

**“Constituting the settler colony and reconstituting the indigene:- the native administration and constitutionalism of Sir George Grey K.C.B during his two New Zealand governorships (1845-1853, 1861-68) until the outbreak of the Waikato War in 1863.”**

*Regna non merito accidunt, sed sorte variantur*

**“States do not come about by merit, but vary according to chance”.**

**Cyprian of Carthage**

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## Abbreviations

<b>A.J.H.R.</b>	Appendices to the Journals of the House of Representatives.
<b>C.M.S.</b>	Church Missionary Society.
<b>G.B.P.D.</b>	Great Britain Parliamentary Debates.
<b>G.B.P.P.</b>	Great Britain Parliamentary Papers.
<b>K.C.B.</b>	Knight Commander of the Bath.
<b>N.Z.G.A. 1846</b>	New Zealand Government Act 1846.
<b>N.Z.C.A. 1852</b>	New Zealand Constitution Act 1852.

## Glossary of Maori Terms

<b>Hui</b>	a conference
<b>Kotahitanga</b>	“Unity” Movement, the movement towards Maori unification.
<b>Kingitanga</b>	<i>“King” Movement, the movement for a Maori king.</i>
<b>Mana</b>	the prestige, glory, reputation, fame of a person or persons; by extension their “authority” and sovereignty.

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### **Short Abstract**

Sir George Grey K.C.B. ( 1812 -1898) served as Governor of South Australia, of New Zealand twice, and of the Cape Colony. This thesis explains his policy for the first time for a history of the political ideas of colonization. Grey introduced the policy of racial amalgamation to settler colonies after the 1837 Report of the Select Committee into Aboriginal Affairs, that had advised the policy of segregation as had been North American policy under Sir William Johnson. This thesis demonstrates that Grey was a Liberal Anglican who had adopted neo-Harringtonian thought, and who introduced Jeffersonian native policy into British native policy. He practised the strategic theory of Antoine-Henri Jomini, applying it to native policy. Grey captured the monarchical constitution of the empire for what had been a settler policy of dissent to the segregation of indigenes that dated back to Tudor Ireland and early Virginia. Grey’s distinctive intellectual practices were ethnographical research and speculation, for which he enjoyed an international reputation, and the constitutional design of settler colonies, an activity he came to totally identify with. The thesis concentrates on his first New Zealand governorship (1845-53) and upon the resumption of his second New Zealand governorship ( 1861- 68) because it was in that colony he first fully practised his native policy and participated in constitutional design, and in which he brought about a crisis of indigenous amalgamation on the eve of the Waikato War in 1863, having introduced full responsible government.

## Long Thesis Abstract

Sir George Grey (1812-1898) had an extraordinary and controversial career in the Colonial Service and New Zealand politics. He was commander of a British Government Expedition in Western Australia 1837-39, Resident Magistrate at Albany, Western Australia 1839-40, Governor of South Australia 1841-45, Governor of New Zealand 1845-53, Governor of the Cape Colony and High Commissioner for southern Africa between 1854-61, Governor of New Zealand 1861-68, Member of the New Zealand House of Representatives between 1875 and 1895, Superintendent of the Auckland Province of New Zealand 1875-76, Premier of New Zealand 1877-1879. The decisive document in Grey's career was the formulation of his racial policy of amalgamation in the memorandum from Port Louis Mauritius of June 1840 to the Colonial Secretary Lord John Russell, and his practice of that policy in New Zealand during his first government of that colony, in conjunction with his participation in the constitutional process for that colony. To that process he had been invited to contribute by the 3<sup>rd</sup> Earl Grey, as he had been by Gladstone, when Gladstone was Earl Grey's predecessor as Colonial Secretary.

The thesis argues that for Grey a colonial constitution constituted and enforced a racial order for indigenes. That order was amalgamationist and opposed to the segregationist policy of the Report of 1837 of the Select Committee on Aboriginal Affairs, the so-called "Buxton Report". Grey was a Blumenbachian racialist, who believed in the plasticity and not in the fixity of human races, in their common origin and essential equality. The thesis demonstrates that Grey's ethnographic reputation lent authority for his prescriptions. He practised ethnology for a purpose that was

constitutional, and he constitutionalized so as to dissolve indigenous peoples and polities over time into settler polities, as well as to constitute Harringtonian settler polities. Settlers were conversely expected to maintain virtuous Harringtonian polities, that avoided commercial corruption and monopolistic land- holding, and sought to induct indigenes into their communities.

Grey was a military intellectual, a soldier savant, who studied Natural History, and the Natural History of Mankind through his ethnography. As a soldier, who had attained distinction in his studies at the Royal Military Academy, he had learned the military theory and strategy of Baron Antoine-Henri Jomini, which he applied to colonial frontiers. It was no accident that the Army of the United States and the Army of Russia, both of them terrestrial expansionist colonial powers, adopted Jominian theory in the 1810s. What Grey acquired from Jomini was the doctrine of the dissolution of frontiers in contrast of the practice of “holding the line”. Frontiers were to be dissolved and collapsed so as to absorb indigenous peoples into the settler colony, for the large part reducing them to farm labourers, and public works labourers. However as Grey demonstrated in the Eastern Cape in 1857 and on the Waikato in 1863, he would so conduct policy so as to exploit propitious circumstances and indigenous stress so as to hasten the process.

Grey was intellectually formed as a Liberal Anglican, personally mentored by Archbishop Whately whom he knew from the age of eight, and with whom he furloughed while he served in the Tithe War in Ireland. The Liberal Anglicans were a reading and conversation circle that based themselves on Bishop Joseph Butler’s “Analogy of Religion”, arguing Christian Evidences by coopting the new sciences

and disciplines of the Moderate Enlightenment. They were therefore an alternative intellectual culture to that of the Scots stadialists, who are usually invoked as a source for stadial theory in colonial policy. They were conspicuous for Harringtonian receptions, and for receptions of German history and theology. To these Grey added an interest in Jeffersonian policy for settler expansion and indigenous amalgamation in the United States. Among German receptions, Alexander von Humboldt provided a compelling model of explorer, ethnographic inquirer and of policy analysis. Unique to Grey was an interest in francophone Protestant and Swiss thinkers, Jomini, Albert Gallatin the ethnologist who had been Jefferson's Secretary of the Treasury. Grey adhered lifelong to the French Liberal School of Economics.

Grey then, came from a capacitarian and radical Whig circle of the Liberal Anglicans, that corresponded to Lord Durham in many respects. Harringtonian thought interested Dr Arnold, Whately and Grey. The thesis argues that the Port Louis Memorandum was in fact an equivalent of the Durham Report, in so far as Lord Durham recommended population "swamping" of a non-British population by British immigrants in the colonial situation, and Grey proposed the same to creolize indigenes.

Unique to Grey was how he was able to capture and deploy as a crown agent the prerogative as exercised in the "monarchical" constitution of the empire, for what had been the settler dissentient tradition of racial absorption from Tudor Ireland and early Virginia, that was opposed in mid 18<sup>th</sup> century America to the segregationist policy of the Appalachian Protectorate. Humboldtian and Harringtonian in his intellectual formation, Grey was nonetheless influenced by Sir Stamford Raffles and James Mill's

policy of legal integration and of the abolition of indigenous institutions. This was an instance of a Liberal Anglican receptivity to Utilitarian thought, nonetheless mediated through Raffles' Humboldtian pursuit of antiquities. Although "amalgamation" was topical in Grey's youth, it was he who formulated and practised a constitutional and native policy to effect it, as the alternative to the segregationist model of the Appalachian protectorate that was established after the Seven Years War and exported to the Eastern Cape, and then to Treaty of Waitangi New Zealand, after the Buxton report had reaffirmed it as British Policy. Grey practised amalgamationist policy, until the culminations of the Xhosa famine of 1857 and the outbreak of war in New Zealand in 1863. "Indirect Rule" became the preferred method of native administration once it became apparent how expensive and controversial Grey's policies were, along with the reluctance, if not refusal of settler populations to accord indigenous civic rights, even on capacitarian terms.

Grey's first New Zealand governorship is the prime site for research into his career, to unify inconsistent historiographies scattered between the United Kingdom (and even Ireland), South Africa, Australia and New Zealand, and the Pacific. Although Western Australia, and experience of the circle of officials about Governor John Hutt, provided the context for Grey's Port Louis Memorandum, it was the New Zealand crisis of 1845 that provided him with the opportunities to practise that policy and assist in developing the settler constitutionalism to support his native policy. Knighted a K.C.B. in 1848, awarded an honorary Doctor of Laws by Oxford University in 1854 for his contributions to the New Zealand Constitution Act 1852, Grey thereafter identified as a constitutionalist and as the proponent of racial amalgamation in capacitarian settler regimes. He particularly affected the constitutional development

and racial administration of New Zealand and South Africa, with results that are controversial to this day. In New Zealand's case his policy left problems for reconstituting 21<sup>st</sup> century New Zealand in terms of the revived Treaty of Waitangi.

## Introductory Chapter

This thesis attempts to analyse the contributions of Sir George Grey (1812-1898) to the devolutions of representative and responsible government to New Zealand, as contributions in themselves to the political thought of white settler colonization and of racial policy. It investigates the first New Zealand government of Sir George Grey between 1845-1853 and the opening years of his second New Zealand administration (1861-1868) until the outbreak of the Taranaki War and of the Waikato War in June and July 1863.

To summarize his career, Grey was Governor of South Australia 1841-45, of New Zealand 1845-53, Governor of the Cape Colony and High Commissioner for Southern Africa between 1854 and 1861, Governor of New Zealand 1861-68, Member of the New Zealand House of Representatives 1875-90, 1891-95, Premier of New Zealand 1877-79 and Superintendent of the Auckland Province 1875-76. Recognition of his achievements included appointment to the Privy Council (1894), the honour of Knight Commander of the Bath (1848), honorary doctorates from Oxford and Cambridge Universities in 1854 and 1869.<sup>1</sup> Despite these distinctions, Grey's colonial service career ended in disgrace, after two decades of a remarkable reputation. He obtained none of the higher distinctions and postings, let alone the British political career, that he desired in middle age. One of the first intellectuals to be recruited as a governor in the Colonial Service, and the youngest appointee at just 28 years of age, he preceded the generation of successful university-educated governors and officials.

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<sup>1</sup> Grey was also awarded the Order of the Tower and Sword by Dom Pedro V of Portugal, and the Order of St Pius 3<sup>rd</sup> class by Pope Pius IX.

This thesis is a contribution to the history of British imperial administration and to the history of the political ideas of colonization. Grey was both the architect of the policy of racial amalgamation and also the constitutionalist for that policy in the age of devolutions to responsible government. This thesis demonstrates through Grey's career that a colonial constitution was also a racial order, and not merely a political system for white settlers to rule themselves, as if these two activities could be segregated from one another. Colonial constitutions were designed to cope with the indigenous societies they sought to govern. Governing South Australia, New Zealand and Southern Africa, Grey practised his policy to its mature expression and fullest application in New Zealand, with consequences that affect current legal and constitutional debate in that country. For the first time, this thesis will demonstrate Grey as an ethnographer and constitutionalist whose political thought was informed by the intellectual culture of Liberal Anglicans, by Harringtonian and Jeffersonian political thought, by Jominian military theory and anti-classical Political Economy, and by a stadial ethnography that asserted the common origin of humanity, but denied the possibility of independent development from the so-called "savage state" into more advanced social forms.

### *The Historiography of Grey*

This thesis is a first attempt at the history of the political ideas that formed Grey's policy. Previous works have either name-dropped influences without assessing them, or have misunderstood the relation of these ideas to his policy. A fundamental problem with writing history about Grey is not only that his periods in office were dispersed about the Southern Hemisphere, but that they remain interludes in other

countries' histories. South Africans have naturally wanted to concentrate on his policy towards the Xhosa at the time of the rinderpest plague and cattle-killing, to account for his reconciliation of Afrikaners, and public works policy. The Australians consider the failed Western Australian explorer, the controversial ethnographer and the South Australian governor of the 1837-1845 period. No South African or Australian has written on Grey's New Zealand governments as New Zealanders have tried to do with his Australian and South African experiences. This is not because New Zealand historians are more ambitious than historians of other countries, nor simply because Grey spent 38 years in New Zealand. The historiographies of none of these three countries have attained an imperial, and global, overview of Grey. Rather in the case of a young and complex colony like New Zealand, Grey had a decisive, if traumatic, effect on the country's development.

Only Mark Francis has attempted an historiographical review of Sir George Grey to date<sup>2</sup> in an attempt to discipline anachronistic readings of Grey for contemporary purposes. He did not extend his review of egregiously offending New Zealand historians to the wider imperial perspective. While the necessity for Francis' review arose from the packaging of Grey for New Zealand's politicised and juridicized history, Francis leaves us with too understated, subtracted and blank a figure. Was Grey a "fervent evangelical"? He was rather a Whatelyan Liberal Anglican. Was he a man of such "simplicity" that he was untroubled by the "intellectual turmoils which troubled other evangelicals in the 1840s and 1850s"?<sup>3</sup> How then did he befriend the

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<sup>2</sup> Francis, Mark, in Andrew Sharp and Paul McHugh (eds.) *Histories Power and Loss*, Bridget Williams Books, Wellington 2001 p. 165.

<sup>3</sup> Francis, *ibid* p. 176.

“heretical” Bishop Colenso,<sup>4</sup> and become an enthusiast for Massachusetts Transcendentalist, Dr Theodore Parker?<sup>5</sup> Was Grey really a minor administrator, a vulnerable man, without great connections? Grey was not a nobleman prime minister’s son like Sir Arthur Gordon, nor an Etonian like Sir William Denison. If South Australia and New Zealand were minor postings, the Cape Colony was a considerable one. His importance is derived from his impact on the policy of the colonies that he governed, which have since developed into complex and influential modern states. He was the governor of a significant policy, the policy of legal integration and racial amalgamation. He was indeed psychologically and politically vulnerable, most likely collapsing beneath the strain. A “nobody”, he discovered distinguished associates throughout his life who reintroduced him into contemporary literature, journalism and scientific writing. Francis reprehended Sinclair’s comparison of Grey to Bismarck. If comparisons must be made, Grey was rather like Carlyle’s Dr Francia of Paraguay, or like Argentina’s Bartolomeo Mitre. Benito Juarez was the exemplar of an amalgamationist policy like Grey’s in Mexico. Grey was not the intellectually minimalist and whittled down stick figure that Francis offered.

Historiographic assessment of Grey needs to be entirely re-evaluated away from the parochial constraints of New Zealand academic historians. Condemned by Jeff Peires for his handling of the Xhosa cattle-killing,<sup>6</sup> condemned by Maori and by New

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<sup>4</sup> Francis, *ibid* p. 176.

<sup>5</sup> Collier, James, *Sir George Grey, Governor, High Commissioner and Premier:- An Historical Biography*, Whitcombe and Tombs, Christchurch, Wellington and Dunedin, 1909.

<sup>6</sup> Peires, J.B., *The Dead will Arise: Nongqawuse and the Great Xhosa Cattle-Killing Movement of 1856-7*; Bloomington and Indianapolis, Indiana University Press, 1989, pp. 317-18.

Zealand historians as responsible for the revolutionary subversion and overthrow of the Treaty of Waitangi in New Zealand, recognized as the architect of the strict application policy of British law upon Australian aborigines, yet regarded as the most outstanding Victorian proconsul, Grey's reputation has remained controversial at the expense of any coherent and reasonable assessment of his policy and character.

The New Zealand historiography about Grey and his New Zealand governorships has the potential to be central to such a reconstituted and re-internationalized historiography. During the first New Zealand governorship, Grey demonstrated for the first time the full repertoire of governance skills and pretensions to carry out his native policy and literally "constitute" a settler polity. He defiantly returned to Britain without leave in May 1854,<sup>7</sup> an ethnographer, the strategist of racial amalgamation and a constitutionalist. He practised his policy to the fullest extent with genocidal results in the Eastern Cape of South Africa. He returned to New Zealand in 1861 determined to impose the same policy of native administration he had announced for the Eastern Cape in 1855. The IInd Taranaki War and the Waikato War broke out in the winter of 1863, pacification was only formalized in 1881, Maori self-determination was reduced either to collaboration or to subjugation. The gravamen of historic grievances that have been brought as claims to the Waitangi Tribunal since 1984 relate to these events. Maori nonetheless practised their own constitutional and political values within the spaces that the New Zealand constitution and native administration permitted them.

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<sup>7</sup> *Rules and Regulations for Her Majesty's Colonial Service*, W. Clowes and Sons for Her Majesty's Stationery Office, London 1843; regulation 15 on p. 8 "He is on no account to absent himself from the Colony without Her Majesty's Permission." For failing to report on an officer's leave of absence (including his own presumably) the Governor was liable to a fine of 100 pounds p. 28.

As Mahmood Mamdani described such amalgamationist crises:-

“ Yet we must remember that this smashing could never be complete. Even when the Cape Parliament is said to have “reluctantly annexed Kaffraria” in 1865 and resolved to maintain a separate legal system for all its inhabitants, its prerequisite –capitalist relations and the sway of market relations – did not quite obtain. In the scattered reserves that punctuated the space between one settler farm and another, “tribal courts and tribal law continued to operate under makeshift arrangements”.<sup>8</sup>

The result of the Waikato War (1863-65) and of the continuing insurgency in New Zealand was same “smashing” except that Maori politics were able to develop out of the civic integrations imposed upon them and out of the remnants of the tribal order, which the New Zealand Government convinced itself had been “conquered”.

Culturally and spatially both settlers and indigenes on Grey’s dissolved frontiers found themselves in porous marcherlands, in which the settler claim to an homogenous power sphere was frustrated and belied.

A thesis’ bibliographic review makes the case for its own necessity from the state of the literature. South African historiography discusses at length neither Grey’s Australian sojourns nor the first New Zealand governorship, nor has any need to assess his later career. <sup>9</sup>His intellectual culture eludes them even though Southern

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<sup>8</sup> Mamdani, Mahmood, *Citizen and Subject: Contemporary Africa and the Legacy of late Colonialism*, Princeton, 1996., pp. 66- 67 referring to Simons, H.J., - *African Women:- Their Legal Status in South Africa*, London 1968 pp. 29-30.

<sup>9</sup> Crais, Clifton C., *White Supremacy and Black Resistance in Pre-Industrial South Africa: The Making of the Colonial Order in the Eastern Cape 1770-1865*, Cambridge University Press, 1992; p. 199 –“ A committed reformist, Grey had considerable – if infamous – colonial experience in New Zealand”.

MacMillan, W.M., *Bantu, Boer, and Briton: The Making of the South African Native Problem*, Faber and Gwyer, London 1929, pp. 292-296 for a “classic” treatment of Grey by South Africans.

Africa is where he governed most ambitiously. The exception is the classic work by C.W. de Kiewiet<sup>10</sup> which still offers outstanding analysis of the principles of colonial frontier systems and into Grey's own frontier policy, that are entirely applicable to the first New Zealand governorship.<sup>11</sup> This thesis will argue that de Kiewiet's insights referred to Jominian strategic theory, applied to the frontier.<sup>12</sup> The Australian contribution relates to Grey's explorations and research in Western Australia and to his South Australian governorship, not to the full operation of the Port Louis memorandum policy of native amalgamation, which was first fully practised in New Zealand. The New Zealand contribution is abundant, at times attempting a full comprehension of Grey's life and career, but deficient as a history of colonial political ideas.

The British contribution to Grey biography largely amounts to books from the late 19<sup>th</sup> century by James Anthony Froude<sup>13</sup> and Fleet Street journalist J.J. Milne,<sup>14</sup> both of them driven by hero-starved pursuit of the Carlylean "Great Man". Milne's biography is related to the Rees "biography" and Froude's work by Grey's own contribution to the work. More significant as a British contribution for re-establishing Grey's imperial reputation, was James Anthony Froude's *Oceana*. Thus began an imperial rehabilitation after Grey's disgraces of the later stages of his second New

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Davenport, T.R.H., *South Africa : A Modern History*, University of Toronto Press, Toronto and Buffalo, 1977; p. 88, p. 101, pp. 111-112 for how a summary history treated Grey.

<sup>10</sup> de Kiewiet, C.W., *British Colonial Policy and the South African Republics 1848-1872*, Longmans, London, 1929.

<sup>11</sup> de Kiewiet., *ibid*, p.p. 88-91.

<sup>12</sup> de Kiewiet, *ibid*, pp. 88-89 .

<sup>13</sup> Froude, James Anthony, *Oceana, or, England and her Colonies*, Longmans, London 1886.

<sup>14</sup> Milne, J.J., *The Romance of a Proconsul - Being the Personal Life and Memoirs of The Right Hon. Sir George Grey K.C.B*, London, Chatto and Windis, 1899 .

