

Erskine May, Vol. III, Chapter XVII, pp. 356-377

The New Colonial Empire

Crown Colonies

We must now turn to another class of dependencies, not originally settled by English subjects, but acquired from other states by conquest or cession. To these a different rule of public law was held to apply. They were dominions of the crown, and governed, according to the laws prevailing at the time of their acquisition, by the king in council. They were distinguished from other settlements as crown colonies. Some of them, however, like Jamaica [357] and Nova Scotia, had received the free institutions of England, and were practically self-governed, like other English colonies. Canada, the most important of this class, was conquered from the French, in 1759, by General Wolfe, and ceded to England in 1763, by the treaty of Paris. In 1774, the administration of its affairs was intrusted to a council appointed by the crown: but in 1791, it was divided into two provinces, to each of which representative institutions were granted.(1) It was no easy problem to provide for the government of such a colony. It comprised a large and ignorant population of French colonists, having sympathies with the country whence they sprang, accustomed to absolute government and feudal institutions, and under the influence of a Catholic priesthood. It further comprised an active race of British settlers, speaking another language, professing a different religion, and craving the liberties of their own free land. The division of the provinces was also a separation of races; and freedom was granted to both alike. The immediate objects of this measure were to secure the attachment of Canada, and to exempt the British colonists from the French laws: but it marked the continued adhesion of Parliament to the principles of self-government. In discussing its policy, Mr. Fox laid down a principle, which was destined, after half a century, to become the rule of colonial administration. 'I am convinced,' said he, [358] 'that the only means of retaining distant colonies with advantage, is to enable them to govern themselves.' In 1785, representative institutions were given to New Brunswick, and, so late as 1832, to Newfoundand; and thus, eventually, all the British American colonies were as free, in their forms of government, as the colonies which had gained their independence. But the mother country, in granting these constitutions, exercised, in a marked form, the powers of a dominant state. She provided for the sale of waste lands, for the maintenance of the church establishment, and for other matters of internal polity.

Australia

England was soon compensated for the loss of her colonies in America by vast possessions in another hemisphere. But the circumstances under which Australia was settled were unfavourable to free institutions. Transportation to the American plantations, commenced in the reign of Charles II., had long been an established punishment for criminals.(2) The revolt of these colonies led to the establishment of penal settlements in Australia. New South Wales was founded in 1788, and Van Diemen's Land in 1825. Penal settlements were necessarily without a constitution, being little more than state prisons. These fair countries, [359] instead of being the homes of free Englishmen, were peopled by criminals sentenced to long terms of punishment and servitude. Such an origin was not promising to the moral or political destinies of Australia: but the attractions which it offered to free emigrants gave early tokens of its future greatness. South Australia and New Zealand, whence convicts were excluded, were afterwards founded, in the same region, without free constitutions. The early political condition of the Australian colonies forms, indeed, a striking contrast to that of the older

settlements, to which Englishmen had taken their birthrights. But free emigration developed their resources, and quickly reduced the criminal population to a subordinate element in the society; and, in 1828, legislative councils nominated by the Crown, were granted to New South Wales and Van Diemen's Land.

While these colonies were without an adequate population, transportation was esteemed by the settlers, as the means of affording a steady supply of labour: but as free emigration advanced, the services of convicts became less essential to colonial prosperity; and the moral taint of the criminal class was felt more sensibly. In 1838, Sir William Molesworth's committee exposed the enormities of transportation as part of a scheme of colonisation; and in 1840, the sending of convicts to New South Wales was discontinued. In Van Diemen's Land, after various attempts to improve the system of convict labour and discipline, [360] transportation was finally abolished in 1854. Meanwhile, an attempt to send convicts to the Cape of Good Hope in 1848, had been resisted by the colonists, and abandoned. In the following year, a new penal settlement was founded in Western Australia.

The discontinuance of transportation to the free colonies of Australia, and a prodigious increase of emigration and productive industry, were preparing them for a further development of freedom, at no distant period.

