

opinion to be, that a system of government at home, more permanent in its principal responsible members than that which at present exists, and is carried on through the medium of the colonial office, and of a station so responsible as to insure their confidence, is essential to the good government of the colonies.

This he is fully persuaded is a matter, which, however it may be yet for some time delayed, must eventually force itself, on account of its importance, upon the consideration of parliament. For the honour and interest of the empire, and especially for the welfare of Her Majesty's colonial possessions, it is fervently hoped that it may early attract attention ; and great encouragement for this hope is found in the research and attention which has been of late addressed in parliament to colonial affairs-matters, indeed, upon which the most constant and diligent attention may well be bestowed, for what subject can be more interesting to the nation than the gradual and peaceful extension of its people, its religion, language, and laws, by the establishment of colonies, to which it has been as it were invited by Divine Providence vouchsafing to it the blessings of a long and profound peace, a redundant population at home, and an almost unbounded field for emigration abroad? What subject more interesting to a nation so circumstanced respecting its colonies, can be well conceived, than their good government ? *

With respect to the internal government of the colony, the objections which exist to the present system having been stated, the writer conceives it to be his duty in the next place to point out what more convenient form of government might be granted to it. The observations which have been hitherto made, have had reference only to New South Wales, in which the writer has resided for more than six years, and to which he is still attached by holding a responsible office ; and

* The writer of these observations is aware that this subject has been already brought before the public, by the petition to the House of Commons of Robert Montgomery Martin, Esq., author of the History of the British Colonies, who has thus the merit of having originated the suggestion. It would, however, be, in the estimation of the writer, a culpable neglect of his duty to his country, were he to withhold the expression of his own opinion merely because another has the merit which clearly belongs to Mr. Martin. He is happy to follow any one of right principles in advocating a just cause. He may be permitted, however, to state, that the opinion above expressed was entertained by him, and communicated to his personal friends and acquaintance, without any communication with Mr. Martin, or knowledge of his views, long before it was suggested in England. This will be remembered by several who will read this statement.

therefore conceives himself called upon by his duty to declare his own opinions-if they may have any weight-respecting the affairs of the colony, and to be at all times ready to give a reason for those opinions, and to promote its interests to the extent of his ability. A similar duty does not seem to be cast upon him as to any other colony ; and he might fear the imputation of over-officiousness and interference, his remarks were extended beyond the limits which he has prescribed to himself One colony, however-Van Diemen's Land-is so nearly connected with New South Wales, that although he pretends to no intimate acquaintance with its internal affairs, yet, inasmuch as the government of Van Diemen's Land was provided for, together with that of New South Wales, in the same expiring statute, and upon the same principles—and their future system will probably be provided for in like manner-the suggestions which follow are intended to be applicable to both.

Both New South Wales and Van Diemen's Land contain at present a free population of emigrants and natives alone, (without including those who have been convicts,) very far exceeding what that now flourishing colony, Upper Canada, attained for many years, after its present constitution was conferred upon it. In 1791, when the Stat. 31 Geo. III. c. 31, was proposed for the government of the two Canadas, Upper Canada contained a population of only 10,000 persons. The emigrant and native population of New South Wales cannot be now estimated at so little as 63,000, and that of Van Diemen's Land at so little as 20,000. No objection can therefore be made on the ground of the smallness of the communities, for which the same form of government is now sought to be obtained. The town of Sydney alone contains more free emigrants and persons born in the colony, than did the whole colony of Upper Canada when the parliament conferred upon it a legislature, consisting of the governor, assisted by his council, a legislative council appointed by the crown, and a legislative assembly, 'of not less than fifteen members,' freely elected by the people.

Upper Canada has prospered under the enjoyment of these privileges ; has increased in a ratio which can only be accounted for upon the consideration, that emigrants thither knew they were proceeding to a country where they would be governed according the principles of the British constitution ; and has preserved its attachment to Great Britain, and its loyalty to the crown, notwithstanding the near neighbourhood of examples to the contrary. And can it be doubted that under similar treatment, New South Wales will do the same ?