Zealand governorship and of his premiership. Froude's book was a tribute to James Harrington's *The Commonwealth of Oceana*. It was above all an acknowledgement of Grey as a latter-day Harringtonian, far from a surprising identification, as several members of the Liberal Anglican network produced Harringtonian work, such as Archbishop Whately, and Dr Thomas Arnold. Froude's work was also the beginning of a spate of literary notices of Grey in the late nineteenth century, by Robert Louis Stevenson,<sup>15</sup> by Olive Schreiner for instance.<sup>16</sup>

Early works on Grey regrettably remain foundational for accounts of Grey's early life. No matter how critical the literature has become, historians have remained reliant upon this archaic narrative, without reinterpreting it. This must be superseded if a history of Grey's political thought is to be re-assembled. The Rees<sup>17</sup> biography published in Grey's 80<sup>th</sup> birthday year, preserves a fatal influence. It has been impossible to move biographies over the past century out of the ruts that it dug into Grey's career, no matter how critical they become. To a considerable extent an autobiography rendered in the 3<sup>rd</sup> person,<sup>18</sup> the Rees biography remains significant for two reasons. Grey became the leader of a political sect in New Zealand during his later years. It is impossible to comprehend the problems of Grey's career and the subsequent historiography without coming to terms with the fall-out from and reaction against, this "cult". The cult extended beyond the circles of New Zealand

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<sup>15</sup> McLynn, Frank, *Robert Louis Stevenson*, Hutchinson, London 1993, p. 454, p. 461.

<sup>16</sup> Schreiner, Olive, *Trooper Peter Halket of Mashonaland* T. Fisher Unwin London 1897. See frontispiece dedication to Sir George Grey, "A Great and Good Man".

<sup>17</sup> Rees, William and Rees, Lily, *The Life and Times of Sir George Grey K.C.B.* Auckland, 1892.

<sup>18</sup> de Kiewiet, op. cit. p. 309 noted that the Rees biography "was commonly accepted as Grey's own work".

radical politics and included Olive Schreiner<sup>19</sup> and the Countess of Aberdeen<sup>20</sup> and the emergent Labor parties of Australia. Secondly, this cult converged with an imperial cult of Grey that lasted from the 1890s until the First World War.

The Rees biography, which de Kiewiet reported an autobiography, laid the tracks for Grey's early life and education. Grey's familial and social contexts have been entirely misunderstood. We need to re-establish Grey's *Bildung* and wrench it at last off the Rees' rails and Grey's own version. To the extent that Grey was not justifying himself, he was not answering the questions that modern scholars would ask. De Kiewiet's statement that the biography was autobiography receives corroboration perhaps from a book of political economy by William Lee Rees, *From Poverty to Plenty* which the author dedicated to Grey, acknowledging Grey's influence, and which argued for an agrarian economics.<sup>21</sup>

This work is inscribed to one who wise counsels have so often aided me to attain results at which I have arrived, and who will recognize in its pages many tokens of the familiar interchange of thought between us during the past fifteen years; to whose sympathy and encouragement I owe more than I can express, and to whom every effort made for the happiness of men, especially of men of his own race, is an effort in a sacred cause. To a great statesman, profound thinker, and sincere philanthropist, brave in the field, wise in council, true to his country, loyal to his Queen, and, above all, a humble servant of the Great Master, this book, with all reverence and affection, is dedicated ...<sup>22</sup>

The French Physiocrat school of the 18<sup>th</sup> century provided the basis of Grey and Rees' agrarianism. William Rees was a barrister and late 19<sup>th</sup> century New Zealand

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<sup>19</sup> Schreiner, Olive, *Trooper Peter Halket of Mashonaland* London, T. Fisher Unwin 1897 is dedicated "to a Great Good Man, Sir George Grey".

<sup>20</sup> The Rees' biography is dedicated to "Isabel the Countess of Aberdeen".

<sup>21</sup> Rees, William Lee, *From Poverty to Plenty, or The Labour Question Resolved*; London, Wyman and Sons, 1888.

<sup>22</sup> Rees, W.L., *ibid.* p. i.

politician.<sup>23</sup> His novel *Sir Gilbert Leigh* contains an appendix entitled “The Great Pro-Consul” reviewing Grey’s personality and politics, his work on Political Economy is dedicated and beholden to Grey, and he went on to write with his wife, the “authorised” biography for Grey’s 80<sup>th</sup> birthday year.

The former Liberal government minister William Pember Reeves<sup>24</sup> set the classic image of “Good Governor Grey” that prevailed in New Zealand schools until the 1960s. Yet Reeves’ wider body of work yields discernment so long as it is read carefully and not just for his paean to New Zealand colonization, *The Long White Cloud*. In his *Dictionary of National Biography* entry, Reeves compared Grey to Thomas Jefferson.<sup>25</sup> As a political economist of colonization himself, Reeves proposed that from personal knowledge and sound judgement. It is one of the most helpful yet neglected comments about George Grey that has ever been made. Grey as an anti-classical political economist may be compared with anti-“classical” agrarians like Jefferson, or with the Harringtonians or Charles James Fox.<sup>26</sup> This thesis explores those Jeffersonian and Harringtonian influences on Grey for the first time. Reeves had known Grey while a journalist and Member of the House of Representatives when Grey’s politics had assumed a Jeffersonian complexion. At the inception of Grey’s career, Jeffersonian Indian policy and the ethnographic work that Jefferson’s Secretary of the Treasury, Albert Gallatin published, were available as examples and

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<sup>23</sup> Brooking, Tom, “Rees, William Lee, 1836-1912” *Dictionary of New Zealand Biography*. URL: <http://www.dnzb.govt.nz/>

<sup>24</sup> Reeves, William Pember, *The Long White Cloud*, London, Allen and Unwin, 1899.

<sup>25</sup> Stephen, Sir Leslie., and Lee, Sir Sidney (eds), *Dictionary of National Biography: From the Earliest Times until 1900* Vol. XXII Supplement, p. 786 bottom of left column for the initials “W.P. R.”.

<sup>26</sup> Bord, Joe, *Science and Whig Manners:- Science and Political Style in Britain, c. 1790- 1850*, Cambridge 2009 pp. 125-126.

sources, not just Liberal Anglicans and Utilitarians and Scots Enlightenment stadial thought that J.B. Peires identifies.<sup>27</sup> The comparison between Grey and Jefferson is sustainable if it is appreciated that both men moved beyond their physiocratic foundations to more contemporary anti-classical thinkers, in Jefferson's case to Jean-Baptiste Say, in Grey's case it was Sismondi whom Rees asserted was the renovator of Political Economy in the physiocrat tradition. The enemy for Grey, according to Rees, were the Manchester School "Economists", against whom he campaigned in England in 1868 in favour of colonial emigration.<sup>28</sup>

George Cockburn Henderson<sup>29</sup> was a significant Australian pioneer of both Southern Hemisphere settler colony and of Fijian history. Henderson was the first author on Grey to not have met him. His was the first academic study. The Henderson biography establishes a sober academic narrative, applying the first professional criticism to Grey, who nonetheless remained for the author a remarkable and exemplary man. This was the historiography of critical appreciation. The objectives of Grey's life were as yet unquestioned. To this historian however belongs the credit for identifying the major policy problems concerning Grey.

James Collier<sup>30</sup> was variously Herbert Spencer's laboratory assistant and the New Zealand Parliamentary Librarian. His biography of 1909 was a critical hagiography. Collier was impressed with Grey as an instance of Nietzschean, or "tropical" Man. This biography then was highly literary as it attempted psychological assessment of

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<sup>27</sup> Peires J.B. , op. cit. p. 49 .

<sup>28</sup> Rees, William Lee, *Sir Gilbert Leigh* ; Sampson, Low; Marston, Searle and Rivington; London 1878, 2 vv.; p. 258.

<sup>29</sup> Henderson, George Cockburn , *Sir George Grey, Pioneer of Empire in Southern Lands* London, T.M. Dent 1907.

<sup>30</sup> Collier, op. cit..

its subject, but as the narrative is on the level of proposing that Grey at one point resembled Chateaubriand meditating an 18<sup>th</sup> Brumaire, we rather learn from it the tropes through which Grey's later contemporaries regarded him. This is Grey biography in the mode of John Morley.

Between the Edwardian period and the post-World War II period, a lacuna occurs in sustained writing on Grey, apart from de Kiewiet and of W.P. Morrell.<sup>31</sup> Morrell however reviewed Grey's career with intelligence and respect in his works on New Zealand provincialism and British colonial policy in the Pacific. For factual enunciation of policy and arguably also for constitutional review, Morrell set a standard for clarity and for exposition of the agents and elements of imperial policy that remains exemplary to this day. He was nonetheless the historian of the broad movements and close machinery of government, not a student of Grey's intellectual world.

Though distancing himself from the Oxford imperial scholarship, Keith Sinclair did not presage the impending storm of polemic about Grey. In 1957 Sinclair<sup>32</sup> reviewed Grey's policy and character in *The Origins of the Maori Wars*, which is one of the rare classics of New Zealand historiography, one of the wisest and most sober books on history and war a New Zealander has written. Sinclair had a rare respect for, and competence at, Grey, as if he had his measure. Unlike so many others, Sinclair made

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<sup>31</sup> Morrell, W.P. , *British Colonial Policy in the Age of Peel and Russell* Oxford University Press, Oxford 1930.

Morrell, W.P., *The Provincial System in New Zealand 1852-1876* , Longmans Green, London 1932.

Morrell, W.P., *Britain in the Pacific Islands* , Oxford 1960.

<sup>32</sup> Sinclair, Keith, *The Origins of the Maori Wars* Auckland University Press/ Oxford 1957 pp. 33-34.

neither detestation for, nor fascination with, Grey evident, and was able to acknowledge his great gifts while insisting upon both the harm done and on the limits of one mere man before the vast problem of racial competition in colonial environments. The status of the book is further enhanced by its total disengagement from “presentist” agendas. Such authority, intelligence and life experience have never been replaced. Sinclair nonetheless posed as a New Zealand pragmatist while busying himself with his own intellectual project of establishing a New Zealand nationalist alternative to Whig constitutionalist and imperial historians. Grey’s intellectual formation and imperial dimensions were never discussed in Sinclair’s works.

The third historian connected with the New Zealand Parliament to write on Grey, W.H. McLintock<sup>33</sup> published his *Crown Colony Government in New Zealand* in 1958. It remains the substantial work on Grey’s first New Zealand government, the precursor of this thesis. It is the summary work of New Zealand white settler “Whig” constitutionalism, if such a school of settler constitutional history may be identified between Morrell in 1926 and Peter Adams in 1976, wherein race relations were de-emphasized for concentration upon the devolution of responsible government and the development of settler institutions for racial administration. McLintock identified with the New Zealand Company and settler leaders and composed the definitive Machiavellian image of Grey in his chapter “The Master Hand”. This remains a masterful caricature, uninformed by Grey’s own Harringtonian affiliations, to be discussed in the next chapter. For why would a man in a monarchical office such as a British colonial governor have to convince himself to become a constitutional dictator, unless he was informed and self-justified by an ideology that affirmed

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<sup>33</sup> McLintock, A.H., *Crown Colony Government in New Zealand*, Government Printer, Wellington 1958.

exceptional dictatorship? We are otherwise reduced to animadversions upon dictatorial “personality”. For all the discussion of Whig constitutionalism, McLintock’s book was a curious work from a scholar of Newfoundland for not applying the development of responsible government in Canada to New Zealand. Though educated at the University of London, McLintock never “realized” the British context. British statesmen come and go, without depth in presentation. No history of political thought was attempted, even though Grey and the Wakefieldian settlers were evidently caught up in storm surges of political ideas.

James Rutherford’s<sup>34</sup> biography of Grey remains the only comprehensive biography of Grey to date and is now as old as this student is. Factually reliable, yet utterly mistaken on many points of interpretation, it is time this hoary and serviceable work-horse was decommissioned as active biography, while appreciated for the valuable contribution it has made for almost 50 years. Though it has filled the chasm in Grey biography, this bridge should be replaced with a multi-volume biography. Rutherford relied however on the 1892 Rees biography for Grey’s early life. It therefore contains much outdated or poorly contextualised information and interpretation. Rutherford had little to say about Grey’s intellectual contexts apart from providing signposts as to his aspirations and name-dropping influential thinkers.

Throughout the 1960s and the 1970s Grey’s reputation took a pummelling. Following on from McLintock’s deconstruction, the “Good Governor Grey” of New Zealand school textbooks fell to pieces and was exposed as a colonial tyrant. The next generation of historians competed in their condemnations, as they created the

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<sup>34</sup> Rutherford, James, *Sir George Grey K.C.B. 1812-1898:- A Study in Colonial Government*, Cassell & Co, London 1961.

historiography that would support the case for racial reconciliation and indigenous rights in New Zealand . B.J. Dalton's<sup>35</sup> review of war and politics in New Zealand between 1855-1870 marks the all-time nadir of Grey assessment. Perhaps taking a hint from the Collier biography of 1909, Dalton proposed a “degenerated” Grey for the 1860s much like Collier had done for the 1880s. Yet in a curious extension of this accusation, he suggested:-

“The legendary first governorship may yet prove to be as far from the truth as the usual account of the second. At all events the record of his second governorship is clear: confusion, debt, destruction and despair were its legacy.”

That is a contention then, which this thesis reappraises. While this student has at times suspected that the catastrophic “self-destructing” Grey premiership of 1877-79, was only as “bad” as the second New Zealand governorship, similar assessments have not arisen from Grey's South Australian and Cape Colony governorships. Grey is accused of ruthlessly exploiting catastrophe in South Africa, and of straining, though not compromising, public finances,<sup>36</sup> not of ineptitude.

The truth is that Grey's three New Zealand administrations did all leave a legacy of confusion and debt, while his administrations at the Cape<sup>37</sup> and in Adelaide left solvent, if stressed, public finances, that featured irregularities such as withdrawals of specie from the South Australian government for New Zealand purposes and the governor's own private funding of public programmes at the Cape. Destruction and

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<sup>35</sup> Dalton, B.J. , op. cit., *War and Politics in New Zealand 1855-1870* , Sydney University Press, Sydney 1967 p. 259.

<sup>36</sup> De Kiewiet, op. cit., p. 158.

<sup>37</sup> Davenport, T.R.H., “The Consolidation of a New Society: The Cape Colony” in Wilson, Monica and Thompson, Leonard (eds) *The Oxford History of South Africa*, Clarendon Press, Oxford 1969, v I p. 329.

despair did attend his South Africa and second New Zealand governorships. It is nonetheless valuable that Dalton expressed such a negative assessment. By what benchmarks are Grey performances such as the first New Zealand government to be measured? By what standards could a political opponent such as Sir Frederick Whitaker describe Grey's first New Zealand governorship as the best government New Zealand had ever enjoyed? <sup>38</sup> From this perspective New Zealand presents no instance of a "successful" governor of the four who conducted executive government between 1840 -1868. Yet Grey's superiors were convinced that his first New Zealand administration was a success. A history of political ideas might better explain why they assessed that regime so, than Dalton's judgement.

In contrast, Alan Ward's<sup>39</sup> magisterial discussion of Grey's policies of amalgamation occurs in a fine work that made a significant contribution to the historiography that revised and insisted upon the evils of race relations in New Zealand. While Ward produced a history of policies, he produced no history of political thought, nor any sustained intellectual context to Victorian colonial policy for New Zealand. For all its excellence and classic status to date, Ward's book requires after 35 years the addition of the intellectual dimensions, that perhaps a false sense of pragmatism, the success of his argument or the apparent sufficiency of the material did not then warrant. The historiography of the 1970s only differed from the 1950s in its polemical intent, remaining political history nonetheless.

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<sup>38</sup> *NZPD* v XXI, p. 149.

<sup>39</sup> Ward, Alan, *A Show of Justice: Racial "Amalgamation" in 19<sup>th</sup> century New Zealand*, Auckland University Press, Oxford University Press, Auckland and Oxford 1978.

It may now seem astonishing while such polemical history was being published, that Peter Adams' "Whig"<sup>40</sup> constitutionalist history was written on the eve of the revival of the Treaty of Waitangi, to argue against the Treaty as a relevant institution. His Oxford D.Phil thesis and the resulting book demonstrate however that good-faith high quality modern history could also be written from the Treaty-sceptic position. Far from the final instance of settler justificatory history of the period, or the last hurrah of settler indifference towards Maori, Adam's book just as much commenced a new series of Treaty-sceptic commentary,<sup>41</sup> as it concluded the Whig historiography that had been practiced from W.P. Morrell's generation. Adams was arguing against the constitutional import of the Treaty by arguing that it would not bear such construction.

Edmund Bohan's<sup>42</sup> biography was intended to mark the centenary of Grey's death. The recent tendency of non-academic New Zealand historians has been to consider their subjects less from a negative and condemnatory perspective, but to demonstrate the "humanity" and reasonableness of such people. In New Zealand at least, Grey is becoming a literary figure infused with pathos. Bohan's Grey is the first Grey since Sinclair and Rutherford that has not been the target of recrimination. Pakeha New Zealanders want to live with their country's history, and such books may seem to "smooth the pillow" of guilt. The trend is towards moving on from polemics about

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<sup>40</sup> Adams, Peter, "British Intervention in New Zealand", 1830-1846 Thesis ( D.Phil.) University of Oxford, 1974.

Adams, Peter, *Fatal Necessity: British Intervention in New Zealand 1830-1847* Oxford, Oxford University Press 1977.

<sup>41</sup> Waldron, Jeremy, "The Half-Life of Treaties: Waitangi, Rebus Sic Stantibus" *F.W. Guest 30<sup>th</sup> Memorial Lecture Otago Law Review* 11, 2 2006.

<sup>42</sup> Bohan, Edmund, *To Be a Hero: A Biography of Sir George Grey* Thames and Hudson, Auckland 1998.

settler colonization.<sup>43</sup> Yet for the requirements of improving the historiography, so that it can reorganize itself for a history of ideas, the search for a “more human” Grey is a distraction.

Substantial reassessment has been coming from theses. It is to Damen Ward<sup>44</sup> we owe the correction of the long-unchallenged assumption by James Rutherford that Grey’s Port Louis paper relied upon the 1837 “Buxton Report” of the Select Committee on Aboriginal Affairs.<sup>45</sup> For on the contrary the Port Louis paper challenged the conclusion of the Aborigines Committee report, point by point. Ward was the first to emphatically describe the former document as a legal applicationist rejection of the exceptionalist approach.<sup>46</sup> It was addressed to the then Colonial Secretary Lord John Russell who circulated it to all Australasian governors.<sup>47</sup> Herman Merivale quoted it at length with approval in Lecture XXVIII of his Drummond Chair series of *Lectures on Colonisation and the Colonies*.<sup>48</sup>

Russell’s approval of the paper marked Grey’s accession to the “class” of Australasian and Southern Hemisphere governors. It must be noted however that Ward’s identification of Grey was anticipated by South African historiography.

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<sup>43</sup> Belich, James, *Replenishing the Earth*, Oxford University Press, Oxford 2009.

<sup>44</sup> Ward, Damen, “The Politics of Jurisdiction: British law, indigenous peoples and colonial government in South Australia and New Zealand, c. 1834-60”, Thesis (DPhil) University of Oxford 2003, p. 48.

<sup>45</sup> Rutherford, James, op. cit., p. 52 –

<sup>46</sup> Damen Ward, op. cit., ibid p. 48.

<sup>47</sup> Lord John Russell to Governor Hobson 9 December 1840

*G.B.P.P. Correspondence Respecting the Colonisation of New Zealand* 11 May 1841 [ 311] p. 43.

<sup>48</sup> Merivale, Herman, *Lectures on Colonisation and the Colonies*, Longman, Green, Longman, and Roberts, London 1861, pp. 498-502.

Mahmood Mamdani referred to Grey as a “legal integrationist”.<sup>49</sup> Ward though identified the Port Louis memorandum as legal integrationist. Much remains to be added to Ward’s thesis about Grey’s racial policy and constitutionalism. Ward did not itemize or discuss at length Grey's critique of the Buxton Report in the Port Louis paper, nor did he discuss the content of its political thought for Grey’s amalgamationist policy. The Ward thesis offered just one short paragraph on the New Zealand Constitution Act 1852 and upon Grey's involvement with it.<sup>50</sup>

Moreover a major historiographical problem arises over the 1837 Select Committee’s “Buxton Report”. Ward relied much on Zoe Laidlaw’s<sup>51</sup> account of the activities of the Buxton clan in lobbying the aboriginal rights cause. What is missing in both the Laidlaw and Ward theses is a diachronic analysis that set the 1837 Select Committee Report in rapport with the Appalachian Protectorate policy of 1763, which this thesis will argue it substantially resembles, virtually point for point. The reason for insisting upon the correct relation of the 1837 Select Committee Report to the 1763 Appalachian Protectorate, for originating the Buxton report in the institutions of the “second empire” that P.J. Marshall identified, is to demonstrate the “tradition” of Crown agent colonial policy that Grey attacked in the so-called “Buxton Report”. One cannot call it a “school”, because as evidence to that Select Committee proved, the segregationist policy required reaffirmation. It was however the standard from which lapse had taken place. The Appalachian Protectorate policy was unknown to Laidlaw and Ward, even though Mark Hickford discussed it in his lucid and nuanced Oxford

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<sup>49</sup> Mamdani, Mahmood, *op. cit.*, p. 66.

<sup>50</sup> Ward, Damen, *op. cit.*, p. 172 .

<sup>51</sup> Laidlaw, Zoe, “Networks, Patronage and Information in Colonial Governance: Britain, New South Wales and the Cape Colony 1826- 1843”, Thesis ( D.Phil ) Oxford 2001.

D.Phil thesis of 1999,<sup>52</sup> and was the first to bring that regime back into scholarly commentary.

Donald Kerr's<sup>53</sup> study of Grey the bibliophile and Ptolemaic library builder from 2006, is valuable for its research and for the most able presentation of the literary material Grey collected, but this book does not arrive at what was distinctive about Grey's intellectual interests however nor does it integrate his ethnography with constitutional obsessions. The author's concerns were primarily bibliographical.

