



1846

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CHAPTER III. THE NEW ZEALAND CONSTITUTION OF 1852...

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CHAPTER III.

THE NEW ZEALAND CONSTITUTION OF 1852--AN ACCOUNT OF THE GOVERNMENT BILLS WHICH PRECEDED IT, AND SIR GEORGE GREY'S CONNECTION THEREWITH--AN OUTLINE OF THE CONSTITUTION OF 1852--THE PERSONS TO WHOM THE CONSTITUTION OWES ITS ORIGIN AND PRESENT FORM--SIR GEORGE GREY--REVIEW OF HIS CHARACTER AND MODE OF GOVERNMENT--FOX'S LETTER TO EARL GREY--THE ANSWER--EXTRACTS FROM SIR JOHN PACKINGTON'S DESPATCH -- THE SETTLERS' CONSTITUTIONAL ASSOCIATION--LETTER FROM MR. FOX RESPECTING IT--EXTRACT FROM MR. GLADSTONE'S SPEECH ON THE N.Z. CONSTITUTION OF 1852.

ON the 23rd of October of this year (1852), the brig *Louis and Miriam* arrived in Wellington, bringing the cheering and welcome intelligence that the "New Zealand Constitution Bill" had received the Royal assent. The passing of this Constitution was most important, and is a great and interesting event in the history of New Zealand: so much so that I now venture to give a very brief outline of its principal features, and a list of the important New Zealand Government Bills which preceded it, beginning with:--

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1.--An Act passed in the year 1840, authorising Her Majesty's Government to issue certain "Letters Patent" and to erect the islands of New Zealand into a separate colony: in consequence of which New Zealand was constituted and became a separate colony on the 16th of November, 1840. ¹ Before the latter period it was included within the jurisdiction of the colony of New South Wales.

2.--By Letters Patent issued under the above Act of 1840, Her Majesty did also "authorise the Governor for the time being of the said Colony of New Zealand and certain other persons, to be a Legislative Council for such Colony, and to make laws for the peace, order, and good government thereof." Under this authorization, emanating from the Act or "Charter" of 1840, was established the first system of government in New Zealand; which system continued down to the end of 1848. The Government thus set on foot consisted of the Governor and a Council; the latter formed of three of His Excellency's principal executive officers, and three Nominees--not officials--and might be properly designated, the General Legislative Council for the Colony of New Zealand.

3.--During the year 1846, another Act was passed, known as "The New Zealand Constitution Act of 1846." This Act repealed the Act of 1840, and also "all Charters,

Letters Patent, Instructions and Orders in Council made and issued in pursuance thereof," so

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far as the same were repugnant to the Act of 1846, or any Letters Patent, Charters, &c., made under the authority thereof.

4.--The Constitution Act of 1846, was never brought into operation--its introduction having been suspended for five years, at the earnest and urgent request of the Governor, Sir George Grey, made to the British Government. ² In accordance with this request another act was passed in 1848, called the "Suspending Act," which had the effect of postponing, for five years, the introduction of Representative Institutions into New Zealand, and which also revived the irresponsible government founded under the Act of 1840.

5.--While this interregnum, or period of suspense existed, the Colony was left without a vestige or shadow of Representative Institutions; but Sir George Grey was actively, busily, and adroitly employing his time and talents in devising a Constitution peculiarly his own. By the Suspending Act of 1848, he was empowered to establish temporary Legislative Councils on the representative principle, if he thought it expedient to do so. His Excellency did think it expedient so to do, for he established two Provincial Legislatures for New Ulster and New Munster--the former for the North, the latter for the South. The Northern or Auckland one,