It has been long enough retarded by its convict yoke, its free emigrant and native- population largely predominate, and it would be giving an undue weight to that part of its population which now constitutes its minority, if that were now to be held a cause for depriving the colony at large of the free institutions of the parent state. The outline of that system of government which in the year 1791 was granted to each of the two provinces of Canada, and is now considered applicable to the two colonies of New South Wales and Van Diemen's Land, is as follows :—

That the governor, or lieutenant-governor of each colony, acting in the name and on the behalf of Her Majesty, and a legislative council, and a house of assembly, shall constitute the legislature of each colony, in manner following :-

1. That there shall be within each of the said colonies a legislative, council and an assembly, composed and constituted in the manner hereinafter described ; and in each of the said colonies respectively Her Majesty, her heirs and successors, shall have power, during the continuance of the act, to make laws for the peace, welfare, and good government thereof; and that all such laws, being passed by the legislative council and assembly of either of the said colonies respectively, and assented to by Her Majesty, her heirs or successors, or assented to in Her Majesty's name by such person as Her Majesty, her heirs or successors, shall from time to time appoint to be the governor or lieutenant-governor of such colony, or by such person as Her Majesty, her heirs, and successors shall from time to time appoint to administer the government within the same, shall be valid and binding to all intents and purposes whatever within the colony in which the same shall have been so passed.

2. Her Majesty to be empowered, by an instrument under her royal sign manual, to authorize and direct the governor or lieutenant-governor, &c. within a time specified, in Her Majesty's name, and by an instrument under the great seal of the colony, to summon a sufficient number of discreet and proper persons, being not fewer than twelve members, to the legislative council of each colony.

3. That no person shall be summoned to the legislative council under twenty-one years of age, and not being a natural-born subject of Her Majesty, or naturalized by act of the British parliament.

4. That every member of each of the said legislative councils shall hold his seat therein for life, subject to provisions for vacating the same, in cases to be specified.

5. Seats in council to be vacated by absence from the colony for a definite time, or by becoming bankrupt, or taking the benefit of any laws relating to insolvency, or being convicted of treason or felony.

6. Questions respecting the vacancy of any seat in council, to be determined by the council, subject to appeal to Her Majesty in parliament.

7. The governor, or lieutenant-governor, acting in the name and on behalf of Her Majesty, to have power to appoint and remove the speaker of the legislative council.

8. Her Majesty to authorize (as in the Canada act) the governor, or lieutenant-governor, by an instrument under the great seal of the colony, to summon and to call together an assembly in and for each colony.

9. That for the purpose of electing the members of such assemblies respectively, Her Majesty may, by an instrument under her sign manual, authorize the governor or lieutenant-governor of each colony, to issue a proclamation dividing the colony into districts, or counties, or circles, and towns and townships, and appointing the limits thereof, and declaring and appointing the number of representatives to be chosen by each ; and to nominate and appoint proper persons to execute the office of returning officer in each of the said districts, &c. Such declaration and appointment to be valid, unless at any time otherwise provided for by any act, of the legislative council and assembly assented to by Her Majesty.

10. The whole number of members to be chosen in each colony, shall *not* be *less* than twenty. *

11. Writs in Her Majesty's name for the election of members of the house of assembly, to be issued by the governor or lieutenant-governor, within sixteen days after the sealing of the instrument for summoning and calling together the assembly; to be directed to the respective returning officers, and made returnable within fifty days from the day on which they shall bear date, unless otherwise provided for by an act of the legislature, duly assented to by, or on behalf of Her Majesty.

12. The members for the several districts, &c., to be chosen by the majority of votes of such persons as shall possess a freehold of £10 in annual value, or shall rent a dwelling house of £30 a year.

13. No member of the legislative council to be eligible as a member of the house of assembly, or any minister of the Church of England, or of the Church of Scotland, or any minister, priest, ecclesiastic, or teacher, either according to the rites of the church of Rome, or under any other form or profession of religious faith or worship.

14. No person to be capable of being an elector or a member under twenty-one years of age. Nor any person attainted of treason or felony.

15. The governor, or lieutenant-governor, to fix the time and place of holding elections, and of holding the sessions of the council and assembly, giving fourteen days' notice of such time, subject to being otherwise provided for by the legislature.

