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English Liberty and People's Rights: the influence of heritage in achieving self-government in Queensland†

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Most Britons believed that participating in the governance of their country was a foundation of British liberty and integral to the orderly functioning of their society. From Saxon times, citizens argued that they had the right to influence government decisions. Possessing a common British heritage and considering themselves as free as their fellow-citizens in Britain, the colonists of New South Wales, including those living in the northern districts that became Queensland, shared this belief. They resented unresponsive and self-serving governance and anticipated the delivery of parliamentary representation as an overlooked right. However, New South Wales possessed an abundance of convicts and former convicts and upholders of law and order in the British Government asserted that the receipt of these rights would have disastrous consequences.

The British Background

A foundational principle that kings in Saxon times accepted and that formed the basis of Britain's Parliament was that in making laws the king 'should not act without first taking advice' from his counsellors. This principle evolved into the belief that there should be 'no taxation without representation' and that parliament had legal supremacy.¹

The Battle of Hastings ended the six centuries of Anglo Saxon rule that had established freedoms and had legitimised the monarchy, but William, the Norman conqueror, did not abandon English practices.² Some kings resented this accountability. Henry II who became king in 1154, reduced the power of the earls and barons and his sons, Richard and John obtained almost autocratic power.³ England's barons rebelled over the latter's arbitrary behaviour, and in June 1215 John agreed to sign a charter, referred to as the Magna Carta, that specified that he was not to impose taxes unless the members of the Great Council were present, and that trial by jury was available to everyone.⁴

In 1295, John's grandson, Edward, as king, established a 'Model Parliament'. Acknowledging that greater representation was essential to

ensure compliance with his taxation measures, Edward incorporated the three most influential classes — the barons, the clergy and the commons — into his parliament.⁵

Although in France the king could tax his subjects without recourse to parliamentary scrutiny, in England since the thirteenth century, the king usually sought parliament's agreement. By 1547, the year of Henry VIII's death, the Commons had obtained a permanent home in the Palace of Westminster.⁶ Approximately 140 years later, the British Parliament offered the throne to William of Orange, the first citizen of the Dutch Republic, and his wife Mary. He agreed that parliament should be superior to the king, thus ending the possibility of absolute rule. With the new king's agreement, parliament devised a new Magna Carta defining the monarch's rights and citizens' liberties. This Bill of Rights, confirmed by parliament, established constitutional monarchy. It prohibited the king from altering or ignoring the law, imposing a tax without the approval of parliament or raising an army in peacetime without parliamentary consent. In 1694, under William, elections for the commons every three years and annual sessions of parliament became law. This 'Glorious Revolution' was to transform England.⁷

Reforms continued but failed to acknowledge demographic changes. To an extent, the *Great Reform Act* (1832) rectified this, with centres such as Manchester, Leeds and Birmingham gaining representation for the first time.⁸ At the same time, revolutions were commonplace in Europe. The Prime Minister, Charles Grey, 2nd Earl Grey, commented: 'The principle of my reform is to prevent the necessity for revolution'.⁹

The Development of Representative Government in New South Wales

Many New South Wales settlers including former convicts embraced British ideals of liberty and governmental accountability but the British Government believed their colony was initially without a substantial group of suitable men to form a Legislative Council or Assembly. Thus, representatives of the Crown ruled autocratically for many decades. Nevertheless, these early governors were subject to British legal constraints and the colonists enjoyed many common law protections, as Governor Lachlan Macquarie realised in 1818. Under British law, he had exceeded his authority over the imposition of taxes and duties, and the British Parliament was compelled to pass an *Act of Indemnity* to protect him from future litigation.¹⁰

Following a two-year investigation into Macquarie's rule, Commissioner John Thomas Bigge's negative findings generated support for limiting

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the powers of New South Wales governors. Consequently, in 1823, the British Parliament passed an Act to establish a Legislative Council consisting of between five and seven members. The Act placed limitations on the Governor's powers with a majority of Council members sufficient to prevent the passing of a law, but the British Parliament through the Secretary of State for War and the Colonies, to whom the Governor was accountable, still maintained ultimate control. The Governor could enforce measures in extreme circumstances despite all Council members dissenting, all Council Acts were to be conducive to British law and the British Parliament had the power to veto repugnant legislation. In addition, all of the members of the Legislative Council were Crown appointees usually chosen by the Governor, so they tended to sympathise with his interests.¹¹

