

(No. 27.)



1860.

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T A S M A N I A.

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**LEGISLATIVE COUNCIL CONSTITUTION  
AMENDMENT ACT.**

**PETITION TO THE QUEEN, AND LETTER TO THE DUKE OF  
ARGYLE.**

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Laid upon the Table by Mr. Whyte, and ordered by the Council to be printed,  
August 21, 1860.



To the *QUEEN's Most Excellent Majesty in Council.*

The humble Petition of the undersigned Citizens of the City of Hobart Town and Electors of the Parliament of Tasmania.

SHOWETH :

1. THAT Your Majesty's Petitioners, as loyal and dutiful subjects of the British Crown, inhabiting Your Majesty's Colony of Tasmania, desire very respectfully to express their devoted attachment to Your Majesty's Throne and Person; their sincere admiration of those political institutions which have so long blessed Great Britain with true liberty and good Government, and their profound appreciation of those Constitutional principles which have ever guided Your Majesty's Royal Councils, to the general advantage of Your Majesty's faithful people, and the lasting honour of Your Majesty's long and prosperous Reign.

2. That, in the year 1854, Your Majesty, in the exercise of Your Royal prerogative, was graciously pleased to sanction an Act of the Legislature of this Colony, (passed under the authority of an Act of the Imperial Parliament, "For the better Government of the Australian Colonies,") entitled *The Constitutional Act*, whereby a wholly elective Parliament, consisting of a Legislative Council of 15 Members, and a House of Assembly of 30 Members, was established as the Supreme Local Legislature of the Colony of Tasmania; and the form of polity, known as Responsible or Parliamentary Government, was graciously conceded to Your Majesty's grateful subjects resident in the said Colony.

3. That, amongst other provisions contained in the said *Constitutional Act*, it was by the 7th Section thereof declared, that any "Person should be capable of being elected a Member of the Legislative Council who was of the full age of thirty years, and a natural born or a naturalised subject of Your Majesty, or legally made a denizen of Tasmania;" to the intent, as Your Majesty's Petitioners know and believe, that Judges of the Supreme Court of the said Colony and Ministers of Religion might be eligible and be elected Members of such Council; while such Judges and Ministers were, by the 15th Section of the said Act, expressly declared to be incapable of being elected Members of the House of Assembly.

4. That, in the lawful exercise of the powers and privileges bestowed upon them by the said 7th Section of *The Constitutional Act*, your Majesty's loyal subjects the electors of the Electoral District of Hobart proceeded to elect, and on the 6th day of October, 1856, did, by an overwhelming majority of votes, elect one of the Judges of the Supreme Court of the Colony to serve in the Legislative Council as one of three Representatives of the City of Hobart Town, the capital of the Colony; and that, immediately upon the assembling of the first Parliament summoned under *The Constitutional Act*, the Judge so returned by the electors of Hobart was elected by his colleagues to be the President of the said Council, which eminent office His Honor has since filled for the three years last past with dignity and impartiality, with credit to the Legislature and advantage to the Public Service.

5. That, by the 9th Section of *The Constitutional Act*, it was ordained that five of the fifteen Members of the said Legislative Council should retire every three years; the first five Members to vacate their seats three years after the issue of the writs for the "first election" under *The Constitutional Act*.

6. That, in consequence of a doubt as to the meaning of the words "first election under this Act,"—the writs for the House of Assembly having been issued in the month of August, and the writs for the Legislative Council having been issued in the month of September, 1856,—several, that is to say three, Members of the said Council retired, by resignation of their seats, in the month of August, 1859, believing that they were not justified, under the provisions of *The Constitutional Act*, in retaining their seats beyond that period.

7. That, in consequence of the retirement of such three Members, the resignation, on other grounds of three other Members, and the absence from the Colony of one other Member of the Council, six out of the twelve Constituencies entitled to return Members to such Council were left wholly unrepresented therein, and one other Constituency, namely Hobart Town, the capital of the

Colony, was left with only two out of three of its legal number of Members; and thus only eight Members of the Council, out of the full complement of fifteen, were left to transact the business of the Country in that branch of the Legislature.

