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-FORMS OF GOVERNMENT ESTABLISHED IN THE
BRITISH COLONIES.

THERE is no subject connected with civilization so ill-defined, or so imperfectly understood, as that of governing men in masses ; and for **this** reason, that, in the present state of mankind, the science (if it may be so called) of government is not capable of being reduced to fixed principles ; and the various habits, feelings, and social condition of **our** fellow-beings require a peculiar discrimination for the purpose of securing to authority the fealty and attachment, without which no constituted power can long exist. If self-governance in the case of an individual be difficult, and too often unattained when opposed to the **master** passions, how much more complicated does the question of the **government of a nation** become, especially if that nation be far **advanced in** civilization, and at the same time possessed of numerous **distant** colonies in every stage of the social compact, from the rudest to **the** highest grades of civilized life.

When men enter into the social compact, they openly or tacitly **surrender** a portion of what is termed their natural **liberty**, in order that they may enjoy, with the greater security and advantage, the free **privileges which they retain** ; but the quantity necessarily surrendered, **and the time or periods** for so doing, have never been defined, and as long as the human mind is not entirely influenced by Christian **principles**, never can be accurately stated.

Some people, it is true, have a greater aptitude for the acquisition of political freedom than others ; several quickly **appreciate** its advan-

tages, but appear incapable of retaining it ; and too many prefer serving under some superior rule, from an inability to enjoy the inestimable benefits of an equal share of liberty diffused among their fellow-subjects.

Let it not be supposed, however, that any man is by nature so imperfect, as to be insensible of the blessings of liberty ; freedom of will is unreservedly given to all ; the exercise of it remains with the individual—its dormantness is no proof of its non-existence ; but it is so feebly, so partially, and so irregularly exercised, that the mass of mankind remain, even after centuries of good example, in a state of comparative barbarism and slavery. As has been elsewhere observed,* “ Man makes or mars his own happiness ; the good created for his bliss he too often perverts unto evil, and then laments over what he erroneously terms the dispensations of Providence : the free-will bestowed for his advantage too seldom, alas ! is governed by the influence of reason ; passion triumphs, and sin and misery ensue.”

For a man to be politically free in the highest social state, he must first be, as an individual, *morally* free ; no species of real liberty can long exist without the doctrine of responsibility being experienced in its fullest force ; responsibility rests on self-agency, and a human being seeking happiness individually, socially, or politically, must be conscious that—its attainment is within his own power, and that until he internally understands and appreciates it, he never can enjoy it externally.

The rules that, are applicable to individuals apply with as great, if not greater, force to them when congregated in a society, the object of which is self-protection so far as it is consistent with the prosperity and happiness of their neighbours ; and therefore, until the influence of free agency be generally felt and rigidly acted on, any attempt at fixing government as a science based on immutable principles, to be carried into operation under all circumstances and at all times, must necessarily end not only in disappointment, but in protracting the period when the mind shall be fitted for the reception of truth, and prepared to act on its infallible precepts,

In every thing with which we are acquainted, improvement or **perfection** is arrived at by progressive stages, varying in duration according to the object to be attained, thus also is it with self or with general government ; and it is according to our power of resisting temptation, or of controlling the passions, that we are more or less fitted to make

* In the Introduction to the “ Analysis of the Bible.”

a good use of our free-will, to render it practically efficient for the management of our political as well as social affairs, and therefore conducive not only to our national welfare, but to the happiness of mankind.

Few of the present transmarine possessions of England were originally acquired by actual settlement ; they were chiefly obtained by conquest or cession, and to the inhabitants was promised the continued enjoyment of their religion and laws : hence we see the reason why, to a certain extent, such various forms of government are in existence under the sway of the British crown.

In order to comprehend this intricate and important subject in its full bearing, it will be necessary to take a summary view of each colony as to its domestic government, and we shall then be better prepared to discuss the general question of our colonial administration at home and abroad.

The colonies, as to government, may be divided into three classes :

1st. Those having a representative assembly, a legislative council, and a governor.

2d. Those having no representative assembly, but a legislative council, and a governor.

3d. Those having neither a representative assembly, nor a legislative council, but only a governor.