16. The council and assembly to be called together at least once in every twelve months, and to continue for four years from the day of the return of the writs for choosing the same, subject to be sooner prorogued or dissolved by the governor or lieutenant-governor.

17. All questions either in the council or assembly to be decided by a majority of voices of such members as shall be present; in case of equality, the speaker to have a casting voice.

18. The governor to be authorized to give or withhold Her Majesty's assent to bills passed by the legislative council and assembly, or reserve them for Her Majesty's pleasure.

19. Copies of all bills assented to by the governor to be transmitted by the first convenient opportunity to one of Her Majesty's principal secretaries of state, and the Queen to be authorized to declare her disallowance thereof within two years.

20. Bills reserved for Her Majesty's pleasure not to have any force until Her Majesty's assent be communicated to the council and assembly.

* Upper Canada, it was considered, could only afford fifteen members.

21. All laws, statutes, and ordinances in force, on the day to be fixed for the commencement of the act, to remain and continue in full force and effect, except in so far as altered by the act, and as they may be afterwards altered by the legislature.

Such are the principles upon which the government of each of the Canadas was provided for, when the population of one of them did not amount to a tenth part of that of New South Wales at the present time ; and such, it is maintained, might safely, and ought constitutionally to be the system upon which the future government of that colony, and of its neighbour Van Diemen's Land, should now be established. It is no new or hastily conceived theory, but was devised for the Canadas by the Imperial parliament, upon the model of one, which may God of his goodness long vouchsafe to preserve the British constitution! and an experience of fifty years has attested its wisdom, whilst the same length of experience in any system provided for the Australian colonies has only proved its insufficiency.

The present time, it is conceived, is one to be ~~avoided~~ ^{taken a dvantage} of by the friends of the latter for procuring a return, in their case, to the right principles of colonization. The present session of parliament cannot pass away without some measure being proposed by Her Majesty's ministers, for the future government of those colonies. The noble lord at present at the head of the colonial department having, in his place in parliament, declared such an intention, it is most important what that measure shall be, and that it shall be of a nature to satisfy the just expectations of the colonists.

Thus much it has been thought by the writer to be his duty to lay before his fellow-countrymen in Great Britain, on the subject of the future government of these colonies. When, however, ministers shall produce a bill having that object, it will be found that there are others of equal importance to be provided for, and requiring not less jealousy to be placed upon true and constitutional principles, -viz. the administration of justice—the settlement of the church in the colony and the education of the colonial youth.

* The writer has twice before advocated, in his public communications to the government, the establishment of a new system of government for New South Wales on these principles ; viz., first at the commencement of the year 1838, and again at the commencement, of the year 1839.

THE JAMAICA GOVERNMENT,

VIEWED WITH REFERENCE TO THE LATE CONTEST, AND PRESENT
POLICY, OF SIR CHARLES METCALFE.

THE colony of Jamaica, occupying so large a space in the history of our transatlantic possessions, and contributing, as it has done, so considerably to the resources of the mother-country, must be an object of deep interest to every reader of this Journal. This interest is greatly increased when we view the present state of the colony, contrasted with that which it presented but a few months since.

We have taken up this subject on the present occasion in conformity with our promise, believing that a calm consideration of the late contest, in which the house of assembly was so unhappily involved with the colonial office, may afford some sound practical lessons for the future government of all our transmarine possessions, and that the present tranquil state of Jamaica will clearly demonstrate that mild and conciliatory measures towards our varied and invaluable dependencies, are ever to be preferred to a system of severity and coercion.

We shall best illustrate and enforce these views, by giving an impartial narrative of the leading features of that contest, and by showing it to have been the result of a temporary departure from those sound principles and maxims of policy, by which alone we are persuaded it is possible to discharge the obligations which rest on the parent state, and to keep alive those feelings of mutual good understanding and attachment, which it is at all times so desirable and necessary to preserve.

In order accurately to understand, and fully to appreciate the nature of the contest referred to, it will be necessary to glance over the history of the constitution of Jamaica.

