

THE STRUGGLE FOR POLITICAL SUPREMACY IN NATAL 1856—1896 — II

As a result of the recommendations of the Select Committee and the Legislative Council, the Secretary of State for the Colonies, Earl of Kimberley, informed the Governor of Natal, Sir Henry Bulwer, on 2 February 1882, that he was prepared to grant responsible government on certain conditions. The conditions he stipulated were mainly concerned with defence and the protection of the rights and interests of the Bantu population. Britain was not prepared to continue stationing troops in Natal for the maintenance of internal order or for the defence of the frontiers. Protection of Natal against aggression by Foreign Powers, was Britain's only concern. The reason for this attitude towards Natal was based on the fear that if local affairs were vested in the colonists under a system of responsible government the Natal Cabinet might follow unwise policies and involve Britain in frontier wars.

As far as the Bantu of Natal were concerned, Kimberley expected that "due provision would be made (in the constitution) for the protection of (their) rights and interests,"⁵⁰ but he did not advocate extension of franchise rights. In addition he considered an increase of the number of members of the Council desirable, and the extension of the franchise to whites. He felt that the system of responsible government could be worked efficiently in a single Chamber, provided proper safeguards were made against ill-considered legislation. To bring about the necessary constitutional change, he advised the Governor to dissolve the existing Legislative Council in order to ascertain the views of the colonists by means of an election.

The granting of responsible government on these conditions caused considerable surprise in Natal. The colonists who felt themselves incapable of controlling border tribes denounced Britain for trying to get rid of the Colony. Consequently the election which took place, showed that Natal was not prepared to accept responsible government on Britain's terms. In Durban, John Robinson, "the most uncompromising advocate" of responsible government, was unseated. The same results followed in the other constituencies except Victoria County, which was the only one that returned members pledged to support responsible government. Thus nearly all the elective element of the new Legislative Council was returned against the proposed change.

The new Council was called together on 8 June 1882 and the question of responsible government was taken up on 3 July 1882 by Theophilus Shepstone. Regulations were adopted to the effect that the Colony, while appreciating the liberal spirit in which their petition for responsible government had been met, was not as yet in a position to undertake the responsibilities set forth in Despatch no. 333.⁵¹ The Council went into committee on the whole question and then referred

50. Kimberley to Bulwer, despatch no. 333 of 2.2.1882.

51. Natal Legislative Council: Annexures to Votes and Proceedings, 1883: Bulwer to Derby, no. 154 of 31.8.1882.

the matter to a Select Committee under the chairmanship of Harry Escombe. This Committee proposed additional resolutions. These were adopted by the Legislative Council, which followed up Kimberley's suggestion and increased the members of the Council from 20 to 30. Seven of these were to be non-elective and to be nominated by the Governor to protect the interests of the coloured population.

The Governor, Sir Henry Bulwer, was satisfied that this increase of numbers would facilitate party government, but he was sceptical about the seven nominated members. He thought this arrangement would open the door to serious constitutional inconveniences and embarrassments. If the Governor followed the advice of the responsible advisers, he would have to nominate these members in accordance with their wishes. This would add a factitious strength to the supporters of the Ministry which might not possess the confidence of the majority of the elected members or the confidence of the country. According to Bulwer, this would be such an interference with the principles of responsible government, that those principles would be virtually destroyed. On the other hand, if the seven nominated members represented British interests, Britain would retain its share but could also be placed in a false position, for Britain would practically have no control over members who had been appointed by the Governor in accordance with the advice of the Ministry.⁵²

The Legislative Council did not only increase the number of its members, but went further and passed new voter's qualifications in order to protect the white colonists against the Indians. Law no. 2 of 1883 provided that: "[N]o person belonging to a class which (was) placed by special legislation under the jurisdiction of special courts, or (was) subject to special laws and tribunals" would be entitled to be placed on the Voters' List or to vote at the election of any member of the Legislative Council. Persons subject to such special laws and courts could apply to the Governor for exemption if the application was written in English or Dutch in the presence of a Resident Magistrate.⁵³