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was not called into operation. The Southern one--embracing the Wellington district, and the whole of what is now termed the Middle Island--was summoned and met at Wellington early in 1849; but its first meeting appears to have been only a formal one, for another Session was held at a later period of the same year, for the dispatch of business, and was the last ever held. This Provincial Legislature was composed entirely of nominees, with the Lieutenant-Governor of New Munster, Edward John Eyre, (who made such short work of the Jamaica Insurrection in 1865), at its head; but it was so unpopular, that Sir George Grey was unable to keep it in existence, and had to fall back on his old General Legislative Council which was established by and which subsisted under the Act of 1840. The powers so recently given to Provincial Legislatures, were transferred to and absorbed by the General Legislature just named, which, thus revived, met in Wellington in 1851. This Council is the one I speak of in Chapter I. of this volume, and the sittings of which I occasionally attended. I was present at the sitting in June, when Governor Eyre in a manner denounced Grey's nominee system. This he did in a somewhat hasty manner. It was the nominee members of this Council, who in 1851, passed the "Provincial Councils Ordinance," which Sir George Grey recommended (as I shall presently show) should form such a prominent feature in a new Constitution--the one of 1852. The last time Sir George's General Legislative Council met, was I believe, at Wellington, in 1852, when

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from the Wellington Almanack of 1853, I find it to have been composed of the following members, which it will be observed, with one exception--Captain Smith, were all of them Sir George Grey's officials--subordinate officers:--

A List of the Members present during the Session of the Legislative Chamber, held in Wellington, in the year 1852.

His Excellency Sir George Grey, K.C.B., Governor-in-Chief; His Excellency E. J. Eyre, Lieutenant-Governor, New Munster; Lieut.-Col. McCleverty, Commander of the Forces, Southern District; A. Domett, Colonial Secretary, New Munster; Hon. H. W. Petre, Colonial Treasurer, New Munster; D. Wakefield, Attorney-General, New Munster; S. Carkeek, Collector of Customs, New Munster; F. D. Bell, Commissioner of Crown Lands, Wellington District; Captain Smith, R.A., Nominee.

The measure above described, as might be expected, gave general dissatisfaction, ³ and perhaps led to His Excellency recommending (in Despatch 121) to the Home Government, a more liberal Constitution, which afterwards had some of its salient points embodied in

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the last and most liberal constitution ever bestowed on any Colony by the British Parliament.

The Constitution Act (containing 82 Clauses) was passed on June 30th, 1852, and is intituled, "AN ACT TO GRANT A REPRESENTATIVE CONSTITUTION TO NEW ZEALAND." The Act divides New Zealand into six Provinces, viz.--Auckland, New Plymouth, Wellington, Nelson, Canterbury, and Otago. This Constitution, the "*Magna Charted* of New Zealand, is of a comprehensive and democratic character; at the same time, it may be described as being elaborate in its composition, and minute in its details. It is, perhaps, as a whole, somewhat complicated -- owing to the concurrent jurisdictions for which it makes provision. However, taking it as it was passed, it is a remarkable piece of Constitutional Legislation, and consists of seven different centres of authority--representing seven distinct powers, in due order of subordination--the one controlling the other, from the highest to the lowest as represented by:--

- 1.--Her Majesty, the Queen.
- 2.--His Excellency, the Governor.
- 3.--The Legislative Council.
- 4.--The House of Representatives.
- 5.--The Superintendent
- 6.--The Provincial Council.
- 7.--The Town Municipality.

- 1.--The Queen,-- the Supreme Power,-- is for the Empire.

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- 2.--The Governor stands between the Crown and the Colony, and acting for both.
- 3.--The Legislative Council exercises a veto upon acts of the House of Representatives, as a check to hasty or inconsiderate legislation.
- 4.--The House of Representatives is the most popular, powerful, and important branch of the Constitution --being composed of the elected Representatives of the whole Colony. Its legislative functions, standing orders, &c., are analogous to those of the British Parliament.
- 5.--The Superintendent is a Governor of a Province, elected by the constituency of the *whole* Province, and with a kind of derivative sovereign power in the way of assenting to or dissenting from Bills passed by the Provincial Council--such Bills after having received the assent of the Superintendent being transmitted to the Governor for *his* assent. The Superintendent--except in special cases--has *now* the authority to assent to Bills in the name of the Governor.