In 1828, an Act enlarged the Council to between 10 and 15 Crown nominees and extended the constraints placed on the Governor by limiting his appropriation of special taxes. Legislation needed the approval of a majority of members for enactment. However, the requirement that laws passed were not to be repugnant to the laws of England, with the government of the United Kingdom deciding upon controversial legislation, remained.¹²

At least 16 British Empire colonies had a Governor, a Legislative Council and a Legislative Assembly, but many complained about their denial of self-government similar in form to that enjoyed in pre-revolutionary America. Within New South Wales, however, the convict presence weakened the arguments of those who sought greater political representation and self-determination.¹³

In 1842, following the expressed intention of ceasing transportation to the colony, a *Constitution Act* provided for a greater degree of representation in the Legislative Council. The new Council was to consist of 36 members, with only 12 nominated by the Governor and the franchise consisted of about a third of the males residing in the colony. Limiting the power of the Governor, but maintaining his ultimate authority, the new Act continued to deny the colonists their British liberties as final approval of controversial laws remained with London. The Act also contemplated the future subdivision of northern New South Wales, specifying that 'no part of the colony south of the twenty-sixth parallel [near Maryborough] should be so separated'.¹⁴

In the House of Commons in May 1847, Henry Grey, 3rd Earl Grey, Secretary of State for War and the Colonies, commented that numerous politicians were contemplating giving the Australian colonies 'the benefits of the British Constitution'. A principal reason was economic, with Sir

William Molesworth stating in the Commons 14 months later that since embracing free trade, Britain no longer derived any advantage from its colonial empire. Nevertheless, some parliamentarians were also aware that numerous British citizens living in New South Wales resented the loss of the rights and liberties that they had possessed before migrating.¹⁵

In August 1850, the Australian Colonies Bill became law through the British Parliament. The Act gave Van Diemen's Land, South Australia and Western Australia Legislative Councils consisting of up to 24 members, with two thirds popularly elected, and it provided for the future Separation of the Port Phillip District. With regard to New South Wales, the Act confirmed the provisions of the 1842 legislation with a Legislative Council of 12 Crown nominees and 24 popularly elected members, but it gave the colony's Legislative Council the power to establish a bi-cameral system of parliament with upper and lower houses — provided the legislation received the approval of the Imperial Government. Perhaps in response to a petition from Sydney, and unaware of the cost differences between Britain and New South Wales, the British Parliament reduced the freehold property requirement for the colony's voters from £200 to £100 and household rentals from £20 to £10 a year. This gave tradesmen and mechanics, some of whom had chartist views, the vote. Although confirming the provision of the 1842 Act whereby the future Separation of the northern districts could occur at 26° south latitude (near Maryborough), the Act stated that upon sufficient householders petitioning, land above 30° south latitude (near Grafton) could become part of the new colony.¹⁶

The financial power and legislative interference of the Imperial Government angered the New South Wales Legislative Council. Under the 1850 legislation, Britain continued to retain the land revenue and the Colonial Office not only controlled Government appointments but fixed government salaries at high levels with the colonists meeting the cost. Clearly, the colonists believed that New South Wales did not have effective self-government. The Council members consequently complained that only the local legislature had the authority to tax citizens living in New South Wales or appropriate money obtained through the sale of their public land. In addition, the Council advocated that government appointments and salaries be determined within the colony, that colonial applicants receive all 'offices of trust', and that the Imperial Government only consider bills 'affecting the royal prerogative or the general interests of the Empire'.¹⁷

During mid-1853, the Legislative Council debated the form of constitution desired. The *Sydney Morning Herald* and WC Wentworth strongly favoured a parliament with a nominated upper house believing that this would serve a similar purpose to Britain's House of Lords. A 'New South

Wales Constitution Committee' conducted large opposition meetings, with at least one attracting several thousand people.¹⁸ Daniel Deniehy, a solicitor, ferociously attacked Wentworth's view, suggesting that 'the colonies were to be favoured with a bunyip aristocracy'.¹⁹

In September 1853, in the New South Wales Legislative Council, a majority of 34 to eight passed the Constitution Bill that proposed the creation of two houses of parliament with the upper nominated. The *Moreton Bay Courier* expressed hope that the Imperial Parliament would respect 'colonial liberty' and reject the bill as it considered it 'mischievous and imprudent'.²⁰ However, the Imperial Parliament respected the wishes of the colonial politicians and passed it.