In spite of the changed voters' qualifications and the increased number of councillors, the Legislative Council did not adopt responsible government. Instead it wanted to know on what terms the British Government was prepared to maintain a garrison in Natal until the colony was strong enough to dispense with military help from Britain. The imperial troops were needed as a visible proof to the Bantu population of British authority in Natal. With regard to the threats from border tribes, it was recommended that Britain should establish some form of government in Zululand at Britain's expense.⁵⁴

These decisions and proposals clearly indicate that Natal would accept responsible government if political supremacy remained in the hands of the white colonists, and if Britain helped with the defence of the colony. Responsible government was taken up on 10 July 1883

52. *Ibid.*

53. Bill no. 8 of 1882.

Natal Blue Book, 1883: Law no. 2 of 1883, clause 6.

54. Natal Votes and Proceedings, 4.7.1882: 131, 137-138.
Ibid., 15.8.1882, 388.

by Harry Escombe who wanted something for the interim because he felt Natal was not ripe for self-defence. He thought of a ministry based on the confidence of the majority and responsible to both the elective and nominated members of the Legislative Council. This ministry was to consist of elective and nominated members. The latter were to be appointed by the British Government. His object was to give Britain a direct share in the Cabinet and responsibility for the defence of the Colony, because he feared that if the British garrison was withdrawn it would create a false impression among the Bantu.⁵⁵ Escombe was opposed to direct representation for the Bantu but tried to protect them by curbing the supremacy of the popular voice by means of nominated members and ministers.

John Robinson strongly opposed Escombe because his scheme would not give the colony the full benefit of self-rule. He failed to recognise any peculiar competency in the Crown for the selection of seven representatives for the Bantu. The Crown nominees, he feared, would be appointed according to the dictates of either Downing Street or Exeter Hall, or as the forces of philanthropy might desire.⁵⁶ As for the willingness of Natal colonists to be nominated, he thought not one really independent and intelligent colonist would occupy seats in the House as representatives of the Bantu on Britain's terms. By the laughter of the Councillors, he concluded that none of them would represent the interests of the Bantu faithfully or fairly according to the dictates of Downing Street. He feared that if such seven members were appointed, and if they passed legislation contrary to the wishes of Downing Street, there would be nobody to instruct them to change their views. If they acted according to the wishes of Downing Street, they would destroy responsible government. Therefore, Robinson protested against any duality of government, for he was convinced that a form of government which left the control of European affairs in the hands of one set of people, and the control of Bantu Affairs in another, would break down. He objected to the idea that Natal should be made "a vile body for political experimentalists to exercise their arts upon."⁵⁷

Robinson again insisted upon an Upper Chamber, consisting of twelve members nominated by the Crown for ten years. This was the same as the recommendation of 1879-80. He recommended that all measures affecting the Bantu, including taxation, be initiated in the Upper House. Such a constitution, he believed, would enable the Colony to undertake the control of its own affairs and would virtually preserve the interests of the Bantu from any rash, hasty or jerky legislation. However, his main idea was to remove Bantu representation to an Upper House in order to prevent them being placed in the position of "shuttle cocks in the three-handed game of battlebore in which the Crown, the

55. *Natal Mercury*, 5.7.1882.

Natal Leg. Council Debates, 1883: 49-56.

Charter Amendment Bill no. 1 of 1883.

56. *Natal Leg. Council Debates*, 1883: 112-113.

57. *Ibid.*, 113-116.

Ministry, and the elective members would each be tossing them from one to the other, each endeavouring to win over their support, and each striving to make use of the votes and influence of these irresponsible members for their own purpose." By means of a nominated Upper House and an elected Assembly he hoped to gain control over all classes of the people, and that the checking power of the Assembly should take the form of a nominated Upper House.⁵⁸

Robinson's opponents regarded the Upper House as cumbersome and expensive. They feared that friction would arise between the two Houses.⁵⁹ Harry Escombe thought that the members of the Upper House would be mere fossils and that that House would be an utter farce, such as it was in the Cape Colony.⁶⁰ He insisted on representation in the Assembly, and a Ministry composed of elected and nominated members.