Colonial Administration

From the period of the American war the home government, awakened to the importance of colonial administration, displayed greater activity, and a more ostensible disposition to interfere in the affairs of the colonies. Until the commencement of the difficulties with America, there had not even been a separate department for the government of the colonies: but the board of trade exercised a supervision, little more than nominal, over colonial affairs. In 1768, however, a third secretary of state was appointed, to whose care the colonies were intrusted. In 1782, the office was discontinued by Lord Rockingham, after the loss of the American provinces: but was revived in 1794, and became an active and important department of the state. Its influence was felt throughout the British colonies. However popular the form of their institutions, they were steadily governed by British ministers in Downing Street.

In crown colonies,—acquired by conquest or [361] cession,—the dominion of the crown was absolute; and the authority of the colonial office was exercised directly, by instructions to the governors. In free colonies it was exercised, for the most part, indirectly, through the influence of the governors and their councils. Self-government was there the theory: but in practice, the governors, aided by dominant interests in the several colonies, contrived to govern according to the policy dictated from Downing Street. Just as at home, the crown, the nobles, and an ascendant party were supreme in the national councils,—so in the colonies, the governors and their official aristocracy were generally able to command the adhesion of the local legislatures.

A more direct interference, however, was often exercised. Ministers had no hesitation in disallowing any colonial acts of which they disapproved, even when they concerned the internal affairs of the colony only. They dealt freely with the public lands, as the property of the crown: often making grants obnoxious to the colonists; and peremptorily insisting upon the conditions under which they should be sold and settled. Their interference was also frequent, regarding church establishments and endowments, official salaries and the colonial civil lists. Misunderstandings and disputes were constant, but the policy and will of the home government usually prevailed.

Colonial Patronage

Another incident of colonial administration was that of patronage. The colonies offered a wide

field of employment for the friends, connexions, [362] and political partisans of the home government. The offices in England, available for securing parliamentary support, fell short of the demand; and appointments were accordingly multiplied abroad. Of these, many of the most lucrative were executed by deputy. The favoured friends of ministers, who were gratified by the emoluments of office, were little disposed to suffer banishment in a distant dependency. Infants in the cradle were endowed with colonial appointments, to be executed through life by convenient deputies. Extravagant fees or salaries were granted in Downing Street, and spent in England; but paid out of colonial revenues. Other offices again, to which residence was attached, were too frequently given to men wholly unfit for employment at home, but who were supposed to be equal to colonial service, where indolence, incapacity, or doubtful character might escape exposure.(3) Such men as these, however, were more mischievous in a colony than at home. The higher officers were associated with the governor, in the administration of affairs: the subordinate officers were subject to less control and discipline. In both, negligence and unfitness were injurious to the colonies. As colonial societies expanded, these appointments from home further excited the jealousy of colonists, many of whom were better qualified for office than [363] the strangers who came amongst them to enjoy power, wealth, and distinction, which were denied to themselves. This jealousy and the natural ambition of the colonists, were among the principal causes which led to demands for more complete self-government. As this feeling was increasing in colonial society, the home government were occupied with arrangements for insuring the permanent maintenance of the civil establishment out of the colonial revenues. To continue to fill all the offices with Englishmen, and at the same time to call upon the jealous colonists to pay them, was not to be attempted. And accordingly the home government surrendered to the governors all appointments under £200 a year; and to the greater number of other offices, appointed colonists recommended by the governors.(4) A colonial grievance was thus redressed, and increased influence given to the colonists; while one of the advantages of the connexion was renounced by the parent state.

Commercial Policy

While England was entering upon a new period of extended liberties, after the Reform Act, circumstances materially affected her relations with the colonies; and this may be termed the third and last period of colonial history. First, the abolition of slavery, in 1833, loosened the ties by which the sugar colonies had been bound to the mother country. This was [364] followed by the gradual adoption of a new commercial policy, which overthrew the long-established protections and monopolies of colonial trade. The main purpose for which both parties had cherished the connexion was lost. Colonists found their produce exposed to the competition of the world; and, in the sugar colonies, with restricted labour. The home consumer, independent of colonial supplies, was free to choose his own market, wherever commodities were best and cheapest. The sugars of Jamaica competed with the slave-grown sugars of Cuba: the woods of Canada with the timber of Norway and the Baltic.