James Belich provides a judicious and balanced account of Grey for his *Oxford Dictionary of National Biography* entry.<sup>54</sup> He notes that Grey had the "private means" to start a career, in contrast to the picture of an impoverished young officer.<sup>55</sup> The appraisal is the best 21<sup>st</sup> century short summation of Grey's career. What has to be added to it however is an assessment of his political ideas and constitutionalism.

Cain and Hopkins also emphasize the networks and contacts that Grey's generation of imperial officials belonged to. In *British Imperialism 1688-2000* they state of Grey's class:-

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<sup>52</sup> Hickford, Mark, "Making Territorial Rights of the Natives:- Britain and New Zealand, 1830- 1847", Thesis (D.Phil.) University of Oxford 1999.

<sup>53</sup> Kerr, Donald, *Amassing Treasures for all Times:- Sir George Grey, Colonial Bookman and Collector*, Otago University Press, Dunedin 2006.

<sup>54</sup> Belich, James, entry on Sir George Grey in Matthew, H.C.G., and Harrison, Brian (eds) *Oxford Dictionary of National Biography*, Oxford University Press 2004, v. 23 pp. 841-845.

<sup>55</sup> Belich, James, *ibid.*, p. 841.

most senior British officials, at home and abroad, were drawn largely from the ranks of those whose ties were with landed, rentier, or service-sector wealth, rather than with industry.<sup>56</sup>

Such perspectives help ensure that Grey is no longer regarded as more idiosyncratic or anomalous than he needs to be.

Another level exists above national historiographies. “Macro” writing on the policies and institutions of imperial government has been pursued with particular distinction in recent works. Grey’s career has yet to be assessed at this level of review. Arguably Anthony Pagden’s Oxford D.Phil thesis of 1980<sup>57</sup> was the first and best of the Oxford theses that have concentrated on how imperial officials debated the rights of indigenous persons in terms of their metropolitan law or else posited *jus gentium* rights. P.J. Marshall<sup>58</sup> published a decisive reconsideration of the British empire as it fought for and administered the consequences of, the Seven Years War. J. H. Elliott in *Empires of the Atlantic World 1492- 1830*<sup>59</sup> compared Spanish and British empires in the Americas, identifying crises that each system experienced in the 1770s resulting from administrative reforms in the aftermath of the Seven Years War. Central to any evaluation of Grey’s career is his opposition to the segregationist native policy that was instituted by the Appalachian Proclamation in 1763, corresponding to Spanish models that had been developed in the 16<sup>th</sup> century. The systemic integrations that Marshall and Elliott’s works achieved are those to be practised for a decisive advance in the historiography on Grey.

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<sup>56</sup> Cain, P.J., and Hopkins, A.G., *British Imperialism 1688-2000*, Pearson Educational Books, London 2002, p. 43.

<sup>57</sup> Pagden, Anthony, “The American Indian as Barbarian: a reassessment of some sixteenth century views on the nature of Amerindian Man and his society” , Thesis (D.Phil.) University of Oxford 1980.

<sup>58</sup> Marshall, P. J., *The Making and Unmaking of Empires: Britain, India, and America c. 1750- 1783*, Oxford University Press, 2005.

<sup>59</sup> Elliott, J.H. , *Empires of the Atlantic World:- Britain and Spain in America 1492- 1830* , New Haven and London, Yale University Press, 2006 .

### *Chapter Summaries*

Chapter One identifies and defines Grey's policy and practice as a colonial governor.

Chapter Two analyses Grey's intellectual and social formations, with a view to correcting the persistent errors about these. Grey was a Liberal Anglican, and Harringtonian, whose response to Political Economy was to be anti-classical, while adopting Raffles and James Mill's policies of legal integration from the East India Service.

Chapter Three will consider Grey as an ethnographer, and the relation of ethnography to the sociology of jurisprudence, and the negative importance of Grey's research and practice as an ethnographer to Grey's constitutionalism. Ethnography provided Grey with the proofs as to why amalgamation was necessary.

Chapter Four considers Grey's contribution to native administration, a strict policy of legal and social and economic integration. It will examine the Port Louis Paper of 1840 as a dissent against the "Buxton Report" of the Select Committee of Aboriginal Affairs of 1837.

Chapter Five assesses the New Zealand as a political and administrative order on the eve of Grey's assumption of office as governor in November 1845, and will relate

review Grey's pacification of the colony in which two wars were raging in 1845, and his reestablishment of Crown colony government.

Chapter Six discusses Grey's "coup" against the *New Zealand Government Act 1846* the Royal Charter and Royal Instructions, and the role he assumed thereby in the colony's constitution-making process.

Chapter Seven analyses the New Zealand Constitution Act 1852 in relation to the Imperial Constitution and to constitutional paradigms.

Chapter Eight investigates the development of imperial government and Grey's response to it as a Harringtonian and "Russellian" governor.

Chapter Nine relates the transformation of New Zealand's political system. It discusses Maori responses to settler constitutionalism and Grey's role in securing ministerial responsibility for native affairs at the start of his second New Zealand administration. If it was in New Zealand during his first governorship that Grey demonstrated the full scope of his policy, it was in New Zealand during his second term that this policy reached a culmination, through the devolution of responsibility for native affairs and in the attempted application of direct government upon Maori.

Chapter Ten, the Conclusion will complete the thesis' argument by providing a summary assessment of Grey's political thought in relation to his practice as a governor.

### *Methodology*

The New Zealand constitutional order and its historiography remain exceptional because of their reference to indigenous rights as expressed through the Treaty of Waitangi. A statement is required on how Grey and this thesis relate to modern Treaty of Waitangi historiography. It is now impossible to write 19<sup>th</sup> century New Zealand history without reference to the Treaty. There have been periods when the Treaty has been denied outright, affirmed, or conceded, or else respected yet considered redundant as a “Maori Magna Carta”.<sup>60</sup> What has been less obvious is how the status of the Treaty at any period for the parties concerned to it, has related to the political thought and practice of a period. As Grey was obliged to engage in Treaty commentary during his first New Zealand governorship, this thesis’ method in this respect must be declared and justified. Treaty hermeneutics however are no different from the historian’s specific task in the history of ideas. Grey’s despatches are now evidence for how British administrators regarded the compact. Interpretation may not arise from the text alone, as some scholars have proposed, because the text has been historicized and imposed upon, and is now the subject of Dworkinian legal interpretation and the doctrine of “moral fit”. Yet as Quentin Skinner has warned:-

“ I am only pleading for the historical task to be conceived as trying to think as far as possible as our ancestors thought and to see things their way. What this requires is that we should recover the concepts they possessed and the chains of reasoning they followed in their attempts to make sense of their world. What I cannot see is why this should be thought to require us to map their distinctions and the terms they used for expressing them on to the very different distinctions and expressions we happen to use ourselves.”<sup>61</sup>

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<sup>60</sup> McHugh, Paul , *The Maori Magna Carta: New Zealand Law and the Treaty of Waitangi* , Oxford University Press, Auckland, Oxford 1991.

<sup>61</sup> Skinner, Quentin, *Visions of Politics* v I “ Regarding Method” , Cambridge 2002 p. 47.

Since Grey then is alien to us, scholars may not presume on the apparent familiarity that the historiography of grievance reconciliation gives us. Historians and jurists share an historical interface in New Zealand colonial history as they inform policy-makers. Against the judicial arm of government as well as the legislature and executive, historians must insist upon the methodologies of historical hermeneutics against those who would consider the problems from the past ahistorically, or either lapse into teleological interpretation. Schools and traditions of indigenous rights discourse and of policy have developed in New Zealand. No historian however working in a tradition of commentary may claim “identity” with, or full understanding of, the texts.

“For the historian it is a basic principle that tradition is to be interpreted in a sense different than the texts, of themselves, call for”.<sup>62</sup>

Or as Joseph Raz states the same principle for jurists “ the meaning of the object is not in the object”.<sup>63</sup> In this sense, Treaty and despatch interpretation may not be confused with the originalist exercise of construing them “ad fontes”. Ricoeur further warns us that any text acquires “ an autonomous space of meaning which is no longer animated by the intention of its author”.<sup>64</sup> The historian’s intrusion into that space is to attempt to reconstitute original meaning and practice, not to manoeuvre the text for juridical or political manipulations.

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<sup>62</sup> Gadamer, Hans-Georg, *Truth and Method* , Joel Weinsheimer and Donald G. Marshall (trans), Sheed and Ward, London 1989, p. 332.

<sup>63</sup> Raz, Joseph , *Authority and Interpretation* , Oxford 2009, p. 228.

<sup>64</sup> Ricoeur, Paul, in Thompson, John B. (translated and edited), *Hermeneutics and the Human Sciences*, Cambridge, 1981 p. 174.

The chief sources for this thesis then will be the published official papers from the Colonial Office and from the Governor's Archive of the New Zealand National Archives, as well as supporting unpublished material from the CO 209 and other Colonial Office series. This is a thesis that seeks to contribute to the history of political ideas, not to traverse archives. Much archival research has been done in the past on Grey without reference to his political ideas, and that is in part due to the fact that the people in this thesis published their ideas in papers, books and memoranda, or delivered them avowedly in political speeches. People did not write each other tracts, in personal correspondence, especially when not on familiar terms, or over great distances. The genre of the despatch was sufficient for such communications. The despatch was a communication that was destined to appear published in the Parliamentary Papers, and therefore required extreme care in drafting. Even in those materials that do reveal his thinking, Grey could be discreet about both his influences and his targets. The historian's task to correlate Grey's statements to the indications he did give, that contemporaries gave of him, and to demonstrate a considerable degree of correspondence between Grey's ideas and the thinkers who influenced him. Personal correspondence referred to private or business matters between political agents who were not intimates or associates. Grey and his superiors were most definitely neither associates or intimates. The readily available published material and material on-line are the best places to start for a first history of ideas on Sir George Grey.

It is time that these were read with care as policy documents and as policy conversation and as documents expressive of political thought even if Grey wrote to dissemble and mislead at times. Grey's despatches will be read and analysed for the

purposes of a history of political ideas, instead of for purely administrative history or for Treaty of Waitangi historiography. This thesis will also undertake the review of the literature that formed Grey and in which he in turn participated for his policy. The methodology for interpreting them will be a Skinnerian history of the political ideas of colonization. Quentin Skinner's discussion of the hermeneutic which he derived from J.L. Austin and Wittgenstein has previously been deployed in Oxford DPhil theses for histories<sup>65</sup> into colonial political thought, to propose more sophisticated accounts of how political ideas and political practice interact other than on a crude bond of cause and effect.

Skinner remarks:-

“To recover the nature of the normative vocabulary available to us for the description and appraisal of our conduct is at the same time to identify one of the constraints on our conduct itself. This in turn suggests that, if we wish to explain why social agents concentrate on certain courses of action while avoiding others, we are bound to make reference to the prevailing moral language of the society in which they are acting.”<sup>66</sup>

Moral language however is admitted to be multiple. It is the argument of this thesis that Grey was not an independent inventor, such as a “classic” political thinker would be, but drew on and interpreted a particular repertoire of political languages. As

Skinner proceeds to argue:-

“ We need, in short, to be ready to take as our province nothing less than the whole of what Cornelius Castoriadis has described as the social imaginings, the complete range of inherited systems of representation that constitute the subjectivity of an age.”<sup>67</sup>

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<sup>65</sup> Wilson, J.E. , “Governing Property, Making Law:- Land, Local Society, and Colonial Discourse in Agrarian Bengal, c 1785-1830” University of Oxford, 2001.

<sup>66</sup> Skinner, Quentin, *Visions of Politics: v. I Regarding Method*, Cambridge University Press 2002, p. 174.

<sup>67</sup> Skinner, Quentin, *op. cit.*, p. 102.

Skinner's discussion of J.L. Austin accounts for Grey as an active and thinking political agent who gave himself to be both understood, and misunderstood in his statements and productions.<sup>68</sup> Words are not just performative of various rhetorical operations, they "do" and accomplish things in themselves. Skinner particularly distinguishes the force of such statements from their operation, which is a valuable distinction for as sophisticated and controversial and complex a political agent as Sir George Grey,<sup>69</sup> with a reputation for mendacity.

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<sup>68</sup> Skinner, Quentin, *op. cit.*, pp. 103- 122.

<sup>69</sup> Grey has been frequently accused of lying, yet even a lie is a speech performance which an historian must assess.

## Chapter One

### The Policy of Sir George Grey

The primary claim that can be made for Grey is that he succeeded Sir William Johnson and preceded Sir Henry Sumner Maine and Lord Lugard as an “architect” of racial policy in the colonial empire outside of British South Asian possessions. The Report in 1837 of the Select Committee on Aboriginal Affairs reaffirmed the segregationist native protection model. The Report referred to the Charles II’s Letter of 1670 to the Council of Foreign Plantations as the source of its own policy, as the source of the British policy tradition towards indigenes.<sup>1</sup> This model had been the policy of Sir William Johnson’s Appalachian Protectorate where the regime was that of native protection by segregation from settlers and exclusion from British law. The Appalachian Proclamation of 1763<sup>2</sup> and the Appalachian Protectorate over Six Nations Indians expressed this policy. Segregationist native protection remained the model for the Eastern Cape after the British resumed government of the Cape Colony in 1806,<sup>3</sup> and provided the paradigm for the Report of the Select Committee on Aboriginal Affairs of 1837. It had by Stockenstrom’s admission lapsed in the Eastern Cape, but he argued for its revival.

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<sup>1</sup> Report of the Select Committee on Aborigines, G.B.P.P. [425] 26 June 1837, p. 4.

<sup>2</sup> Brodhead, John Romeyn, and O’Callaghan, E.B., (eds.), *Documents Relative to the Colonial History of the State of New-York: Procured in Holland, England, and France*, Weed, Albany New York, 1856.

<sup>3</sup> *British Parliamentary Papers*, “Report from the Select Committee on Aborigines (British Settlements) Together with Minutes of Evidence Appendix” Irish University Press Series of *Great Britain Parliamentary Papers* in volume “Anthropology Aborigines 1” ; the evidence of Andries Stockenstrom 14 August 1835 pp. 43- 45 paragraphs 519- 528 proves the existence of a “legal boundary” like the Appalachian Model on the Eastern Cape after 1808.

Native protection by segregation and proclaimed frontiers constituted a “family” of policies and regimes, that all resembled one another. Sir William Martin the Chief Justice of New Zealand argued in 1847 for the Appalachian Proclamation as the model that informed Treaty of Waitangi New Zealand in his pamphlet *England and New Zealanders*.<sup>4</sup>

Grey’s policy however was one of “legal integration”,<sup>5</sup> of “strict application”<sup>6</sup> of British law upon protected indigenes, of the dissolution of frontiers, and of the amalgamation of indigenes into the settler workforce and markets so that they would qualify for civil rights in a colony. Grey’s policy apparently answered requirements for the management of the frontiers, as well as accounted for how both land and labour would be procured from indigenes by settler colonies growing out of the bridgeheads<sup>7</sup> and beachheads. It possessed then considerable power of explanation. Amalgamationist policy was in turn succeeded during the 1870s-90s by the policy of “indirect rule”, which offered efficiencies in government for colonial governments in the tropics that needed to secure collaboration from indigenous leaders as well as create labour reserves in tribal districts that could be tapped when plantations and mining industries required. This spread to white settler colonies. Whereas this latter policy is associated with Lord Lugard, it might in fact be appropriate to associate the jurist Sir Henry Sumner Maine with it, on account of his juridical rehabilitation of

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<sup>4</sup> Martin, William, *England and New Zealanders: Part I. Remarks upon a despatch from the right hon. Earl Grey to governor Grey. Dated December 23 1846*; Bishop’s Auckland, College Press 1847, pp. 22-24.

<sup>5</sup> Mamdani, Mahmood, op. cit. p. 63.

<sup>6</sup> Ward, Damen, op. cit., p. 47.

<sup>7</sup> Darwin, John, “Imperialism and the Victorians:- The Dynamics of Territorial Expansion” *English Historical Review*, June 1997, p. 629.

indigenous custom for the purposes of indirect rule,<sup>8</sup> and also Sir Arthur Gordon out in the field, who applied it in 1870s Fiji.<sup>9</sup>

Yet once this distinction is made, a warning must be made. These alternatives might have seemed clear to Grey as public policy alternatives. It is another question to consider the comprehension and motives of his contemporaries and superiors in supporting him. It would be a mistake to make them “canonical”, without qualification. Grey’s policy of amalgamation was one of several projects for assimilation. The Aborigines Protection Society envisaged common polities with distinct settler and indigenous citizens. Edward Gibbon Wakefield re-imagined or else misunderstood the changing role of chiefs in Maori society to propose that they sat in a New Zealand nominated upper chamber, as if they were peers of the realm. Such a proposal may be compared with Spanish co-options of Aztec and Inca royalty within the castes and land tenure and heraldries of Spanish America.<sup>10</sup> Grey’s was the one that came into effect however, and that was because he obtained the means of power to do so. The language of the Buxton Report was conservative, in its suggestions, flashbacks to, and extrapolations from, the Appalachian protectorate. Such conservatism did not exclude however “temporisation” with a view to assimilation. Grey was expressly commended by the Aborigines Protection Society for his “temporising”. American practice as proposed by Thomas Jefferson was assimilationist, whereas “assimilation” had become a fashionable concept in British public debate in the 1830s and 1840s. This thesis proceeds on the basis that the

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<sup>8</sup> Mamdani, Mahmood, op cit., p. 63.

<sup>9</sup> Chapman, J.K., *The Career of Arthur Hamilton Gordon, First Lord Stanmore 1829-1912.*, University of Toronto Press, Toronto, 1964, pp. 155- 233.

<sup>10</sup> Elliott, J.H., *Empires of the Atlantic World : Britain and Spain in America 1492-1830*, Yale University Press, New Haven 2006, p. 359.

Buxton Report's reaffirmation of British North American native administration was accompanied by dissenting discussions concerning a new programme of pro-active policy of assimilation in settler colonies. Some proponents such as Grey critiqued the report, directly, though without mentioning it, while others, like Louis Alexis Chamerovzow of the Aborigines Protection Society, held both propositions in mind at the same time, the Buxton Report with its reaffirmation of the British policy from 1763, and "assimilation",<sup>11</sup> though for the Aborigines Protection Society, assimilation would occur into a single political society, not a fusion of races.<sup>12</sup> The bridge between the two was the "temporising" that Grey practised, with "sagacity" and "skill".<sup>13</sup> Indeed Grey was the proponent of assimilation most like the American Democrat leaders, it was he who offered analysis of frontier security and of ethnography, and who furnished the management plan for a radical dissolution of indigenous peoples within settler colonies, without any such half-way houses as native districts or chiefly rule, as his rivals proposed. "Native Protection" then was an alliance of interests and ideologies, which Grey managed to capture for a radical programme of social transformation in three sets of colonies, Australia, New Zealand and Southern Africa. It was in New Zealand that the full trial in strenuous military and political conditions was carried out, with consequences that affect New Zealand's constitution, law, politics and race relations to this day. What then may have struck Grey as a contrast, or even ourselves in retrospect, was in fact rather more oblique and internecine to interested British contemporaries. That said, Grey the assimilator was

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<sup>11</sup> Chamerovzow, Louis Alexis, *The New Zealand Question and the Rights of Aborigines*, London 1848, pp. 214-216.

<sup>12</sup> Sinclair, Keith, "The Aborigines Protection Society and New Zealand – A Study in nineteenth century opinion", unpublished thesis, Auckland University Library, Auckland pp. 69-71.

<sup>13</sup> Chamerovzow, op. cit., p. 335.

the great inverter of the Buxton Report and of Sir William Johnson's policy in colonial America, while sharing Johnson's skills and ethnographic concerns.

Grey remains a controversial personality, for his policy and conduct as a colonial governor, as well as his character. The business of this thesis is to assess him for the first time as an intellectual in public policy, specifically as a soldier-savant in the Colonial Service, so as to identify his policy and explain its consequences. Grey's achievement was to integrate strategic theory, ethnography, constitutional thought for a policy of racial amalgamation, and for a constitutional order that would impose and express that amalgamation. The constitutional order which his autocracy prepared for, was that of capacitarian liberalism<sup>14</sup>, upon both indigenes and settlers, according to their different stages of social development. If indigenous peoples were to gradually participate in the settler civic sphere at the expense of their own customs and institutions, settlers for their part were to be trained to succeed him in the same "humanitarian" policy. As Alan S. Kahan observes:-

"Through the language of capacity, liberals legitimated their own claims to power and disqualified their competitors; with it they drew the lines which marked the boundary between those entitled to participate in politics, and those not yet so entitled."<sup>15</sup>

### *Grey and the Constitution of the Empire*

Grey's policy was revolutionary towards imperial institutions and not just towards indigenous ones. The first statement of his programme was the Port Louis

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<sup>14</sup> Kahan, Alan S., *Liberalism in Nineteenth Century Europe:- the Political Culture of Limited Suffrage*, Basingstoke, Palgrave Macmillan 2003, p. 6.