6.---The Provincial Council represents the local interests of a large territorial division of the colony, and makes laws for the "peace, order, and good government" of the Province. Thirteen subjects are enumerated on which it has not the power to legislate.

7.--The Municipality is to control and manage the affairs of a town.

These several Powers or Members of the Constitution have each of them their respective rights, duties and privileges in the body politic--the State. It sometimes happens, however, notwithstanding all the care

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and precaution taken to make these different powers work harmoniously together, that they occasionally impinge upon each other, and that conflicts and collisions become imminent, in which case, nothing but good sense and mutual forbearance--rare attributes-- can prevent that clash of authorities known in the Colonies and elsewhere, as a "dead-lock."

The New Zealand Constitution in most of its fundamental parts may be considered as a democratic imitation of the English Constitution.

Beginning at the head there is --

1.--The Governor, as the representative of Her Majesty, stands in the same relation to New Zealand as the Queen does to the United Kingdom--he is our *local* supreme head.

2.--The Legislative Council (the members of which are elected for life by the Governor, advised by his Ministers) is our House of Lords. By the Constitution, its members cannot be less than ten.

3.--The House of Representatives -- elected on a wide suffrage--is our House of Commons.

4.--The Provincial Councils, with their *elected* Superintendents and Members, have no parallel in the British Constitution. Their origin is to be found in America, in what is called "State Government," although the functions of the latter are far more extensive than those of the New Zealand Provincial Governments.

5.--Municipal Institutions are a truly English mode of Local-Self-Government--though by no means pecu-

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liarily or exclusively so, for they existed over a great part of Europe more than a thousand years ago, and can trace their origin back to the days of Imperial and Republican Rome, long before the Christian era; and it was to the existence of Municipal Institutions that modern Europe, more especially France and Germany, and the Italian Republics of the middle ages, owed their commercial prosperity and their progress in civilisation.

Let me now speak of the Democratic *outposts* of the Constitution:--

1.--To enable a man to vote for the election of a member of the Provincial Council or a Municipal Body, the Superintendent, or a member of the House of Representatives, he must be 21 years of age and possess some one or more of the four following qualifications: (1)--He must be in possession of a freehold, worth £50 and clear of all encumbrance; (2) or he must possess a leasehold estate of the clear annual value of £10; (3) or he may be a householder residing within the limits of the town, paying clear yearly rent of £10; (4) or if residing without the boundaries of a town he must be paying a clear annual rent of £5. The qualification must attach to the district for which the vote is to be

given. This in New Zealand, where wages and rents are higher than in England, approaches somewhat closely to Universal Suffrage; and when we consider that the duration of a N.Z. Parliament is only five years, and that its members receive 20s. per day for their attendance during its sittings, it must be ad-

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mitted that we are in advance of England's institution of the present day; but not of those of our ancestors; for in the time of Henry VI. Universal Suffrage was in existence, (*i.e.*) the whole body of *freemen* had a right to vote; and in that of William and Mary the Triennial Act was passed, whereby the duration of the sittings of Parliament was limited to three years; this act at a more recent date was repealed, and seven years substituted for three.

It is here worthy of remark that in the reign of Edward III. we find that members of parliament were paid for their services, members for counties (knights of shires) receiving 4s. per day, and members for towns or boroughs 2s. per day. The sum paid here seems trifling, but the value of money was greater at that period than it is now.

2.--No property qualification is required to enable any person to become a candidate for election, as a member of the House of Representatives, the Provincial Council, a Municipal Corporation, or for the office of Superintendent--save the ordinary qualifications for an elector as above mentioned.

3.--The maximum duration of the House of Representatives is fixed at five years.

4.--The maximum duration of the Provincial Councils is fixed at four years.

5.--The duration of the office of Superintendent expires with the termination of each Provincial Council.