These new conditions of colonial policy seriously affected the political relations of the mother country with her dependencies. Her interference in their internal affairs having generally been connected with commercial regulations, she had now less interest in continuing it; and they, having submitted to it for the sake of benefits with which it was associated, were less disposed to tolerate its exercise. Meanwhile the growing population, wealth, and intelligence of many of the colonies, closer communications with England, and the example of English liberties, were developing the political aspirations of colonial societies, and their capacity for self-government.

Early in this period of transition, England twice had occasion to assert her paramount authority: but learned at the same time to estimate the force of local opinion, and to seek in the further development of free institutions, the problem of colonial government. Jamaica, [365]

discontented after the abolition of slavery, neglected to make adequate provision for her prisons, which that measure had rendered necessary. In 1838, the Imperial Parliament interposed, and promptly supplied this defect in colonial legislation. The local assembly, resenting this act of authority, was contumacious, stopped the supplies, and refused to exercise the proper functions of a legislature. Again Parliament asserted its supremacy. The sullen legislature was commanded to resume its duties; and submitted in time to save the ancient constitution of Jamaica from suspension.

At the same period, the perilous state of Canada called forth all the authority of England. In 1837 and 1838, the discontents of Lower Canada exploded in insurrection. The constitution of that province was immediately suspended by the British Parliament; and a provisional government was established, with large legislative and executive powers. This necessary act of authority was followed by the reunion of the provinces of Upper and Lower Canada into a single colony, under a governor-general.

Responsible Government

But while these strong measures were resorted to, the British Government carefully defined the principles upon which parliamentary interposition was justified. 'Parliamentary legislation,' wrote Lord Glenelg, the colonial minister, 'on any subject of exclusively internal concern to any British colony possessing a representative [366] assembly is, as a general rule, unconstitutional. It is a right of which the exercise is reserved for extreme cases, in which necessity at once creates and justifies the exception.' Never before had the rights of colonial self-government been so plainly acknowledged.

But another principle was about to be established in Canada, which still further enlarged the powers of colonial assemblies, and diminished the influence of the mother country. This principle is known as the doctrine of responsible government. Hitherto the advisers of the governor in this, as in every other colony, were the principal officers appointed by the crown, and generally holding permanent offices. Whatever the fluctuations of opinion in the legislature, or in the colony,—whatever the unpopularity of the measures or persons of the executive officers, they continued to direct the councils of the colony. For many years, they had contrived, by concessions, by management and influence, to avoid frequent collisions with the assemblies: but as the principles of representative government were developed, irresponsible rulers were necessarily brought into conflict with the popular assembly. The advisers of the governor pursued one policy, the assembly another. Measures prepared by the executive were rejected by the assembly: measures passed by the assembly were refused by the council, or vetoed by the governor. And whenever such collisions arose, the constitutional means were wanting, for restoring [367] confidence between the contending powers.(5) Frequent dissolutions exasperated the popular party, and generally resulted in their ultimate triumph. The hostility between the assembly and permanent and unpopular officers became chronic. They were constantly at issue; and representative institutions, in collision with irresponsible power, were threatening anarchy. These difficulties were not confined to Canada: but were common to all the North American colonies; and proved the incompatibility of two antagonistic principles of government.

After the reunion of the Canadian provinces, a remedy was sought for disagreements between the executive and the legislature in that principle of ministerial responsibility, which had long been accepted as the basis of constitutional government in England. At first, ministers at home were apprehensive lest the application of that principle to a dependency should lead to a virtual renunciation of control by the mother country.(6) Nor had Canada yet sufficiently recovered from the passions of the recent rebellion, to favour the experiment. But arrangements were immediately made for altering the tenure of the principal colonial offices; and in 1847, responsible government was fully established under Lord Elgin. From that time, the governor-general selected his [368] advisers from that party which was able to command a

majority in the legislative assembly; and accepted the policy recommended by them. The same principle was adopted, about the same time, in Nova Scotia; and has since become the rule of administration in other free colonies.(7)

