

“ As both the consuls and the tribunes, in their public and private interests, were averse to each other, their mutual conflicts contributed, for the most part, to strengthen rather than to destroy the balance of the constitution ; but when the consular and tribunitian powers were united-when they were vested for life in a single person ; when the general of the army was at the same time the minister of the senate, and the representative of the Roman people, it was impossible to resist the exercise, nor was it easy to define the limits of his imperial prerogative.“+

The United States may be cited, perhaps, as an example in favour of the adoption of two elective chambers ; but it should be remembered, that a few centuries of such government must be experienced ere we pronounce authoritatively on a subject which inspires with well-founded alarm the most honest and able statesmen, who clearly see with Gibbon, that, in elective constitutions, the vacancy of the seat of supreme power is a moment big with danger and mischief. We must await the effects of civilization, of a dense population, of adverse interests ; we must watch the conduct of men who, like Marius and Caesar, may commence by declaring themselves the protectors of the people, and end by subverting the liberties of their country. Moreover, we should remember that the United States are a republic, and England is not disposed to change her hereditary constitutional monarch for an annual or quinquennial president.*

Let us hear, however, the very language of the most enlightened men of the United States on this important subject. Judge Story, himself a republican, in his commentaries on the constitution of the United States of America, in treating of the senate, thus correctly expresses himself on this topic :-

“ Another and most important advantage arising from this ingredient is, the great **difference** which it creates in the element of the two branches of the legislature ; which constitutes a great desideratum in every practical division of legislative power. In fact, this division, (as has been already intimated,) is of little or no intrinsic value, unless it is so organized, that each can operate as a real check upon undue and rash legislation.

“ If each branch is substantially framed upon the same plan, the advantages of the division are shadowy and imaginative ; the visions and speculations of the brain, and not the waking thoughts of statesmen or patriots. It may be safely asserted, that for all the purposes of liberty, and security of stable laws, and of solid institutions, of personal rights, and of the protection of property, a single branch is quite as good as two, if their composition is the same, and their spirits and impulses the same. Each will act as the other does, and each will be led by some common influence of ambition, or intrigue, or passion, to the same disregard

* Decline and Fall, vol. i. p. 1056.

† The last President, General Jackson, is accused of tyranny, which, the American press states, would have cost any European monarch his head,

of public interests, and the same indifference to and prostration of private **rights**. It will only be a duplication of the evils of oppression and rashness, with a **dupli-** cation of obstruction to effective redress. In this view the organization of the senate becomes of inestimable value," Again he says, " The improbability of sinister combination will always be in proportion to the dissimilarity of the genius of the two bodies ; and, therefore, every circumstance consistent with harmony in all proper measures, which points out a distinct organization of the component materials of each, is desirable."

Another eminent writer on the constitution of the United States, the late Chancellor Kent, in treating of the necessity of the powers of government being placed in separate hands, says,

" The division of the legislature into two separate and independent branches, is founded on such obvious principles of good policy, and is so strongly recommended by the unequivocal language of experience, that it has obtained the general **appro-** **bation** of the people of this country. One great object of this separation of the legislature into two houses acting separately, and with co-ordinate powers, is to destroy the evil effects of sudden and strong excitement, and of precipitate mea- sures, springing from passion, caprice, prejudice, personal influence, and party intrigue, and which have been found, by sad experience, to exercise a potent and dangerous sway in single assemblies. A hasty decision is not so likely to arrive at the solemnities of a law, when it is to be arrested in its course, and made to undergo the deliberation, and, probably the jealous and critical revision, of another and a rival body of men, **sitting** in a different place, and under better advantages, **to** avoid the prepossessions, and correct the errors of the other branch.

" The legislatures of Pennsylvania and Georgia consisted, originally, of a single house.*

" The instability and passion which marked their proceedings, were very visible at the time, and the subject of **much** public animadversion; and in the subse- quent reform of their constitutions, the people were so sensible of this defect, and of the inconvenience they had suffered from it, that in both states a senate was introduced. No portion of the political history of mankind, is more full of instructive lessons on this subject, or contains more striking proofs of the faction, instability, and misery of states under the dominion of a single, unchecked assembly, than those of the Italian republics of the middle ages, and which arose in great numbers, and with dazzling but transient splendour, in the interval between the fall of the western and eastern empire of the Romans.