<sup>15</sup> Kahan, Alan S., *op. cit.*, p. 6.

memorandum<sup>16</sup> which he sent to Lord John Russell the Colonial Secretary from Mauritius in 1840. It amounted to a thorough-going dissent from the “official” humanitarian policy of native protection as expressed in the *Report* of the Select Committee on Aboriginal Affairs of 1837, that had informed the instructions for the Treaty of Waitangi and the annexation of New Zealand in 1840. Grey’s policy captured the monarchical “constitution of the empire”<sup>17</sup> for amalgamationist policy that had previously been the resort of settler intelligentsias in colonial America and in Tudor and Stuart Ireland against Crown agents. Whereas American settler leaders such as Thomas Jefferson had argued for amalgamation against the segregationist policy of native protection of the Appalachian Protectorate, Grey proposed and practised the policy of amalgamation as a colonial governor, not as a settler leader. Crown colony government under the prerogative was to become the fulcrum for amalgamation, devolving the policy in turn to the settler polity.<sup>18</sup>

Grey’s capture of the prerogative for the policy of racial amalgamation was not out of step with the constitutional model to which the British decided to devolve by the 1850s, after consideration of alternatives that followed on from the publication of the Durham Report in 1839.<sup>19</sup> The mode of devolution was first devised in Canada, then ventured elsewhere at varying rates. In the Canadian context, the gubernatorial initiation of money bills was intended to stimulate settler representatives to assume

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<sup>16</sup> Grey, George ,op. cit., pp. 43-47.

<sup>17</sup> Hulsebosch, Daniel, *Constituting Empire:- the Transformation of Constitutionalism in the Atlantic World 1664-1830*, University of North Carolina Press, Chapel Hill 2005, pp. 75-78.

<sup>18</sup> Wight, Martin, *The Development of the Legislative Council 1606- 1945*; in *Studies in Colonial Legislatures* Marjery Perham (ed), Faber and Faber London 1946 p. 31, pp. 37-38, pp. 56-57.

<sup>19</sup> Lucas, Sir Charles Prestwood (ed.), *Lord Durham’s Report on British North America* v. iii, Clarendon Press, Oxford, 1912 [ 1839].

full “responsibility” by taking over the Executive through the instrument of the viceregal Executive Council.<sup>20</sup> Governors were to appoint ministers to the Executive Council who possessed the confidence of legislatures. Party politics were to be developed. It is no contradiction that sovereignty and prerogative theory attained their fullest development in the century when the doctrine of parliamentary sovereignty was so pronounced and when franchise extension was occurring. Executive powers were never more plenary in description and in assertion than when they were to be exercised by a sovereign’s responsible ministers, whether those ministers were governors and Colonial Secretaries or when those powers were abdicated by devolutions to colonial ministers.

Grey anticipated with success in the 1840s the constitutional development of settler colonies, and defined the native policy and constitution that best suited his analysis of the settler colony economy and its security requirements. Grey instituted amalgamationist regimes of native administration in New Zealand and South Africa. Australia and Canada were to adopt similar methods of amalgamation while supposedly “protecting” indigenous minorities that persisted with traditional lifestyles and social norms. Grey’s system for New Zealand encountered a not-unexpected crisis in the 1860s,<sup>21</sup> where Grey returned in 1861 to ensure the completion of his

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<sup>20</sup> Buckner, Phillip A., *The Transition to Responsible Government:- British Policy in British North America, 1815-1850* ; Greenwood Press, Westport, Connecticut 1985, p. 258.

<sup>21</sup> Merivale, Herman, op. cit., p. 514 for assessment of the probability of indigenous hostilities in settler colonies; and see note endorsing Grey:- “ It is an unusual instance of the fitness of the man for the post, that both these dependencies [ “South Africa” and New Zealand] have been governed in succession, by the man in our times who has displayed the most special talent for this purpose”.

Merivale, Herman, op. cit., p. 518 “ Does the wealth of the Empire, or, if you will, of the mother country, gain by the faster development of a colony under military

programme. In the Eastern Cape between 1855-58 he encountered conditions of rinderpest plague and social stress and religious expectation that provided him with the context for the conversion of systems of racial “differentiation” into those which supposedly increased racial “identity”. In either colony, as there were significant numbers of highly organized and militarised indigenes, a crisis was required for enforcement, whether anticipated or else discovered through events.

Grey’s government of New Zealand exemplified his policy. If Western Australia was where Grey practised ethnographic observation, gaining experience as a resident magistrate, South Australia was where he learned to be a colonial governor. South Africa and the Eastern Cape represent “the height” of his career, for both status and catastrophic impact on indigenous peoples. The first New Zealand governorship however represents Grey’s first exercise of the array of skills required to practise both amalgamationist racial policy and yet to contribute as a “constitutionalist” to New Zealand’s devolution to responsible government. The constitutional statutes on which Grey advised were the New Zealand Government Act 1846 and the New Zealand Constitution Act 1852.<sup>22</sup> Grey was thereafter to identify himself as a constitutionalist as well as the practitioner of racial amalgamation. Grey visited his New Zealand policy upon the Eastern Cape in 1855<sup>23</sup>, and then inflicted the policy that he had applied in the Ciskei upon the Waikato in 1863 at the outbreak of the Waikato War. Grey returned to New Zealand in 1861, determined to fully implement the logic of the *N.Z.C.A. 1852*, by imposing an amalgamationist system of native administration upon

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protection, more than it loses by the expense of that military protection?”. Merivale answers in the affirmative.

<sup>22</sup> *An Act to Grant a Representative Constitution to the Colony of New Zealand*, 15 and 16 Vict., cap. 72 ; in McLintock, op. cit., pp. 417-433.

<sup>23</sup> Macmillan, W.M., *Boer, Bantu, and Briton : The Making of the South African Native Problem* Faber and Gwyver, London, 1929 p. 293.

Maori, and by imposing full devolution to responsible government upon the New Zealand Government.

Grey's native policy and constitutionalism entirely revised the Treaty of Waitangi native protectorate. One may indeed speak of a Maori "protectorate" in New Zealand, even if it could not be territorially described in latitude and longitude like the Appalachian Protectorate had been.<sup>24</sup> Sinclair asserted that more existed than a Native Protector and his office.<sup>25</sup> Sinclair understood it both as a service, and by extension the people it "protected". Belich refers to the "nominal sovereignty" that the Crown actually possessed over Maori, as distinct from the "substantive sovereignty" that British officials might have pretended to.<sup>26</sup> Grey intended the Protectorate to become redundant. In his judgement, conversion from autonomy was inevitable for indigenous peoples who came under British protection, regardless of whether the humanitarian protectors were segregationists or assimilationists. Segregationists preferred native districts and district commissioners, rejecting legal integration, while assimilationists preferred resident magistrates whereby indigenes came under colonial law<sup>27</sup>. In either case, indigenous sovereignty was compromised and then converted from the autonomy inherent in the model of the original Appalachian protectorate into an actual native administration that sought to make indigenes subjects of the colonial state. Grey in any case came to use both magistrates and commissioners in the Eastern

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<sup>24</sup> Johnston, W. Ross, *Sovereignty and Protection: A Study of British Jurisdictional Imperialism in the Late Nineteenth Century*, No 41 Duke University Commonwealth-Studies Center, Duke University Press, Durham North Carolina 1973, pp. 28-30.

<sup>25</sup> Sinclair, Keith, *The Origins of the Maori Wars*, Oxford University Press, Auckland University Press 1957 p. 37 :- " Instead of the Protectorate being improved as its officers gained experience, or as better officers were appointed, the organization came to a stop."

<sup>26</sup> Belich, James, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland University Press 1986, p. 21.

<sup>27</sup> Ward, op. cit., pp. 201-206.

Cape in 1855 and in New Zealand in 1861, as instruments for the enforcement of British law.<sup>28</sup>

### *Grey and Frontier Policy*

The development and application of Grey's policy is the concern of this thesis. Grey was educated at the Royal Military Academy, Sandhurst. He became familiar with the strategic theory of Antoine-Henri Jomini ( 1779-1869) who enjoyed a pre-eminent reputation in military science before Clausewitz's reputation became ascendant after the Franco-Prussian War. It is to be understood however that the British Army as an institution long remained impervious to military theory. Napoleon had after all been defeated without it. Nonetheless a small sect in a military intelligentsia adopted Jominian strategic thought. William Patrick Napier ( 1785-1860) , the brother of Sir Charles Napier, published an Edinburgh Review article in 1821 on Jomini. Lieutenant J. Gilbert published an abridged account of Jomini's theories in the standard military texts series, xxx in 1828. It is surely insignificant that Napier published in the leading Whig review, at a time when Lord Liverpool was prime minister and the Duke of Wellington dominated the Army. Would-be Army reformers sought allies among the Whigs.

Jomini was to have considerable influence on the colonial frontiers of empires and expansionist states. His work was translated at West Point by 1817. He was to provide a basic education in strategic theory for the American Civil War generation of

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<sup>28</sup> Peires, J.B., op. cit., p. 63.  
Sinclair, Keith, op. cit., pp. 241- 42.

commanders. Jomini himself was in the Russian service from 1813-1869, and Russia was a power with frontiers in Central Asia and the Balkans to overcome. Although not at all dominant in the British Army, he remained a resource that intelligent and thoughtful officers could draw upon. For example Patrick MacDougall resorted to Jomini to make sense of the Crimean War he found himself fighting in. Grey for his part had colonial frontiers to manage. He argued conjointly for the dissolution of frontiers and the amalgamation of the indigenous peoples upon them. His native policy was based on a strategic policy, and the ethnography that supported it identified “culture” and “customs” as the inhibitions upon indigenous development. No one will find Grey overtly espousing Jominian doctrine in his official papers. Hew Strachan referred to a weight of prejudice in the Army against this mode of thought.<sup>29</sup> Nevertheless a military intelligentsia was interested in Jomini. Napier was to become famous as the author of the *History of the War on the Peninsula*. Gilbert offered a vision of war as pure geometry. As Grey especially distinguished himself in mathematics as well as on ethnography, he too can be considered a military intellectual. It was possible for him to offer an analysis of the colonial frontier from first principles, without name-dropping “authorities”, and this is what Grey did in the Port Louis paper, and moreover carried out on indigenous frontiers throughout the Southern Hemisphere.

The radical feature of Jominian theory for colonial policy was Jomini’s insistence upon the dissolution of frontiers that were not themselves difficult natural obstacles and upon the dispersal of bodies of indigenes. Instead of insisting that frontiers be held on which indigenes could congregate and through which transits were

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<sup>29</sup> Strachan, Hew, “Soldiers, Strategy and Sevastopol” in *The Historical Journal*, 21, 2 (1978) pp. 303-325.

supposedly concentrated and controlled, Grey argued in his Port Louis Memorandum for the collapse of frontiers, for the dispersal of indigenes within the settler colony and for their absorption within the settler economy, and eventually the settler polity. This policy of racial amalgamation was in fact the American settler policy<sup>30</sup> espoused by Thomas Jefferson against Crown policy after the Seven Years War and then practised by him during his presidency.<sup>31</sup> His Secretary of the Treasury, Albert Gallatin a Swiss émigré provided the ethnography<sup>32</sup> for this strategy and for this policy with his great review of Indian tribes and languages, the *Synopsis*. Furthermore this American settler tradition of dissent against the Crown agents' policy of native protection within native protectorates, has its antecedents in Tudor and Jacobean Ireland where Edmund Spenser<sup>33</sup> and the Irish Solicitor General Sir John Davies<sup>34</sup> insisted that pacification could only occur if the law and property institutions of the native Irish were replaced by those of the settlers.

Grey's achievement was to consolidate these disciplines and policy traditions into a programme for Crown agents in the Colonial Service. He had achieved this by 1840 in his Port Louis Memorandum dissent against the *Report* of the Select Committee on Aboriginal Affairs that recommended the revival of the Appalachian Protectorate

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<sup>30</sup> "Philo-Indicus", *Gentlemen's Magazine*, XXXIV, (1763), pp. 125-7.

<sup>31</sup> Wallace, Anthony F.C., , *Jefferson and the Indians:- The Tragic Fate of the First Americans* , Bellknap Press of Harvard University, Cambridge Massachusetts 1999.

<sup>32</sup> Gallatin, Albert , *Synopsis of North American Tribes within the United States East of the Rocky Mountains and in the British and Russian Possessions in North America*, AMS Press, New York 1973, [ 1836] originally published in "Archaeologia Americana:- Transactions and Collections of the American Antiquarian Society".

<sup>33</sup> Spenser, Edmund, *A View of the State of Ireland, written by way of dialogue between Eudoxus and Ireneus*, Dublin 1763, originally written 1596 published 1630.

<sup>34</sup> Davies, Sir John ; *A discoverie of the true causes why Ireland was never entirely subdued, nor brought under obedience of the crowne of England until the beginning of His Majesties happie raigne, James 1<sup>st</sup>* , Dublin, printed for Richard Watts and Laurence Flin, 1761.

policy from the Appalachian Proclamation of 1763, and of the Eastern Cape policy after 1808. In other words, Grey had converted the settler dissentient tradition of racial amalgamation into the Crown agents' policy. Instead of challenging the Crown and the doctrine of the royal prerogative to conduct such a policy of racial amalgamation in the settler interest, Grey proposed to capture the "constitution of the empire" and the prerogative for this purpose. The alleged benefits were pacification of the frontier, and a humanitarian policy of racial integration,<sup>35</sup> rather than segregation and demographic decline.<sup>36</sup> Instead of dedicating military resources to holding a line against which indigenes would constantly project themselves whenever disputes broke out, imperial officials should collapse the frontier, render it porous, so that indigenes could be absorbed and dispersed into the settler economy and polity.<sup>37</sup>

A frontier in Grey's analysis only provoked war, since the native protectorate policy after the Seven Years War was premised on segregation, prohibiting settlement across the frontier, and permitting trade and missionary work only under license. Borders he demonstrated, produced concentrations of indigenes on the very limits that were supposed to separate settlers and indigenes from one another. Mission stations concentrated them in borderlands. As land-hungry settlers would always be moving into marcher-lands, and as settlers and indigenes would always compete for resources

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<sup>35</sup> Grey, George, "Report" (1840) in *Journals of Two Expeditions of Discovery in North-West and Western Australia, During the Years 1837, 1838, and 1839, Under the Authority of Her Majesty's Government. Describing Many Newly Discovered, Important, and Fertile Districts with Observations on the Moral and Physical Condition of the Australian Inhabitants*, T. and W. Boone, London 1841, pp. 375-379 paragraphs 6-14; and p. 382 paragraph 32.

<sup>36</sup> Sheehan, Bernard, *Seeds of Extinction: Jeffersonian Philanthropy and the American Indian*, University of North Carolina Press, Chapel Hill 1973, p. 2.

<sup>37</sup> Grey, George, "Report" (1840) in *G.B.P.P. Correspondence Respecting the Colonisation of New Zealand 11 May 1841* [ 311] paragraph 14 on p. 44, paragraphs 30 and 32 on p. 46 and paragraph 34 on p. 47.

and test each other's mettle, Grey argued for the dissolution of the border, the strict application of British Law and the induction of indigenes into the settler colony and for management of the ethnic melee that would inevitably occur.

The thesis argues that Sir George Grey's strategic theory and ethnographical researches informed his native policy and his constitutional design for 19<sup>th</sup> century settler colonies. Policy aside, the intellectual disciplines to which Grey made a significant contribution were ethnography, in which he acquired an international reputation from publications between 1841 and 1883,<sup>38</sup> and colonial constitutionalism. He practised these disciplines as components of his strategy and policy of racial amalgamation. After Oxford University's conferral of an honorary doctorate of Laws in 1854 to acknowledge his contribution to the New Zealand Constitution Act 1852, Grey particularly identified as a constitutionalist, a role that was especially prized and internationally esteemed in 19<sup>th</sup> century politics. The distinctive intellectual activity of George Grey for a history of political ideas, is the specific ambition which he manifested to become the military strategist, the ethnographer, the "law-giver" and constitutionalist, for a colony.<sup>39</sup> Grey strategized and ethnologized to constitutionalize, and what he sought to strategize and ethnologize and constitutionalize for, were the redundancy of the indigenous order and the absorption of indigenes into settler markets and polities.

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<sup>38</sup> Grey, Sir George, *Nga Moteatea: me nga hakirara o nga Maori*, Wellington, printed by R. Stokes, 1853; see also - Grey, Sir George, *Polynesian Mythology and ancient traditional history of the New Zealand race as furnished by their priests and chiefs*, John Murray London 1855.

<sup>39</sup> Grote, George, *History of Greece* Ernest Rhys (ed.), J.M. Dent, London, 1907 [1846-1856], v. IV chapter XXII p. 157 and v. V p. 121.

*Grey and Humanitarian Policy*

Grey remained a monogenist in ethnography, who argued for the common origin of humankind, and insisted upon a potential equality between all humans, which only institutional and economic development accomplished. Culture, not race, was the enemy. Amalgamation was the destiny that humanitarians proposed for black slaves after the Abolition of Slavery in 1833, or least their gradual incorporation as free agents into market, and then eventually, civic institutions.<sup>40</sup>

The abolition movement and the native protection movement were broadly coeval, commencing as public issues in the 1760s and culminating in the 1830s. Evangelical Reformers adopted for indigenes however a version of the “Orientalist” solution in India of segregation and protection of indigenous institutions and customs.

Evangelical Anglicans had been the only missionaries permitted by Sir William Johnson in Appalachia.<sup>41</sup> A life-long abolitionist and later an opponent of “black-birding” in Queensland, Grey rather proposed the Utilitarian solution of the abolition of indigenous institutions and their replacement by British law and direct government.<sup>42</sup> In other words the fate of indigenous peoples was to be the same as that of black emancipees, supposed absorption into the settler colony. That absorption was to proceed by stages of development.<sup>43</sup> Granville Sharpe’s foundation of Sierra

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<sup>40</sup> Sierra Leone was the first colony of this kind precariously founded in 1787.

<sup>41</sup> O’Toole, Fintan, *White Savage:- William Johnson and the invention of America*, London, Faber, 2005, p. 274, pp. 309-311.

<sup>42</sup> Mill, James, *The History of British India* ( edited and continued by Horace Hayman Wilson) Book II Routledge/Thoemmes London 1997 [1817], pp. 107- 164. Majeed, Javed, “James Mill’s The History of British India; The Question of Utilitarianism and Empire” in *Utilitarianism and Empire* Bart Schultz and Georgios Varouxakis ( eds) Lexington Books Oxford 2005 pp. 93- 102.

<sup>43</sup> Merivale, Herman, op. cit., p. 511 and see note on Grey.

Leone in 1787 as a colony for both white settlers and emancipees prefigured Grey's conception of the settler colony. Black emancipation and a settler dissenting tradition that insisted upon amalgamation and not segregation were the two different policy traditions that combined in Grey's policy.

Reality meant however that Grey had to work with the native protectorate system recommended as British global policy by the 1837 *Report* of the Select Committee on Aboriginal Affairs, also known as the "Buxton" Committee. He had to work with a policy culture that was not radical or ideological or partisan, in the ways he was. This policy established British government in New Zealand under the Treaty of Waitangi<sup>44</sup> and Governor Hobson's Royal Instructions.<sup>45</sup> Grey as this thesis will demonstrate was able to work with the Treaty while intending its redundancy, despite his criticisms of the recommendations of the 1837 Select Committee on Aboriginal Affairs and his dissent from the policy of the Appalachian Protectorate policy of 1763. He was a persistent and proactive temporiser. Although Grey resembled the Appalachian native protector Sir William Johnson in many ways, his ultimate aim was not to move Maori onto reservations as land was progressively acquired for settlers, allowing them to continue their mode of life or develop on their own terms as users and consumers of 19<sup>th</sup> century technology, but to absorb them into settler society. Grey was a temporiser whose policy and constitutions operated to bring about a revolutionary process of redundancy conversion and induction of indigenes. In other words like Chamerozvov's other hero, Napoleon III, Grey was an exponent of the coup d'etat, and of a *Realpolitik*. Capable of acknowledging an institution or a policy

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<sup>44</sup>Orange, Claudia, *The Treaty of Waitangi*, Wellington, Allen and Unwin, 1987.

<sup>45</sup> Marquis of Normanby to Captain Hobson R.N. 14 August 1839, *G.B.P.P. Correspondence Relative to New Zealand* 8 April 1840 [238] pp. 37-42.

as a status quo or starting point, he worked to convert them to his own amalgamationist programme. For all Grey's reputation for exaggeration and mendacity, he was capable of holding two different propositions in his mind, so long as a conversion from one policy to another could be achieved. He was entirely capable of accepting native protection as starting point, and of appearing to maintain such a system, while in fact working towards the dissolution of protectorate zones.

The ambiguity that Grey worked with between systems of native administration reflected the transition from a mercantilist to a Free Trade British Empire in his early career, as Peel repealed the Corn Laws and as the Navigation Acts were abolished. Segregation policy such as the Appalachian Protectorate had been the concomitant of mercantilism. Crown agents used the prerogative to ensure that the British interest remained paramount, whether it required the protection of British shipping and business interests or the protection of indigenes from settler pressure, so as to prevent frontier embroilments. The Free Trade Empire discovered its policy for native administration in amalgamation, not in protection and segregation. If, as the 3<sup>rd</sup> Earl Grey argued, the value of the empire lay in its colonial markets for British goods, indigenes who had been assimilated would presumably become consumers with higher earning power than if they remained segregated in forests and wildernesses.<sup>46</sup>

#### *Grey and the New Zealand Constitution*

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<sup>46</sup> Grey, Henry George, 3<sup>rd</sup> Earl Grey, *The Colonial Policy of Lord John Russell's Administration* 2 vv., R. Bentley London 1853 v. I. pp 15-16.