The first class may be said to comprise-Canada, Upper and Lower, New Brunswick, Nova Scotia and Cape Breton, Prince Edward Island, and Newfoundland, in North America ; Jamaica, Barbadoes, Antigua, Tobago, Grenada, St. Vincent, Montserrat, Nevis, St. Mitt's, Honduras, the **Virgin** Isles, the Bahamas, and Bermudas, in the West Indies ; the **Ionian** Isles, the Norman Isles, and the Isle of Man, in Europe.

The **second** class comprehends Bengal, Madras, Bombay, Penang, **Malacca**, Singapore, and Ceylon, in Asia ; the Cape of Good Hope, the **Mauritius**, Sierra Leone, the Gambia, and Cape Coast Castle, in Africa ; New South Wales and Van **Diemen's** Island, in Australasia ; Demerara, Essequibo, Berbice, Trinidad, and St. Lucia, in the West Indies ; and **Malta** and Gozo, in Europe.

The third class embraces-St. Helena,* Ascension, Accra., and Seychelles, in Africa ; Swan River, (Western Australia,) and South Australia, in Australasia ; Gibraltar and **Heligoland**, in Europe.

* There is a council at St. Helena, and at some other of the settlements included in this class, but it is a council in aid of the governor, not as a controlling or directing power,

In the first class, the people, through their representatives in the house of assembly, regulate the levying of taxes, and control, to a certain extent, the expenditure thereof; in the second class, there is no immediate power over the council, except that of public opinion in the colony; and in the third, the governor is responsible alone to the home government.

Canada Lower was, until the recent rebellion, an illustrative example of the first class. Estimating the population at half a million, the number of electors was at least 80,000, of whom nine-tenths were proprietors of the soil. These electors returned eighty-eight representatives to form an Assembly (like the British House of Commons,) which elected its speaker, held its annual sitting at Quebec, the capital of the province, and was renewable every four years, under the provisions of what is termed the Quebec Act of 1791, which has been called Mr. Pitt's act, although really drawn up by Lord Grenville.

The qualifications for an elector were, - in the counties, being possessed of real property to the yearly value of forty shillings sterling; in the towns, of the yearly value of five pounds, or paying rent to the amount of ten pounds sterling annually. No religious disabilities as to electors, but clergymen and Jews were not eligible as representatives. Elections by open voting. No property qualification required for representatives, who, moreover, were paid eighteen shillings a day while the session continued, and four shillings a league travelling expenses to and from the capital.

The Assembly thus described was empowered to make laws for the "peace, welfare, and good government of the province," such laws not being repugnant to the act of 31 George III. c. 31. The Assembly claimed, and if an adequate civil **list*** were granted, the imperial government would have been disposed to concede, a sole control over the finances of the colony, both as to the extent and mode of levying the taxes, and the distribution of the **same**.†

* A colonial and civil list is sometimes understood to signify the means of paying the governor and a few of the principal functionaries; but a proper civil list should include the **means** of carrying on the whole of the civil government, so far as it be liable to be deranged by the house of assembly stopping the annual votes of supply.

† England has granted more liberty to her colonies, practically **speaking**, than any other nation; it is true, that the French National Assembly professed to do much, but their professions were very imperfectly put in execution. In the first clauses of a law passed in the National Assembly at Paris, on the 8th of March, 1790, it is declared, "That every colony is authorized to make known its wishes

The Legislative Council or Upper House, consisted of thirty-four members, appointed by his Majesty for life. The chief justice, Protestant bishops, and several other public functionaries, were, *ex-officio*, included in the list of members. This house held its sittings at the same time as the House of Assembly ; and its functions, in relation to the latter, were as those of the British House of Lords to the House of Commons.

The governor of the province represented his Majesty, in whose name he assembled, prorogued, and dissolved the two houses, which, however, he **was** obliged to call together once in every twelve calendar months. The governor gave, withheld, or reserved, for the further signification **of his Majesty's** pleasure, the royal sanction to bills proposed and passed by the other two branches ; but laws assented to by the governor, might be disallowed by the king within two years.

The governor was assisted by an executive council of eleven members, holding official rank, and appointed by the crown. The executive council in the colonies is somewhat similar in its functions to the privy council in England.

