

public good, but the other may' as conscientiously be of opinion, is only calculated to work a public injury, and in that opinion he may be perfectly right, and the governor wrong.

If, indeed, the officers of the government were merely executive, there would be no objection to this ; for it may be conceded that the inferiors of a public department must be prepared cordially to cooperate with their superior. The objection and the inconsistency lie in their double capacity of executive officers, and legislative councillors ; and the impropriety lies in requiring them, in a case where the Imperial parliament has committed to them a charge, and laid upon them a solemn responsibility, to sacrifice their conscientious opinions to whatever may be the will of the governor.

Respecting the governor's tenure of office, and which subjects a colony to such disadvantages, it may perhaps be advanced, that a ready mode is thus secured of dispensing with the services of an incompetent person at the end of a short period, upon the ground of official regulation, without assigning any other cause. But it is answered, that for such an appointment, the utmost care should be exercised beforehand, rather than the ease with which a bad governor may be dispensed with relied upon ; and that the higher and more independent the governor's tenure of office, the greater care will be exercised in the *selection* and thus a double advantage be gained by the community over which he is to preside.

The mode, however, in which he is to exercise his office shows how little of independence there is in his actions. He must execute it according to such instructions as shall be given him under the royal sign-manual and signet, or by Her Majesty's order in her privy council, or by Her Majesty through one of her principal secretaries of state. In practice, the latter is the mode of communicating the governor's instructions. The authority of the secretary of state alone is chiefly resorted to, and that of Her Majesty not so much as adverted to. As an example of this system of government may be produced the " Rules and Regulations for the Information and Guidance of the Principal Officers and others in His Majesty's Colonial Possessions," issued by the colonial department in the year 1837. These appear to be framed on similar principles to the Rules and Regulations issued for the guidance of the army, but with this difference, that the latter will be found to be issued under the sanction of Her Majesty's command, and signed by the commander-in-chief; the Colonial Rules and Regulations do not assume to be founded on any such authority, but simply upon that of the secretary of state, and do not even bear his signature :

“Lord Glenelg,” it is stated in the preface of the book thus issued, “has instructed them (the governors and other public officers in the colonial possessions of the crown) to receive it as a rule for the guidance of their conduct on the several matters to which it relates.”

Of the inconvenience of this system to a colony situated at the distance of New South Wales from the seat of government, the following extracts from the “Regulations for Incurring Public Expense,” may be produced as an example : from these it will appear that the control of the ordinary revenue, raised in the colony, and applicable only to colonial purposes, is in practice retained by the Lords Commissioners of Her Majesty’s Treasury in England, notwithstanding the appointment of a governor, and of an executive and a legislative council, for this very purpose.

The amount of expense allowed to be incurred for any public work, except on very pressing emergency, without the previous sanction of Her Majesty’s government, is so trifling, as to be of no value whatever ; whilst the great distance of the colony from England, and the continual reference and delays arising from these causes, impede the operation of every useful work ; and upon a point like this it may surely be remarked, that either the legislative council is fit to be entrusted with the administration of the funds of the colony, or it would be for the public advantage that it should be so constituted,

“1. Governors are not authorized, unless on very pressing emergency, to incur, without the previous sanction of His Majesty’s government, any expenditure which may exceed **£200** sterling for any one service.

2. If the expenditure be under **£200**, they are at liberty to authorize the same upon their own responsibility, explaining, at the same time, the absolute necessity of such expenditure. Governors are also prohibited, under a similar limitation, from increasing salaries or allowances, or authorizing *any public expenditure, without the previous sanction of His Majesty’s government.*

3. **By** Act of Parliament, 1 & 2 Geo. IV. c. 121. s. 20, all public officers abroad authorizing or directing any improper or irregular expenditure, may, by order of the lords commissioners of the treasury, be called upon to account for the same before the commissioner for auditing the public accounts ; and the person so required to account will thereupon be, and be deemed to be, a public accountant, with respect to such monies, in as full and ample a manner, to all intents and purposes, as if the amount of such monies had been actually issued to him by way of **imprest**, and upon account.

4. His Majesty’s government will give effect to the provisions of that act, by making the governors or persons administering the governments at foreign stations, personally responsible for all the expenditure which they may sanction without authority.”