The proposal that the Bill be read this day six months, was put to the vote. An equal number of votes (12-12) were cast for and against the Bill. The Speaker gave his casting vote with the ayes and the Bill was rejected.

During the next year a few Bills were introduced to amend the constitution. Bill no. 58 of 1884 introduced on 14 August by H. Binns provided for the establishment of responsible government, and a parliament consisting of two Houses. The Upper House was to have ten nominated members. These members would have a property qualification and would have to be on the voters' roll for a term of three years. To the Upper House would belong the right of originating all questions which affected the Bantu of the Colony. In case the two Houses of Parliament disagreed upon a question, the two Houses would sit together as one House, and a majority of two-thirds would be required to pass the measure in question.⁶²

Harry Escombe again opposed the idea of the two Houses meeting in case a difference arose between them. He feared that if the Upper House were outvoted by a mechanical majority, friction would increase and that the Upper House would still remain of the same opinion.⁶³ Robinson on the other hand, strongly supported the proposals as the only wise and reasonable provision to bridge over difficulties. However, Robinson and his supporters did not wish to press the matter further than affirming the principle that the Council was in favour of reasonable government.⁶⁴ On 9 September 1884 the Council decided to ask Britain what assistance it would be prepared to render to Natal towards its defence if responsible government was accepted.⁶⁵ Lord Derby replied

58. *Ibid.*, 119.

59. *Ibid.*, 121 and 141.

60. *Ibid.*, 141.

61. Leg. Council Debates, 1884: 15, 368, 451, 548.

62. *Ibid.*, 451, 705, 706, 707.

63. *Ibid.*, 715-717.

64. *Ibid.*, 368, 568, 744.

65. Natal Leg. Council: Votes and Proceedings, 9.9.1884: Address no. 4; Annexures: Message no. 80, 291.

that the conditions under which assistance might become necessary could not be determined in advance. Consequently no definite promise was made,⁶⁶ and Natal dropped its request for responsible government until 1888.

The Secretary of State for the Colonies raised the matter on 30 April 1887 in a confidential letter to John Robinson when he attended the Colonial Conference in London. On his return to South Africa, John Robinson was appointed chairman of a Select Committee to investigate responsible government. This committee reported on 18 September 1888 and felt that the time was at hand to discuss the matter once more because Zululand was entering a process of pacification. As for internal defence, the Committee suggested the adoption of a defence system corresponding to that of the Emigrant Farmers. As for the northern and southern boundaries the Committee felt that the Cape Colony would maintain peace in the south, whereas Britain and the Republics would do so in the north.⁶⁷ But once again the Committee considered it of vital importance to gain full control over all classes of the population, subject to some constitutional guarantee for the interests of the unrepresented races. After much deliberation it was decided that a nominated Upper House was preferable on grounds both of "constitutional propriety and political convenience."⁶⁸ At this stage there was an estimated 408 922 Bantu who had "made little if any progress towards a higher state of civilization . . . and they cling as fondly to their primitive modes of life as they did forty years ago."⁶⁹ Because of this large semi-savage community, the Community felt it was up to the colonists to decide whether Natal was to be a Colony where the "dominant and pervading race was to be that of the barbarian Native," or the "industrious, progressive and Christian Colonist."⁷⁰ The annexation of Zululand was recommended in order to repatriate those Zulus who had settled in Natal and to provide land for white Settlers.

The following proposals were submitted to the Legislative Council:

1. A Parliament of two Houses but the Assembly was to be wholly elective;
2. An Upper House of ten members, either nominated by the Crown or elected for a fixed term by the colonists, or partly nominated and partly elected;
3. With the Upper House would rest the initiation of all measures relating to the taxation or domestic policy of the Bantu population;
4. The replacement of the existing Executive by a Cabinet of Ministers responsible to the elective Legislative Assembly;
5. The appointment of a permanent Under-Secretary for Native Affairs.