6.--The General Assembly besides making general laws has the power to legislate for the "sale, letting

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ing those within the settlements of Canterbury and Otago--for which special reservations were made; but the privilege of managing all other waste lands was a valuable and most important concession, resulting in after years, in the bestowal of the land-fund and waste land management, on the various Provinces.

7.--The Constitution makes provision for the alteration and amendment of its own powers and attributions in certain cases. This power of amendment was subsequently enlarged, by an Act passed in 1857, and intituled "An Act to amend the Act for granting a Representative Constitution to the Colony of New Zealand." 4 By this amendment of the Act of 1852, the Stafford Ministry were enabled to introduce the "New Provinces Act" which was passed in 1858, and which was the means whereby, in all *New Provinces* -- the right of the electors to elect their Superintendent was taken away and conferred on the *members* of the Provincial Councils formed under the said Act.

From the foregoing sketch--brief and imperfect as it is--some idea may be formed of the liberal tendencies of the Constitution of 1852.

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With, respect to the sources and the persons to whom we are indebted for this Model Colonial Constitution, they are I believe so varied and so numerous, that it will not be

necessary, in this brief description, to do more than indicate the principal persons to whom our Constitution owes its origin.

Earl Grey and Sir George Grey, conjointly, appear to have prepared its frame-work. Sir George Grey in one part of an elaborate despatch, 5 proposed to divide New Zealand into five Provinces, incorporating New Plymouth into one of them; and in each of these five provinces he proposed to establish a Provincial Legislative Council, which, at its introduction and for a limited or provisional period afterwards, should be composed one-third of *nominees*, and two-thirds of elected members. He also in Despatch (121, Clause 44) recommends, that no express qualification be required for members of a Provincial Council, and that they be paid a sum to cover their expenses in attending its sittings. Instead of a Lieut.-Governor, (as Governor Eyre was in Wellington), Sir George advises that the head of the Provincial Executive be designated "Superintendent." He appears, from the same Despatch, to think

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that the General Legislative Assembly would not be required to meet often; and in Clause 69, he anticipates that the Provincial Councils, may eventually develop themselves into governments of a higher character, and remain "distinct and separate Provinces." He recommends that provision be made for the Provincial Councils becoming a form of government, consisting of an Upper and a Lower House--to be designated Legislative Council and House of Representatives respectively.

Dr. Featherston and Mr. William Fox, and other Gentlemen, in Nelson, Canterbury, Otago, and Auckland, with E. G. Wakefield, and his friends in England, were no doubt most powerful contributors by their pens and their tongues, their writings and speeches, to the Constitution of 1852, -- as maybe seen by the Parliamentary Blue Books of 1849-50-51 and 52. That they also by their petitions and representations to the Colonial Office, helped to neutralise and modify Sir George Grey's tendencies towards and recommendations in favour of, irresponsible government, --must likewise be admitted.

Any impartial person who carefully reads Sir George Grey's Despatches to the Home Office, on New Zealand Government, or who studies his conduct as Governor of that Colony, must see how long and how tenaciously he clung to his views and his irresponsible system of Colonial Government, which he must have known were unsuited to the tastes, the wants, and the habits of a community composed of Englishmen. Most people could not but notice how he appeared to wish every

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important measure regarding New Zealand to emanate from his own powerful mind; he would have no Colonial rivals in government--obedient subordinates were needful for him. His Government appeared a paternal one--absolute within the Colony, but controlled from without, by Imperial authority -- whose instructions he sometimes did not hesitate to set aside or disregard; though perhaps not always without reason.

Any ordinary mind may glean from his great Despatch, No. 121, Clauses 49 to 59, his manifest intention there exhibited, to retain all the power he could, and as long as he could; and then, when his own term of office expired, (like the sick man who dies and cannot take his wealth with him) he takes the credit of divesting himself--or rather his successor--of much political and administrative power, and of transferring the same to a Legislative Council, a House of Representatives, Superintendents, and Provincial Councils; and then, finally, after the introduction of the Constitution of 1852, taking his

departure at the close of 1853, with all the *eclat* of the author of a successful *denouement*.