By the adoption of this principle, a colonial constitution has become the very image and reflection of parliamentary government in England. The governor, like the sovereign whom he represents, holds himself aloof from, and superior to parties; and governs through constitutional advisers, who have acquired an ascendancy in the legislature. He leaves contending parties to fight out their own battles; and by admitting the stronger party to his councils, brings the executive authority into harmony with popular sentiments.(8) And as the recognition of this doctrine, in England, has practically transferred the supreme authority of the state, from the crown, to Parliament and the people,—so in the colonies has it wrested from the governor and from the parent state, the direction of colonial affairs. And again, as the crown has gained in ease and popularity what it has lost in power,—so has the [369] mother country, in accepting, to the full, the principles of local self-government, established the closest relations of amity and confidence between herself and her colonies.

There are circumstances, however, in which the parallel is not maintained. The Crown and Parliament have a common interest in the welfare of their country: but England and her colonies may have conflicting interests, or an irreconcilable policy. The crown has, indeed, reserved its veto upon the acts of the colonial legislatures: but its practical exercise has been found scarcely more compatible with responsible government in the colonies, than in England. Hence colonies have been able to adopt principles of legislation inconsistent with the policy and interests of the mother country. For example, after England had accepted free trade as the basis of her commercial policy, Canada adhered to protection; and established a tariff injurious to English commerce.(9) Such laws could not have been disallowed by the home government without a revival of the conflicts and discontents of a former period; and in deference to the principles of self-government, they were reluctantly confirmed.

Democratic Constitutions

But popular principles, in colonial government, have not rested here. While enlarged powers have been intrusted to the local [370] legislatures, those institutions again have been reconstituted upon a more democratic basis. The constitution granted to Canada in 1840, on the reunion of the provinces, was popular, but not democratic. It was composed of a legislative council, nominated by the crown, and of a representative assembly, to which freeholders or roturiers to the amount of £500 were eligible as members. The franchise comprised 40s. freeholders, £5 houseowners, and £10 occupiers: but has since been placed upon a more popular basis by provincial acts.

Democracy made more rapid progress in the Australian colonies. In 1842, a new constitution was granted to New South Wales, which, departing from the accustomed model of colonial constitutions in other parts of the Empire, provided for the legislation of the colony by a single chamber.

The constitution of an upper chamber in a colonial society, without an aristocracy, and with few persons of high attainments, and adequate leisure, had ever been a difficult problem. Nominated by the governor, and consisting mainly of his executive officers, it had failed to exercise a material influence over public opinion; and had been readily overborne by the more popular assembly. The experiment was, therefore, tried of bringing into a single chamber the aristocratic and democratic elements of colonial government. It was hoped that [371] eminent men would have more weight in the deliberations of the popular assembly, than sitting apart and exercising an impotent veto. The experiment found favour with experienced statesmen: yet it can scarcely be doubted that it was a concession to democracy. Timely delays in legislation,—a cautious review of public measures,—resistance to the tyranny of a majority,

and the violence of a faction,—the means of judicious compromise,—were wanting in such a constitution. The majority of a single chamber was absolute.

Australian Constitutions of 1850

In 1850, it became expedient to divide the vast territories of New South Wales into two, and the southern portion was erected into the new colony of Victoria. This opportunity was taken of revising the constitutions of these colonies, and of South Australia and Van Diemen's Land. (10) The New South Wales model was adhered to by Parliament; and a single chamber was constituted in each of these colonies, of which one-third were nominated by the crown, and two-thirds elected under a franchise, restricted to persons holding freehold property worth £100 and £10 householders or leaseholders. A fixed charge was also imposed upon the colonial revenues for the civil and judicial establishments, and for religious worship. At the same time, powers were conceded to the governor and legislative council of each colony, with the assent [372] of the queen in council, to alter every part of the constitution so granted. The experiment of a single chamber was soon abandoned by those colonies themselves; while the principle of election was introduced into the legislative councils.(11) But otherwise the tendency of such societies was naturally favourable to democracy; and in a few years the limited franchise was changed, in nearly all of these colonies, for universal or manhood suffrage and vote by ballot.(12) It was open to the queen in council to disallow these laws, or for Parliament itself to interpose and suspend them:(13) but in deference to the principle of self-government, these critical changes were allowed to come into operation.