The Select Committee again wished to know whether Britain would maintain a permanent garrison of Imperial troops if Natal accepted

66. Natal Leg. Council: Annexures to Votes and Proceedings, 1888: Select Committee Report, 72-73.

67. *Ibid.*, 76.

68. *Ibid.*, 78.

69. *Ibid.*

70. *Ibid.*

responsible government; whether Britain would insist upon any conditions as regards Native affairs other than those provisions of the draft Bill; and under what conditions Britain would be prepared to unite Zululand to Natal.⁷¹

Lord Knutsford replied to these matters on 5 March 1889 and 29 August 1889. He noted with satisfaction that the Legislative Council was aware of the need for protecting Bantu interests but was not satisfied with the constitutional safeguards because the Lower House could press on the Upper House to initiate any measure which the Lower House desired. If the Upper House refused a deadlock would probably ensue. Therefore he recommended the following matters for reservation:

1. The exaction of compulsory labour from Native proprietors of land or other private persons;
2. The restriction of the freedom of Natives to enter into contracts of service;
3. The increase of the restrictions of the pass laws;
4. The abolition of Native Law, and the placing of the Natives under the general law;
5. The reduction of the area of the Native locations;
6. An increase of the hut tax.

Lord Knutsford also wanted a Native Protection Board, consisting of persons nominated by the Governor, with power to deal with certain Native questions. The powers of the Board were subject to the control of the Governor. He feared that the annexation of Zululand would be delayed by the introduction of responsible government. Furthermore, he was prepared to allow the introduction of responsible government if there was "a decided and unmistakable declaration of public feeling" in favour of the change.⁷²

During the election that was held in 1890 twenty four members were elected of whom 14 were in favour and 10 against the introduction of responsible government. From the number of recorded votes it appeared that the community was about equally divided on the question. But with a majority of the Councillors in favour of responsible government a Select Committee was appointed under the chairmanship of John Robinson and H. Escombe, R. M. Archibald, G. M. Sutton, and Bale as members. This committee recommended that Parliament should consist of a nominated Upper House of ten members, and an elective Lower House of 37 members. The Cabinet was to consist of six Ministers. Bills affecting any class of subjects, as distinguished from the whole community, would require the assent of more than a bare majority of the Lower House.⁷³

This report was followed by a second one which provided that the future government would have full control over its own affairs and of

71. *Ibid.*, 84-85.

72. Natal Votes and Proceedings: Annexures, 1890.

73. Natal Leg. Council Debates, 1890-91: 3.12.1890, 19.

74. Natal Votes and Proceedings, Annexures 1890-1891; report of 5.12.1890, 19.

75. Natal Leg. Council Debates, 1890-91: Speech of Robinson, 41.

all sections of the population, and without any interference otherwise than by the exercise of the Royal veto.⁷⁴ The members of the Upper House would initially be nominated by the Governor but thereafter by the Governor-in-Council. The Committee made no provision for admitting the unenfranchised portion of the population to full rights of electoral privileges. To justify their recommendations the Committee pointed out that the Bantu had not "yet been elevated to that condition of civilisation and of political responsibility which justifies us investing them with the privilege of a vote."⁷⁵

During the Council debates, Sir John Robinson believed "[that every man in this Colony (was) agreed on that point: that we (could) under no circumstances at present, and probably for many years to come, allow the Natives of the Colony (except under the restricted conditions that already exist) to exercise the franchise." He added that "successive Secretaries of State have insisted upon the necessity of what they call 'some protection' being provided in any constitutional change for the Native inhabitants of this Colony . . . I maintain, and I believe we all maintain, that we do represent the Natives just as faithfully and just as honestly as we do represent the interests of any other class in the country." To satisfy Britain the Upper House had been introduced. With that Chamber would rest the representation of Bantu interests and to provide a conservative and restraining check. Sir John Robinson preferred this Upper House to the proposal of Lord Knutsford for a Board of Protection; or to a legislature of one House with a certain number of nominees of the Crown; or some members of the Cabinet nominated by the Crown. He could not see how the latter would work. Therefore the Select Committee returned to the idea of an Upper House, initially nominated by the Governor, and thereafter by the Governor-in-Council because the members of the Cabinet would possess the confidence of a majority of the electors. On their part these Cabinet Ministers were subject to the Lower House. Whether the members of the Upper House were elected or nominated they could not interfere with the free course of self-government. The franchise was left unaltered since the Select Committee did not want different qualifications for voters or members for the two Chambers.⁷⁶