Cleverly managed, every one will admit, not a bit too soon or a bit too late; nor am I complaining of the *result*, for it was a wise arrangement that permitted the departure of an unconstitutional Governor, so soon after the introduction of a Constitution conferring representative institutions.

Let me not speak unfairly or too severely of Sir George, for on my first arrival and for years afterwards, I admired and respected him for the great material

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good he did to the Colony: but, in candour and truth, I feel bound to say what I have said--and further, that the great reason he gave for retarding and suspending the introduction of free institutions--namely, the fear that wrong and injustice would, by the Colonists, be done towards the Natives -- is unsound: it is an erroneous opinion--perhaps rightly and conscientiously held by the Governor--but wrong in fact: for if these representative institutions were so framed (which they were) as not to permit of the Colonists legislating for and managing the Natives, how could any collision arise between them on this head? The Imperial Government, through the Governor, Sir George Grey, or his successor, had Native affairs and the Native question in their own hands. To my mind the Natives were just as likely to be unfairly treated--nay, more so--when free institutions had no existence, as when they were introduced.

This mode of reasoning appears to me to regard the Natives and Colonists as children, with Sir George as their kind, indulgent, wise, and knowing parent; and may be likened to the argument of one of Sir George's nominees, Mr. G. Moore, who, in a speech in favour of nomineeism, said, *in effect*, in a comparison about the unfitness of the Colonists for representative institutions, that he considered the Colonists as juveniles, who were not fit to handle free institutions, and he was afraid they would hurt or injure themselves by their use;-- you don't, said he, as a climax to his argument, intrust a child with a steel knife until he has first learnt to eat

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with a *bone one*. This *bone knife* argument was long remembered to the annoyance of its author, who otherwise was a good-natured man and an enterprising colonist.

Notwithstanding Sir George Grey's repeated attempts to retain almost absolute power in his own hands and retard the introduction of representative institutions, I am ready to admit that he was an able and excellent Governor, particularly so, during his early administration of the affairs of New Zealand. He displayed great energy and ability, in his first attempts to grapple with the difficulties of the Colony; and great promptitude and firmness--combined with kindness and humane feeling in dealing with the Natives and the Native question;-- in all of which difficulties, colonial or native, he was well seconded by Imperial confidence in his administration, and also by grants of money and men--military and naval. Without these latter important resources, his own great exertions would not so well or so soon have relieved the Colony from its financial, native, and administrative entanglements. To my mind, no Governor ever tried so much to understand the habits, dispositions, and language of the Natives, or succeeded so well *for a time*, in winning their confidence, as did Sir George Grey--whose own abilities, disposition and temperament well fitted him for the post and position he was called upon to assume, when he accepted the Governorship of New Zealand. Sir George had peculiar and appropriate qualifications to have made him a good Governor of a Province of India, where, if appointed to

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it, he would have administered a mild, firm and beneficent system of Government bordering on despotism. Governor Grey, as head of an irresponsible Government in New Zealand was, I consider, a very good Governor;--by-and-by I shall, I trust, have cause to speak of him as a Constitutional Governor of the Colony.

Next to Sir George Grey, in communicating with the Colonial Office in England, respecting a Constitution for New Zealand, may be classed Mr. William Fox, as may be seen from various Parliamentary Blue-books on New Zealand, of the years 1851 and 1852. Mr. Fox's position with reference, to these transactions may be gathered from the tenor of the following two letters:--

Copy of a Letter from, W. Fox, Esq., to Earl Grey.

Parthenon Club,
3rd January, 1852.

MY LORD,

On the 15th November, 1850, being on the point of leaving New Zealand for England, I was appointed honorary political agent for the colonists of Wellington. The appointment was made unanimously at one of the largest public meetings ever held in the colony, not less than 500 male adults being present, and was ratified at a subsequent meeting held about three months afterwards. The object of my appointment was, that I might bring before Her Majesty's Government the views and earnest desires of the colonists on the subject of a constitution of self-government, and particularly in reference to that proposed to be introduced by His Excellency Sir George Grey, the Governor-in-Chief.

