

eye the form of a valuable though not absolutely inflexible precedent, and limiting the circumstances under which such creations can properly take place, is desirable. Such an understanding did, in fact, exist between Sir John Young and his successive Ministers; and the object of my despatch of the 18th December was to enforce on you the inconvenience of any course which was calculated, without necessity, to impair the authority of that understanding, and to the expediency of making it clear, in the interest of the colonial Constitution, that any necessary violation of its letter was not really a violation of its spirit—that is to say, that it was resorted to not to strengthen a party, but in reality for the convenience of legislation."

9. In December, 1869, Mr. Robertson recommended to Lord Belmore appointments to the Legislative Council which would have involved a further increase in the number of that Chamber from thirty to thirty-three members. He urged in support of his proposal that he still declined to recognise the validity of any such understanding as that agreed to between Sir John Young and former Ministries, and that so small a number of the Council had been appointed by Governments of which he had been a member that additional appointments were then necessary to enable him to carry on the Government. Lord Belmore declined to act on the advice tendered, and the appointments were not made. Mr. Robertson soon after resigned office, on grounds unconnected with this refusal, and the course adopted by Lord Belmore in this matter was approved by the Secretary of State.

10. Since then the number of the Legislative Council has not been allowed to exceed thirty, except occasionally, when, as at present, an extra member has been appointed to give the Minister of the day a representative of his own selection in the Upper House.

11. Thus it will be seen that, although several attempts have been made to break through the understanding come to in 1861, such attempts have always been successfully resisted, except in the one instance, which I have detailed, in the year 1868, when the maximum was increased from twenty-seven to thirty. And, indeed, notwithstanding this increase, I think it may be fairly contended that the spirit of the understanding of 1861 has been adhered to up to the present time; for, as I have shown, Sir John Young himself interpreted that understanding as meaning twenty-seven members "present in the colony, and available for service"; and if from the number of thirty-one now on the roll there be deducted one member absent in England, two members who are by age and infirmity rendered incapable of attending to their duties, and one who has been obliged, in consequence of altered circumstances, to remove to a great distance (350 miles) from Sydney, there will remain only twenty-seven members available for service, many of whom even are prevented from attending regularly by a variety of causes.

12. I now come to the minute of the Cabinet upon the present composition of the Legislative Council, which has been submitted for your Lordship's consideration. In that paper Mr. Parkes alludes, in the first place, to the large number of appointments to the Council which have been made by Sir James Martin, several of the gentlemen so selected being, he considers, unknown to public life, and without ascertainable political opinions. He calls attention next to the irregular attendance of a considerable portion of the Council, from a variety of causes, and he proceeds to animadvert upon the course adopted by the Council on the Border Customs Bill, which was defeated by what he characterizes a party vote. He adds that he and his colleagues are of opinion that "the action of the Legislative Council on this occasion, viewed in connection with the unsatisfactory character of certain appointments in past years, and the facility with which, in their belief, outside and mere personal influences could be exercised upon the Council's deliberations, afforded signal evidence of the failure of the nominee principle." And he intimates that the Cabinet had, in consequence, decided to introduce, in the next session of Parliament, a Bill to reconstruct the Council on an elective basis. This, of course, is a perfectly legitimate issue to be laid before the country. It is obvious that, so long as the appointments to life seats in the Upper Chamber are made by the Minister of the day, no guarantee can be afforded that the selections will always be made with regard solely to the fitness of the person chosen, and his ability and willingness to devote himself with assiduity to the business of legislation. Other considerations of a personal or party character will often present themselves, which, practically, it will be very difficult to resist; and it remains, therefore, for the Legislature and the public to weigh carefully the evils which are inseparable from the nominee system, in comparison with those which attach to a Chamber constructed on an elective basis, and to adopt the form which may, on the whole, be held to present the fewest disadvantages.

13. The object of Mr. Parkes's minute, however, as he explains, is not to discuss the merits of the policy which he is prepared to pursue, but to bring under your Lordship's notice the consideration which, in his opinion, ought to determine appointments to the Legislative Council as at present constituted; for he thinks it most probable that the legislation of the colony will still have to be carried on for several years with the continued existence of the nominee principle in the Council. He is of opinion that if any limit in the number is to be observed, thirty-six would be a better maximum than thirty, but he objects strongly to the recognition of any understanding on such a subject, as he considers that all appointments should be determined by the merits of each case.

14. The grounds urged for a maximum of thirty-six are that such a number "would be safer for the public interest, and more likely to secure a true representation of those elements of political experience, mature judgment, and the distinction and authority arising from public service which ought to prevail in the Legislative Council, and would afford better guarantees against small personal organizations and clique influences." But I must confess I am unable to see why these results should follow a mere increase in the numerical strength of the Council from thirty or thirty-one to thirty-six. The evils complained of by Mr. Parkes in the present composition of the Legislative Council are not traceable, as far as I can see, to any limitation in the number. If members were selected solely with regard to fitness and to their ability and disposition to attend regularly, twenty-seven or thirty would be found amply sufficient to meet all the requirements of an Upper Chamber, whilst, if their selection be influenced by other considerations, a mere increase in the number will