8. That, whilst one Chamber of Parliament was thus imperfectly constituted, comprising a bare quorum of Seven Members, in addition to the President; and after a Resolution had been passed in the House of Assembly, with the concurrence and support of Ministers, declaring that no alteration in *The Constitutional Act* was necessary during the then Session of Parliament, the present Executive Government brought in a Bill to amend the Constitution of the Legislative Council, to the extent of rendering the seats of its Members tenable for six years from the date of their Election, and providing further, that "No Judge of the Supreme Court shall be capable of being elected, or of being a Member of the Legislative Council," thus depriving Your Majesty's faithful subjects, the freeholders of the Colony and Electors of the Parliament of Tasmania, of the highly valued privilege of unrestricted selection from all classes of the community of their Representatives in the Legislative Council, including Judges of the Supreme Court and Ministers of Religion, should they think fit to make choice of such persons as their Members; and further, expressly disqualifying and excluding from Parliament one of the elected Representatives of Hobart Town, then President of the Council, and thereby, to that extent, actually disfranchising the Metropolitan Constituency of the Colony.

9. That Your Majesty's Petitioners would further represent, that Your Majesty's faithful subjects in Tasmania were, on this occasion, deprived of their Constitutional right of petitioning the Legislature, owing to the haste with which the Ministers of the Crown hurried this most important measure through both Houses of Parliament: that only one constituency, namely Hobart Town, of which the electors, as Your Majesty's Petitioners have already stated, were directly and especially interested and aggrieved, did approach Parliament by Petitions adopted at a Public Meeting of the Citizens; and that such Meeting was characterised by the Mayor of the City, who acted as Chairman, as one of the most numerous, influential, and unanimous over which he had ever presided.

10. That Your Majesty's Petitioners would further very respectfully submit for the serious consideration of Your Most Excellent Majesty in Council, that the rules of equity and long-established Constitutional usage alike require that no alterations of the Institutions of the Country, and especially no proposals for limiting and restricting the franchises already enjoyed by Your Majesty's subjects the electors of Tasmania, or for rendering either branch of the Legislature more independent of responsibility to the Constituencies, should have been introduced to Parliament by the Ministers of the Crown, or sanctioned by the Legislature, at a time when more than one-half of the Constituencies of that Chamber intended to be affected by such alterations in the nature of its duration, the qualifications of its Members, and the rights of its Electors, were virtually disfranchised and actually unrepresented in Parliament.

Your Majesty's Petitioners, therefore, make it their humble prayer to Your Most Excellent Majesty in Council to interpose the Royal Prerogative between Your Majesty's faithful subjects in Tasmania and those who would deprive them of the highly valued political rights and privileges which they now enjoy and desire still to exercise under the Constitution graciously granted to them by Your Majesty, by the advice and with the sanction of the Imperial Parliament; and Your Majesty's Petitioners further pray Your Most Excellent Majesty in Council to disallow the Bill lately passed by the Legislative Council and House of Assembly of the Parliament of Tasmania, intituled "An Act to amend the Constitution of the Legislative Council;" in order that, whatever measures of Amendment may hereafter at any time be thought necessary or desirable in the existing Constitution of the Colony, may be submitted to the deliberate and dispassionate consideration of a Parliament in which every Constituency in the Island shall be fully represented in both Houses of the Legislature.

And Your Majesty's Petitioners, as in duty bound, will ever pray, &c. &c. &c.

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*Hobart Town, Tasmania, 13th October, 1859:*

MY LORD DUKE,

ON behalf of a very large and influential body of our Fellow Colonists, Citizens of Hobart Town and Electors of the Parliament of Tasmania, we have the honor to entrust Your Grace with a Petition to the House of Peers, praying their Lordships to withhold the sanction of Parliament from a certain Bill recently passed the House of Assembly and Legislative Council of this Colony, and reserved by the Governor for the signification of Her Majesty's pleasure, intituled "An Act to amend the Constitution of the Legislative Council," and further praying your Right Honorable House to advise Her Majesty in Council to disallow such Bill.