On my arrival in this country in June last, I was advised that no measure being then before Parliament, it was too late to move the matter during the current session. I, therefore, merely forwarded to your Lordship my address and certain documents with which I

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was entrusted by the colonists, and among them one which contained the Resolution by which I was appointed their agent.

The time has now arrived, when I consider it my duty, on behalf of the colonists whom I represent, to request the attention of Her Majesty's Government to the subject, and I have, therefore, the honour to beg that your Lordship will favour me with an interview, in order that I may personally state to you the wishes and feelings of the colonists.

I have, &c.,
(signed) WILLIAM FOX,
Honorary Political Agent for the Colonists of Wellington.

Copy of a Letter from F. Peel, Esq , to W. Fox, Esq.

Downing Street,
21 January, 1852.

SIR,

I am directed by Earl Grey to acknowledge the receipt of your letter of the 3rd instant, in which, in the capacity of Political Agent for the colonists of Wellington, you request an interview with his Lordship, in order that you may personally state the wishes and feelings of the colonists on the subject of the constitution of New Zealand.

In reply, I am directed to acquaint you, that his Lordship *cannot recognise you as the agent of the settlers*, and that he regrets that the many demands upon his time render it impossible for him to see you at present, without great inconvenience. I am directed to add, that any observations which you may have to offer, and which may be sent to Lord Grey in writing, shall be duly considered.

I have, &c.,
(Signed) F. PEEL.

The latter of the above two letters (particularly the part I have put in italics), shows, or indicates, an un-

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favourable feeling towards Mr. Fox, as entertained by Earl Grey; but fortunately for the Constitution and New Zealand, a Tory Government soon after this succeeded a Whig one, and Sir John Pakington became the successor of Earl Grey in the Colonial Office;--when a Constitution, the "general outlines" of which were taken from a Bill previously prepared by Earl Grey, embodying some recommendations by Sir George Grey, and containing also other suggestions made by friends and colonists of New Zealand, was prepared by the new Colonial Minister.

Sir John Pakington, unlike Earl Grey, had had no unpleasant correspondence of an irritating and recriminative character between his office and the Colony and colonists of New Zealand,--which advantage enabled him to take a calm, unprejudiced, clear and almost friendly view of the whole circumstances connected with the formation and passing of a Constitution for New Zealand. Accordingly, we find him handling the question, in all its phases, on its own merits.

From a Despatch (No. 32, dated from Downing-street, 16th July, 1852) it will be found that in framing the Constitution, Sir John Pakington was not guided entirely by any one single Imperial or Colonial authority, --for at Clause 3 of this despatch, No. 32, he informs Sir George, who had recommended the formation of only five Provinces, that he has thought it best to establish six, by the addition of New Plymouth. Sir George Grey recommended that the Provincial Councils should

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consist of two chambers, but Sir John Pakington thinks differently and, in Clause 6, informs him that only one has been constituted.

Clause 7 of the same Despatch speaks for itself, and appeals so directly to the good sense of the electors of New Zealand, that I deem it worthy of insertion:--

For the same reason, Her Majesty's Government determined on submitting to Parliament another suggestion originated by yourself, although not actually reduced by you into practice; that of rendering the Superintendents of Provinces elective. They are aware that this is an innovation on ordinary usage, inasmuch as these officers have one function at least of a higher and more independent character than the elective chief magistrate of an English municipality--being, that they are to possess a negative voice in the passing of Local Ordinances. But they have not, on this account,

thought it necessary to withhold what they have every reason to believe will be regarded by the colonists as a valuable concession; while they feel a confident hope that the electors will form the best judgment as to the persons qualified to serve the public interest in offices for which a knowledge of the wants and circumstances of each particular locality is peculiarly requisite.

