictly Imperial interests" (15). In other words he advocated responsible government for the colonies.

New South Wales was the first Australian colony to benefit, and in 1842 an Act was passed by both Houses of the British Parliament without a dissentient voice, creating a new Legislative Council for that colony, whereby representative government was obtained. The new body was to consist of thirty-six members, twenty-four of whom were to be elected; and twelve nominated. Of the nominee members, not more than six could be officials. The franchise was given to freeholders in land or tenements of the value of £200, or householders occupying premises worth £20 per annum. It was to sit at least once a year, and not to continue without a general election for more than five years; nominee members were to vacate their seats upon a dissolution. The Council thus constituted was to have power to legislate for the colony in any manner "not repugnant to the laws of England." It was an adaptation of the English bi-cameral system, two distinct classes of members sitting in one Chamber.

Tasmania was not included in this Act, and the reason was evident. The British Government was resolved to make this colony a huge gaol for the Empire. Convicts began to pour in at the rate of four thousand a year, and at the end of three years, from 1841 to 1844, no fewer than 15,000 convicts had arrived from all parts of the Empire, in spite of the opposition of the free settlers, who saw with deep concern the rising tide of convictism. The maintenance of police and gaols was a charge on colonial revenue, and with the vast increase in the number of convicts the expenditure reached alarming figures. To all petitions for relief, Lord Stanley was obdurate. In plain terms he told the colonists that Tasmania was founded as a penal colony, that in emigrating there they had voluntarily surrendered their rights, and were neither entitled to object to the importation of convicts nor to the increased financial burdens. Failing to gain money from the Imperial Government, Sir Eardley Wilmot resolved on increased taxation, and met with opposi-

(15) Lord Durham: *Report on the State of Canada*, p. 241.

tion from the non-official members of the Council. The Governor resolved to force the estimates through, but the non-official members left the meeting, and reduced the number below the legal quorum. Then the "Patriotic Six" resigned. The whole colony supported them, the press rang with their praises, and thundered denunciations against any who accepted nomination in their place. The failure of the new convict system and the political turmoil roused the English Government to seek a scapegoat, and Sir Eardley Wilmot was recalled. Earl Grey became Secretary of State for the Colonies in 1846, and with his administration a better day dawned for the colonies. Sir William Denison, the successor to Sir Eardley Wilmot, was instructed to settle the dispute at his discretion, and eventually the "Patriotic Six" were reinstated. In 1847, Earl Grey, in answer to the insistent demands of the colonists to control their own affairs, said that he "had no wish to impose upon the inhabitants a 'form of government not, in their judgment, suited to their 'wants' (16).

So that the Australian colonists might be governed for their own benefit, in 1849 he called together the Committee of the Privy Council for Trade and Plantations to act as a deliberative body to frame a form of government for the Australian colonists. As a result, the "Act for the better government of Her Majesty's Australian Colonies" passed the Imperial Parliament in 1850. By it the Port Phillip district was separated from New South Wales and erected into the colony of Victoria, and an improved system of government was established in all the Australian colonies. Tasmania, Victoria, and South Australia, were to come under the terms of the statute granted to New South Wales in 1842, that is, they were granted representative government, and, in addition, power was given to the Councils of the four colonies to change the form of government. The existing Legislature in Tasmania was to decide the number of members in the new Council, but it was limited to twenty-four. The new Council was empowered to make laws for the peace, order, and good government of the colony; to impose taxation, including the imposition of Customs duties; and to appropriate to the public service the whole of the revenue arising from taxes, duties, rates, and imports. Moreover, the Legislatures were entrusted "with the power of making any other amend-

"ments in their own Constitution which time and experience 'may show to be requisite.'" Power was thus given to the colonial legislatures to devise new constitutions with the assent of the British Government to be given after notice to the Imperial Parliament. Transportation was now the only bar to responsible government. Early in 1850, Lord Newcastle's despatch of the 14th of December, 1852, brought to the colonists of Tasmania the joyful news that transportation had ceased forever.

Before the end of 1854, the four colonies had made up their minds as to the forms of government they desired, and had sent Home bills for the Queen's assent. All but the Tasmanian Act came into conflict with Imperial enactments, and so required amending. The Queen declared her assent to the "Act to establish a Parliament in Van Diemen's Land 'and to grant a civil list to Her Majesty'" on the 1st day of May, 1855. Thus it came to pass that Tasmania was the first of the colonies to obtain responsible government; for it will be recalled that, by the Act of 1842, only representative government was acquired by New South Wales.

(16) Parliamentary Papers, 1847, quoted by Egerton in *A Short History of British Colonial Policy*.