" They were all alike ill-constituted, with a single unbalanced assembly, They were all alike miserable, and all ended in similar disgrace. Many speculative writers and theoretical politicians, about the time of the commencement of the French revolution,, were struck with the simplicity of a legislature with a single assembly, and concluded that more than one house was useless and **expensive**. This led the elder President Adams to write and publish his great work, entitled, ' A **Defence** of the Constitution of Government of the United States,' in **which** he **vindicates**, with much learning and ability, the value and necessity of the

* Franklin's **favourite**, **but** mistaken idea **was** a single legislature, and a plural executive-ED.

division of the legislature into two branches, and of the distribution of the different powers of the government into distinct departments. **He** reviewed the history, and examined the construction of all mixed and free governments, which had ever existed, from the earliest records of time, in order to deduce, with more certainty and force, this great practical truth, that single assemblies, without check or balance, or a government with all authority collected into one centre, according to the notion of M. **Turgot**, were visionary, violent, intriguing, corrupt, and tyrannical dominations of majorities over minorities, and uniformly and rapidly terminating their career in a profligate despotism."

Mr. Jefferson, late President of the United States, in his remarks on the constitution of his native state, Virginia, says,

"All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands, is precisely the **definition** of a despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it, turn their eyes on the republic of **Venice**. An **elective despotism** is not the government we fought for, but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits without being effectually checked and **restrained** by the others."

With reference to the highly important consideration of having a check on the irregular exercise of popular power, the link that binds the colony to the mother-country, so far as government can do so, would be materially, if not entirely injured by the substitution 'of an elective legislative council, for one appointed by the crown through the functionaries of the state.

A governor, without any control over the two houses of legislature in a colony, would be reduced to a political cipher, and the adoption of the elective principle in a governor, would soon take place of nomination by the king; in fact, the independence of, and separation from, the mother-country would virtually ensue, whether officially announced or otherwise, the colony thereby deriving all the advantages of the connexion, while the parent state would lose every thing which made the possession valuable to the empire.

It is not necessary to discuss here the relative advantages of the monarchical or elective principle in government ; as before stated, the former has been tested by centuries in England, and found conducive to the greatest portion of happiness that any nation has yet possessed ; so long, therefore, as a colony is united with Great Britain, it cannot be the desire or the interest of any practical statesman to weaken the efficacy or diminish the just prerogatives and power of the crown,

It seems to be totally forgotten by those who go the length of demanding an elective legislative council, that there is a wide difference between an imperial and provincial government ; that the former must of necessity have a control over the latter so long as they maintain towards each other their relative positions of protecting and protected states. When the latter has ceased to be a colony, it is of course free to choose its own government ; but so long as it remains in that state, it has no right to ask, much less to demand, from the mother-country democratic institutions which she herself does not possess, and the granting of which would be fatal to all permanence of political or social connexion. The power held by the crown of appointing for life the members of the legislative council would be, if properly regulated under the management of the proposed colonial board, of great benefit to the colony ; it would stimulate the wealthy and intelligent colonists to distinguish themselves, in order that they might attain the highest rank in their respective countries, and be deemed worthy the approbation of their sovereign. There would be thus an honourable emulation kept' up, which is of the most essential advantage in every community; for, as finely expressed by Sir William Blackstone (and the remark is as applicable to a colony as to the parent state,)-“ The distinction of rank and honour is necessary in every well-governed state, in order to reward such as are eminent for their services to the public, in a manner most desirable to individuals, and yet without burden to the community ; exciting thereby an ambitious yet laudable ardour, and-generous emulation in others.

“ And emulation, or virtuous ambition, is a spring of action which, however dangerous or invidious in a mere republic, or under a despotic sway, will certainly be attended with good effects under a free monarchy ; where, without destroying its existence, its excesses may be continually restrained by that superior power from which all honour is derived. Such a spirit, when nationally diffused, gives life and vigour to the community ; it sets all the wheels of government in motion, which, under a wise regulator, may be directed to any beneficial purpose ; and thereby every individual may be made subservient to the public good, while he principally means to promote his own particular views.