Ged Martin has reviewed the entire process of the development of responsible government in Canada.<sup>47</sup> The inception of responsible government in imitation of Westminster after the Union of the Canadas Act 1840 became the model for devolution to settler responsible government elsewhere by 1849. This hazardous process was an empirical one and far from predetermined. A curiosity of the New Zealand historiography on the *N.Z.C.A. 1852* is that it has not been reviewed in Canadian contexts. The relevant context for comparison lies in the gradual transitions to responsible government, attained in Nova Scotia by 1848 and in the united Canadian provinces by 1849. In New Zealand responsible government began in 1856, though full devolution for native affairs only occurred early in Grey's second New Zealand term. The *N.Z.C.A.* and Grey's contribution to it warrant separate analysis. A constitutional study should identify unique features to the outcome since the Act was far more complicated than the Australian Colonies Government Act 1850. The *N.Z.C.A.* attempted several tasks which Canadian, Australian and Cape Colony constitutional statutes never attempted. This thesis analyses this circumstance for the first time.

In the first instance the *N.Z.C.A.* "constituted", or rather constitutionally expressed the native policy of amalgamation, which Grey and settler ministries brought into full operation by the commencement of war in 1863, the war undertaken to enforce the Act on the Waikato, Taranaki and other resisting tribes. Canadian statutes between 1791 and 1867 attempted nothing of the kind. Secondly the *N.Z.C.A.* devised the

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<sup>47</sup> Martin, Ged, *The Durham Report and British Policy:- A Critical Essay*, Cambridge University Press, 1972.  
 Martin, Ged (ed.) *The Causes of Canadian Confederation*, Acadiensis Press, Fredericton, New Brunswick, 1990.  
 Martin, Ged., *Britain and the Origins of Canadian Confederation 1837-1867*, Macmillan, Basingstoke, 1995.

institutions of representative government, just as other colonial constitutional statutes and ordinances did. Thirdly the Act created subsidiary provincial governments. These governments had to be subordinated to the central government. In no other colony was the debate over “municipalism” played out so thoroughly as in New Zealand between 1846 and 1876, in debates over subsidiary and provincial governments. Fourthly waste lands were devolved to the colonial government, which was in fact a first step towards rendering up the Crown’s right of pre-emptive purchase of Maori land. New Zealand’s statute was exceptional among its contemporaries for this combination of features.

### *Grey and the Constitutional Context*

The Treaty of Waitangi however is now invoked and debated in the latest phase of constitutional development in New Zealand.<sup>48</sup> Australia and South Africa have also responded to the new wave of global indigenous law. Grey regarded himself as a constitutionalist for his contributions to the *N.Z.C.A.* . This thesis proposes to deepen the meaning of this identification. Grey was one among several contributors to the process of drafting the Bill. His was the most important policy contribution however, and that was not just for previously noted contributions such as New Zealand’s provincial system or for negative contributions such as encouraging the British Government to suspend the New Zealand Government Act 1846, nor even for his firm management of settler politics, his take-over of the native protectorate, or for

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<sup>48</sup> Williams, David V., “ Te Tiriti o Waitangi – Unique relationship Between Crown and Tangata Whenua?” in I.H.Kawharu (ed.) , *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi*, Oxford University Press, Auckland, Melbourne, Oxford, New York, 1989, pp. 64- 91.

predetermining the eventual Act with his own legislative council ordinances. Grey's chief contribution is that he undertook constitutional activity, for the native policy of amalgamation, for legal integration to occur, for indigenous institutions to be repealed or supplanted, for civic rights to be progressively granted to indigenes on such terms. Settlers for their part were to accept responsibility for continuing the same policy of amalgamation. Emphasis on the agenda of racial integration has been entirely missing from purely formal or political discussions of Grey's constitutionalism to date.

The caveat to this is that Grey was privileged as few colonial governors were, to participate in constitutional conversation with the leading Whig constitutionalists of his generation. He was not an "ordinary" governor, as Earl Grey informed him.

<sup>49</sup>Constitutionalists proper were not just in-house experts or intellectual associates, but great Whig political magnates who assiduously cultivated constitutional and intellectual reputations in the Foxite tradition, politicians to whom Grey deferred, such as Lord John Russell and the 3<sup>rd</sup> Earl Grey, political and social superiors who were also ambitious for an intellectual and literary reputation.<sup>50</sup> Indeed they vied with one another as constitutionalists.<sup>51</sup> Even with respect to intellectual collegiality, Sir George Grey had to persuade and convince deferentially if he was in turn to obtain their condescension.

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<sup>49</sup> Earl Grey to Grey (private) 26 February 1848, Grey MSS, Auckland Public Library.

<sup>50</sup> Bord, Joe, op. cit., pp. 31- 55 esp. p. 43.  
Collini, Stefan, Winch, Donald and Burrow, John, *That Noble Science of Politics* Cambridge University Press 1983 p. 30.

<sup>51</sup> Russell, John, *An Essay on the History of the English Government and Constitution: from the reign of Henry VII to the Present Time*, Longman, Hurst, Rees, Orme and Brown, London 1823.

Grey, Henry George, 3<sup>rd</sup> Earl, *Parliamentary Government Considered with Reference to a Reform of Parliament*, Richard Bentley London 1858.

In so far as Grey was the man of a “moment”, he belonged to the process whereby the British Government and Colonial Office considered how to devolve representative government to its settler Crown colonies in the aftermath of the Durham Report. Grey’s chief contribution occurs in the 1840s and early 1850s, when alternatives to both 17<sup>th</sup> century charter models and to Westminster itself, were considered in Colonial Office circles. Whereas the British constitutional paradigm after the Reform Act demanded the development of civic capacity among metropolitan subjects and the induction of those qualified into the mysteries of Parliamentary sovereignty, the colonial constitution that Sir George Grey and the Colonial Office determined upon, inducted settlers and ultimately indigenes into the “monarchical constitution of the empire” already referred to,<sup>52</sup> into the operations and powers rather of a devolving Executive. John Whitson Cell argued that the Colonial Office was “not well equipped for the formulation of long-term policies”.<sup>53</sup>

The settler government thereby came to accept full responsibility. The *ancien regime* American model was rejected, whereby governors met assemblies without settler participation in the colonial executive, the branches of government were separated, and settlers put up the money bills. The *ancien regime* distinction and separation of political institutions in a pre-1776 American colony was replaced by the creation of “representative” institutions under the prerogative, already granted by the Canada

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<sup>52</sup> Hulsebosch, Daniel, *Constituting Empire:- New York and the Transformation of Constitutionalism in the Atlantic World 1664-1830*, University of North Carolina Press, Chapel Hill, 2005 pp. 77- 83.

<sup>53</sup> Cell, John Whitson, *British Colonial Administration in the Mid-Nineteenth Century: The Policy-Making Process*, New Haven and London, 1970. Buckner, Philip, “The Colonial Office and British North America” in *Dictionary of Canadian Biography v. VIII 1851 to 1860*, Frances G. Halfpenny and Jean Hamelin (eds) Toronto University Press, Toronto 1985, p. xxxv.

Constitutional Act 1791, and by the development of the Executive Council as a site for the conveyance and exercise of “responsibility”.<sup>54</sup>

Paul McHugh discusses how the full development of Crown sovereignty in the 19<sup>th</sup> century adversely affected indigenes.<sup>55</sup> While that is true, the story is a far subtler one, not only of how the Buxton Report reaffirmed the prerogative-based native protection policy in the former Appalachia, but also of how settlers were to assume that prerogative themselves after they were drawn in and inducted into it. Furthermore despite the loss of the American colonies, the conversion of colonial institutions into monarchical instruments continued apace in British North America. The Quebec Act 1774 and the Canada Constitutional Act 1791 devised legislative councils and executive councils as the instruments of a colonial “new monarchy”, which was the monarchy of British parliamentary government in the colonial sphere. Such institutions sustained the Appalachian tradition in British North America. Agents of that imperial monarchy had to establish legislatures, assist the British Government and Parliament in devising policies and constitutions, enact constitutional statutes and manage the transitions to “responsibility”.

Grey was such a gubernatorial monarch. W.L. Morton discussed gubernatorial monarchy in the Canadian context in 1961.<sup>56</sup> This thesis will demonstrate that the

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<sup>54</sup> Buckner, op. cit., ch. 8 “Yielding to the Inevitable” pp. 291- 324.

<sup>55</sup> McHugh, Paul , *Aboriginal Societies and the Common Law:- A History of Sovereignty, Status and Self-Determination*, Oxford University Press 2005 pp. 108-109, p. 119.

<sup>56</sup> Morton, W.L., *The Canadian Identity*, The University of Wisconsin Press, Madison 1961, pp. 86-87, pp. 99-103, pp. 103-107.

Morton, W.L., “The Meaning of Monarchy in Confederation”, in *Transactions of the Royal Society of Canada* (1963) Sections I, II, and III, Series 4 v. I.

following contention by Daniel Hulsebosch about American Crown agents of the 1760s applies just as much to Grey in New Zealand's 1840s-1860s:-

“ This vision of gubernatorial power vested in a privileged bureaucracy, rather than the gradually developing idea of the supremacy of Parliament, was the imperial agents' mainstay throughout the colonial period. The prerogative and aristocracy, like parliamentary supremacy for some others, were ways of justifying their policies, but were not intrinsic to them, for their goal was to create an administrative elite in North America, not to empower the crown or Parliament.”<sup>57</sup>

Nor was it inconsistent for a Crown agent with Harringtonian values to behave as such a constitutional monarch. Two of Harrington's borrowings from Machiavelli were the need to establish colonies and the necessity of a dictator. The Harringtonian dictator was a founder, or emergency ruler, who established an impersonal representative regime to replace himself. Grey was the unique colonial governor who participated both in the rule of Crown colonies and then in the politics and government of the colony he chose to settle in, under conditions of responsible government, thereby encompassing the entire early development of colonial New Zealand.

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<sup>57</sup> Hulsebosch, Daniel J., op. cit. p. 78.

Buckner, Philip, “The Colonial Office and British North America”, in *Dictionary of Canadian Biography v. VIII 1851 to 1860*, Frances G. Halfpenny and Jean Hamelin (eds), University of Toronto Press, Toronto 1985; p. xxiv.

## Chapter Two

### Grey's Formations

Grey was formed as a Liberal Anglican savant, his military education produced an exemplar of the military intelligentsia. Grey's misunderstood family origins lay interstitially between dynastic banking houses and provincial yet socially mobile gentry, and included those Liberal Anglicans. Liberal Anglicans such as Whately and Arnold were greatly interested in James Harrington. Grey was to manifest a repertoire of Harringtonian behaviours and of Thomas Jefferson's mediations of the Harringtonian tradition. The Harringtonian colony was a zone for "over-balance" in the Harringtonian equilibrium scheme, amalgamation and legal integration were the Jeffersonian consequence of the overwhelming of indigenous peoples. The Liberal Anglican and Harringtonian receptions were primary however. Grey's military education taught him how a colonial policy of racial amalgamation might be operationalized to create a colonial order. Utilitarian writing on India corroborated Jefferson's amalgamationist policy.<sup>1</sup> From Carlyle he acquired images and self-justifying morality about the "personality" of power as possessed by heroic and successful, if misunderstood, leaders. While in the Colonial Service between 1840 and 1868, Grey was circumspect about the political views that informed his native policy. His record of disagreements with the Colonial Office and the British Government nonetheless grew over the 1850s and 1860s. Such breakdowns may be more usefully understood as arising from discrepancies between Grey's ideology of

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<sup>1</sup> Stokes, Eric, *The English Utilitarians and India*, Oxford University Press, Delhi 1957.

colonization and the requirements of British imperial policy, rather than as expressions of an irascible temperament.

It is no coincidence that Grey was at his most influential and was most supported and trusted by the British Government during his first New Zealand term 1845-53, while the Whig administration of Lord John Russell governed between 1846-1852. Grey was compatible with the Whigs of that time. His social and intellectual formations provided him with the skills and fluencies and ideologies to work constructively with Whig constitutionalists such as the 3<sup>rd</sup> Earl Grey and Lord John Russell, even though he was personally unknown to them. A Liberal Anglican formation could open doors. As the proponent of amalgamation and of legal integration, Grey was the man of an ideological moment in which he could most make himself understood. That moment passed. Unlike the Whigs proper, Grey was not on a journey from “Foxism” to “constitutional moralism”<sup>2</sup> but towards an even more radical and transformative civicism. The capacitarian conversion of British subjects into citizens was nonetheless fundamental to both Lord John Russell’s parliamentary reform and to Grey’s amalgamation of indigenes and gradual induction of settler leaders into his policy.

The task to hand is to assemble the colonial ideology of Sir George Grey so as to account for the origins and content of his native policy. James Harrington’s “The Commonwealth of Oceana”<sup>3</sup> provided a civic humanist explanation of the colony, and argued the *Realpolitik* necessary to establish it. From the Liberal Anglicans he

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<sup>2</sup> Brent, Richard, *Liberal Anglican Politics: Religion, Whiggery and Reform 1830-1841*, Oxford University Press 1987 p. 19, and p. 53.

<sup>3</sup> Harrington, James, *The Commonwealth of Oceana*, Cambridge University Press 1992 [1656].

drew a Christian Anthropology and an anti-classical Political Economy. It was the Harringtonianism that persisted in his lifetime as an “apologia”. James Anthony Froude entitled his political travel book of the Southern Hemisphere colonies “Oceana”,<sup>4</sup> after Harrington’s work, and it culminated with a sojourn on Kawai Island as Grey’s guest.

From Jefferson<sup>5</sup> he drew the policy of the American Democrats, who opposed classical Political Economy to promote a republic of smallholder citizen farmers and militiamen. Above all he derived from Jefferson the settler dissentient tradition of native administration, which proposed amalgamation of indigenes as the remedy. It opposed their segregation and protection from settlers and their colonial constitutions,<sup>6</sup> and rejected indigenous self-development lest indigenes become unassimilable. Whereas Washington’s Secretary of War Henry Knox<sup>7</sup> proposed recognition of Indian rights to their land, and a policy of “civilization” so as to attach them to the American interest, Jefferson further proposed the amalgamation of Indians, their legal integration and their induction into American citizenship. The ultimate origins of “legal integration” lay in the policy proposals of officials and settlers such as Edmund Spenser and Sir John Davies in plantation era Ireland. Colonial Ireland remained a powerful imaginative site for Grey. His service in the Tithe War introduced him to his unknown father’s homeland. Whatley was involved in Irish Poor Law reform. Grey was to be a life-long enthusiast for Spenser’s *The*

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<sup>4</sup> Froude, James Anthony, *Oceana, or, England and her Colonies* Longmans, Green, London 1888.

<sup>5</sup> Pocock, John Greville Agard, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, Princeton, 1975 p. 547.

<sup>6</sup> Wallace, Anthony F.C., *Jefferson and the Indians:- The Tragic Fate of the First Americans*, pp. 35-36 and p. 223.

<sup>7</sup> Wallace, *ibid*, p. 167.

*Faerie Queene*, for him an epic of colonization<sup>8</sup> exemplifying the Irish colonial experience.<sup>9</sup> This thesis will disclose the Irish depth to his Harringtonianism.

From Carlyle, Grey derived a psychology and purported morality of power in liminal roles for liminal places, an historical perspective for his individual labours, an insistence on the social dimension of humankind over the individual. Carlyle fully endorsed colonization for the purposes of emigration. Jeff Peires<sup>10</sup> accounts for Grey through an incoherent mixture of Carlylean attitudes and of Utilitarianism. As the broken personal relations of Carlyle and John Stuart Mill attested, it was impossible to reconcile such contrasting mindsets.

The Liberal Anglicans were in the first instance a theological movement, concerned to discern Christian Evidences in the findings of the new sciences, and to reconcile the latter with Christian theology. Bishop Joseph Butler's *Analogy of Religion*<sup>11</sup> was the main text of this enterprise. That theology was Arminian, latitudinarian, probabilist and barely Trinitarian, even verging on Socinianism by all accounts, from the testimony of John Davison on the Oriel Senior Common Room,<sup>12</sup> and of Sir Leslie

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<sup>8</sup> Grey, George, "On the Social Life of the Ancient Inhabitants of New Zealand, and on the National Character it was likely to form" in *Journal of the Ethnological Society of London* v I 1869 p. 362 for one instance of what was a perennial theme for Grey.

<sup>9</sup> Cormack, Bredin, *A Power to Do Justice: - Jurisdiction, English Literature, and the Rise of Common Law, 1509-1625*, University of Chicago Press 2007 pp. 133- 176; for chapter three "Inconveniencing the Irish: Custom, Allegory, and the Common Law in Spenser's Ireland".

<sup>10</sup> Peires, J.B., *The Dead will Arise: Nongqawuse and the Great Xhosa Cattle-Killing Movement of 1856-7* p. 46 and p. 49.

<sup>11</sup> Butler, Joseph, *The Analogy of Religion Natural and Revealed, or the Constitution and Course of Nature*, John Boyle, Aberdeen 1775.

<sup>12</sup> Davison, John, *An Inquiry into the Origin and Intent of Primitive Sacrifice and the Scripture Evidence Respecting it; with Observations on the Opinions of Spenser, Bishop Warburton, Archbishop Magee and other writers on the same subject; and*

Stephen's *History of English Thought in the Eighteenth Century*.<sup>13</sup> Hugh Trevor Roper<sup>14</sup> proposed the descent of Erasmian, Arminian and Grotian thought to 17<sup>th</sup> and 18<sup>th</sup> century High and Latitudinarian churchmen. Pocock concurred with this definition:-

“ The distinction between high-church and latitudinarian Anglicanism, therefore, does not itself impede the argument that the origins of Enlightenment in England lie in the maintenance by the church of its Erasmian, Arminian and Grotian traditions.”<sup>15</sup>

The Liberal Anglicans are an established formation in British historiography, discussed by Duncan Forbes<sup>16</sup> and Richard Brent,<sup>17</sup> and first revealed to New Zealand historiography by Mark Hickford.<sup>18</sup> Brent identified the Butlerian core of their thought.<sup>19</sup> They did not just influence imperial policy, some of them became imperial policy-makers. Canadian governor Sir Edmund Head and Colonial Office and India Office Permanent Under Secretary Herman Merivale and Sir Travers Twiss along with Sir George Grey belonged to the younger generation of Liberal Anglican associates. Senior members of the Oriel generation such as Dr Arnold<sup>20</sup> and

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*Some Reflexions on the Unitarian Controversy*, John Murray, London 1825, pp. 181-182.

<sup>13</sup> Stephen, Sir Leslie, *History of English Thought in the Eighteenth Century*, 1876 v. I pp. 2-8, 72, 79, 83-105, 149, 155, 151, 183-4, 270-71, 420-21, 426-7, 452-64.

<sup>14</sup> Trevor-Roper, Hugh, *The Crisis of the Seventeenth Century: Religion, Reformation and Social Change*, Harper and Row New York 1968.

<sup>15</sup> Pocock, J.G.A.P., *Barbarism and Religion: The Enlightenments of Edward Gibbon*, v I Cambridge 1999 p. 25.

<sup>16</sup> Forbes, Duncan, *The Liberal Anglican Idea of History*, Cambridge University Press, Cambridge 1952.

<sup>17</sup> Brent, Richard, “ The Emergence of Liberal Anglican Politics: The Whigs and the Church 1830-1841” Thesis (D.Phil) Oxford University 1984.

<sup>18</sup> Hickford, Mark, “Making Territorial Rights of the Natives:- Britain and New Zealand, 1830- 1847”, p. 69.

<sup>19</sup> Brent, Richard, op. cit., p. 168.

<sup>20</sup> Arnold, Thomas, *The Effects of distant Colonization on the Parent State:- A Prize Essay Recited in the Theatre at Oxford June 7, 1815*, Oxford 1815.

Archbishop Whately<sup>21</sup> wrote on colonization issues. These intellectuals breakfasted, clubbed and walked out together homosocially across ideological divides.<sup>22</sup> When not actually meeting one another, they corresponded. Their circles provide one origin of “the epistolary constitution”,<sup>23</sup> which as we shall see, Grey’s contribution to the *N.Z.C.A.* necessarily was. Liberal Anglicans were a “corresponding society” of constitutional “projectors” and Christian apologists.

Differences were manifest however between all members of the Liberal Anglican grouping. “Manly” individualized gentlemanly intellects were never identical.

Whately and Arnold for example disagreed over the emancipation of Jews,<sup>24</sup> Twiss and Senior competed for the Drummond Chair. As Whately’s protégé,<sup>25</sup> Grey shared many differences between Whately and the rest of the group. Although Grey spoke and read German well, as Whately never did,<sup>26</sup> no evidence exists that Grey had received a deep formation in the German historiography derived from Barthold Niebuhr, and from the Chevalier Bunsen. Grey was most Vichian in his ethnography, where he insisted that indigenous cultural productions expressed the mental capacities they had acquired at their stages of development.<sup>27</sup> Grey was an ethnographer not an historian and any influence from Vico was remote and mediated by Whately. He did

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<sup>21</sup> Whately, Richard, *Remarks on Transportation and on a recent defence of the system:- In a second letter to Earl Grey*, B. Fellowes, London 1834.

<sup>22</sup> Akenson, Donald Harman, *A Protestant in Purgatory: Richard Whately, Archbishop of Dublin*, The Conference on British Studies and Indiana University at South Bend, Archon Books, Hamden, Connecticut, 1981 p. 65.