2. It is unnecessary for us, in addressing a Nobleman so distinguished as Your Grace for taking a warm interest in the general prosperity and political advancement of Her Majesty's loyal subjects the Colonists of Australia, to state at length the character and constitution of the Legislative body which now forms the Parliament of Tasmania. But Your Grace may not unreasonably desire to be made acquainted with the circumstances under which a community, enjoying the privileges of wholly representative Institutions and Responsible Government, finds itself compelled to appeal from the

Local Legislature to the wisdom of the Imperial Parliament, and to desire the interposition of the Royal Prerogative between her Majesty's subjects and the Advisers of the Crown, whom the theory of the Constitution supposes to command the confidence of the people, as indicated by the votes of their Representatives. We propose, therefore, to state, as succinctly and as clearly as we can, the reasons that have induced the Colonists to adopt the somewhat unusual course, of which the Petition we have now the honor to forward to Your Grace is the formal embodiment.

3. The Bill we petition Her Majesty to disallow proposes to alter the Constitution of our Legislative Council in two essential particulars: 1st. By limiting and restricting the Franchises of the Electors; and 2nd. By giving additional and extended permanency to the Chamber itself. The Franchises of the Electors are limited by the enactment that Judges of the Supreme Court shall no longer be eligible for election as Members of the Legislative Council, a privilege which the existing Constitution bestows upon the Constituencies represented in that Chamber. Another provision of the same Bill declares that every Member of the Council shall retain his seat for Six years from the date of his Election, in lieu of a triennial retirement of the first five Members on the Members' Roll, arranged by lot by the Members themselves, at the assembling of the first Parliament under *The Constitutional Act*.

4. We do not feel called upon to enter into any arguments on the relative merits of the existing Constitution, which, having received the sanction of the Imperial Parliament and the allowance of the Crown, has now for three years supplied Tasmania with a Representative Legislature, and of the alterations proposed to be effected by the Bill which now awaits the signification of Her Majesty's pleasure. We conceive that Your Grace will agree with us that such questions, affecting the political rights and privileges of the Colonists of Tasmania, are most properly to be debated and determined by our lawful Representatives in Parliament assembled. But we would entreat Your Grace's attentive consideration to the following very important and essential particulars of this controversy between the community and the Legislature.

5. 1st. In the exercise of Constitutional rights conceded to them by the grace of the Crown and the wisdom of Parliament, the Electors of the District of Hobart (comprising the capital City of the Colony) did, in 1856, elect as one of their Representatives in the Legislative Council one of the Judges of the Supreme Court, who was, immediately upon the assembling of the first Parliament, elected to fill the President's Chair. From that moment to the present time, with the exception of one Petition from the Town of Launceston signed by 140 persons, there has been no public expression of dissatisfaction on the part of the Electors of the Island with the provisions of the Law which admits Judges to the Legislative Council. The Judge in question was originally elected by a larger number of votes than has ever been recorded for any candidate for a seat in that Chamber; and, before this communication can reach Your Grace, the same learned person will, in all probability, be re-elected by the Metropolitan Constituency. 2nd. When the Bill under review was introduced to Parliament by the Ministers of the Crown, the Legislative Council was reduced, by the absence of one Member in Europe, and the resignation of their seats by three other Members, from its full complement of fifteen to eleven Members; and when the same Bill was read a second and third time in the same Chamber, the number of Members was still further reduced, by the resignation of three other Members, to a bare legal *quorum* of seven in addition to the President. In the Council thus constituted six out of the twelve Constituencies entitled to Representation in that House were, under these circumstances, virtually disfranchised and actually unrepresented; and one Constituency, Hobart, the capital of the Colony, was represented by only two of its three Members; the Judge having resented the indignity offered him by Ministers by the introduction of the Bill, by the immediate resignation of his seat. 3rd. The Bill, thus uncalled for by any general or definite expression of public opinion, was hurried through both Houses in a single week. The country Constituencies were thus practically precluded from exercising the privilege of petitioning Parliament; and a Petition adopted by a numerous, influential, and unanimous Public Meeting of the Citizens and Electors of Hobart Town, presided over by their Mayor, was productive of no influence or effect upon either branch of the Legislature. 4th. A Resolution had been passed by the House of Assembly, with the concurrence and support of the Governor's advisers, to the effect that no alteration of the Constitution of the Colony was necessary during the then Session of the Legislature. Public expectation of any proposed alteration of the Constitution was thus entirely set at rest; while a very general opinion had been expressed in the Legislature, and had gained ground out of doors, that any measure of Parliamentary Reform should be preceded by a Dissolution of the House of Assembly.