“ A body of nobility is also more peculiarly necessary in our mixed and compounded constitution, in order to support the rights of both the crown and the people, by forming a barrier to withstand the encroachments of both. It creates and preserves that gradual scale of dignity, which proceeds from the peasant to the prince ; rising like

a pyramid from a broad foundation, and diminishing to a point as it rises. It is this ascending and contracting portion that adds stability to any government; for when the departure is sudden from one extreme to another, we may pronounce that state to be precarious.

“ The nobility, therefore, are the pillars which are reared from among the people, more immediately to support the throne ; and if that falls, they must be also buried under its ruins. Accordingly, when in the last century the Commons had determined to extirpate monarchy, they also voted the House of Lords to be useless and dangerous. And since titles of nobility are thus expedient in the state, it is also expedient that their owners should form an independent and separate branch of the legislature. If they were confounded with the mass of the people, and, like them, had only a vote in electing representatives, their privileges would soon be borne down and, overwhelmed by the popular torrent, which would effectually level all distinctions. It is, therefore, highly necessary that the body of nobles should have a distinct assembly, distinct deliberations, and distinct powers from the Commons.”*

. Another proposition is, that the executive council should be under the control of the House of Assembly, in order, as it is supposed, to assimilate the colonial government to that of England ; but the propounders of these changes quite forget the necessarily subordinate position of a colony : and they overlook the fact, that the executive council in a colony is not similar to the ministerial body at home, but analogous rather to the privy council, the members of which are appointed for life. By means of the proposed colonial board in Downing-street, the improper and partial nominations, which have heretofore taken place to both the legislative and executive councils in various colonies, would be prevented for the future, while the power of the crown would be upheld, without hazarding the peace of any colony, or its connexion with the parent state.

· In reference to the assertion that the legislative and executive council in the colonies, and the House of Lords at home, are irresponsible bodies, it may be remarked, that no class of men in any civilized community are above the influence of public opinion, and, least of all, those who possess wealth, enjoy rank, and have honours conferred on them by supreme authority. Their conduct is closely watched, their actions jealously examined, and even their motives subjected to the most rigid investigation,

* Quarto Edition, 1803, p. 138.

The British House of Lords is therefore, in point of fact, far more responsible, because individually and permanently so, than the House of Commons, which is but generally and temporarily so ; the members of the latter are, to a certain extent, indeed, amenable to the fluctuating and fickle opinions of their constituents, but a member of parliament, when elected, may not choose to incur the expense and risk of another election ; his ambition may have been sufficiently gratified, or he may find himself inadequate to the station he sought, and on any of these grounds he may feel indifferent to the sentiments of his constituents, and retire into private life, with no restraint on his actions.

It is not so with a member of the House of Lords : his office is not only for life, but hereditary ; he has 'no retiring from before the public until age incapacitates him ; his constituents consist of the whole mass of the community, and he is deeply responsible to them, to his king, and to his God, for the due and honest discharge of the seriously solemn duties to which the greatest energies of his mind, and the highest attributes of his nature, are devoted. There is also another point of responsibility ; the electors in every community, where universal suffrage does not prevail, form but a portion of society ; a large and valuable section, the working classes, are unrepresented in the Commons, but not so in the Lords, who are the guardians of the poor man's rights.

The truth of these remarks is equally applicable to the legislative and executive councils in the colonies, whose responsibility is not confined to their fellow-citizens in the island or settlement, but extends to the mother-country, where it is but natural they should desire to maintain themselves high in the esteem of their sovereign, and in the regard of their fellow-subjects.

Ere closing this section it should be observed, that we would wish to see the legislative and executive councils placed on as extensive a basis as it is possible to adopt, so as to combine the utmost amount of virtue, intelligence, and wealth, in each colony. Municipalities might be formed in the colonies ; and in settlements possessing legislative and executive councils, the corporations might be empowered to return a limited number of members to those assemblies, in addition to the members appointed by the crown. Where there was a university, a similar privilege might with advantage be bestowed.

To lay down rules, however, on the subject would be superfluous ; a wise statesman will know how to combine policy with principle, justice with expediency, and private worth with public benefit,

VAN DIEMEN'S LAND:

MORAL, PHYSICAL, AND POLITICAL.