In thus cursorily describing the causes that led to the passing of the Constitution of 1852, I must not omit to mention the local agitations for Self-Government, and the representation made for its speedy introduction, by nearly all the Settlements in New Zealand --two of which, Auckland and New Plymouth, constituted the Province of Ulster, and four--Wellington, Nelson, Canterbury, and Otago, formed the Southern one, New Munster.

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The names of Featherston, Godley, and others in the Colony, with Fox, E. G. Wakefield, Sewell, and some directors of the New Zealand Company in London, ought to be long remembered, for the great assistance they afforded, directly or indirectly, in securing the Constitution of 1852 for the Colony--as may be gathered in the main from Blue-books of 1849-50-51 and 52.

It must also be admitted that "The Settlers' Constitutional Association,"⁶ established at Wellington -- of whose organization Dr. Featherston was the mainspring, and the very life of its management and correspondence--(as the accounts of its proceedings and editorials, contained in the local journals, particularly the "*Independent*" amply testify)--rendered great and special service. During my sojourn in England, in the year 1865, and after I had penned the above remarks, I wrote to my friend Mr. Fox, (late Premier of New Zealand), who happened to be also in England, --to favor me with *his* views as to the origin and originators of the "Settlers' Constitutional Association," when he obliged me with the underwritten reply:--

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Durham, 23rd November, 1865.

MY DEAR CARTER,--

* * * The origin of the "Constitutional Association," as near as I can recollect was as follows:--

Grey had got Lord Grey's Constitution of 1846 suspended, and authority to substitute a temporary one of his own invention, embodying as much or as little of Representation Government as he pleased. The Wellington earthquake happened in October, 1848, and Grey no sooner heard of it, than he rushed a nominee Constitution through his Auckland Council, and with it in one hand, and a bag of cash in the other, he came to Wellington, intending by the latter to bribe us into the acceptance of the former, to which he knew we were opposed by anticipation. However, our damaged chimneys were not so serious a disaster as to induce us to swallow his pill. I had a long talk with him, and objected to his measure, and wrote strongly to the New Zealand Company (whose agent I was) against it. He tried us all in detail, and, ultimately, having felt his way, he proceeded to nominate Wellington and Nelson Nominees. I had been obliged to go to Canterbury and Otago, and was absent more than a month. On my return I found the Nominee Council formed, and also the Association, which I immediately joined. It was no doubt Featherston's work backed by J. and W. Dorset, Capt. Daniell, John Johnston, Kelham, Lyon, Jimmy

Smith, Mackenzie, and all independent people, and most of the old hands whom you have known as our supporters for years. On the other side, Grey got Petre, Bell, Bannatyne, Johnny Jones, George Moore, George Hunter, R. Stokes, Mantell, Hickson, Carkeek, &c., and almost immediately the Council met under Eyre. The Association went to work, chiefly by criticising Grey's despatches as they came out in Blue Books, and writing in the *Independent*, the former the joint work of Featherston and myself, the latter chiefly mine, till I went home

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in 1851, when Featherston continued it. ⁷ We made the lives of the Nominees very miserable to them, and finally several of them took advantage of an insult offered by Lord Grey, to send in their resignations. * *

Your's very sincerely,
WM. FOX.

As a contrast to Sir George Grey's systematic efforts for retarding the introduction of the political liberties of the colonists, I quote below an extract from the speech of the Right. Hon. W. E. Gladstone, M.P., (at this period a strong Conservative) delivered on the second reading of the "New Zealand Constitution Bill," on the 21st of May, 1852. This extract will conclude the Chapter, and my remarks on the New Zealand Constitution Act of 1852, and the leading personages who originated and matured it.

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¹ See Preamble of the "New Zealand Constitution Act of 1852."

² The N.Z. Constitution Act of 1846, says Earl Grey to Governor Grey, in a dispatch from Downing Street, dated Feb., 1852, was suspended "in consequence of the representations made by yourself, of the danger of introducing those institutions in a part, at least, of the islands at that particular juncture."

