

law in all their application to the details of civilised life. It is necessary to take into account the anomalous position which they occupy on the one hand as having acknowledged the Queen's sovereignty, and thus become liable to the obligations and entitled to the rights of British subjects, and on the other hand as having been allowed to retain their tribal organisation and native usages, and as thus occupying, in a great measure, the position of independent communities. Viewed in the former capacity, they have, by levying war against the Queen, rendered themselves punishable by death and confiscation of property. These penalties, however, can only be inflicted according to the rules and under the protection of the criminal law. Viewed in the latter capacity, they would be at the mercy of their conquerors, to whom all public property would at once be transferred, private property remaining under the protection of international custom. Remembering the difficulty of determining what is private and what public property among the Maoris, it seems to follow that in the interest of all parties the rights of the Maori insurgents must be dealt with by methods not described in any law book, but arising out of the exceptional circumstances of a most anomalous case.

It is therefore doubly necessary that those who administer in the name of the Queen a Government of irresistible power should weigh dispassionately the claims which the insurgent Maoris have on our consideration. In the absence of those legal safeguards which furnish the ordinary protection of the vanquished, the Imperial and Colonial Governments are bound so to adjust their proceedings to the laws of natural equity, and to the expectations which the Natives have been encouraged or allowed to form, as to impress the whole Maori race at this critical moment with the conviction that their European rulers are just, as well as severe, and are desirous of using the present opportunity, not for their oppression, but for the permanent well being of all the inhabitants of New Zealand.

I recognise the necessity of inflicting a salutary penalty upon the authors of a war which was commenced by a treacherous and sanguinary outrage, and attended by so many circumstances justly entailing upon the guilty portion of the Natives measures of condign punishment. But I hold, in the first place, that in the apportionment of this punishment those who have actively promoted or violently prosecuted this war should be carefully distinguished from those who, by circumstances, connection, or sense of honour, or other natural temptation, have been unwillingly drawn into it, and still more pointedly from those who have on the whole adhered to the British cause. Even in the case of the most culpable tribes the punishment should be such as to inflict present humiliation and inconvenience rather than a recurring sense of injury, and should leave them with a conviction that their punishment, if severe, has not exceeded the limits of justice, and also with the assurance that for the future they have nothing to fear, but everything to hope from the Colonial Government. With this view, the punishment, however exemplary, should be inflicted once for all, and those who may have suffered from it should be led to feel that they may engage in the pursuits of industry on the lands which remain to them with the same security from disturbance which is enjoyed by their most favoured fellow-subjects. And I should hold it as a great misfortune if the punishment were so allotted as to destroy those germs of order and prosperity which have been so singularly developed in some of the Waikato tribes.

I do not dispute the right of the Colonial Government to obtain from the punishment of the insurgent Natives some aid in defraying the expenses of the war, or, in other words, of including in the contemplated cession or forfeiture lands to be disposed of by sale, as well as lands to be devoted to the purposes of military settlement. But these expenses have been mainly borne by this country, which has, therefore, a right to require that the cession or confiscation of territory shall not be carried further than may be consistent with the permanent pacification of the island and the honour of the English name.

I must now now invite your attention to some difficulties to which such a scheme would appear to be liable if carried into effect too suddenly, and on too great a scale.

I think it may be generally said that there is not much modern experience of a successful military settlement. In the present case it can scarcely be hoped that the 20,000 persons whom it is proposed to place upon land, will be entirely of the most desirable class; and notwithstanding the intention expressed by your Minister to provide for the introduction of married settlers, with their families, it is to be expected that there will be a great preponderance of males among them, a circumstance which is always productive of many causes of strife in such a state of society. If the settlements should be scattered at a distance from any natural centre, and in the heart of a disaffected country, they might prove unequal to their own defence, and their protection would be extremely expensive, while it would hardly be possible for the Colony to abandon the territories which it had occupied. Lastly, as the immigrants would be without special experience or capital, bound to a distasteful military tenure, and perhaps exposed to the hostility of the Natives, it is to be feared that they would have to undergo much hardship, and would be soon attracted from their farms by the high wages of Australia, or the still nearer gold-fields of Otago.

I am strengthened in these apprehensions by observing that the difficulty of enforcing military service upon Colonists has pressed itself on the notice of yourself and the New Zealand Representatives. In your despatch of the 24th July, 1862, you express your fear that labourers and artisans could not be induced to remain in the Colony if liable to militia service. And a somewhat similar anticipation is expressed in the Memorial addressed to Her Majesty by the House of Representatives, and mentioned in your Despatch of the 6th October, 1862.

This is a matter which more properly belongs to your own Advisers on the spot, responsible as they now are for the conduct of Native Affairs, and I do not urge these objections for the purpose of discouraging, within moderate and practicable limits, a scheme from which you expect the best results, but only that, in order to ensure success, those limits may be carefully considered, in the first instance.

I shall have occasion to recur to the subject of lands taken for sale, in considering the proposal for a guaranteed loan.

Considering that the defence of the Colony is at present effected by an Imperial force, I should perhaps have been justified in recommending the disallowance of an Act couched in such sweeping terms, capable therefore of great abuse, unless its practical operation were restrained by a strong and resolute hand, and calculated, if abused, to frustrate its own objects, and to prolong, instead of terminate war. But not having received from you any expression of your disapproval, and being most unwilling to take any course which would weaken your hands in the moment of your military success,