<sup>23</sup> Hulsebosch, Daniel, *Constituting Empire:- the Transformation of Constitutionalism in the Atlantic World 1664-1830*. p. 77.

<sup>24</sup> Brent, Richard, *Liberal Anglican Politics* p. 147.

<sup>25</sup> Akenson, op. cit., pp. 17-20.

Newman, John Henry, *Apologia pro Vita Sua*, London reprint ed., 1912 [ 1864] p. 36.

<sup>26</sup> Forbes, Duncan, op. cit. p. 2.

<sup>27</sup> Grey, George, op. cit., (1869) p. 362.

subscribe nonetheless to the “Germanism” or rather the Anglo-Saxonism of this circle. He even concluded his first governorship of New Zealand by disingenuously comparing himself to Alfred the Great.<sup>28</sup> Anglo-Saxons had come back in fashion, as John Burrow has related, between the 1<sup>st</sup> Reform Bill and the aftermath of the Year of Revolution in 1848.<sup>29</sup> What may be discerned here however are the new historical disciplines supplementing the “ancient constitutionalist” neo-Harringtonian narrative. Pocock described the latter as:-

“Harringtonian freedom was made to exist in the Gothic and English past instead of being founded in its ruins”.<sup>30</sup>

Liberal Anglican agendas influenced Grey as a colonizer from the start. Disbelieving in the “infidel” notion of “Progress”, they sought to demonstrate the workings of Providence in history. Believing in a British imperial religious dispensation, they collaborated on anti-classical forms of Political Economy, and devised for their Anthropology an explanation of the “savage state” and of human development, all of which Grey adopted. The measure of their success is that they acquired powerful political patrons. Copleston and Whewell were associated with Peel,<sup>31</sup> Whately for his part led a grouping that found patrons among Whigs.<sup>32</sup> For George Grey’s part, his mentor had opened doors for him at the heart of the Holland House set.<sup>33</sup> Whately identified with Grey as much as Grey loyally identified with him all his life. When in

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<sup>28</sup> *New Zealand Spectator and Cook’s Strait Guardian*, Wellington, 24 September 1853.

<sup>29</sup> Burrow, John Wyon, *A Liberal Descent: Victorian Historians and the English Past*, Cambridge University Press, Cambridge, 1981 pp. 116 -125.

<sup>30</sup> Pocock, J.G.A., op. cit., p. 416.

<sup>31</sup> Brent, Richard, op. cit., p. 147.

<sup>32</sup> Brent, Richard, *ibid* p. 139.

<sup>33</sup> Prest, John, *Lord John Russell*, Macmillan, London and Basingstoke, 1972, p. 10, p. 33, p. 77.

1837 George Grey set sail for the North West of Australia on board the “Beagle”, Whately published an anonymous “Account of an Expedition to the Interior of New Holland”<sup>34</sup> which was allegedly edited by Lady Mary Fox. It related the discovery of a Harringtonian utopian 17<sup>th</sup> century Germano-British community in the Australian interior. The novel is a *roman a clef* of the political and colonizing values of Grey’s formative culture. It also fictionalises an end result of racial amalgamation, the lower house of a new state in the colony consisting of mixed race citizens, the upper house of pure whites only.<sup>35</sup> Fiction aside, the fact of Grey’s publicly funded expedition, under Lord Glenelg’s patronage demonstrates a Whig investment in Grey, on Whately’s recommendations.

Constitutions could be analysed and designed in the terms of their principles, just as they were in Whately’s novel. They were both positivized and purposive instruments. What Richard Brent argued for Lord John Russell goes too far for Sir George Grey, without extensive qualification:-

“Thus in the years 1819-1834, Russell changed from a Foxite constitutionalist to liberal moralist; and in so doing with the aid of his younger fellow Whigs, he altered the concerns of Whiggery from an interest in the mechanics of the constitution to a consideration of its moral foundations.”<sup>36</sup>

For a neo-Harringtonian, a concern with the normative mechanics of a constitutional order was paramount.<sup>37</sup> Grey remained interested in the “mechanics of constitutionalism” because he was convinced from his education that constitutions

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<sup>34</sup> Whately, Archbishop Richard, *Account of an Expedition to the Interior of New Holland* :-edited by Lady Mary Fox , Richard Bentley, London 1837.

<sup>35</sup> Whately, Richard , op. cit. p. 122-124.

<sup>36</sup> Brent, Richard, “ The Emergence of Liberal Anglican Politics”, p. 46.

<sup>37</sup> Pocock , op. cit. pp. 416-419.

were structured and operated according to correct and even “moral” principles in the first place that had the power to transform colonial subjects.

Liberal Anglicans colonized many of the new disciplines under the motto of *Phusei politikon anthropos*.<sup>38</sup> The reclamation of Political Economy was a priority. It is one of the peculiarities of the Drummond Chair of Political Economy at Oxford University in the 1830s, which was founded as Liberal Anglican project,<sup>39</sup> that Whately and Herman Merivale both lectured on topics that related to Grey’s interests in colonization. Whately lectured with reference to human development and the savage state, while evaluating the capacity of human societies to sustain economic activity and civilized institutions, while Merivale understood colonization as an enterprise of Political Economy. Colonization and native policy then were intrinsic subjects of interest to Liberal Anglicans before even George Grey contributed his memorandum as a dissent against the Buxton Report. Utilitarians had long disapproved of settler colonization. Their authorities had considered it an inherently mercantilist and protectionist activity of no benefit to metropolitan nations, an economic and strategic liability. However a profusion of discussion broke out from the 1820s onwards, as theoretical justifications were sought for the activity. Liberal Anglican and their Whig patrons found themselves obliged to develop a coherent theory for British undertakings in response to the Durham Report and to the Buxton

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<sup>38</sup> Whately, Richard, *Introductory Lectures on Political Economy* B. Fellowes. London 1832, Lecture IV p. 99. “Man is political by nature”.

<sup>39</sup> The Drummond Chair was held by Liberal Anglican associates Nassau Senior (1825-30) Richard Whately (1830-31) William Forster Lloyd (1832-37) Herman Merivale (1837-1842) then by Travers Twiss.

Report. By 1853 Lord Grey was able to publish a retrospect that reviewed a settled Whig policy on colonization from the Russell administration.<sup>40</sup>

The *Bible* for Liberal Anglicans was an historically and culturally conditioned record of how humankind had really been, just as for Joseph Butler, scriptural revelation corresponded with the natural order. This had colonial implications. Human history for all its autonomy nonetheless remained God's "ordinary providence" so that teleological purpose and eschatology could be read into contemporary history. The British Empire itself corresponded to a divine plan, and represented a dispensation for global progress and for global Christianization. As Dr Arnold speculated to Oxford students:-

"modern history appears to be not only a step in advance of ancient history, but the last step; it appears to bear marks of the fullness of time, as if there could be no future history beyond it.....The changes which have been wrought have arisen out of the reception of these elements by new races; races endowed with such force of character that what was old in itself, when exhibited in them, seemed to become something new. But races so gifted are and have been from the beginning of the world few in number: the mass of mankind have no such power; they either receive the impression of foreign elements so completely that their own individual character is absorbed, and they take their whole being from without; or being incapable of taking in higher elements, they dwindle away when brought into the presence of a more powerful life, and become at last extinct altogether.....So if our existing nations are the last reserve of the world, its fate may be said to be in their hands, God's work on earth will be left undone if they do not do it. "<sup>41</sup>

Whately for his part devised an Anthropology for this historical vision, arguing that the savage state could not have been the origin of human civilization, that humanity did not entirely make its own history, and that God had intervened among the

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<sup>40</sup> Grey, Henry George 3<sup>rd</sup> Earl, *The Colonial Administration of Lord John Russell's Administration* Richard Bentley, London 1853.

<sup>41</sup> Arnold, Thomas, *Introductory Lectures on Modern History delivered in Lent Term, MDCCCXLII with The Inaugural Lecture delivered in December MDCCCXLI*, 6<sup>th</sup> edition Longmans, Green and Co., London 1874 [1842] p. 28 ff..

generations after the Fall, and that only thereafter did human history operate as an ordinary Providence. It was inconceivable to Whately that intellectually and morally disabled humanity could ever autonomously emerge from conditions of “savagery” without the intervention of previously civilized peoples, who were themselves originally civilized in the series of civilizing projects by the intervention of Divine Providence. From his Drummond Chair Lecture V in 1831 on “the savage state” to his Y.M.C.A. lecture of 1854 *On the Origins of Civilization*, Whately remained a consistent degenerationist:-

“it has been very commonly taken for granted, not only by writers among the ancient heathen, but by modern authors, that the savage state was the original one, and that mankind or some portion of mankind, gradually raised themselves from it by the unaided exercise of their own faculties . . . . but as for savages properly so styled - there is no one instance recorded of any of them rising into a civilised community, or, indeed, rising at all, without instruction and assistance from people already civilised.”<sup>42</sup>

Grey derived this post-lapsarian anthropology from Whately. Von Humboldt and Niebuhr’s speculations on the apparent incapacity of “savage” humanity, and on fallen American civilizations were discussed in Whately’s Drummond Chair lectures in *Political Economy* of 1831:-

“The famous historian Niebuhr also is recorded . . . to have strongly expressed his full conviction that all savages are the degenerated remnants of more civilised races, which had been overpowered by enemies, and driven to take refuge in woods . . . and there to wander, seeking a precarious existence, till they had forgotten most of the arts of settled life, and sunk into a wild state.”<sup>43</sup>

As Forbes noted:-

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<sup>42</sup> Whately, Richard, *On the Origin of Civilization:- A Lecture by His Grace The Archbishop of Dublin to the Young Men’s Christian Association*, December 1854 pp. 9-10. In “Whately’s Tracts” BOD 270 e. 1877 (9).

<sup>43</sup> Whately, Richard, op. cit. p. 22.

“Whately and Arnold arrived at a different deduction. They agreed with Vico that all civilized people were originally savage, but the fact that there are no recorded instances of savage peoples having civilized themselves is for them an argument for the intervention of Providence.”<sup>44</sup>

So insuperable was the step between savagery and the stadial scheme proper for Whately that he considered it a disproof of Lamarckian evolution. Gallatin noted the extreme difficulty of the transition for American Indians from a hunter-gatherer state of existence to an agricultural.<sup>45</sup> Gallatin’s work was a text-book of Jeffersonian racial amalgamation. Araucanians were the only instance that Gallatin gave of a hunting people in the Americas who had converted to agriculture. Their resistance against the Spaniards had been “long and successful”, ominous praise for settlers determined to “amalgamate”, rather than eradicate.<sup>46</sup> The stadial schemes inherited from the classical world proposed that after catastrophes humanity had revived from pastoral remnants, to agriculture and then to urban life and commerce. Hunter-gatherers appeared to exist at the extremes of the Earth, far from the tempered mediocrity of the Mediterranean. A missing step developed in the stadial scheme once “the savage” was placed at the bottom in the sociological speculations of the Scottish philosophers. The view persisted that no independent progress could occur from the savage state to even the pastoral. Adam Smith denied the possibility,<sup>47</sup> while Brent observed that Lord John Russell despite his Edinburgh education, adhered to the model of civic humanist

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<sup>44</sup> Forbes, Duncan, op. cit. p. 71 .

<sup>45</sup> Gallatin, Albert , *Synopsis of North American Tribes within the United States East of the Rocky Mountains and in the British and Russian Possessions in North America*, p. 156 .

<sup>46</sup> Gallatin, ibid pp. 151-152.

<sup>47</sup> Pocock, John Greville Agard . *Barbarism and Religion* v. IV Cambridge University Press, Cambridge 2005 p. 171.

human development, that “extruded” the so-called savage.<sup>48</sup> Whately denied outright that such progress could be made unaided in arguments that echo throughout Grey’s Port Louis paper of 1840:-

“ According to the present course of things, the first introducer of civilisation among savages is, and must be, Man in a more improved state; in the beginning therefore, of the human race, this, since there was no man to effect it, must have been the work of another Being. There must have been, in short, something of a REVELATION made, to the first, or to some subsequent generation, of our species. And this miracle (for such it clearly is, being out of the present course of nature) is attested independently of Scripture, and consequently in confirmation of the Scripture accounts, by the fact that civilised Man exists at the present day. Each one of us Europeans, whether Christian, Deist, or Atheist, is actually a portion of a standing monument of a former communication to mankind from some supernatural Being. That Man could not have made himself, is often appealed to as a proof of the agency of a divine Creator; and that mankind could not in the first instance, have civilised themselves, is a proof of the same kind, and of precisely equal strength, of the agency of a divine Instructor.”<sup>49</sup>

From such views of the “savage state” and of “fallen man”, Grey drew the Anthropology, for which he found the ethnography in Albert Gallatin’s “Synopsis” of 1836.<sup>50</sup> Whately’s teachings were also compatible with the role of the legislator and constitutional dictator that Harrington had borrowed from Machiavelli.<sup>51</sup> In the Whatelyan scheme, once the “special providence” of divine and angelic presences had been withdrawn from the direct education of fallen humanity, “higher races” undertook the reclamation and civilization of savage peoples once human history had become autonomous, operating under “the ordinary providence” of God.<sup>52</sup> Such was the space for culture heroes and dictators. Whately for his part emphasised in general the accumulated effect of ordinary people’s lives in historical developments, in the

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<sup>48</sup> Brent, Richard, “ The Emergence of Liberal Anglican Politics” p. 10.

<sup>49</sup> Whately, Richard, op. cit. pp. 18-19.

<sup>50</sup> Gallatin, Albert , op. cit..

<sup>51</sup> Whately, Richard , *Introductory Lectures on Political Economy* , Lecture V p. 133-134 .

<sup>52</sup> Whately, Richard , *ibid* pp. 110-113, see p 111.

tradition of late 18<sup>th</sup> century British statistical historians, and of the *Waverley* novels, which he had reviewed.<sup>53</sup> Unique individuals however according to Whately could play an exceptional role on the reclamation of “savage” and “barbaric” peoples, and in that sense his “ordinary providence” provided scope for the intervention of the “law-giver”, or necessary dictator in such constitutive circumstances. “The Great Man” extruded, like the savage, from the history of civilized nations could nonetheless operate on the frontiers in such a person as Governor Grey. For Grey however, the mission of such a lawgiver and “ruler” nonetheless was to admit indigenous peoples to the normal political and economic life of settler peoples, to submit them to sufficient quantities of immigrants who would be able to constitute a colonial society in which indigenes would be obliged to find their new community. It was a role for which his readings of Carlyle psychologically prepared him.

The political thought of James Harrington purposefully pervaded and unified Grey’s thought-field, invested it with imaginative and revolutionary content, as it had done for Jefferson,<sup>54</sup> and yet also for Dr Thomas Arnold.<sup>55</sup> Deist and Liberal Anglican divine could both participate. Harrington especially explained the colony in Machiavellian terms. The civic republican purpose that James Harrington and Henry Neville’s<sup>56</sup> writings explained for Grey, was how settlers combined and constituted colonial polities, that then became their own nations. Settler colonization was developing an Apologia against Utilitarian objections expressed in James Mill’s

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<sup>53</sup> Forbes, Duncan , op. cit. p. 137.

<sup>54</sup> Pocock, *The Machiavellian Moment* p. 547.

<sup>55</sup> Arnold, Thomas , *The Effects of distant Colonization on the Parent State* (1815) p. 25.

<sup>56</sup> Neville, Henry , *Plato Redivivus* , London 1674.

article “On Colonies”.<sup>57</sup> Thomas Arnold’s Commencement Day address at Oxford of 1815 marks an early justification. It was liberating for proponents of a settler

*Realpolitik* to be assured from Harrington that:-

“Natural Government is an effect of natural Force, or Vigor. Provincial Government is an effect of unnatural force, or Violence.”<sup>58</sup>

and to be assured that:-

“Provinciall ballance .....is.....the overballance of a native Territory to a forraign; for as one Country balanceth it self by the distribution of propriety according to the proportion of the same, so one Country overbalanceth another, by advantage of divers kinds”.<sup>59</sup>

The ideology of colonization had previous 17<sup>th</sup> century sources. Liberal Anglicans were deploying Harrington to defend colonization a generation before Grey’s Port Louis paper. Arnold’s Commencement Day address<sup>60</sup> significantly resorted to colonial America because he referred in its notes to “a beautiful pamphlet” entitled “The New Life of Virginia” printed in 1612 “by an author who signs himself R.I.”<sup>61</sup> A more benign version of the legal integration and assimilation that Spenser and Davies would impose on the Irish, was suggested for American Indians. For this was

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<sup>57</sup> Mill, James, *Essays on I. Government, II. Jurisprudence, III Liberty of the Press, IV Prisons and prison discipline, V. Colonies VI. Law of Nations, VII, Education* 1824 The Bodleian Library electronic resource.

<sup>58</sup> Harrington, James, *A System of Politics*, (written 1661) John Toland (ed.) *Collected Works* London, 1700 p. 496.

<sup>59</sup> Harrington, James, *The Commonwealth of Oceana*. p. 20 .

<sup>60</sup> Arnold, Thomas, *The Effects of distant Colonization on the Parent State:- A Prize Essay Recited in the Theatre at Oxford June 7, 1815*, Oxford 1815.

<sup>61</sup> Arnold, Thomas, *Introductory Lectures on Modern History delivered in Lent Term, MDCCCXLII with The Inaugural Lecture delivered in December MDCCCXLI*, London 1874 [ 1842] p. 36 note to p. 26.

the text by Robert Johnson dedicated to Thomas Smith, that proposed the eventual equality of civilized Indians if the settlers:-

“winne the elder sorte by wisdom and discretion, make them equal with your English in case of protection wealth and habitation”, and:-

“ Take the children and traine them up with gentlenesse, teach them our English tongue, and the principles of religion”.<sup>62</sup>

This is what Grey proposed for Australian aborigines. Oxford Liberal Anglicans then as a reading circle had identified the original text that translated features of the assimilationist policy in Ireland to North America.

The immediate influence on Grey though, as William Pember Reeves proposed, was that of Thomas Jefferson.<sup>63</sup> As a neo-Harringtonian reception, Jeffersonianism would appear to have been unique to Grey among the Liberal Anglican Whigs. The articulator and then practitioner of the policy of native amalgamation into settler colonies was in fact Thomas Jefferson, analogously in the context of opposition to a policy of segregation. Jefferson sought to transform Indians into Americans, just as Grey wrote against the Buxton Report. Jefferson had joined vociferous settler opposition<sup>64</sup> before the War of Independence against the Appalachian Protectorate

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<sup>62</sup> Johnson, Robert, *The New Life of Virginea: Declaring the Former Successes and Present Estate of that Plantation, Being the Second Part of Nova Britannia*, printed for William Welby 1612, p. 20.

<sup>63</sup> Stephen, Sir Leslie., and Lee, Sir Sidney (eds); *Dictionary of National Biography: From the Earliest Times until 1900*; Vol. XXII Supplement, p. 786 bottom of left column for the initials “W.P.R.”.

<sup>64</sup> Hulsenbosch, Daniel J. ,op. cit. pp. 100-101 and pp. 111-112.

policy,<sup>65</sup> keen though he was to acquire land obtained by Johnson under the 1<sup>st</sup> Treaty of Fort Stanwix in 1768 and the Treaty of Fort Pitt in 1775. Albert Gallatin had been his Secretary of the Treasury and had compiled an ethnographic opus in which both the native policy of the Jefferson administration and the military intelligence requirements of the War Department are evident. Grey's achievement was to adopt and apply this policy of amalgamation for the purposes of colonial government by Crown agents in British settler colonies, in place of the "official" policy of protection and segregation, reaffirmed by the "Buxton" Select Committee Report in 1837. In other words the royal prerogative would be used to "Americanise" Britain's southern hemisphere frontiers.

Jeffersonians aside, the amalgamation of indigenes into colonial settlements was an idea whose time had come, when Grey set to compose the Port Louis paper. Dr Arnold's Harringtonian *History of Rome* argues for amalgamation policy on the analogy of Carthage and Rome, Carthage in this case defined as a colonial state that would have made its position stronger if it had in fact absorbed its neighbours into alliance and citizenship, as the Romans did:-

"The name of Carthage has already occurred more than once in the course of this history; and I have already noticed the extent of her dominion, and the inherent causes of its unsoundness, inasmuch as the Carthaginians and their African subjects were separated from one another by broad differences of race, language, and institutions; so that they could not blend together into one nation. The isolation of Carthage from all the surrounding people offers a striking contrast to the position of Rome in Italy, where the allies and the Latin name were bound to the Romans and each other by manifold ties; and the communication of the Roman franchise, or at least the prospect of obtaining it hereafter, was every year effacing the painful memory of the first

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<sup>65</sup> Wallace, op. cit. pp. 17-18.

conquest, and effecting that consolidation of various elements into one great and unified people, in which alone conquest can find its justification".<sup>66</sup>

While German historicism mattered less for Grey, than for others in the Liberal Anglican circle, francophone sources and Swiss Protestant savants greatly appealed. From the ethnography of Albert Gallatin ( 1761- 1849), a Genevan émigré who had become Jefferson's Secretary of the Treasury, to the anti-classical Political Economy of Jean-Charles-Léonard de Sismondi ( 1773 – 1842 ),<sup>67</sup> to the military thought of Antoine-Henri Jomini ( 1779-1869) who remained in the French Service until 1813, then joined the Russian, Grey assembled a political programme that could account for colonization, while furnishing him with the tools to articulate an alternative native policy for settler colonies.