The protection of the nicely balanced powers of the British constitution, the enjoyment of the spirit of freedom, which is its soul, together with all the varied rights and privileges which it confers, are the birthright of every Englishman. And he can no more be stripped or deprived of these by any acts of others, than he can throw off his allegiance to his sovereign by any act of his own. And as these are the birthright of the *man*, so they follow him into every land. Whether he advances on the East or on the West ; whether he dwells

on the burning plains of Asia, or goes to colonize the interminable forests of America, the constitution he carries with him and establishes, is necessarily the same, it is an off-shoot of the parent tree, having the same form, and in all respects analogous thereto ; in short, it is an image or miniature of the British constitution. Nor does this in the slightest degree derogate from, nor is it inconsistent with that supreme *general* superintending power, which the government and parliament of this country necessarily possess over each part of the British empire, any more than the *general* rights of the parent prevent the operation of free will in the child, or are incompatible with his *particular* self-government.

Such was the nature of the rights and privileges which, in 1655, the first English colonists of Jamaica carried with them to that splendid island : and thus their constitution and form of government is contemporaneous with the first settlement of the colony. When Jamaica became a part of the British empire, her inhabitants were composed not of the conquered people of a foreign state, but original settlers, who resorted thither, not only with the permission, but the invitation and encouragement of the crown. They were, in fact, Englishmen leaving their country with the permission of their sovereign, and became, therefore, upon principles of constitutional law which have never been doubted, entitled to carry with them, and did carry with them, all the rights and privileges of British-born subjects : so that when a form of government was to be given to them, none could be given less free than that which England herself possessed. Incapable, in consequence of their absence, of participating in legislation here, incapable of being represented here, they of necessity acquired a representative form of government in the colony to which they resorted.

Thus then was established the constitution of Jamaica ; it consists of the sovereign of the United Kingdom, represented in the colony by a governor or lieutenant-governor, a council, composed of twelve persons, five of whom are sufficient to constitute a board, and who are nominated, and hold their seats as members, at the will of the crown. They may even be suspended by the governor himself, and may be appointed by him whenever the number is reduced to less than seven. This body forms also the executive, as well as the legislative council. Besides these two branches of the legislature, there is an assembly, consisting of forty-five members, chosen by the freeholders of the respective districts which they represent, and this last branch is precisely analogous to, and possesses all the rights and privileges of, the British House of Commons.

Thus has Jamaica, to use the language of that great and eminent statesman, Burke, “except in the commercial restraint, every characteristic mark of a free people in all her internal concerns ; she has the image of the British constitution ; she has the substance ; she is taxed by her own representatives ; she chooses most of her own magistrates ; she pays them all ; she has in effect the sole *disposal of her own internal government.*”

Such is the constitution which has ever been, and still is, possessed by Jamaica. Such is the constitution under which this great colony has prospered, increasing year by year, until it comprises at least one-half of the populations of our West Indian possessions, giving imports into this country of four millions, and receiving exports from hence of nearly three millions per annum ; and well indeed did it merit the description it received from that great naval hero Lord Rodney, when he called it “ the brightest jewel in the British diadem.” That the value of such a constitution has not been unappreciated by the people of Jamaica we shall see, as we glance over its past history, marking, as we proceed, the jealousy with which they have always watched their rights and privileges, and the uncompromising firmness with which they have maintained them whenever their invasion has been attempted.

We have endeavoured to point out that the original settlers of Jamaica, when they ceased to have a voice in making the laws of England, of necessity possessed, in the country where they had settled, a voice in making those laws by which they were to be governed, and in imposing those taxes and burthens which were necessary for the support of their civil government, and which they themselves had to provide. But the constitution of Jamaica, did not rest alone upon this title, high and paramount as it is : it is expressly ratified and confirmed by a proclamation which was issued by Charles II., shortly after his restoration. By this proclamation it is expressly declared, that “ all children of any of the natural-born subjects of England to be born in Jamaica, shall, from the time of their respective births, be reputed to be, and shall be, free denizens of England, and shall have the same privileges, to all intents and purposes, as the free-born subjects of England.” This was, indeed, rather a guarantee and confirmation of those rights which the people of Jamaica then enjoyed, and which they carried with them from England, than in the nature of an original grant.

Shortly after the issuing of this proclamation, a new governor was appointed, and sent out with instructions to convene an assembly.