³ See Parliamentary Papers "New Zealand," 1852, viz., Copies or Extracts of Correspondence between the Colonial Department and Mr. Fox, of Wellington, in which Lieutenant-Governor Eyre is quoted as saying, in an official dispatch, dated 24th of August, 1850, "That the present form of the Council is so unpopular, and daily becoming more so, that there is little probability of the Government being able to induce any gentleman of sufficient character, standing and ability, to join it; the prevailing impression amongst the best educated and more respectable portion of the community being, that it would neither reflect credit upon themselves, nor enable them to serve the public usefully, by becoming members of a Legislature which is so distasteful to the public generally."

⁴ This Act is alluded to by the Right Hon. H. Labouchere (then Secretary of State for the Colonies) in the following terms, in a despatch, dated Downing Street, Sept. 15th, 1857:-- "The Act amending the Constitutional Act has been passed in pursuance of the Resolutions of the Assembly seeking for a relaxation of that Act in certain particulars, and but slightly departs from the tenor of these Resolutions.

"Sections 67, 68, and 69 of the Constitutional Act (which gave certain limited powers of amendment) were repealed. It has, continues the Secretary of State, "been thought also necessary, that the power given to amend the provisions of Section 19 of the Constitutional Act (which restricts the jurisdiction of the Provincial Councils), should be rendered exercisable only--by Acts reserved for Her Majesty's pleasure."

⁵ No. 121, headed "Legislative," and dated Government House, Wellington, August 30th, 1851. In this despatch, Sir George transmitted his Provincial Council Ordinance. Sess. xi. No. 6.

⁶ "The Settlers' Constitutional Association" was formed in December, 1848. with John Dorset as its chairman, Dr. Featherston, secretary, and W. Lyon, treasurer. Members were elected by ballot, and the expenses of the society were defrayed by means of an annual subscription of 2s. 6d. So powerful was its organization, and so well was it supported, that a petition to Parliament against

Sir George Grey's Provincial Councils Measure, &c. of 1848-9, received over 800 signatures, out of a population of 1000 male adults.--See "Wellington Almanacks" for 1851 and 53.

- 7 "And thus our modern colonists, instead of remaining, as formerly, in continuous and hereditary possession of their liberties, after quitting the mother country, instead of keeping them, and handing them on as the regular and unquestioned heritage of their children in another hemisphere, go out to Australia or New Zealand to be deprived of these liberties, and then, perhaps, after fifteen, or twenty, or thirty years' waiting, or yet more, to have a portion given back to them, with great and magnificent language about the liberality of Parliament in conceding free institutions--(hear, and a laugh)--while during the whole of that interval they are condemned to hear the whole of the miserable jargon which has grown into use about training them for free institutions, and fitting them for the privileges thus conferred; whereas, in point of fact, so far from thus training and fitting them, every year and every month during which they are kept out of the possession and familiar use of such institutions, and retained under the administration of a despotic government, renders them less fit for free institutions, and the consequence is that the introduction of them at length is attended with great embarrassments; liberty comes to them as a novelty: its working is something strange and unknown, attended with hazard, uncertainty, and excitement; and thus you have inconvenient or disastrous consequences brought upon you by your own fault, which you might have avoided if you had only followed that which in this case no one need be ashamed of holding up to commendation as the wisdom of your ancestors--if you had only walked in the path they struck out for your guidance. Let the people you send out to colonise a distant land take root unmolested in their new ground as the seed of a future community, as the natural and living centre around which population is to grow; and instead of training them for free institutions, rely upon it, that the best training they can have is the training they have already received before they left your shores, and while they are still British citizens; let them carry their freedom with them, even as they carry their agricultural implements, or anything else necessary to establish them in their new abodes; so let them hold it for themselves, and so let them transmit it to their children. This is the true secret, of subduing the difficulties of colonisation.--(Cheers)." * *

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