Grey's Political Economy was French, like Jefferson's had been, not Scottish. Just as William Rees collaborated with Grey on the Grey biography of 1892, so does Rees' *From Poverty to Plenty; Or, the Labour Question Solved*, commence with a dedication to Grey:-

"This work is inscribed to one whose wise counsels have so often aided me to attain results at which I have arrived, and who will recognize in its pages many tokens of the familiar interchange of thought between us during the past fifteen years; to whose sympathy and encouragement I owe more than I can express."<sup>68</sup>

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<sup>66</sup> Arnold, Thomas , *History of Rome:- From the End of the First to the End of the Second Punic War*. T. Fellowes; Rivingtons; B.B. and H.H. Hodgson, J. Bain; Simpkin, Marshall and Co; and Bickers and Son, London 1869 [ 1838-1843]. v. II ch. 39.

<sup>67</sup> Dossey, Barbara Montgomery , *Florence Nightingale:- Mystic, Visionary, Healer* , Springhouse Corporation, Springhouse Pennsylvania, 2000 pp. 39-40.

<sup>68</sup> Rees, William, *From Poverty to Plenty; Or, the Labour Question Resolved*, Wyman & Sons, London 1888, p. 1.

This work may be taken then as an authorized account of Grey's Political Economy. Chapter Four undertakes a defence of anti-classical economic thinkers, from Richard Whately<sup>69</sup> to Francois Quesnay's Physiocrat school,<sup>70</sup> and then Sismondi. Florence Nightingale, who was a friend of Grey's, had been a disciple and member of Sismondi's circle in Genoa. Rees's claim for Sismondi was that:-

“ As Quesnay and Smith are the real founders of political economy, Sismondi may be called the first reformer.”<sup>71</sup>

There can be no doubt that Rees argued a neo-Physiocrat position:-

“ This foundation principle of the physiocrats is, as we have seen, contradicted by Adam Smith, and his statement that labour is the source of wealth has been generally adopted by modern writers. The question is, however, beyond dispute. No weight of authority, no amount of assertion, no arguments of casuistry, can for a moment shake the immovable foundation laid by Quesnay, - that nature is the sole source of wealth.”<sup>72</sup>

“Nature” in Quesnay's definition, amounted for Grey and Rees and it did for Jefferson to the primary resources of a colony, mines, forests, lands for settlement. Francois Quesnay and the Physiocrats provided the base for Grey's agrarianism as it did for Thomas Jefferson,<sup>73</sup> but both men respected Adam Smith's *Wealth of Nations*, and admired Jean-Baptiste Say. Whereas Destutt de Tracy influenced the later Jefferson,<sup>74</sup> Grey rather admired Sismondi. The fundamental issue for Grey and Rees

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<sup>69</sup> Rees, *ibid.* pp. 127-128.

<sup>70</sup> Rees, *ibid.* pp. 50- 53.

<sup>71</sup> Rees, *ibid.*, p. 141.

<sup>72</sup> Rees, W.L., *ibid.* p. 154- 155.

<sup>73</sup> Davis, Richard Beale, *Intellectual Life in Jefferson's Virginia 1770-1830*, University of Tennessee Press, Knoxville 1972, p. 424.

<sup>74</sup> Padover, Saul K., *The Complete Jefferson – Containing his Major Works Published and Unpublished, Except His Letters*, Duell, Sloan & Pearce, New York 1943, pp. 330-333, pp. 369-373.

was that Smith, and later Marx, were wrong to found wealth upon labour. The definitive statement for Grey's policy of close settlement in Rees runs:-

But put a man way in the bush in Australia or New Zealand, in the backwoods of Canada, or the prairies of the Western United States, and give him a small capital in money and stock, and a comparatively small area of freehold land, from the fruit of which alone he must support himself and family, and he will if not starve, at any rate merely eke out an existence. Place, however, ten thousand such men and their families, with aggregated proportionate capital, upon two or three hundred thousands of land, and, under ordinary conditions of good management, and an organised system labour and productivity, you will have a prosperous, even wealthy, community.<sup>75</sup>

As a colonial governor, Grey was unable to lecture or discuss his economic theories through the medium of official communications. He remained however the proponent of close settlement, the enemy of what he regarded as monopoly possession of mining claims and of large land-holdings. During these decades when he could not give the speeches he later gave explaining his policy, Grey is to be judged by what he did.

W. J. Gardner wrote of Grey's economics:-

“Grey did not like or understand pastoralism – especially in the hands of political opponents. He professed to be founding an economy of “small landed proprietors” but markets in New Zealand could not sustain an expanding yeomanry”.<sup>76</sup>

The phrase “small landed proprietors” is Grey's own expression to Lord Grey.<sup>77</sup> Thus he could perfectly express himself without resorting to quoting texts of agrarian economics. Gardner's treatment of Grey's policy is typical of how Grey's statements

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<sup>75</sup> Rees, W.L., *ibid.*, p. 168.

<sup>76</sup> Gardner, W.J., “A Colonial Economy” in *The Oxford History of New Zealand*, W.H. Oliver and B.R. Williams (eds) Oxford University Press, Oxford 1981, p. 63.

<sup>77</sup> Grey to Earl Grey 15 March 1849, *G.B.P.P.* [1136] p. 56.

have been treated in New Zealand historiography, factually, often analysed rightly as Gardner has done, for New Zealand could not sustain small farmers in the 1840s and 1850s as it was later to. Gardner however wrote without reference to any political culture that Grey might have drawn upon to explain his prejudice in favour of small-holders. The usual explanation is that Grey was so shocked by conditions in Ireland, that he sought lands for settlement in the colonies as remedy. That explanation however ignores the literature and thought available to him and other Liberal Anglicans. It also places the excessive burden on Grey of uniqueness and idiosyncrasy. It is unlikely that Grey historiography should be done any longer on the basis that he independently invented propositions and policies that are found in his despatches, or those which appear in 1888 in Rees' work.

Furthermore the capacitarian liberalism of Francois Guizot,<sup>78</sup> the French Protestant statesman and political theorist, had become so ambient in Whig circles, that it is impossible to adduce a particular influence from Guizot on Grey, more than on Lord John Russell<sup>79</sup> or the 3<sup>rd</sup> Earl Grey. For George Grey spoke French. The Portarlington Huguenot colony in Ireland from which his mother came, had been Ireland's seminary for French language education. French and German were compulsory subjects on the Sandhurst curriculum.<sup>80</sup> He hiked in Normandy in the summers of his young manhood. His uncle and aunt Martin were allegedly the "founders" of the English wintering colony at Pau. Nonetheless he was particularly enthusiastic about German, at Schiller's verse and drama.

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<sup>78</sup> Kahan, Alan S., *Liberalism in Nineteenth Century Europe:- the Political Culture of Limited Suffrage* pp. 5-9 .

<sup>79</sup> Kahan Alan S. , *ibid* p. 84.

<sup>80</sup> Smyth, Sir John, *Sandhurst, The History of the Royal Military Academy, Woolwich, the Royal Military College, Sandhurst, and the Royal Military Academy, Sandhurst 1741-1961*. Weidenfeld and Nicolson, 1961. p. 58.

Attractive as his family heritage of French Calvinism might have been, Grey is distinctive among Liberal Anglican associates for his interest in francophone Protestants. These Swiss émigrés did not reject historical analysis for the governing disciplines of the Age of Political Economy. Jomini mined military history to demonstrate his principles of warfare. The brother-in-law of Sir James Mackintosh, Sismondi enjoyed an international reputation as a Political Economist and as the historian of the Italian Renaissance city states,<sup>81</sup> as an authority on Renaissance civic republicanism. He was also a constitutional analyst<sup>82</sup> and a commentator who compared the benefits of ancient and modern colonies.<sup>83</sup> Rees affirmed Sismondian Political Economy, making the following claim:-

It is remarkable that Sismondi and those who followed him took a far more just and correct view of the operation, not only of the current political economy generally, but of the operation also of its component parts, than the leaders of the Manchester School.<sup>84</sup>

Gallatin's *Synopsis* offered the prospect of a universal history of human development in its classification of the strata of social development observed amongst American First Nations. These authors had rather subordinated historical facts to the provision of empirical demonstrations of the laws for an autonomous human history, that could pass as the "ordinary providence" of the world order. Grey's uses of history were for

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<sup>81</sup> de Sismondi, Jean-Charles-Leonard, *Histoire de la liberté en Italie, de sa progrès, de sa décadence, et de sa chute*, Treuttel et Wurtz, Paris 1832 2 vv..

<sup>82</sup> de Sismondi, Jean-Charles-Leonard, *Examen de la Constitution Française* Treuttel et Wurtz, Paris, 1815.

<sup>83</sup> de Sismondi, Jean-Charles-Leonard, *Les colonies des anciens comparées à celles des modernes sous le rapport de leur influence sur le bonheur du genre humain*, Geneva, Lador et Ramdoz, 1837.

<sup>84</sup> Rees, W.L., *ibid.*, p. 143.

either utility or hero-worship, when it was not for discerning the course of “Providence”.

To carry out his policy, Grey applied Jominian strategy to Jeffersonian policy. Among Royal Military College cadets and Army officers, the military doctrine of Jomini had become the fashionable military doctrine. Grey’s military education relied upon Jomini’s analyses of battles and campaigns of the recent Napoleonic Wars and of the classic battles of the 18<sup>th</sup> century. Clausewitz died in 1831 with a Prussian, though not yet a universal reputation. *On the Nature of War* was not published until 1832. Only after the Franco-Prussian War, and Jomini’s death, did Clausewitzian thought subsume and obliterate Jomini’s reputation.<sup>85</sup> Clausewitz’ text lacked the deconstructive analysis of frontiers that the Jominian literature offered. In Grey’s youth then, Jominian strategy was being promoted in Great Britain by both William Napier and J. Gilbert. It must not be regarded though as the ascendant doctrine at the Royal Military College, despite its influence at West Point.<sup>86</sup> “Jominians” were a small sect of military intellectuals.

Yet both the United States and Russia found in Jominian strategy the military theory for their expansions into their respective colonial frontiers on the American West and with Mexico on the one hand, and into Siberia and Central Asia on the other. The

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<sup>85</sup> Langendorf, Jean-Jacques, *Faire la Guerre:- Antoine-Henri Jomini*, Goerg, Paris 2002, v 1 “Chronique, Situation, Caractere” p. 205 in which Langendorf discusses an *Allgemeine Militar-Zeitung* of Darmstadt article of 20 March 1833, that asserted the superiority of Clausewitz over Jomini, and states “*C’est la le début d’une longue évolution qui verra le triomphe intellectuel du Prussien.*” Grey had completed his military education by this time.

<sup>86</sup> Rapin, Ami-Jacques, *Jomini et la Stratégie:- une approche historique de l’œuvre*, Editions Payot Lausanne, Lausanne 2002. pp. 241-242 for the dominance of Jominian strategic thinking on American Civil War generals.

kind of war that seemed applicable to colonial hinterlands, was the variety which Jomini called “defensive-offensive war”<sup>87</sup>. Long marches into enemy territory to strike at their base, if they had one, were hazardous and left long and exposed lines of operation<sup>88</sup> and vulnerable rear-guards for a foe to fall upon.

“When a frontier is found in open country, it is necessary to give up the idea of making a complete and formal line of defense by multiplying too many positions which require whole armies to man to the ramparts and actually do nothing to prevent anyone from invading the country. It would be wiser to establish a few well chosen positions, not to prevent the enemy from entering but to increase the obstacles along his march, and to protect and assist on the contrary active armies ordered to repel them”<sup>89</sup>.

British officers who had been trained to hold the line on colonial frontiers instead learned:-

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<sup>87</sup> Jomini, Antoine-Henri, *Précis de L'Art de Guerre, ou Nouveau Tableau analytique des principales combinaisons de la stratégie, de la grande tactique, et de la politique militaire*, Anselin, Paris, 1837. p. 143 :- *Ce genre de guerre, que j'ai nommé autrefois la défensive-offensive, peut être avantageux en stratégie comme en tactique. En agissant ainsi on se donne les avantages des deux systèmes, car on a celui de l'initiative, et l'on est plus maître de saisir l'instant ou il convient de frapper*” (note “D'autres l'ont nommé défense active, ce qui n'est pas aussi juste, puisque la défense pourrait être très active sans être offensive”).

<sup>88</sup> Jomini, op. cit. p. 140 :- “*Sous le rapport militaire, l'offensive a son bon et son mauvais cote; en stratégie, si elle est poussée jusqu'à l'invasion, elle donne des lignes d'opérations étendues en profondeur, qui sont toujours dangereuses en pays ennemi.* »

<sup>89</sup> Jomini, Antoine-Henri, op. cit. pp. 293-94 :- *Lorsqu'une frontière se trouve en pays ouvert, il faut bien renoncer à l'idée de vouloir en faire une ligne formelle et complète de défense en y multipliant des places trop nombreuses, qui exigent des armées pour en garnir les remparts, et en définitive s'empêchent jamais d'entrer dans le pays. Il sera plus sage de se contenter d'y établir quelques bonnes places habilement choisies, non plus pour empêcher l'ennemi de pénétrer, mais pour augmenter les entraves de sa marche, pour en protégeant et favorisant au contraire les mouvements des armées actives chargées de le repousser.*

“In all instances one must not exaggerate such a tactical advantage [ of defended positions] since one will fall into [error of] “the system of positions” (starke Positionen) which has been the ruin of so many armies.”<sup>90</sup>

The chief influence of Jomini lay in his opposition to hard and fast frontier lines that had to be held. British military policy in the Eastern Cape had foundered on “holding the line”. Grey’s Port Louis paper proposed the dissolution of hard and fast frontiers, and the prevention of concentrations of indigenes upon them, so as to facilitate their absorption into the settler colony. Grey’s policy was bound to the Jominian doctrine of “interior lines”. By dissolving concentrations of indigenous peoples on frontiers, and collapsing the frontiers themselves, so that indigenous peoples were all the time being drawn into the settler colony, Grey was obliging indigenous peoples to present virtual “interior lines”, not in one march, but as a constant motion into the colony.

A Jomini book analysed military behaviour from the past in terms of various departments and operations “lines of operation”, “offensive battles” “crossing rivers” “retreats” “logistics”.

“Il existe un petit nombre de principes fondamentaux de guerre, dont on ne saurait s’écarter sans danger, et dont l’application au contraire a été presque en tous temps couronnée par le succès.

« Les maximes d’application dérivent de ces principes sont aussi en petit nombre, et, si elles se trouvent quelquefois modifiées selon les circonstances, elles peuvent néanmoins servir en général de boussole à un chef d’armée.”<sup>91</sup>

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<sup>90</sup> Jomini op. cit. p. 183 :- *Toutefois il ne faut pas s’exagérer cet avantage tactique, puisqu’on tomberait dans le système de positions (starke Positionen), qui a cause la ruine en tante d’armées.*

<sup>91</sup>Jomini, op.cit., p. 21. For a summary of Jomini’s principles, consult his *Traite des Grandes Opérations Militaires, contenant l’histoire des campagnes de Frederic II*, Magimel Libraire pour L’Art Militaire, Paris, , 1811. ,t. iv, ch 35.

Grey's amalgamationist policy was composed of such immutable principles. Jominian principles and Grey's policy intersected at the frontiers. Indigenes were first and foremost a military problem. As a war-planner Jomini himself advised on wars for the emperors of Russia along colonial frontiers in the Balkans and Central Asia.

The power culture of Grey's governments is also explicable in Jominian terms. Whether in Crown colony or Executive Council governments for the period of this thesis, Grey governments were characterized by the extreme control Grey kept over collaborators and associates in power. Former premier Henry Sewell was not exaggerating when he compared a ministry to a general staff under Grey.<sup>92</sup> As the policy of amalgamation would presumably take a few generations to complete, Grey required the reproduction of this power culture and of the policy for which it existed. Jomini provided a comprehensive definition of relation between a commander and his general staff that applies to any Grey administration between his arrival in Adelaide in May 1841 and the outbreak of the Waikato War in 1863:-

“A good general staff is, above all, necessary to make a good army; it should be considered as the nursery, from which the commander-in-chief should select the instruments by which he works; as a collection of officers whose intelligence should second his own. Where there is no harmony between the genius which commands and the talents that are to apply his conceptions, success becomes doubtful, for the most skilful operations are destroyed by faults in their execution. A good staff has also the advantage of being more durable than the genius of a single man; it may remedy many evils, and we may dare affirm, that it is the safeguard of an army. Paltry party-interests, narrow views, and a misplaced self-love, may rise against this assertion; it will, nonetheless, remain an incontrovertible truth to every thinking soldier and every enlightened statesman.”<sup>93</sup>

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<sup>92</sup> Sinclair, Keith, *The Origins of the Maori Wars* p. 239.

<sup>93</sup> Jomini, Antoine-Henri, *History of the Revolutionary War*, v I p. 210 as translated by J.A. Gilbert in *An Exposition of the First Principles of Grand Military Combinations and Movements, compiled from The Treatise upon Great Military Operations by The Baron de Jomini* T. Egerton, Military Library, Whitehall, London 1825 p. 145.

In New Zealand, Colonels Pitt and Wynyard thus understood that their role in relation to the Governor-in-Chief, was to second Grey's policy for the colony. Members of the New Zealand Executive Council between 1861-63 found themselves drafted to become the Governor's departmental secretaries, while being made to accept responsibility for native affairs. Civilians like the Native Protector George Clarke and Lieut.-Governor Edward John Eyre fell foul of Grey's governing culture. At all times Grey was imperious, consulting with his subordinates and collaborators on a "need to know" basis, and intolerant of dissent from his plan. Grey used the constitutional systems as he found them to secure "instruments" for his own policy, while he worked and advised on the development of constitutions to further his native policy.

Lieutenant J.A. Gilbert, Royal Artillery, had published an English text of Jominian theory in 1825 entitled *An Exposition of the First Principles of Grand Military Combinations and Movements compiled from The Treatise upon Great Military Operations by Baron Jomini*.<sup>94</sup> For those who desired more than a promotional précis, Jomini's tome, the *Precis de L'Art de Guerre* and other works amounted to a one-man on-going industry reviewing the Napoleonic Wars. Grey was recognized as an exceptional student, learning from his regular military studies a system of thought that identified and assessed principles for structuring and operationalizing violence.<sup>95</sup> Such a science of principles differed little from texts of Political Economy in modes of demonstration and reasoning, yet differed from modes of historical and sociological representation in the absence of discursive and illustrative text, and in the

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<sup>94</sup> Gilbert, J. A., op. cit..

<sup>95</sup> Grey obtained an exceptional first-class certificate with a rare special recommendation to the General Commanding in Chief:- Certificate 5 November 1836 Grey MSS, Grey Collection, Auckland Public Library, Auckland.

reduction of all behaviour to the operation of such principles regardless of circumstances or culture. The Port Louis paper consisted of a set of dispositions from ethnographic premises for frontier management and native administration.<sup>96</sup>

Technical military education aside, officers who were savants, linguists and political economists were a persistent feature of the Army at that time. Political Economy and the skills requisite for governance and war-fighting in the multi-ethnic “second” British Empire created a military intelligentsia.<sup>97</sup> If not common, they were at least not chimaeras. Grey belonged to a seam that included among others John Austin (1790-1859), Robert Torrens (1780-1864), Charles Sturt (1795-1869), Sir Richard Francis Burton (1820-90). By Grey’s own account, service in Glasgow and in the Tithe War in Ireland with the 83<sup>rd</sup> Foot radicalised him, converting him to dissent against British policy in Ireland. His regiment was a dedicated rebellion-crushing unit. After Grey had set sail on the *Beagle* to explore North-Western Australia, his brother officers and men were shipped out to Canada to quell the rebellions that had broken out there.

### *Grey’s Family Background*

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<sup>96</sup> Grey, George, *Journals* (1841) v. II pp. 372-388.

<sup>97</sup> Deleuze and Guattari, *Thousand Plateaux: Capitalism and Schizophrenia*; The Athlone Press, London 1988 translated Brian Massumi, p. 362 “State science retains of nomadic science only what it can appropriate; it turns the rest into a set of strictly limited formulas without any real scientific status, or else it simply represses and bans it. It is as if the “savants” are caught in a rock and a hard place, between the war machine that nourishes and inspires them and the State that imposes upon them an order of reasons. The figure of the engineer (in particular the military engineer), with all its ambivalence, is illustrative of this situation”. Grey was a military engineer.

Grey nonetheless belonged with real people, had affections and a family, and was not just a mind communicating with military intellectuals and a Liberal Anglican intelligentsia. His social origins have been misrepresented and misunderstood to date. His peculiar social ambivalence can be better construed than by dismissing him as a “penniless subaltern”<sup>98</sup> or as one of “the genteel poor”.<sup>99</sup> He rather came from a family connection that was reconstructing itself as Sussex county gentry, after coming together from various socially obscure sources. Overall this connection depended upon the Church, the Army, the Navy, the Colonial and Indian Services, Banking and even the Court, for careers and marriages at anytime between 1820 and 1920, among the relatives in the range of Grey’s lifetime. Indicative of their success were marriages into established county gentry families.