“ The existence of a council to advise the governor in the conduct of the affairs of Canada, may be traced back to the first establishment of a civil government in this province, under the authority of Great Britain. ‘ The Royal Instructions to General Murray,’ dated December 7th, 1763, commanded him **to** name a council, consisting of four principal functionaries therein specified, and of eight other persons chosen from among the most considerable inhabitants of the province; and directed that the body so appointed, should have all the powers and privileges usually enjoyed by the councils in his Majesty's other plantations.

“ Under the authority of this instruction, the council seems to have exercised the function of deliberating on any matters of administration referred to it by the governor, and also of assisting him in framing regulations for the peace, order, and **good** government of the province. The statute of 14 Geo. III. c. 83, established the council in a more formal manner, and directed that it should consist of not more than twenty-three, nor less than seventeen persons, empowered to concur with the governor in making laws for the good government of the province. The members of this council appear to have been consulted also **as** advisers on administrative questions, but to have kept separate records in that

with respect to the constitution, legislature, and administration, which it may deem most likely to conduce to the prosperity and happiness of its inhabitants, subject, however, to the obligation of conforming to the general principles which bind the colonies to the mother-country, and which assure the preservation of their respective interests.” 2d. “ In the colonies where there exist colonial assemblies freely chosen by the citizens, these assemblies shall be admitted to declare the wishes of the colony. In those where there do not exist such assemblies, they shall be formed without delay, in order to fill the same functions.”

capacity ; and whilst, for the purpose of making laws, it was necessary that a majority of the whole should be present, five were constituted, by the royal instructions, a quorum for other business. However distinct the functions of the council, in its legislative and executive capacity, we believe that, generally speaking, no separation, as to the personal composition of it, had, up to this time, been effected in the American colonies ; though, in a work first published in 1764, by Mr. Pownall, who had been governor of Massachusetts Bay, (' Pownall's Administration of the Colonies,' ed. 5, vol. i. cap. 4. sec. 5,) the advantages to be derived from such a separation are pointed out.

" In Canada, the council created by the constitutional act in 1791, was purely legislative, being designed to form one branch of a legislature, resembling, as nearly as circumstances would admit, the Parliament of Great Britain ; and a board to advise the governor was only alluded to incidentally, under the designation of ' such executive council as shall be appointed by his Majesty for the affairs ' of the province. A council of this nature was accordingly appointed by the royal instructions to Lord Dorchester, dated the 16th of September, 1791 ; and the number of its members fixed at nine, with a salary of £100 to each.

" We find that of the nine persons named in Lord Dorchester's instructions to compose his executive council, six were also members of the legislative council ; and that of the whole number of executive counsellors who have been sworn in up to the present time, amounting to forty-two, twenty were also legislative counsellors ; and there have not been eight, or at most ten, who have not filled salaried offices under the government, either at the date of their appointment to the council, or at some time while they continued in it. The names in Lord Dorchester's council stood alternately English and French ; and of the eight counsellors who were actually sworn in, (the ninth, Mr. Lymburner, being absent from the province,) four were of French extraction, and four of English. The three next appointments were of persons of English origin ; and it appears that of thirty-one persons named as executive counsellors, between the years 1793 and 1828, twenty-five were English, or of English extraction, and six were French Canadians ; of these six, one was Mr. Speaker Papineau, whose appointment seems to have been founded on the office he held as speaker, and to have lasted but a short time. Since 1828, three persons only have been appointed, and they are all French Canadians.*

" Additional or honorary members were introduced as early as the year 1794 ; but although appointed by mandamus, they had no salaries. It has subsequently been the custom for the governor provisionally to appoint honorary members, who are supposed, however, not capable of sitting in the court of appeals until they are confirmed by the King. The salary of each ordinary member is £100 per annum.

" The clerk of the council has a salary of £550, and about £85 fees ; and the assistant-clerk has £182. 10s. The executive council are required to give their opinion or advice to the governor whenever it is asked for. There are some cases in which, by the provisions of statutes, imperial or provincial, or by instruc-

* This fact is a sufficient reply to the allegation, that the French Canadians receive no share of the government appointments ; but a participative should not be converted into an exclusive right.

tions from his Majesty, it is incumbent on the governor to act either by and with ~~the advice~~, or with the advice and consent of the executive council ; but in far ~~the greater part of the business of government, he is at liberty to decide whether~~ or not as he pleases ; and if he does take the opinion of the council, he is permitted to proceed in opposition to it, without entering his decision, or assigning its reasons on the council books.