[Continued from p. 79, No. 5.1

IN discursive sketches, like the present, it cannot be expected that the chronological order or systematic detail of history should be rigidly pursued. To effect conciseness, and to preserve the continuity of interest unbroken in subjects, which would otherwise range through a series of years, it has been deemed advisable, when once touched upon, to follow out their course to their natural termination. With this brief, but not unnecessary, explanation, the thread of narrative is resumed, under this organization., that the advancing date keeps pace, as far as practicable, with the advancing story.

Late in the season of 1825, or early in 1826, the head-quarters of the Van Diemen's Land Company arrived from London. The colonists entertained sanguine hopes that the large capital, said to be at this company's disposal, would tend greatly, by judicious application—loans on mortgage being anticipated—to the general improvement of the island. Such, however, did not prove to be the case,—the company took their overgrown grant at Circular Head—became settlers upon an extensive scale—attempted no beneficial public measure,—contributing even less than others to the general advancement,—in fact, were scarcely ever heard of save as large landed monopolizers. Of late their stock has obtained some character, and they appear to be in a fair way to remunerate the shareholders for the outlay of capital.

In April, 1826, the Van Diemen's Land Establishment, a company formed under the auspices of Colonel Latour, commenced operations. The first local managers of this concern, B. B. Thomas, Esq.* (brother of Colonel Thomas, M.P.) and H. Widdison, Esq., arrived in the Derwent, with some ten or twelve stallions and mares, fifteen or twenty having perished during the passage. The chief object of this company was to effect improvement in the breed of horses, an object in which they rendered yeoman service. Their aim, however, was not exclusively confined to coursers—sheep and oxen were likewise largely imported, and the high prices invariably obtained at Cressy (the name

* This gentleman was unhappily slain by the aborigines in 1831.

of their estate) sales are the best proof of the estimation in which their stock is held.

Scarcely had the Horse Company (as this was termed) entered the field, when race-courses were formed in various parts of the island. Ross Bridge claims the honour of primary selection as a Tasmanian Newmarket. Its distance from the capital (above eighty miles) was decidedly against it, but as Launceston had not then put forth her claims, and as the sole resource of the Hobartonians was the beach at Sandy Bay, Ross for one or two seasons held pre-eminence. Now that thorough-breds are numerous, and that the taste for these truly English sports have become more fully developed, various channels for their fitting enjoyment have been opened. Launceston boasts an excellent course, and capital annual races. Hobart Town is in no respect behind her northern rival. The metropolitan meetings, held at New Town, three short miles distant, never fail to astonish the new-comer, the turn-out being upon a scale worthy even of the parent land. These meetings take place in March—usually commencing on St. Patrick's day, and continuing three. Richmond also boasts its equestrian games, and although other places have occasionally imitated these examples, nevertheless the three above-mentioned are the only regular race-courses, Ross having long ceased to be a place of such resort.

So rapid had been the influx of capital and emigrants during the seven years subsequent to 1820, and so entirely was the original penal character of the colony subdued and purified by such constant accession of free and enlightened settlers, that the community naturally felt anxious to regain their rights as Britons, forfeited, in a very considerable degree; by their migration to an infant and penal province. Numerous and vexatious grievances bore heavily upon them. The legislative council—a symbolical shadow of liberty with the substantial fruits of despotism—afforded neither redress nor hope. Its very constitution is adverse to freedom, or to liberal enactment. Ex officio, the leading members of the local administration hold seats therein, and although there be others selected by the imperial government, nevertheless they are *virtually* the nominees of the governor. Even if inspired by the best of motives and the purest patriotism, they can achieve no good; being debarred the privilege of *originating* any measure, the initiatory resting with the chief authority alone. They may, indeed, negative an act; however, as the governor has it in his power not only to suspend, but to appoint a substitute, “until the pleasure of the secretary of state be known,” the uncourtly legislator would incur the almost certain penalty of instant removal, to make

way for a phantasmagoric senator of less ungracious mind, and more complying mould. Such considerations, and the absence of trial by jury, have long weighed heavily with the Tasmanian people ; meeting after meeting has, in consequence, been held, to urge one unvaried and deep-felt prayer-" TRIAL BY JURY, AND TAXATION BY REPRESENTATION. "*

The English reader will probably exclaim, What ? no trial by jury ! Then what is the substitute ? In cases of felony, the prisoner is tried by a jury of seven commissioned officers in the sea or land service of her majesty. In civil suits, the pleadings are conducted before two gentlemen, termed assessors. It is true, that, where the plaintiff and defendant concur, a jury of twelve is conceded, but no single suitor can attain that object.