At this moment when everything seemed settled at long last, the opposition led by J. L. Hulett, was so determined that the nominated Upper House was abolished and substituted by the veto of the Governor only. The opposition was afraid that an Upper House would be a mere ornament, cumbersome and expensive; that it would block legislation, cause friction and deadlock. It was also seen as a means of restricting Natal's control over all sections of the population. Most opposition members thought responsible government was not suitable for a heterogeneous population. In this respect their arguments were the same as those of the Cape Settlers against responsible government. The opposition therefore tabled the following motions:

76. *Ibid.*, 41-45.

1. To make provision for one House of Parliament, to be called the Legislative Council;
2. To provide for the appointment by the Governor of not more than seven members to represent the interests of the Bantu in the Legislative Council.⁷⁷

These nominated members in the Legislative Council were strongly opposed by John Robinson because there would be three distinct elements in the Legislature, viz. nominees, the Ministers in power, and their opponents. To overcome the problems raised by the opposition he proposed that in place of the nominated Upper House a clause be inserted to the effect that "in case of any Bill affecting one class as distinguished from the whole of the inhabitants of Natal, the requisite majority in the Legislative Council at the second and third readings of such Bill, shall be a three-fourths majority of all the members of the said Council."⁷⁸ This clause aroused so much opposition that Robinson agreed to its deletion from the Bill.⁷⁹ Thereafter he discussed the one chamber legislature with the Governor because Britain had always insisted that the unrepresented classes be safeguarded. The result was the insertion in the Bill of a clause which reserved for Britain's approval all Bills affecting "persons not of European birth or descent."⁸⁰

The opposition then suspected that this clause would destroy the control of the colony over the coloured population. They feared the clause would sanction Britain's interference in the internal affairs of the Colony and at the same time put "a chain round the necks" of the colonists.⁸¹ Robinson explained that the clause was simply the practical equivalent of the nominated Upper House which they had so strenuously opposed. He refused to move the deletion of the clause because without it the constitution would be "absolutely free from any of those conservative checks which were part of every constitution."⁸²

To conciliate the opposition, Harry Escombe, who was now a supporter of Robinson, proposed that "all powers and authorities now vested in the Governor as Supreme or Paramount Chief shall, as from the date when this Act shall come into force, be exercised by the Governor-in-Council."⁸³ This clause was accepted otherwise the responsibility of Ministers with regard to the Bantu would cease at once. In spite of other objections of J. L. Hulett, the third reading was passed by 13 votes against 8.

C. B. H. Mitchell, the Governor, submitted the Bill to the Secretary of State for the Colonies. He explained that the Upper House had been rejected because of its nominated members and because the veto of the Governor was thought to be sufficient in respect of Bills affecting

77. Natal Leg. Council Debates, 1891: 49-51, 60, 91-93.

78. *Ibid.*, 129-132.

79. *Ibid.*, 141.

80. *Ibid.*, 161.

81. *Ibid.*, 160-161.

82. *Ibid.*, 163, 168-169.

83. *Ibid.*, 178, 196-197.