“ Notwithstanding, however, the want of any cogent rules for recurring to it generally, there are two or three extensive matters, of which the right of the council to take cognizance has always been well established. Up to 1826, when the office of commissioner of crown-lands was created, the executive council had the whole superintendence of the business relating to the granting of land ; it still retains the direction of it in some cases, and is commonly referred to by the governor in any disputed matters arising out of the disposal of the crown or wild lands. The council has also been charged from the earliest times with the duty of auditing the public accounts.

“ Another old and most important attribute of the executive council, is that of hearing appeals from the courts of law, which function, in like manner as it had belonged to the former council of Quebec, was allotted to it by the thirty-fourth section of the Constitutional Act, and subsequently regulated by the provincial statute, 34 Geo. III. c. 6.

“ The council can assemble only on summons from the governor, and cannot sit as such without his being present. It may, and frequently does sit in committee to consider matters referred to it by the governor, and these committees go through almost all the labour of the financial and land business of the council ; but their proceedings require to be confirmed by a regular meeting with the governor present, before they can be acted on. The members of council have not the right of recording their opinions individually, or of entering protests on their minutes, and they are sworn to secrecy without any exception or reservation. ” *

This will afford a sufficient idea of the nature of the Colonial Assembly governments. In some of the West India colonies there is only a lieutenant-governor, with a governor over several islands and settlements ; thus, the governor of Barbadoes has under him the lieutenant-governors of St. Vincent, Grenada, Tobago, and British Guyana. The authority of the lieutenant-governor is almost equal to that of the governor, the main difference being in the salary, and emoluments of office,

The second class of colonies are those which have no representative assembly, but whose affairs are presided over by a Legislative Council and governor. This is a subordinate step in colonial government. The Legislative Council consists of a few of the principal officers of

* This detail relative to the executive council in Lower Canada, is derived from the Report of the Commissioners appointed by the crown to investigate the alleged grievances in Lower Canada.

the government ; viz. the chief secretary of the colony, the colonial treasurer, the chief justice and attorney-general, the bishop or arch-deacon, and the commander of the troops. To these are sometimes added a few of the principal merchants or landed gentry of the settlement. The whole are appointed by the crown, *quam diu se bene gesserint*, or, in the case of the government functionaries, so long as they retain their official appointments.

This council is presided over by the governor, and, in some instances, its proceedings are carried on with open doors (as at the Cape of Good Hope, New South Wales, &c.) In some colonies there is, in addition to the Legislative Council, an Executive Council, consisting of the principal official servants of the crown, who are to the government what the Privy Council in England is to the King. The government in India is legislative and executive, but not representative. The council appointed to aid the governor-general or governors of the respective presidencies of Bengal, Madras, and Bombay, consists of the oldest and ablest civil servants of the Company, nominated by the Court of Directors in London ; to whom is added the commander of the forces of each presidency. These councils each consist of four members ; they aid, advise, and to some extent control, the governor-general or governors of Madras and Bombay in all executive and legislative acts;* and though the governor-general or governors may, on cases of emergency, act independently of the council, yet the reasons for so doing must be recorded in writing by both the disputing parties, and transmitted to England for final adjudication.

The Bishop of Calcutta has no seat in the Supreme Council, nor have the church dignitaries at either of the other presidencies.

It is evident that, in the second class of governments, the ruled have but little direct control over their rulers ; and that, with the exception of responsibility to the fluctuating and distant authorities in England, it is a government of the aristocracy of rank, wealth, and talent in the colony. It must not, however, from this be inferred that a government thus constituted is unsuited to some of our colonies. It is merely pointed out, that a combined legislative and executive power is one of those early and precarious states of society which require the most vigilant care, prudence, and management.

The third form of government consists solely of a chief, appointed in **England**, without assembly or council, and subject to little or no check but that of the Colonial Secretary of State.