In January 1856, the *Moreton Bay Courier* farewelled the colony's old legislative structure. 'With the old year has passed away the old form of Government. The hybrid house of legislature is no more'. The editor continued: 'Henceforth the House of Assembly, which will have the exclusive right of regulating the public expenditure, will be entirely elective'.²¹

The elections for the Legislative Assembly took place during March and April 1856, and in May, the *Empire* listed the names of New South Wales citizens who had received offers of nominee places in the Legislative Council.²² The Legislative Assembly consisted of 54 members and the Council, 31, with Sir William Denison the Queen's representative. Stuart Donaldson became the first premier under this new bi-cameral system of governance.²³

Separation of Queensland

In Britain in 1832, parliamentary reformers had confronted the problem of over-represented rotten boroughs and underrepresented industrial centres by utilising population to determine each region's electoral entitlement. The citizens of Sydney believed that they too should possess the rights and liberties of British citizens, and resented the political over-representation of rural New South Wales at their expense. However, for citizens living in the Moreton Bay region of New South Wales, this circumstance conflicted with the expectation of most Britons that their local members could promote their concerns and protect their welfare through parliament. This was not happening. Not only did the northern districts of New South Wales have few representatives, but due to distance, the positions were not highly sought after and at least some representatives were apathetic and uninfluential. With the added complication of Britain endeavouring to reintroduce convict labour into the colony to the dismay

of many Sydneyites but the support of numerous influential northern districts graziers, Separation became a much-debated issue.

In 1846, the Secretary of State for War and the Colonies, Earl Grey, investigated whether the colonists of New South Wales desired the receipt of 'exiled' convicts. The New South Wales Governor, Sir Charles FitzRoy, appointed a Select Committee and to the dismay of many, it recommended the renewal of transportation.²⁴ Not only did convicts undermine law-abiding behaviour, they rendered a colony ineligible to receive representative government, numerous New South Wales citizens lamented.

In Sydney on 11 June 1849, shops closed and masses of people thronged to Circular Quay to protest over the arrival of the convict ship the *Hashemy*. In contrast, many Moreton Bay graziers welcomed the reintroduction of transportation with some, seeking convict labour, having actually met with Grey. Consequently, 45 *Hashemy* prisoners received reassignment to the northern New South Wales districts. Numerous opponents of transportation justifiably suggested that Grey wished to sever Moreton Bay from New South Wales so that it could receive large numbers of transported offenders.²⁵

The misappropriation of money raised from taxes and duties was the northerners' principal grievance. Governmental neglect of the district included the absence of a criminal court, an inadequate police presence, too many impassable roads, poor postal communication, no immigrant barracks, few published maps of the region and obstructions in the river channel.²⁶ An insufficiency of free migrants to alleviate a labour shortage was another source of grievance, with the colonists sometimes failing to distinguish between the policies of the New South Wales and the Imperial Governments.

In January 1851, the Moreton Bay and Northern Districts Separation Association asked northern districts citizens to sign a petition asking for Separation at the 30° parallel of latitude near Grafton, to accept exiled convicts and to unite to achieve these objectives. The 30° parallel had been the southern boundary of a proposed but then rejected Northern Australia convict colony that Colonial Secretary Gladstone had initiated in 1846, so the demarcation was unsurprising. Denied sufficient government finance to improve the region's infrastructure and thus attract sufficient free migrants, but with the editor opposing the receipt of exiled convicts, the influential *Moreton Bay Courier* strongly supported Separation, complaining that the northern districts had been 'mocked with the ghost of legislative representation'.²⁷

The following year, Lord Russell's ministry, that included Grey, fell and Lord Derby's conservative administration replaced it. Derby wished

to discredit the former ministry by vehemently and repeatedly opposing convict transportation, and with it, Moreton Bay's bid to achieve Separation via this means.²⁸

In mid-1852, Wentworth's Legislative Council Select Committee met to prepare a constitution for New South Wales. It also looked at Separation. In August, the committee recommended that the northern boundary should extend 'as far as Wide Bay, leaving Moreton Bay the last northern port of the colony of New South Wales'.²⁹

