

The last few words which I have italicised are not quoted by the Colonial Secretary in his minute, but they are important as showing the precise view taken by the Secretary of State. The Governor apparently may, after personally examining any petition for mitigation, and after giving due weight to the advice of his Ministers, exercise an independent judgment and reject the application. He may say "No" on his own authority, but he can only say "Yes" on the advice of a Minister. The idea would seem to be to make the Governor and the Ministers mutually act as checks on each other. Either can negative a prayer for pardon, but both must concur before any such application can be granted. If, therefore, the petitions were considered in the first instance by the Governor, all cases rejected by him would at once be withdrawn from the cognizance or control of the Minister—a proceeding of which the latter might justly complain if any responsibility at all were to be imposed on him in this matter. In all cases in which the Governor proposed to mitigate the sentence, his decision would have to be approved and confirmed by the Minister, who might, if he saw fit, veto the merciful intentions of the Governor. It appears to me the Governor and the Minister would occupy somewhat anomalous positions in such cases. Under a constitutional form of government, the Crown is supposed to accept or reject the advice of Responsible Ministers: in this matter, the Minister would adopt or reject as he pleased the advice of the Representative of the Crown.

But suppose, on the other hand, that all petitions were considered and reported on in the first instance by the Minister, what would then be the result? Why, all cases rejected by the Minister need never be sent on at all to the Governor, to whom they would be addressed. For, as the Governor could not pardon without the advice of the Minister, there would be no object in troubling him with applications which he could not comply with. In cases in which the Minister advised mitigation, the Governor could, of course, if he saw proper, in the exercise of his "undoubted right," reject such advice—upon being prepared to accept the consequences. But, practically, he would never do so, except in cases which, in his view, involved such a gross abuse of the prerogative that both the Secretary of State and local public opinion would be likely to support him in the adoption of extreme measures. In all ordinary cases in which neither Imperial interests nor policy were involved, the Governor, whatever his own private opinion might be, "would be bound to allow great weight to the recommendation of his Ministry, who are responsible to the colony for the proper administration of justice and prevention of crime." Practically, under such a system, the prerogative of mercy would be transferred from the Governor to the Minister charged with such duties.

It was perhaps the recognition of some such difficulties which led to the suggestion of a compromise between these two systems, thrown out in Lord Kimberley's last despatch on the subject. In effect, his Lordship appears to suggest that the Governor might continue, as at present, to examine into and deal with all petitions for pardon, but that he should, before granting a mitigation of the sentence in any case, ascertain by means of informal consultation that the Minister concurred in such a step. I fear that such a plan would not work well, and that its effect would simply be to fritter away any real or clearly defined responsibility in such matters. In the first place, who would be responsible for the appeals rejected upon which charges of sectarian partiality or official corruption might possibly be based? Is the Governor to remain responsible for refusals, and the Minister to become responsible for pardons? Again, if the Minister is to be responsible for pardons, he would have, unless his concurrence were a mere matter of form, to go through all the reports and papers in each case in which a pardon was proposed by the Governor; and, as I have before shown, he would have to place upon the papers in writing his final acceptance or rejection of the Governor's advice. If such grave matters were disposed of in informal conversations, such a loose mode of transacting business would inevitably result in mistakes and misapprehensions. The Governor might decide a case under the full impression that the Minister concurred in his view, and yet he might find subsequently that there was some misunderstanding, and that his decision was repudiated and condemned.

For these reasons I entirely concur in the conclusion arrived at by the Hon. the Colonial Secretary, in his minute, that the responsibility for the exercise here of the Queen's prerogative of pardon must either, as heretofore, rest solely with the Governor, or it must be transferred to a Minister, who will be subject in this as in the discharge of other administrative functions, only to those checks which the Constitution imposes on every servant of the Crown, who is at the same time responsible to Parliament. The real question at issue is thus brought within narrow limits.

The Colonial Secretary expresses "grave doubts whether any change at present from the system which has hitherto prevailed here will be beneficial to the colony," and he thinks that, under the circumstances existing here, the prerogative of pardon will be better exercised by the Governor than by the Minister. If the validity of such an argument were once admitted, it might perhaps be held to extend to other branches of administrative business. But the very essence of the Constitution is responsibility to Parliament for the administration of local affairs; and possessing, as the system does within itself, a prompt and effectual means of correcting any abuse of power, there can be little doubt that political training and official experience will soon impose restraints upon those impulses which sometimes mar the earlier attempts at self-government.

I have felt, ever since my first arrival in the colony, that the practice which has hitherto prevailed here, of intrusting an important branch of local administration solely to an officer who is not responsible to Parliament, is highly objectionable; and as I fail to see that any plan of divided responsibility in such a matter can be devised, I can only repeat here, what I have on several occasions since the receipt of Lord Kimberley's last despatch stated to the Colonial Secretary in conversation—namely, that I am quite prepared to adopt a change of system; and I think that for the future all applications for mitigation of sentences should be submitted to me through the intervention of a responsible Minister, whose opinion and advice as regards each case should be specified in writing upon the papers.

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