“6. In the colonies enumerated in the margin,\* the following system is to be observed in regard to the expenditure of public money. Before the expiration of the month of June in each year, the governor will submit to the council of government, or, in the case of British Guiana, to the court of policy, such an estimate as he may think necessary of **the** whole expenditure, not *already fixed under the sanction of His Majesty’s government, which is intended to be charged upon the colonial revenue for the year next ensuing*. If this estimate shall meet with the concurrence of the majority of the council, it will be passed in the form of an ordinance, and the governor will transmit it to the secretary of state by the earliest opportunity for His Majesty’s approval and confirmation. It will be competent, at **the** same time, to any minority of the council who may have dissented from the estimate, or from any items of it, to record the grounds of their dissent in the minutes of the council; and it will be the governor’s duty, should he be required so to do by them, to transmit an exact copy of such minutes, together with the copy of the estimates for the secretary of state, for the consideration of His Majesty’s government.

7. Should the estimate which the governor may propose to the council be rejected by a majority of that body, he will request to be furnished, by those who dissent from his estimate, **with** such a one as they would propose to substitute ; and should he still give the preference to his own, he will transmit both estimates to the secretary of state, together with the reasons which he, and any councillors who may agree with him, may have to allege in support of his own estimate, and the reasons stated by the majority of the council opposed to him in favour of theirs, in order that His Majesty’s government may be enabled to decide for the adoption of that estimate which shall appear to them most eligible.

8. When this estimate shall have been passed by His Majesty’s authority, or else by the same authority altered and amended, as may appear to be necessary for the public service, *the expenditure of the year must be held to be definitively limited and arranged, and no authority must be applied for any further disbursements on account of the money of that year, unless under circumstances of unforeseen emergency*. ‘Under such circumstances, the proper course will be to submit to the legislative council, in the first instance, a supplementary estimate of the expenditure required; and *unless the circumstances be such as to forbid the delay of a reference to this country*, the same course will be pursued with the supplementary estimate, as has been prescribed in respect of the original one.

9. These estimates, on being received in this country, will be laid before the lords commissioners of His Majesty’s treasury by the secretary of state, in order that their lordships may communicate to the secretary of state such opinions as they may wish to express upon them, previously to any instructions being issued to the colonial authorities.

10. With respect to taxation, the governor will, at the **same** time that he **pro-**poses to the council the estimate of the ensuing year’s expenditure, also submit to them the draft of any ordinance which may be necessary to provide the ways and means by which the expenditure is to be met. Such ways and means will not, of course, require to be re-enacted in annual ordinances, and it is only in the event of taxation being required, which is not already provided for, that any such

---

\* Malta, Sierra Leone, Gambia, Trinidad, St. Lucia, British Guiana, Mauritius, Cape of Good Hope, Ceylon, and the Australian Colonies.

draft will be necessary. And with respect to the passing of this draft, and the transmission of it for His Majesty's confirmation, and the simultaneous transmission of any draft for the same purpose which a minority of the council may wish to substitute, and with respect also to the transmission of the governor's draft, should he be in the minority, and of the draft which the majority of the council may wish to substitute, with reasons which the several parties may wish to allege in support of their respective measures, the governor will pursue the same course which has been pointed out for his guidance in reference to annual estimate of expenditure.

11. On the first occasion of transmitting to this office the ordinance above mentioned, the governor will transmit also a complete statement of the taxation already provided for, and which does not require to be re-enacted in those ordinances, and of the several authorities under which it is levied, in order that His Majesty's government may be enabled to revise the permanent system of taxation, and amend it if necessary. And the gentlemen of the council will understand, that any suggestions on this head which they may think proper to offer to the governor, will be duly considered, along with his report upon them by His Majesty's government. It must be borne in mind, however, that, unless the expenditure be shown to be capable of reduction, it is in vain to urge the evils and inconveniences of any tax in lieu of which no one better and equally productive is, at the same time, pointed out for substitution.

12. The drafts of ordinances for the imposition of taxes for each year, will, in like manner with the estimates, when received in this country, be submitted to the lords commissioners of the treasury.

13. It is, of course, to be understood, that the species of immediate control, which it is the object of these instructions to give to the council over the revenue raised in the colony, by taxes upon the inhabitants, and over its expenditure, does not extend to funds arising from the property or droits of the crown.

