

it, and the circumstances connected with the defeat of the Bill after it had been passed by an Assembly elected with special reference to the policy to which it gave expression, stated that he and his colleagues could, after this transaction, look forward with little confidence to the action by the Council with regard to measures passed by the Assembly. He further observed that the Ministers were desirous to avoid any course which might have the appearance of tampering with the Constitution, and, after mature consideration, had arrived at the opinion that signal evidence had been afforded of the failure of the nominee principle, the working of which they held to have invoked the interference of the Secretary of State in a manner not expressly sanctioned by law, and incompatible with the rights of self-government secured to the colony by the Constitution. They therefore had decided to introduce in the next session a Bill to reconstruct the Legislative Council on an elective basis; and, with reference to probable reception of such a measure by the Council, they felt compelled to weigh beforehand the considerations which should determine appointments to that body. As a matter of argument they could not recognise the wisdom and sound policy of a low maximum, but, if an arbitrary rule were to be kept in view, they were in favour of a maximum equal at least to one-half the Assembly. But they held that no such arbitrary rule should be maintained, and that all appointments should be determined by the circumstances of each case, and the exigencies of time, which could not be foreseen; and they could not relinquish any part of the liberties of the colony, nor concur in any rule at variance with the absolute right of the people to govern themselves in all matters within their colony, as secured to them by the Constitution.

3. In your despatch, No. 41, you give a clear and concise narrative of the several occasions on which the understanding arrived at in 1861, as to the number within which, for general convenience, it was expedient to limit nominations to the Council, has been questioned, and proposed to be set aside, showing that it has nevertheless been maintained with the consent of successive Ministers of differing opinions, and with only a slight modification, up to the present time, and you point out that this limitation was not suggested by Her Majesty's Government, and that its maintenance cannot justly be said to have been the result of any direct interference on the part of my predecessors.

4. Without entering into any lengthened examination of the present constitution of the Legislative Council, I would state that it does not appear to me to have been established that the appointment of its members by nomination has been the cause of the difficulties which have from time to time induced Ministers to recommend the addition to it at once for a particular object of an unusual number of members. If the tenure of his seat by a Legislative Councillor had been limited in the Constitution Act to a term of years, and it had been arranged that a fixed number of seats should become vacant, either annually or at frequently recurring periods, there would have been little danger of the Legislative Council being, or continuing for any long time to be, in opposition to the policy supported by the elective House. And it does not seem out of place to inquire whether, if any reform of the constitution of the Council should be held to be requisite, it is necessary to abandon the system of nomination. I do not wish to express a decided preference for either form of constitution, but I may observe that a Legislative Council constituted on an elective basis has proved itself, as your Ministers are aware, not less liable than a nomination House to come into collision with the representatives returned to the Assembly.

5. With reference to the opinion expressed by your Ministers, that the right of self-government and the liberties of the colony have been infringed by the rule acquiesced in by preceding Administrations, I think it can hardly be maintained that it is beyond the proper province of Ministers, who, from time to time, hold power as possessing the confidence of an Assembly freely elected by the people, to govern their action by such an understanding.

6. It appears to me that the arrangement by which any amendment of the Constitution Act, always a matter of serious difficulty and responsibility, has hitherto been avoided, must be held to have acquired a certain force and value, and that, in default of any fresh enactment, there is nothing inconsistent with the proper working of the Constitution in maintaining it.

7. The facts detailed in the first paragraph of Mr. Parkes's minute show clearly the practical inconveniences, not to use a stronger term, that would result from commencing the practice of making unlimited additions to the Council whenever the exigencies of the moment may lead Ministers to recommend them; and I am glad to be assured of your belief that he is impressed with the necessity of exercising great care in making appointments for life to that House. But, even if the number of gentlemen having the requisite qualifications were larger than I understand it to be, and it were possible by the exercise of care to select at the present time a number of persons suitable to be appointed to the Council, that could not always be the case. When one Minister has succeeded in procuring the creation of a number of members, sufficient, in his opinion, either to redress the political balance which he alleges to be averse to him in consequence of appointments made on the recommendation of predecessors from whose policy he differs, or to enable a measure of present importance to be passed, in opposition to the views of the Council, a similar concession could not fairly be refused to his successor; and it is far from being impossible that in a few years the members of the Legislative Council might thus be extravagantly increased, and its quality seriously deteriorated.

8. For the sake, therefore, of the permanent interests of constitutional government in the colony, in the working of which Her Majesty's Government cannot but take a deep interest, although they seek in no way to interfere with its internal administration, I shall be glad to learn that your Ministers have thought it better to abstain from inviting you to depart from the understanding which has hitherto prevailed.

Governor Sir Hercules Robinson, K.C.M.G., &c.

I have, &c.,
KIMBERLEY.

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