In 1852, a representative constitution, with two chambers, was introduced, after some delay, into New Zealand;(14) and, about the same period, into the Cape of Good Hope.

To conclude this rapid summary of colonial [373] liberties,—it must be added that the colonies have further enjoyed municipal institutions, a free press, and religious freedom and equality. No liberty or franchise prized by Englishmen at home, has been withheld from their fellow countrymen in distant lands.

Colonial Democracy

Thus, by rapid strides, have the most considerable dependencies of the British crown advanced, through successive stages of political liberty, until an ancient monarchy has become the parent of democratic republics, in all parts of the globe. The constitution of the United States is scarcely so democratic as that of Canada, or the Australian colonies. The president's fixed tenure of office, and large executive powers,—the independent position and authority of the Senate, and the control of the supreme court,—are checks upon the democracy of congress. But in these colonies the majority of the democratic assembly, for the time being, are absolute masters of the colonial government: they can overcome the resistance of the legislative council, and dictate conditions to the governor, and indirectly to the parent state. This transition from a state of control and pupilage, to that of unrestrained freedom, may have been too precipitate. Society,—particularly in Australia,—had scarcely had time to prepare itself for the successful trial of so free a representation. The settlers of a new country were suddenly [374] intrusted with uncontrolled power, before education, property, traditions and usage had given stability to public opinion. Nor were they trained to freedom, like their English brethren, by many ennobling struggles, and the patient exercise of public virtues. But such a transition, more or less rapid, was the inevitable consequence of responsible government, coupled with the power given to colonial assemblies, of reforming their own constitutions. The principle of self-government once recognised, has been carried out without reserve or hesitation. Hitherto there have been many failures and discouragements in the experiment of colonial democracy: yet the political future of these thriving communities affords far more ground for hope than for despondency.

England ventured to tax her colonies, and lost them: she endeavoured to rule them from Downing Street, and provoked disaffection and revolt. At last, she gave freedom, and found national sympathy and contentment. But in the meantime, her colonial dependencies have grown into affiliated states. The tie which binds them to her, is one of sentiment rather than authority. Commercial privileges, on either side, have been abandoned: transportation,—for which some of the colonies were founded,—has been given up: patronage has been surrendered, the disposal of public lands waived by the crown, and political dominion virtually renounced. In short, their dependence has become little more than nominal, except for purposes of military defence.

Defence

[375] We have seen how, in the earlier history of the colonies, they strove to defend themselves. But during the prolonged hostilities of the French revolutionary war, assaults upon our colonies naturally formed part of the tactics of the enemy, which were met, on our part, by costly naval and military armaments. And after the peace, England continued to garrison her colonies with large military forces,—wholly paid by herself,—and to construct fortifications, requiring still larger garrisons. Wars were undertaken against the natives, as in the Cape of Good Hope and New Zealand,—of which England bore all the cost, and the colonies gained all the profit. English soldiers have further performed the services of colonial police. Instead of taxing her colonies, England has suffered herself to be taxed heavily on their account. The annual military expenditure, on account of the colonies, ultimately reached £3,225,081, of which £1,715,246 was incurred for free colonies, and £1,509,835 for military garrisons and dependencies, maintained chiefly for imperial purposes. Many of the colonies have already contributed towards the maintenance of British troops, and have further raised considerable bodies of militia and volunteers: but Parliament has recently pronounced it to be just that the colonies which enjoy self-government, should undertake the responsibility and cost of their own military defence.⁽¹⁵⁾ To carry this [376] policy into effect must be the work of time. But whenever it may be effected, the last material bond of connection with the colonies will have been severed; and colonial states, acknowledging the honorary sovereignty of England, and fully armed for self-defence,—as well against herself as others, will have grown out of the dependencies of the British Empire. They will still look to her, in time of war, for at least naval protection; and, in peace, they will continue to imitate her laws and institutions, and to glory in the proud distinction of British citizenship. On her part, England may well be prouder of the vigorous freedom of her prosperous sons, than of a hundred provinces subject to the iron rule of British pro-consuls. And, should the sole remaining ties of kindred, affection, and honour be severed, she will reflect, with just exultation, that her dominion ceased, not in oppression and bloodshed, but in the expansive energies of freedom, and the hereditary capacity of her manly offspring for the privileges of self-government.