* The governors of Madras and Bombay have no-w no legislative functions.

This form is confined to a very few settlements ; it is, in fact, the first or elementary stage in colonial government, and the moment numbers, wealth, and intelligence become somewhat concentrated, it must pass into the second stage, which of itself is but a preliminary step to the third, or representative-assembly governments.

The foregoing statement will convey a sufficiently distinct view of the nature of our colonial domestic governments. In some instances there are acts of parliament, and in others royal charters, under the authority of which the government is carried on.

We now proceed to examine the triple form of government.

Centuries of experience have demonstrated the beneficial and practical workings of the British constitution, in its three constituent, independent, and yet harmonizing branches, of King, Lords, and Commons ; and, as far as it is possible, and at suitable periods, it would be desirable to see the colonies enjoying similar constitutions -the governor representing the Crown, the legislative council the Lords, and the house of assembly the Commons. It must be gratifying to all friends of rational freedom to reflect that England has ever been foremost in bestowing on her distant settlements the advantages of her own political institutes -thus evincing a true sense of justice ; whereas, as Montesquieu rightly observes, a republic governs its conquered provinces with more absolute and intolerable sway than a monarchy, whose remote possessions suffer all the evils, without enjoying any of the advantages, of republican government.

With certain limitations, the colonies possess all the advantages of the British constitution, so far as is compatible with their situation as distant provinces of the empire. The principal exception is, that the legislative council is nominated 'by the crown for life, or during the official tenure of those civil servants who are *ex officio* entitled to a seat in the legislative council. A question has, however, been recently raised, as to the advantage of making the legislative council an elective body, instead of being, as at present, nominated by the crown, **through** the Secretary of State. But however desirous we feel for an extension of just democratic principles, yet, looking to the slow **progress** of rational freedom, and remembering that moral and mental **independence** of character are essentially necessary to the **due** exercise of the elective franchise, it cannot be desirable, either in the **mother-country** or in her colonies, to have two elective chambers. **It** would be preferable to have the experiment again tried of the **efficiency** of a **single** chamber; which, however, in every country where it has been attempted, has , been the prelude to despotism.

It may be said, that the upper house, or legislative council, might be chosen by a higher class of electors than those who return members to the lower house, and that therefore the popular voice would be more calmly exercised, and property would have its due weight in making laws for the country.* But it is impossible to deny that even the higher classes in England (and much more in the colonies) are, to a certain extent, liable to great and permanent excitement ; that their will is not always under the control of their reason ; and that in times of political effervescence they are almost as subject to the influence of stormy passions as their poorer brethren.

Those who have not mixed in colonial society can have but a faint idea of the dreadful extent of party-feeling on political subjects : the animosities thus produced are of the bitterest nature-poisoning the very core of society, and even destroying the peace of families.

Now, looking at domestic tranquillity, security of person, lightness of taxation, and freedom from oppressive laws, as the great and desirable advantages of political institutions, it would be insanity or criminality to throw a firebrand into the small community of a colony, under the pretence of gaining some utopian object.

Independent, however, of social considerations, we have no instance on record of any state long maintaining its political freedom, either under a single chamber of representatives, or under two elective chambers, the one holding no control or check over the other, and both at the mercy of fluctuating popular favouritism, jealousy, and caprice. Since the abolition of the hereditary chamber of peers in France, but few traces of liberty have remained to the people, and the restoration of an hereditary peerage is now seriously entertained. The very antagonistic forces, which an hereditary and an elective chamber exercise, are essential to the preservation of the powers of both, Gibbon, in reference to the Roman republic, correctly observes :-

* Mr. Labouchere stated, in the Canada debate in the House of Commons, on the 8th of March, 1837, that the old American colonies of England had elective legislative councils ; but it will be found that it was the chartered, and not the crown colonies, which had such assemblies. Adam Smith says, that in three of the governments of the New England colonies the legislative councils were chosen by the representatives of the people ; in Connecticut and Rhode Island, the governor was elected by the colonists ; and in some the revenue officers, who collected the taxes, were appointed by the people. Pennsylvania, which was a proprietary government, was a scene of never-ending contentions, and the colonists even petitioned the king to take its affairs under the management of the crown.