, To obviate such difficulties, and in the hope of freeing themselves from an intolerable yoke, a public meeting was convened at Hobart Town in March, 1827. It was most numerous and respectably attended, and a petition to the king and both houses of parliament was drawn out, praying that his majesty would be pleased to accord the colonists the privilege of their forefathers, and some control over their local affairs. A deputation was selected, and an hour appointed by the lieutenant-governor to receive them, that he might personally learn their sentiments, and be requested to forward their petition through the appropriate channel. When the hour arrived, his excellency being engaged with Mr. Curr, the Van Diemen's Land Company's agent, an intimation was conveyed desiring the deputation, to call again in an hour : conceiving themselves, as a public body, to be grossly insulted, they withdrew, the affair terminating in an angry and fruitless correspondence.

The scarcity of a metallic currency still curbed and restrained the anxious and persevering endeavours to improve and redeem the waste lands of the colony, which, with the exception of detached portions

* It may be urged **against** this, that a strong **memorial** was forwarded by a numerous body of the influential residents of New South Wales, showing the evil working of trial by jury, in some cases, in consequence of the utter worthlessness of a large portion of those qualified to sit as jurymen,-but New South Wales and Van Diemen's Land are, in some particulars, essentially different. The emancipist, that is, the conditionally pardoned class, are people of money and means in the former, whilst in the latter they possess no consideration-the tide of emigration which set in in 1820 having thrown all the power into the hands of the free people of Van Diemen's Land, whereas in 1820 New South Wales had been long established, and men, *once* convicts, were among its influential citizens.

under cultivation, were nearly entirely unenclosed-the settlers, like the patriarchs of old, being spread over a large common surface, and inhabiting huts of truly primeval construction.

The absence of any law against usury-the exorbitant profits of the Bank of Van Diemen's Land-the remorseless exactions of a shoal of private bill discounters-whose consciences did not scruple to wring 25, 50, nay, 100 per cent. from the necessities of the helpless. These, and the golden prospects held out, induced the formation of a second bank. The Van Diemen's Land Bank evinced considerable alarm at the announcement, and a negotiation, the object of which was a junction of capital, was entered into, but failed. The new establishment, consequently, opened their doors under the title of The Derwent Bank. Its shareholders were said to consist of the *principal* officers of government. To meet their rivals, the Old Bank increased their capital, and, much about the same time, the Messrs. Gellibrand opened a private concern, which has since become merged in the Commercial Bank. These three establishments still flourish, in addition to those of British origin, namely, the Australasian and the Union ;-moreover, several others are now in progress. The result of these speculations has been as favourable to themselves as beneficial to the Colonies-a fact fully *evidenced by the numerous permanent improvements throughout the different settlements.*

* The annexed detail is taken from a local journal of October, 1839:—

JOINT STOCK COMPANIES, VAN DIEMEN'S LAND.

Name.	Shares.	Each.	Paid up.	Premium.	Dividend per Annum.
		£.	£.	£.	
Bank of Van Diemen's Land	1,200	50	50 0 0	60 0 0	13 per cent.
Dexwent Bank	1,000	100	87 0 0	104 0 0	14 ditto.
Commercial Bank	1,200	100	60 6 8	72 0 0	14 ditto.
Derwent and Tamar Insur. } Com	2,000	50	2 1 0	6 0 0	—
Van Diemen's Land 'ditto' .	1,000	100	5 0 0	5 15 0	—
Tasmanian Fire & Life do.	620	100	5 0 0	20 0 0	—
Hobart and Launceston } Marine do.	620	100	5 0 0	16 0 0	—
Australasia Bank	5,000	40	40 0 0		8 per cent.
Ditto ditto	5,000	40	40 0 0		Ditto
Union Bank	10,000	25	12 10 0	13 10 0	5 Ditto

At a meeting of the Proprietors of the Commercial Bank, on Wednesday, the 28th instant, the capital was increased two hundred shares of £100, and to be issued at 20 per cent. premium, which are nearly all disposed of.