14. The governor will cause the colonial accounts, when transmitted for audit, to be accompanied by certified copies of all estimates, or supplementary estimates of expenditure for the service of the year, to which the accounts relate, and of all ordinances for the imposition of taxes for that year, together with the copies of the despatches which shall have been addressed to him by the secretary of state, conveying the sentiments of His Majesty's government upon any such estimates or ordinances.

15. Detailed statements of the revenue and expenditure of the colony should be annually published in the Colonial Gazette, immediately after the period when it is required that the accounts of each year should be transmitted for audit, and in such publication, the funds, arising from the property or droits of the crown, are to be stated separately from those which arise from taxes levied upon the inhabitants of the colony."

The general regulations, however, which have been thus referred to, comprise but a small part of the governor's instructions. The latter, contained in despatches issued under the authority, and in the name only of the secretary of state for the colonies, and embracing every point connected with his administration, are of a nature, and to an extent which, if those addressed to the governor of

the colony for a single year were referred to, would show the practical inconvenience of this mode of carrying on the public affairs of that most important and distant settlement.

The principle of governing the colony by force of the royal prerogative, delegated to the ministers of the crown, and by them to one member of the government, would, on account of the great distance of the governing party from the object of its control, and from the delay in communicating his directions to his representative in the colony, be found sufficiently inconvenient to counterbalance any advantages which can be supposed to arise from such a system, even if that minister were permanent in his office, and well acquainted with colonial affairs. But the confidence which would, and necessarily does, attach to a high and responsible minister of the crown, possessing that of the sovereign and the nation, fails entirely when the minister himself is scarcely, even for so long a time permanent in his office as to afford assurance of his own acquaintance with the affairs of the department under his charge, when he is so wholly engaged in the general political affairs of the empire, as to be able to bestow but little, and that very divided, attention, <sup>upon</sup> any particular colony, and must chiefly depend, both for information and for assistance, upon other and less responsible persons, even clerks, whose offices in the department are subject to no fluctuations of political parties. Thus the royal prerogative by which the colony is governed comes to be exercised, not “according to instructions under the royal sign manual and signet, or by Her Majesty’s order in her privy council, or by Her Majesty through one of the principal secretaries of state,” as provided in the governor’s commission, but by **despatches** issued under the authority of a minister of the crown so circumstanced.

It is not to be supposed, however, that he will not receive, and in a great measure rely upon, information derived on the spot by the governor ; and the foundation of the minister’s instructions to the governor will frequently be found in the recommendation of the latter, **who** thus becomes the framer of his own orders. Hence it will be seen, that the system of government is carried on **by** despatches between the minister and the governor, and upon reasons and conclusions with which the public, who are mainly concerned, are frequently **altogether unacquainted**, and of which they are always ignorant until long after the particular recommendation, whatever it may be, has been adopted or rejected. It follows also from this system, that the minister may be misled into giving instructions upon erroneous information or principles, and that, on the other hand, he may, of his own mind,

with every desire to promote the good of the colony, direct measures not calculated to that end, which, if the matter were fairly submitted to the decision of those who are personally informed as well as interested in it, would scarcely be the case.

Nor does the inconvenience of this mode of government end here : the governor of the colony is reduced by it from the position which it was doubtless the royal intention he should occupy, as a high confidential officer of the crown, administering, in the royal name, the government of a distant possession, to that of a political agent or organ of the minister in England. In the colony he is crippled by the orders he receives from home, and the expedients he resorts to for their fulfilment deprive him, not unfrequently, of the public confidence. It matters not that occasionally these orders are elicited by his own previous recommendation, since the evil, where they are opposed to the interest of the colony, consists in their enforcement as government measures, and by government influence. In the one case, he is expected to avail himself of that influence, to carry his instructions into effect ; in the other, he takes advantage of it, for carrying out his own theories.

The constitution of the legislative council affords no protection to the community against that influence, or even its unfair exercise. It is composed of—1. The governor himself, who presides in person at its deliberations, and has not only the vote of a member, but a casting vote in addition, when the votes of the other members are equal ; 2. of seven official persons, who hold office during Her Majesty's pleasure ; 3. of eight others, appointed by the crown, and who, in case of vacancies, are selected by the governor for the time being.

On the first view, it would indeed seem that the two parties—the government and the public—are fairly balanced by the royal commission for erecting the legislative council, the only apparent difference being that of the governor's casting vote. A great advantage, however, exists in practice in favour of the former, who are all the heads of public departments, whose offices are held at Sydney, and are of course expected to attend upon any measure in which the government take an interest ; the others are selected from the principal landholders of the colony, who reside, some of them, at a considerable distance from the seat of government.

