

The present practice is attended with much that is undesirable for the representative of Her Majesty. He is liable to be accused of being actuated by religious or sectarian motives, or by class prejudice. Deputations of various kinds wait upon him. The counsel for the prisoner claims to be allowed to place before him facts alleged to have come to light since the trial, and thus endeavours to turn the Governor into a Court of Appeal.

10. Parliament may, in its debates, endeavour to influence public opinion to put pressure on the Governor, for I have noticed a growing tendency under certain circumstances to bring under criticism of the popular branch of the Legislature administrative functions performed by the Governor even under the advice of Responsible Ministers. How much more, then, would such a tendency develop in cases which concern the internal administration of the colony, but where the Governor does not act with the advice of Ministers, and cannot maintain that he is acting with a desire to hold the balance between parties, as in the case of the granting or refusal of a dissolution or the choice of a Minister.

11. Were it not that the Governor is directed to consult his Executive Council, it might be held that the Governor alone exercised the prerogative and was alone responsible for its exercise; but, as Ministers must give advice, they must also be responsible for that advice to Parliament, and may at any time demand that it be taken as effective advice.

The consequence is a responsibility differing from the general responsibility of the Governor to the Crown and the Ministers to Parliament, in that it creates a double responsibility, with the possibility of dead-lock.

12. In a despatch to the Governor of New South Wales on the 1st of November, 1871, Lord Kimberley says: "A Governor is to pay due regard to the advice of his Ministers, who are responsible to the colony for the proper administration of justice and prevention of crime;" and your Lordship, in your despatch of the 30th October, 1888, to the Administrator of the Government of Queensland, adds to that doctrine that the Governor "will allow greater weight to the opinion of his Ministers in cases affecting the internal administration of the colony than in cases in which matters of Imperial interest or policy, or the interest of other countries or colonies, are involved." Had your Lordships intended these instructions to apply not only to ordinary cases in which the Royal prerogative of mercy is involved, but to capital cases also, the duty of the Governor would have been perfectly clear.

13. I am not prepared to follow Mr. Ballance into an inquiry whether the present is a survival of Crown colony practice, but I am unable to say that it appears to me otherwise than as an anomaly in a community possessed of responsible government; for it seems incompatible with those principles that the Governor should be instructed to consult his Ministers and yet be specifically instructed that he may, and in certain cases ought to, disregard their advice at the risk of finding himself without Advisers able to carry measures and votes in Parliament.

It appears to be clear that at least two of the Australasian Governments (those of New Zealand and Queensland) entertain the opinion that, in the exercise of the prerogative of mercy, there should be distinct Ministerial advice, tendered under definite Ministerial responsibility. It is possible that these two colonies may not be alone in their contention; and, should your Lordship see your way to give effect to Mr. Ballance's wishes by definite instructions in that direction, I cannot see that any danger to the Empire need be feared.

The rapid strides made by these colonies in recent years have resulted in the building-up of a social fabric differing only in degree from the older communities of Europe: and circumstances have much changed since Sir H. Parkes wrote in 1874 deprecating any change in the existing practice, because, he said: "The persons intrusted with authority, and the relatives and friends of prisoners, move closely together in a community so small as ours." Ministers are capable of assuming complete responsibility for the administration of local affairs without exception. Public opinion expressed through a number and variety of channels is speedily exercised and quickly felt.

Any abuse of power or danger to the preservation of order, if not checked by the influence of Parliament, would be certainly arrested by the first general election, an event which can never be postponed longer than three years, but which usually recurs more frequently.

14. In the earlier history of the Australasian Colonies, as in that of Canada, there may have been much to be said in favour of the practice, but the causes which operated to effect a change in the Dominion have not been wanting in Australasia, and should your Lordship see fit to assimilate the practice here to that which obtains in Canada, the principles of responsible government will be complete, while the Queen's representative will be freed from an anomalous position, and a difficult and undesirable duty.

The Right Hon. Lord Knutsford.

I have, &c.,

ONSLow.

Enclosure No. 1.

The Hon. the Premier.

Government House, Wellington, 29th January, 1891.

I DESIRE to call your attention to the minute as entered in the book of proceedings of the Executive Council of the 16th of December, 1890, respecting the commutation of the death sentence passed on Mahi Kai to one of penal servitude for life, and also to the minutes of Ministers on the papers. I directed that the minutes of the meeting at which that decision was come to should not be confirmed pending consideration of the form in which it should appear.

The Ministers who formed that Council having resigned, I have no longer the opportunity of consulting them on the point, nor do I think that any alteration or addition can now be made to the papers on the case, which contain no advice to the Governor. I think, therefore, that at the next meeting of the Council these minutes should be signed in the form in which they now stand.