“persons not of European birth or descent.”⁸⁴ Mitchell felt that the veto was not sufficient because to exercise this veto in opposition to the views of the Cabinet would cause friction and a possible deadlock. Then it would be futile to dissolve the Council and appeal to the Colony. He was of opinion that the absence of any constitutional check would unduly endanger the stability of government, and that the system of an Upper and Lower House would be a far better check than anything else in a single chamber. To him it did not matter whether the Upper House was elected or nominated, but without it, he feared it would require almost superhuman tact and forbearance on the part of the Governor and of his Ministers.⁸⁵

The Secretary of State and the British Cabinet could not agree to responsible government and a single legislative chamber. Furthermore the clauses which reserved certain Bills were considered unsuitable. The British Cabinet agreed with Mitchell that a second chamber was absolutely necessary. Consequently a Select Committee was appointed to reconsider the matter. This committee consisted of Robinson, Archibald, Escombe and Moor and they recommended an Upper House of eleven nominated members, and an elective Lower Chamber of 38 members. The clauses which reserved certain Bills were deleted and substituted by the following clause: “Whenever any Bill has been passed by the Legislative Council and the Legislative Assembly, it shall be presented to the Governor who may either return the same by Message for the re-consideration of the Legislative Council and Legislative Assembly with such amendments as he may think fitting, or may assent to the same, or that he reserves the same for the signification of the Royal pleasure thereon.”⁸⁶

The Bill which embodied these new recommendations passed the second reading and in order to gain the approval of Britain, Sir John Robinson proposed that representatives of the Legislative Council be appointed to proceed to Britain in order to confer with the Secretary of State for the Colonies about the constitution.⁸⁷ In spite of strenuous opposition the Council sent G. M. Sutton and Sir John Robinson to Britain. They left on 21 April 1892 and returned on 9 July 1892. The Legislative Council met on 15 August 1892 and Robinson reported that the clause reserving all Bills was superfluous and an undue interference with the recognised prerogative of the Crown.⁸⁸ The clause regarding the power of the Governor as Paramount Chief was also deleted because he could not exercise that power without the support of the Legislature and the Cabinet. The suggestion that measures relating to the Bantu should originate in the Upper House was also dropped.

Thus Natal gained full control over the coloured population but the opposition was not yet satisfied. After considerable opposition the

84. Natal Votes and Proceedings; Annexures 1891: no. 57, 7.3.1891.

85. *Ibid.*, 118-123.

86. Natal Leg. Council Debates, 1892: 5-6.

87. *Ibid.*, 33.

88. *Ibid.*, 377-378.

second reading of Bill no. 19 of 1893 was passed by a majority of 14 votes against 9. Sir John Robinson then moved the third reading and reminded the Council of the strenuous contest that had lasted for so long and which was about to terminate. He even indulged in some sentiment by telling the House that "almost to a day, this is the thirtieth anniversary" of his connection with the Council. However, in spite of his earnest plea that the third reading be passed unanimously nine Councillors opposed the Bill and 12 supported it.

The struggle for political supremacy and responsible government came to an end on 10 May 1893, i.e. nineteen years from the time that it was proposed in 1874 by C. Barter. The first Cabinet consisted of Sir John Robinson (Prime Minister and Colonial Secretary); F. R. Moor (Secretary of Native Affairs); Harry Escombe (Attorney-General); G. M. Sutton (Treasurer); and T. K. Murray (Lands and Works).

The different use that was made of the Upper House, is interesting. In 1850 the Cape Settlers wanted a nominated Upper House to protect themselves against the Dutch majority. In Natal a nominated Upper House was used to prevent the nominated white representatives of the Bantu from disturbing the balance of parties in the Assembly. This was made possible by the absence of an Afrikaner majority in Natal. It was not this aspect of the constitution that received attention during the course of the 20th century, but the idea of separate representation for the Bantu. From 1926 to 1936 Premier J. B. M. Hertzog tried to implement separate representation for the Bantu in order to protect the whites against Bantu predominance. This was abolished in 1959. In 1946 this policy was implemented for the Indians, who refused to use it. In 1956 separate representation was given to the Coloureds after a very bitter constitutional struggle, but it was abolished in 1968. In this matter the constitutional struggle in Natal had considerable influence on the struggle for political supremacy during the 20th century.

(To be continued)

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