Again, with a view, doubtless, of securing the independence of all the members of the council, the Imperial parliament \* has imposed a solemn obligation, upon all alike, in form of an oath to be taken by all,

---

\* Stat. 9 Geo. IV, c. 83, sec. 30.

official and non-official ; the terms of which would appear to carry most unquestionable evidence of that intent ; that is to say :—“ I do swear that I will, to the best of my judgment and ability, faithfully advise and assist the governor of the colony of New South Wales and its dependencies (or Van Diemen’s Land and its dependencies) in all such matters as shall be brought under my consideration as a member of the council of the said colony : So help me God.”

From the terms of this oath, and from its being imposed on every member alike, it might be thought sufficiently clear that a similar interpretation must be given to it in the case of official members, as in that of those who hold no office under government. It receives, however, a very different interpretation ; it being understood, that upon a recent occasion, the Right Hon. Lord Glenelg, then Her Majesty’s principal secretary of state for the colonies, expressly communicated to the governor of the colony, and through him to certain of those official persons, that they must either support the governor (in other words, vote with him upon those measures in which he should choose to require their support), or resign their offices ; likening the officers of a colonial government, who only hold their seats in the legislative council by virtue of their offices, to those members of the Imperia.<sup>1</sup> parliament, who holding their seats, not by virtue of office, but independently of Her Majesty’s government, hold office also under the government ; between whom there exists no point of resemblance, and there is also this grand distinction, that a member of the government in England takes office under such understanding, and the colonial officer, after his appointment, and before he takes his seat as a member of the council, takes an oath, not that he shall vote with the governor whenever he requires him, but that to the best of his judgment and ability he will ‘faithfully advise and assist him in all such matters as shall be brought under his consideration as a member of the council.’

Surely it cannot be argued, but that would appear the practical interpretation given to it in the case of *certain* of the councillors, that it is the duty of *any*, for if it be the duty of *any*, it is of *all* the councillors alike, under the terms of this oath, to vote with the governor upon every matter which he may make a government question : yet this is the principle insisted upon.\*

---

\* The present right honourable secretary of state for the colonies, Lord John Russell, has recently issued a circular which places the tenure of office of *certain* officers of government in the colonies upon a different footing, to which, as it is confined in its application only to *future* holders of those offices, and

Proofs might here be adduced by instances which have occurred within the writer's own observation, during his residence of more than six years in New South Wales, of the unfitness of the present system of government for the administration of its affairs, and which would be found fully to warrant the conclusions to which he has arrived : the task, however, which this course would impose upon him, would neither be grateful nor prudent; since it would expose to public view faults, which it is trusted there may now exist the desire to amend in those who have the power, and subjects of great local interest and excitement must be again revived, perhaps with no adequate advantage. Mature consideration, therefore, upon this point, has led the writer to rely, at present, at least for proof of the necessity of a reform in that system, upon other but not less convincing evidence. Reserving to himself, if circumstances should occur, to make it his duty to pursue the other course, to state the specific grounds upon which he has formed his judgment.

No stronger proof, then, it is conceived, need at present be adduced, of the difficulties with which Her Majesty's ministers in England have to contend in legislating in England for that distant colony, than is to be found in the fact that the statute of New South Wales (9th Geo. IV, c. 83) being about to expire at the end of the session of parliament next following the 31st day of December, 1836, and notwithstanding that there were contained in it several enactments relating to the administration of justice, which absolutely required amendment, and that the colonists had repeatedly urged their prayer that a more liberal form of government might be accorded to them ; yet no measure was brought forward to accomplish either object, and the statute was continued for another year ; in 1837 it was again continued till the 31st of December 1838, and from thence to the end of the next session of parliament ; in 1838 it was again continued to the end of 1839, and on the 24th of August, in the last year, it was again continued ' until the 31st day of December, 1840, and thence forward to the end of the then next session of parliament,' but with the following clause by way

---

**appears** to contemplate their selection from the colonists themselves, who **may** take office on such terms or not, as they think proper, and refers only to the support of the government by its own officers, in a representative assembly freely elected by the people, no objection can be entertained : that which is objected above being applied only to the case of New South Wales, where so large a proportion of the legislative councillors are officers of the government, and where none of them are elected by the people, and where all are equally sworn in the terms already mentioned.



of amendment, which appears at once to acknowledge the pressing necessity there was for amendment of the act in some important particulars, and that the home government were not then prepared to propose any bill to the parliament for accomplishing it. The duty is, therefore, delegated to the colonial council. The clause referred to is in the following terms.