Other parts of the British Empire have,—from the conditions of their occupation, the relations of the state to the native population, and other circumstances,—been unable to participate in the free institutions of the more favoured colonies;⁽¹⁶⁾ but they have largely shared in that spirit of enlightened liberality, which, during the last [377]twenty years, has distinguished the administration of colonial affairs.

Footnotes.

1. 31 Geo. III. c. 31; Parl. Hist., xxviii. 1377.
2. 4 Geo. I. c. 2; 6 Geo I, c, 23. Banishment was made a punishment, in 1597, by 39 Elizabeth, c. 4; and transportation, by orders in council, in 1614, 1615, and 1617.—Mills' Colonial Constitutions, 344.
3. 'As to civil officers appointed for America, most of the places in the gift of the crown have been filled with broken members of Parliament, of bad, if any, principles,—

valets de chambre, electioneering scoundrels, and even livery servants. In one word, America has been, for many years, made the hospital of England,'—Letter of General Huske, in 1758; Phillimore's *Life of Lord Lyttelton*, ii, 604, cited by Lord Mahon.

4. Earl Grey's *Colonial Policy*, i. 37-41; *Rules and Regulations for Her Majesty's Colonial Service*, ch. iii.; *Mills' Colonial Constitutions*, App. 378.
5. See Lord Durham's *Report on Canada*, 1839, p. 27-39.
6. Despatches of Lord J. Russell to Mr. Poulett Thomson, governor-general of Canada, Oct. 14th and 16th, 1839; *Parl. Papers*, 1848, No.621.
7. *Mills' Colonial Constitutions*, 201, 205, 209, etc. The only free colony to which responsible government has not been extended is Western Australia. In 1872, it was given to the Cape of Good Hope.
8. 'The executive council is a removable body, in analogy to the usage prevailing in the British constitution' ... 'it being understood that councillors who have lost the confidence of the local legislature will tender their resignations to the governors.'—*Rules and Regulations for the Colonial Service*, ch. ii.
9. *Report on Colonial Military Expenditure*, 1861. Ev. of Mr. Gladstone, 3785; MS. Paper by the Right Hon. Edw. Ellice, M.P.; and see a statement of difficulties experienced by the home government in endeavouring to restrain New Brunswick in the granting of bounties.—Earl Grey's *Colonial Policy*, i. 279.
10. This constitution was postponed, as regards Western Australia, until the colony should undertake to pay the charges of its civil government.
11. Western Australia is the only colony now having a single chamber.
12. *Colonial Acts*, Victoria, Nov. 24th, 1857, 21 Vict. No. 33; South Australia, Jan. 27th, 1858, 21 Vict. No. 12; New South Wales, Nov. 24th, 1858, 22 Vict. No. 22. In New Zealand the franchise has been given to the gold-miners.
13. *Colonial Acts* for such purposes were required to be laid before Parliament, for thirty days, before her Majesty's pleasure should be signified in regard to them.
14. 15 and 16 Vict. c. 72. A previous Act had been passed with this object in 1846, but its operation was suspended in the following year.
15. *Report of Committee on Colonial Military Expenditure*, 1861, and *Evidence; Resolution of Commons*, March 4, 1862.
16. Viz., India, Malta, Gibraltar, Ceylon, Hong Kong, St. Helena, Falklands, Labuan, Sierra Leone, Gambia, Gold Coast.

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