6. Your Grace will perceive from these facts, that the Prayer of the Petition is no more than a reasonable and temperate demand, that the existing Institutions of the Colony should not be dealt with by a Legislature in which the Constituencies of the Chamber immediately interested were practically disfranchised, and insufficiently represented. Our Petition to Parliament and to Her Majesty amounts to no more than this:—We desire the disallowance of the Bill, "in order that whatever measures of amendment in the existing Institutions of the Colony may hereafter at any time be thought necessary or desirable, may be submitted to the deliberate and dispassionate consideration of a Parliament in which every Constituency in the Island shall be duly represented in both Houses of the Legislature."

7. Beyond referring Your Grace to the language and allegations of the Petition itself, we refrain from expressing any opinion upon the desirability or otherwise of the proposed Constitutional changes.

But we deem ourselves entitled to be heard by the mouth of our full number of Representatives in Parliament, whenever any measure is discussed there by which our existing Franchises are to be limited and restricted without our consent, and in opposition to our Constitutional remonstrance. Nor are we prepared to admit that any measure, designed to render either branch of the Legislature more independent of responsibility to the Constituencies, ought to be brought forward by the Executive, or sanctioned by Parliament, without a previous Constitutional appeal to the country on that particular question.

8. At the same time, we shall not attempt to conceal from Your Grace our deliberate conviction that the proposal to exclude Judges from the Council was designed as an intentional indignity to the President of that Chamber, (the Elected Representative of Hobart Town), and was deliberately meant to disfranchise to that extent the Metropolitan Constituency, thus insulted in the person of its most eminent Member.

9. Nor can we divest ourselves of the belief that the alteration in the term of the tenure of seats in the Council was proposed to meet a particular emergency, and to serve the purposes of the Ministry of the day as a measure of revenge upon their political opponents at the expense of the Electors of the Colony, altogether irrespectively of any necessity for amending the existing Law, and without any expression of public opinion that such a change was either requisite or desirable. We conceive that this is not the spirit in which a Constitutional Ministry ought to seek to bring about changes in the Institutions of a young political community like this. We are of opinion that Constitutional changes ought not to be dictated by the mere caprice of any Ministry, and that the people are entitled to be heard by their lawful Representatives in the Legislature whenever the advisers of the Crown deem it their duty to propose specific measures of Parliamentary Reform.

10. We desire, at the same time, to state to Your Grace that, while the Colonies of Victoria, New South Wales, and South Australia have each introduced various changes in the form and character of their representative Institutions, this is the first instance in which a proposal for the Amendment of an Australian Constitution has embodied a restriction and curtailment of the Franchises of the Electors, and tended to render the Legislature more independent of Constitutional responsibility to popular control.

11. It is for these reasons that we now invoke Your Grace's assistance to further the object of our Petitions to the Crown and to Parliament. Your Grace's presence in Her Majesty's Councils, and rank in the House of Peers, induce us to hope that we have committed the advocacy of our political rights to the hands of one who is both able to maintain and willing to defend them.

12. It remains for us to acquaint Your Grace that these Petitions were adopted at a Public Meeting of the Citizens of Hobart Town, convened, on requisition, by the Mayor of the City, and presided over by that functionary; and that the signatures of adult males have been affixed to the Petitions in less than seven days.

13. For further information on this question, of such great public interest to the Petitioners and the Colonists of Tasmania generally, we beg to refer Your Grace to a copy of the principal Daily Journal published in Hobart Town, forwarded to Your Grace by the present mail.

14. In conclusion, we would very respectfully request Your Grace to use your Constitutional influence with the Crown and with Parliament to promote the disallowance by Her Majesty in Council of the Bill against which we have remonstrated in the Petition now transmitted to Your Grace, and in a similar Address to the Crown duly forwarded to Her Majesty through the Governor of the Colony.

We have the honor to remain,  
My Lord Duke,  
Your Grace's most devoted and obedient Servants,  
ROBT. BALLANTYNE,  
WILLIAM ROBERTSON,  
JAMES MILNE WILSON, } Committee.  
WILLIAM CARTER,  
ALEXANDER KISSOCK, }

*The Most Noble His Grace the Duke of Argyle,*  
&c. &c. &c.