The arrival in England of wealthy and influential New England district and Darling Downs grazier Matthew Henry Marsh saw agitation for Separation receive additional vigour. The Permanent Under-Secretary in the Colonial Office, Herman Merivale, influenced by Marsh, also strongly supported Separation, complaining that the northern districts were 'governed by a knot of townfolk living 600 or 700 miles off'. In August 1855, Marsh wrote to the Secretary of State for the Colonies, Sir William Molesworth, laying claim to all land north of 30° near Grafton for a proposed new colony. He stated that the population within this northern district totalled 25 000 people and that the inhabitants' desire for convicts had ceased. In seeking to establish a Legislative Council of both elected and appointed members, Marsh hoped to alleviate the local 'neglect' that arose from the central districts of New South Wales including Sydney regularly spending northern revenue on their projects.³⁰

Together with a small but influential number of northern districts graziers, Marsh strenuously and successfully promoted Separation in England. During mid-1856 the group gained the favour of the new Secretary of State for the Colonies, Sir Henry Labouchere, assuring him that there 'was not a man, woman or child in the northern districts now in favour of transportation', effectively undermining Sir William Denison's protests. The Clarence River should form the southern boundary of the new colony, they advocated.³¹

In September 1857, a copy of the Separation despatch from Labouchere to Denison arrived in Brisbane. The Secretary of State for the Colonies explained that Her Majesty's Government had decided that the Clarence River and New England districts should remain in New South Wales because this was the wish of the majority of the inhabitants as reflected through their petitions to him. It also represented the acceptance of a proposal by the New South Wales Governor.³² Labouchere instructed Denison to divide Moreton Bay into electoral districts.³³

Queen Victoria nominated 'Queen's Land' as the new colony's title and Sir George F Bowen was to become the new governor.³⁴ The colony was to have an upper house of Crown nominees. The task of nominating the

members of the Queensland Legislative Council and issuing writs for the election of members for the Legislative Assembly fell upon Denison. The two colonies were to settle the debt after the achievement of Separation.³⁵ The speed accompanying the Separation of the northern districts angered the New South Wales Government. Upon the motion of New South Wales Parliamentarian John Darvall, the Legislative Assembly passed a resolution by a majority of 29 to 22 declaring the Separation 'inexpedient and premature'.³⁶

On 10 December, Sir George Bowen arrived in Brisbane.³⁷ From then until 22 May 1860 when the first elected government met, Bowen, the Colonial Secretary Robert Herbert, the Colonial Treasurer Robert Mackenzie and the Attorney General, Ratcliffe Pring, administered Queensland.³⁸ The former convicts' barracks in Queen Street became the temporary government chambers, with the Legislative Council on the ground floor and the Assembly on the upper. The building also accommodated the courthouse.³⁹ However as ACV Melbourne stated:

the Constitution which was given to Queensland in 1859 was not the Constitution of New South Wales as it then was, it was the Constitution of New South Wales as it had originally received the royal assent in 1855.⁴⁰

The citizens of the new colony had inherited a more restricted franchise in Queensland than they had enjoyed in New South Wales prior to Separation.

Parliamentary accountability had limited the power of British monarchs from 'time immemorial', most Britons believed. Certainly, since the 'Glorious Revolution' in 1688, a form of representative government had existed. The legitimacy of this form of governance had received an added stimulus in Britain in 1832 with parliament's attempt to equalize electoral districts on the basis of population. In contrast, the governors of New South Wales had almost absolute power, unrestrained in most instances by the colony's Legislative Councils. Citizens, aware of their rights as Britons, questioned this circumstance and the Imperial Parliament, increasingly aware of the shortcomings of the colonial governors, responded by gradually limiting vice-regal power and eventually granting New South Wales representative government. With regard to the Separation of Queensland, Britain's decision to allow Separation was of no financial consequence to the Mother Country. Secretary of State for the Colonies Sir Henry Labouchere recognised that Separation between New South Wales and its northern districts was inevitable, and just as he was conscious that the Imperial Government had averted a New South Wales rebellion by sensible decision-making, he also recognised the likelihood of a future northern districts rebellion and the urgency of a sensible resolution. The Secretary of State for the Colonies granted Queensland Separation to

maintain colonial goodwill and further Britain's image as a promoter of liberty and freedom throughout the Empire.

Endnotes

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