“2. And whereas by the said recited act provision was made for the administration of justice within the said colonies, and for defining the constitution and powers of the courts of law and equity therein ; and whereas the provisions of the said act in that behalf have, by reason of the extension of the said colonies, been found in divers respects inapplicable to the circumstances of the said colonies, and to the wants of the inhabitants thereof; but the local legislatures of the said respective colonies, established under the said recited act, have no power to repeal or alter any of the before-mentioned provisions thereof; be it therefore enacted, that it shall be lawful for the local legislatures of the said respective colonies, by any laws or ordinances to be by them or either of them from time to time for that purpose made in the manner prescribed by the said recited act, and subject to the conditions and provisoes therein contained, to make such provision as to them may seem meet for the better administration of justice, and for defining the constitution of the courts of law and equity, and of juries, within the said colonies respectively, or within any present or future dependency thereof respectively ; any thing in the said recited act, or in any charter of justice, or order in council, made and issued in pursuance thereof, or in any law, statute, or usage, to the contrary thereof in anywise notwithstanding.”\*

It is doubtless true that the delay during part of the time which has elapsed since the expiration of the first-mentioned statute, has been caused by the parliamentary inquiry upon the subject of those colonies which took place in the year 1836, and was not completed until 1838 ; the delay has, however, been a source of serious disappointment in the colony, and of public inconvenience ; for many measures of great importance have been from year to year delayed in consequence of the constant expectation of a new act, and a new constitution emanating from the Imperial parliament : that delay will, however, be less material, if the large accession of emigrants which the colony has since received shall be considered to have increased their claim, and if that delay shall now end in the fulfilment of their hopes. Respecting the system of government at present existing in the colony, no stronger proof need be adduced of the want of confidence, which for different reasons is entertained by the public in the legislative council as at present constituted, than (without referring to those repeated petitions which have proceeded from others to the same effect) is to be found in the petitions to “the (late) King’s most excellent majesty,” and to the,

---

\* Stat. 2. & 3 Vict. c. 70.

“honourable the Commons of Great Britain, in parliament assembled,” of certain “members of council, magistrates, clergy, landholders, merchants, and other free inhabitants of New South Wales,” in the year 1836.

These petitions were signed by six members of the legislative council, fifty-seven justices of the peace, four clergymen, including the principal chaplain of the colony, five solicitors of the supreme court, and 355 landholders, merchants, and other colonists.\*

Any fact stated by such persons is deserving of the highest credit ; upon this point they state in their petition to the king : —

“That the legislative council, as at present constituted, is in a great measure inoperative, from a majority of its members being government officers, from its debates not being open to the public,† from the members not having power to originate laws, and from the presence of the governor as president, which your petitioners would humbly submit tends to obstruct the free expression of opinion.”

In their petition to the House of Commons they stated-

“That the legislative council, as at present constituted, is inadequate to the exigencies of the colony, and has no *hold upon the public, confidence* ; as well from the number of its members being too limited, and the majority of these members consisting of civil officers of the colonial government, as from its debates not being open to the public ; and the right to originate measures being confined to the governor, as president of the council—a circumstance in itself sufficient, as your petitioners humbly conceive, materially to affect that free expression of opinion, which is so essential to a legislative body.”

As far, therefore, as the voice both of the colonists out of council and of those who are members may have weight, it is their unanimous Conclusion that the present legislative body “has no hold on the public confidence ;” and if that voice should be so far heeded as to induce the conferring upon the colonists a system of government more adapted to their wants and desires, it would seem that the only consideration is what should be that system.

Upon the first point, that which relates to the government of the colony in common with all her majesty’s other colonial possessions, and in which they are alike interested, the writer does not hesitate respectfully to avow his own long formed, and, he trusts, maturely considered

\* M‘Arthur’s New South Wales, its present State and future Prospects. London, 1837.--The whole of these petitions are well worthy of the highest respect and attention ; so much of them only is here extracted as relates to the point in question.

† This has been since altered under the administration of the present governor, Sir George Gipps.