An assembly was accordingly convened, which, within a few years after that period, consisted of thirty-two members, and which now consists of forty-five. It was the fate of that assembly, a few years afterwards, to encounter from the ministry of the day an attack similar, in many respects, to that which has so lately been made on the existing constitution, and which has been so nobly and successfully withstood. A scheme was formed by the ministers of Charles II. to govern Jamaica *nominally* by its constitutional legislature, the governor, council, and assembly, but, in reality, by means of laws previously framed in England, and sent out to the governor, to be presented to the assembly—their concurrence being expected and required, without any deliberation, on the subject of those laws. Lord Carlisle was the governor entrusted by that ministry to carry this scheme into execution. He was furnished with a body of these laws, and arrived in Jamaica in 1678. He proposed them to the assembly, but they positively refused to pass any of them—they knew, as Englishmen, the rights to which they were entitled, and had the honesty and fortitude to resist all the various means which were resorted to for the purpose of procuring their compliance. The governor proceeded to measures of violence ; he removed some of the judges, arrested others, and imprisoned some of the members of the council. One of them, whose name is well known in the history of Jamaica, was brought from thence to this country *as a prisoner*. The people of Jamaica appealed to the sovereign against the arbitrary conduct of the ministers : their resistance to that oppressive scheme, and their right to retain a free constitution, became, in consequence, a subject of grave and solemn deliberation before the privy council, at which the chief justice of England assisted. The result was, that the scheme was abandoned. A new commission was forwarded to the governor, under which, in 1680, the established constitution of Jamaica was again recognized, and it was declared, that the acts passed by the three branches of its legislature should at once obtain the full force and effect of laws, and their operation should not be subject to be suspended until the sovereign's pleasure was known. They were subject, of course, to disallowance by the sovereign, but until that disallowance was given they remained in full force and effect. This was the first great victory achieved on behalf of the Jamaica constitution, and one of the highest possible importance, not because it thereby acquired any new rights, but because it ascertained and defined, recognized and *declared* those which it already possessed, and which had, from its very origin, existed as a part of that constitution.

The next memorable event in the history of Jamaica occurred in the year 1728. For some few years preceding this period, there had been an attempt, on the part of the crown, to obtain from the assembly a permanent revenue. They, however, refused to grant the supplies, except from year to year, unless they were secure of their being appropriated to the service of the island.. This second contest was terminated by the crown giving up, on its part, the title to the quit-rents of the colony, and receiving, in lieu thereof, a permanent revenue of £8000 per annum; but the special purposes to which that sum was to be appropriated were named in the very act by which it was granted. That law continues in force at this day, and it contains an express provision that all the laws, “statutes, usages, and customs of England shall continue the common laws of his majesty’s island of Jamaica for ever.”

Again, in the year 1788, the rights and freedom of the constitution of Jamaica were ratified and confirmed by a general act, which was then passed, to restore to the colonies that confidence in the justice and protection of the parent state which had been unfortunately interrupted by the unnatural contest in which Great Britain had been previously engaged with her colonies in America. That act, the 18th of George III. chap. 12, enacts and *declares*, that neither the crown nor the parliament of England would at any time thereafter impose any further tax or duty upon the people of the colony, but left it to themselves, by their representatives, to do so. The only duties which the imperial parliament retained to itself the right of imposing, were those in respect of commerce, but the proceeds of those duties so imposed were only to be applied to the purposes of the colony.

In 1764, a new species of danger threatened the constitution. A very distinguished person, who was then governor of the island (Mr. Littleton), attempted to deprive the assembly of a privilege belonging to that body and essential to the effective exercise of its functions. In his character of chancellor, he discharged two persons who had been committed by the house of assembly for a breach of their privileges. The house, upon ascertaining the fact, came at once to the resolution that that act of the governor was a breach of their privileges, and that until a reparation had been made they would not proceed to transact any further business.

Mr. Littleton prorogued the assembly-dissolved it-convened another-prorogued that-and dissolved it again; and in that state did the colony continue till the 24th June, 1766, a period of two years; when Mr. Littleton was recalled, and Mr. Elliotson was appointed