In Grey’s family, the Liberal Anglicans were not distant, academic, persons. They were virtually a household intelligentsia who lived as close as the guest-room or a drive down the road. Oxford Liberal Anglicans were associated with Richard Whately, a Fellow of Oriel College, who married Grey’s distant cousin Elizabeth Pope in 1821.<sup>100</sup> Grey first met Whately at Cheltenham in 1820, where he been sent to stay with relatives after he had run away from school at Guildford to Eastbourne. Far from being punished, the boy was permitted to walk with Whately and be taught

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<sup>98</sup> Bell Kenneth N., and Morrell W.P., *Select Documents on Colonial Policy 1830-1860*, Oxford 1928 p. xlv.

<sup>99</sup> Clarke, Charles Manning , *A History of Australia* v III “The Beginning of an Australian Civilization 1824- 1851” , Melbourne University Press, Melbourne, 1973 p. 38.

<sup>100</sup> Akenson, Donald Harman, op. cit. p. 35 notes that Whately met Elizabeth Pope at Cheltenham, the daughter of a Middlesex widow in the summer of 1820. Another fellow of Oriel College, and a cousin of Elizabeth’s, Sherlock Willis, (see Burke, Sir Arthur (ed), *A Genealogical and Heraldic History of the Colonial Gentry*, Harrison and Sons, London 1891-1895 2 vv, p. 585 had introduced the couple at Cheltenham. He was the husband of Elizabeth Vignoles’ sister Margaret ( 1797- 1828) The Whately-Pope marriage took place in July 1831 ( see Akenson op. cit. p. 35. ).

about pre-Roman Britons, before being sent to live at Lombard Street for a while. As William Rees a personal friend and biographer was to state, Grey -

was educated at Sandhurst, but enjoyed, through the days of his youth, the privilege of the teaching and guidance of Dr. Whately, afterwards Archbishop of Dublin.<sup>101</sup>

Born in Lisbon on 14 April 1812 after his father Lieutenant-Colonel George Grey had been killed at the storming of Badajoz on 6 April, Sir George Grey was to spend his adult life from 1837 abroad from Britain, apart from the interludes of a few months in 1840, the summer of 1854, ten months 1859-1860, 1868 -1870, and from 1894-1898. Colonel Grey not only left a posthumous son but a daughter Anne Elizabeth who married Rev. George Vigne of Tillingham Essex. A daughter born in 1810 had died at Lisbon.<sup>102</sup> In so far as he had a childhood British home, to form him as an “Englishman”, it was the City of London and the rectory at Bodiam in East Sussex. “Anglo-Irish” is too grand a description for Grey’s paternal grandfather an army captain<sup>103</sup> and his great-grandfather a Church of Ireland minister.<sup>104</sup> “Irish Protestant” is a better description.<sup>105</sup> This family owned property at “Greyfield” outside of Jamestown in modern Co. Leitrim. Grey’s mother’s origins are less obscure.

Elizabeth Vignoles was the daughter of Rev John Vignoles of Cornahir, the former

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<sup>101</sup> Rees, William Lee, *Sir Gilbert Leigh* ; Sampson, Low; Marston, Searle and Rivington; London 1878, 2 vv; v II Appendix “The Great Pro-Consul” p. 233.

<sup>102</sup> Burke, Sir Arthur, op. cit., p. 585.

<sup>103</sup> Burke, Sir Arthur, *ibid* p. 584 Captain Owen Wynne Grey of the 6<sup>th</sup> Dragoons (Carbineers).

<sup>104</sup> *ibid* p. 584.

<sup>105</sup> If the Greys were not in fact actually “Scots Irish”. Grey claimed in *A Genealogical and Heraldic History of the Colonial Gentry* p. 584 that he was descended from Sir John Grey and Elizabeth Woodville of Edward IV’s court, and from the Marquess of Dorset and Viscount Graney of Henry VIII’s reign. Graney was attainted for treason in 1541, whereafter the family allegedly survived fallen into obscurity.

Colonel of a regiment and an Archdeacon.<sup>106</sup> They descended from the Portarlington colony of Huguenot émigrés. She was great-niece of Field Marshal 1<sup>st</sup> Earl Ligonier, and cousin of General 1<sup>st</sup> Earl Ligonier of Clonmell. By her two marriages she produced 8 children who attained adulthood. By all accounts, she resorted to her sisters in London for support during her widowhood. Officer's widows were eligible for an 80 pounds pension, children each to 18-25 pounds of child allowance<sup>107</sup> providing their late spouse had conducted himself creditably. Such entitlements ceased upon remarriage. Mrs Grey and her son were to have family connections with two London banking houses in all. His maternal aunt, Julia Vignoles, had married James Martin of the ancient bank known as "The Grasshopper".<sup>108</sup> This James Martin was James Martin III (d. 1870) the younger brother of John Martin (1774-1834) who a partner 1796-1832. James was only a partner 1806-1823 thereafter ceasing connection with the firm.<sup>109</sup> Grey reminisced about his uncle's house on Lombard Street with its ample library. The address was the house known as "The Plough" 67 Lombard Street on the Change Alley passage, across from "The Grasshopper"<sup>110</sup> where John lived. James Martin is the banker whom Rees said lived on Change Alley. It must be understood that this uncle was not a banker from when Grey was 10 years

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<sup>106</sup> Burke, Sir Arthur, op. cit., p. 583.

<sup>107</sup> On the subject of Widows' pensions:- Queen Anne's Bounty was extended by George II in 1737 to include all widows of officers killed, by means of paying two nominal officers per regiment, and this practice was made a charge on the Army Estimates in 1806. A Lieut. Colonel's widow received 80 pounds, compassionate allowances per child per annum 18-25 pounds if killed in action. All pensions ceased upon remarriage. If commission refunded, there was no entitlement to a pension or compassionate allowance. Colonel Grey's commission was worth 4500 pounds .

<sup>108</sup> Rutherford, James, *Sir George Grey K.C.B. 1812-1898:- A Study in Colonial Government* p. 4.

Bohan, Edmund, *To Be a Hero: A Biography of Sir George Grey* . p. 17.

<sup>109</sup> Martin, John Biddulph , "*The Grasshopper*" in *Lombard Street* , Leadenhall Press London 1892 pp. 99 -100 .

<sup>110</sup> Martin, John Biddulph, op. cit. p. 223 and p. 225.

of age, and that this connection became peripheral to the business at “The Grasshopper”, which became Martins Bank in 1891 before absorption by Barclays PLC in 1969. James’ residence at “The Plough” may have ceased thereafter, in a property made available to family members connected with the business, for he took up residence at Colwall near Ledbury.<sup>111</sup> Marriage connections with banking dynasties were to continue across the generations. The most spectacular marriage of all was that of Grey’s half-sister Caroline to Ormus Biddulph of “Cocks, and Biddulph”, which placed Grey in the position of being a colonial governor related to a significant City banking house.

The Martin marriage provided a base for Grey’s mother to remarry. When Grey was five, Elizabeth married the Rev. John Thomas ( 1784- 1841) the Vicar of Bodiam and Wartling in the East Sussex Weald. He had been previously married to another Huguenot Irishwoman, Francis Ram, who left a son and three daughters, all of whom were to die unmarried and without issue. Thomas possessed two livings. His cousin Sir Godfrey Webster, 6<sup>th</sup> Baronet Webster of Battle Abbey, was Lord of the Manor of Bodiam and patrons of both advowsons . Thomas had prospects however since he was himself the heir to a baronetcy, to which he succeeded in 1829 as the 6<sup>th</sup> Baronet Thomas of Wenvoe.<sup>112</sup> This inheritance involved money as well. The family situation was one of upward mobility after 1829 as Thomas acquired land in the county,<sup>113</sup> bought the advowsons<sup>114</sup> to both his parishes, <sup>115</sup>and married his daughters by

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<sup>111</sup> Martin, *ibid* p.100.

<sup>112</sup> Bohan, *op. cit.* p. 16 gave the impression that Elizabeth Grey *married* a baronet. She had to wait 12 years to become Lady Thomas.

<sup>113</sup> *Victoria History of the Counties of England - Sussex* ; University of London, reprinted 1973; v. VI pt 2 p. 161.

<sup>114</sup> *Victoria County History, Sussex* , v IX p 265 top left column.

Elizabeth Grey (though not by Frances Ram) into the county gentry. The Thomas family had survived a dissipated late 18<sup>th</sup> century, selling their Welsh castle in Glamorganshire in 1765,<sup>116</sup> and falling in duels.<sup>117</sup> Thomas' first cousin Colonel Charles Nassau Thomas was none other than the Vice-Chamberlain before his death in 1820 to the Prince Regent the future George IV.<sup>118</sup> Thomas had taken up residence in East Sussex because his family had previously married into the Websters of Battle Abbey<sup>119</sup> who presented him to his livings. Accession to the county gentry was demonstrated by the marriage of Grey's half-sister Pauline to Herbert Mascall Curteis MP of Herstmonceux Castle,<sup>120</sup> of which she was the chatelaine from 1849-1911.<sup>121</sup>

Such a family connection can be described as county clergy with City connections who transformed into county gentry. They nonetheless remained reliant upon the government services for employment of sons. Thomas' brother was Rear Admiral Frederick Jennings Thomas (1786-1855), Grey and his stepbrother Edmond the 7<sup>th</sup> baronet entered the Army, while Grey, after purchasing commissions,<sup>122</sup> later entered

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<sup>115</sup> *Victoria County History*, *ibid* p. 141 right column for the Webster advowson at Wartling as well.

<sup>116</sup> *Burke's Peerage and Baronetage and Knightage* 1, Burke's Peerage, London, 105<sup>th</sup> edition 1970 Part 2 p. 2631 right column.

<sup>117</sup> *Burke's*, *ibid*. p. 2631.

<sup>118</sup> *Burke's* *ibid*. p. 2631.

<sup>119</sup> Sir Edmond Thomas 3<sup>rd</sup> Baronet (1712-1767) married Abigail Webster daughter of Sir Thomas Webster 1<sup>st</sup> Baronet of Battle Abbey, and by her had Sir Edmond the 4<sup>th</sup> baronet d 1789 and Sir John Thomas 5<sup>th</sup> Baronet who was the father of Sir John Thomas 6<sup>th</sup> baronet.

<sup>120</sup> For Pauline Curteis nee Thomas refer to *Burke's Peerage Baronetage and Knightage Clan Chiefs Scottish Feudal Barons*, Wilmington, Delaware, 2003, 107<sup>th</sup> edition v III p. 3883 left column.

<sup>121</sup> *Victoria History of the Counties of England Sussex* v IX p 134 left column.

<sup>122</sup> As there was a 1100 pounds difference between a captain's commission of 1800 pounds and a lieutenant's commission of 700 pounds in a regiment of the line such as the 83<sup>rd</sup>, and 250 pounds between an ensignship of 450 pounds and a lieutenancy, Grey was more than able to find the funds to obtain promotion.

the Colonial Service. The Church was the option for sons-in-law, though not for sons in the succeeding generations. Nor did court connections cease with the death of Charles Thomas in 1820, Grey was to win the favour of Queen Victoria for life,<sup>123</sup> while his grand-nephew the 10<sup>th</sup> baronet was to become a significant official of the Royal Household.<sup>124</sup> Not entirely arriviste then, the Thomas family underwent social and financial resuscitation, although members of the ménage were all recent immigrants to Sussex over the previous century from Celtic and Pyrenean marcher lands.

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**Table of Commissions for Regiments of the Line.**

<b>Commissions</b>	<b>Prices</b>	<b>Difference in Value</b>
	<b>£</b>	<b>£</b>
Lieutenant-Colonel	4 500	1 300
Major	3 200	1 400
Captain	1 800	1 100
Lieutenant	700	250
Ensign	450	450
	<b>Total</b>	<b>4 500</b>

de Fonblanque, Edward Barrington, *Treatise on the Administration and Organization of the British Army, with Special Reference to Finance and Supply*, Longman, Brown, Green, Longmans, and Roberts, London 1858; , Book II Chapter IV p. 133.

<sup>123</sup> Rutherford op. cit.; p. 650.

Bohan, *To Be a Hero* p. 241.

<sup>124</sup> Sir Godfrey Vignoles Thomas 10<sup>th</sup> Baronet Thomas of Wenvoe (1889-1968) Private Secretary to the HRH Prince of Wales (1919-1935), Assistant Private Secretary to Edward VIII (1936), Private Secretary to the Duke of Gloucester (1937-58).

The undercurrent was that Sussex was a county in crisis. At the beginning of the 19<sup>th</sup> century 22.6% of its population was on either permanent or occasional relief.<sup>125</sup> Real poor relief expenditure rose 23% between 1817 and 1832 in Essex, Kent and Sussex, the period between when Grey and his mother arrived at Bodiam, and when he went to fight in Ireland's Tithe War.<sup>126</sup> The alliance between Whig gentry and radical dissenters that had characterised the county's politics at the time of the Glorious Revolution had broken down during the long reign of the Pelhams, who were themselves from Sussex. By the Regency period, Percy Bysshe Shelley was not the only scion of a Sussex family trying to revive that alliance. The parliamentary career of the Thomas' relative, Sir Godfrey Webster, supposedly the Tory MP for Lewes, but in fact a Radical, resembles Grey's New Zealand political career 40 years later. From a family combining Pelham properties in Sussex and Clinton properties along the Trent, the 5<sup>th</sup> Duke of Newcastle was a Liberal, in contrast to the Tory 4<sup>th</sup> Duke his father. The misery of the rural poor was as close to Grey's home at Bodiam as brilliant Liberal Anglicans were.

In conclusion, Grey's family, education, contacts and culture well prepared him for either a military or colonial career. He chose the latter, doubtless finding greater opportunity for the fulfilment of the opinions and plans he had developed. It must be stressed however that Grey needed to make a career for himself, and could not rely on family property and assets to support his status as a gentleman, or else sustain a parliamentary career. Nor had he acquired a liberal professional education. Related to the banking families, his mother married in the clerical branch of a family of baronets,

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<sup>125</sup> Patriquin, Larry, *Agrarian Capitalism and Poor Relief in England, 1500-1860:- Rethinking the Origins of the Welfare State*, Palgrave Macmillan, Basingstoke 2007 p. 121.

<sup>126</sup> Patriquin, *ibid.* p. 122.

reliant on the favour of Whig noblemen, ambitious and newly married, Grey commenced a career in the Colonial Service.

## Chapter Three

### Grey the Ethnographer

Ethnology and constitutional thought and design were interrelated for Grey. He practised ethnography to constitute the settler polity into which indigenes would be amalgamated. His ethnology and constitutionalism were not intended for the preservation of indigenous institutions as intended by the 1837 Select Committee into Aboriginal Affairs, or by the 1763 Appalachian Protectorate, but for the amalgamation of indigenes into settler colonies such as New Zealand.<sup>1</sup> His Port Louis memorandum of June 1840 was the Durham Report for indigenous peoples. In it he applied<sup>2</sup> the same principles of assimilation into British settler communities that Lord Durham had prescribed for French Canadians to indigenes.<sup>3</sup>

Ethnology and constitutional discussion were then related activities in the taxonomy of political sciences. In the “Age of Political Economy”, analysis of institutions was carried out to define “civilised” society and “savage” or uncivil society from one another and to explain how they came about. Research that became the modern disciplines of Political Economy, History and Sociology referred ultimately to

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<sup>1</sup> Rutherford, James, *Sir George Grey K.C.B. 1812-1898:- A Study in Colonial Government* p. 52 erroneously argued that Grey’s.

<sup>2</sup> Grey, George, *Journals* (1841) v II p. 375 paragraph 6.

<sup>3</sup> Lambton, John George, 1<sup>st</sup> Earl of Durham, in Sir Charles Prestwood Lucas (ed.) *Lord Durham’s Report on the Affairs of British North America*, Clarendon Press, Oxford 1912:- refer to the section on “Lower Canada” and to p. 24 and p. 64 of *Durham’s Report*.

Ajzenstat, Janet, *The Political Thought of Lord Durham*, McGill-Queen’s University Press 1988 pp. 3-12.

Jurisprudence as it worked through a natural history of humankind.<sup>4</sup> Grey carried out ethnographic investigation for the following purposes, for the scientific record, for the purposes of military intelligence, and as well as to contribute to discussion on the origins of humankind and of human institutions, above all for managing the racial orders of settler colonies. Ethnography however has not been assessed as a political discipline in correspondence with Political Economy and the political sciences of the Regency and early Victorian period. It has of course been frequently studied for its contributions to race relations policy, not however as a political discipline in relation to the other political disciplines constituting the colonial sphere. For every settler constitution was a race relations order in a settler colony with indigenous and non-white populations, regardless of whether it included or excluded non-whites and indigenes, or whether it segregated them for the purposes of supposedly developing them as *citoyens capacitaires*<sup>5</sup> and for pre-empting indigenous constitutional projects.

The ethnography derived from the stadial institutional analysis of John Millar<sup>6</sup> and James Mill proved to be powerful colonizing tools. So was the Liberal Anglican counterpart, which Whately and Grey developed. The intent of Grey's regime was not indefinite aborigines protection but assimilation into the settler economy and civil sphere. Amalgamation was the sole alternative to extinction. Ethnography analytically

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<sup>4</sup> Hont, Istvan , "The Language of Sociability and Commerce: Samuel Pufendorf and the Theoretical Foundations of the Four Stages Theory" , in Anthony Pagden (ed.), *The Languages of Political Theory in Early Modern Europe*, Cambridge University Press 1987.

Meek, R.L., *Social Science and the Ignoble Savage*. Cambridge University Press 1976  
 Pocock *Barbarism and Religion* v II "Narratives of Civil Government" Cambridge 2001, p. 314 and p. 322.

<sup>5</sup> Rosanvallon, Pierre, *Le Moment Guizot* , Gallimard Paris 1985 pp. 95 -104.

<sup>6</sup> Millar, John , *Observations Concerning the Distinction of Ranks in Society*, W. and J. Richardson for John Murray, London 1771.

“undid” a people while the political sciences of the Age of Political Economy supposedly remade them as potential citizens.

Grey’s ethnography from the 1830s until at least the 1850s can be characterized in the following terms. It was monogenist, for humanity had a single origin.<sup>7</sup> George W. Stocking assigned Grey under the influence of James Cowles Prichard ( 1786- 1848) who promoted the thesis that there were not several species of human beings in his *Researches into the Physical History of Man* of 1813.<sup>8</sup> This work was dedicated to the racial theorist Johann Friedrich Blumenbach ( 1752-1840) who had argued for the single origin of humanity in 1775 on the basis of comparative anatomy.<sup>9</sup> Whately and Grey definitely believed in the “Fall” and in the common origin of humankind therefrom. Grey like Prichard was opposed to “polygenism”.<sup>10</sup> The fact that Grey insisted on the *Genesis* origin of Australian aborigines in his *Journals* proves this.<sup>11</sup> This school of ethnography was therefore “diffusionist”. Prichard was concerned to supply the techniques of craniometry to ascertain the causes for racial distinctions. Prichard and Blumenbach were “out of Africa” ethnographers. Black people were original humans.

Grey however was concerned with human culture rather than anatomy. Theology intersected all the time with scientific ethnography in the work of his Australian

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<sup>7</sup> Stocking, George W. Jr. , *Victorian Anthropology* , The Free Press: A Division of Macmillan, Inc. New York 1987 pp. 48 -53.

<sup>8</sup> Prichard, James Cowles , *Researches into the Physical History of Mankind* Houlston and Stoneman, London 5 vv 1836-1851.

<sup>9</sup> Blumenbach, Johann Friedrich, ‘On the Natural Variety of Mankind’ in T. Bendyshe (trans.) *The Anthropological Treatises of Johann Friedrich Blumenbach* London 1865.

<sup>10</sup> Stocking, *ibid.* pp. 67-68.

<sup>11</sup> Grey, George, *Journals* v II p. 227 for the reference to Abraham’s reply to Abimelech ( Genesis, xx. 12).

period between 1837-45. While Liberal Anglicans would prefer the monogenist thesis for its correspondence with scripture, it appealed to Evangelical activists against slavery and for native protection. Grey did not invent the “Sacred History”<sup>12</sup> which is evident in his *Journals of Two Expeditions in North-Western and Western Australia*.<sup>13</sup> He had learned it from Richard Whately. In the scheme of Whately’s lectures on Political Economy over 1830, as the Drummond Professor of Political Economy, human culture and civilization were disseminated by culture-bearing peoples from a common source, while “savages” and “barbarians” had radically declined from the original dispensation and capacities of humankind after the Fall. Published in 1831 these lectures discussed ethnography while discussing Political Economy. This account of human origins was resolutely anti-Lamarckian.<sup>14</sup>

An advantage of both the diffusionist and monogenist theses is that the comparative method could be used to learn about the origins of human society and the development of “institutions”, such as marriage, or property. Philology was both a time-depth and comparative discipline that invested heavily in the comparison of all available examples. Adelung and Vater’s *Mithridates* compared grammar, vocabularies and versions of the “Our Father” from all known languages in six volumes between 1807 and 1816.<sup>15</sup> Both Gallatin and Grey provided comparative

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<sup>12</sup> Bacon Francis, *The Two Books of Francis Bacon, of the Proficiency and Advancement of Learning, Divine and Human*, London 1808 [ 1605].

<sup>13</sup> Grey, George , *Journal of Two Expeditions of Discovery in North-West and Western Australia during the years 1837, 1838 and 1839*. T. and W. Boone, London 1841.

<sup>14</sup> Whately, Richard , *On the Origin of Civilization: A Lecture by His Grace the Archbishop of Dublin to the Young Men’s Christian Association*, Young Men’s Christian Association 1854, p. 26.

<sup>15</sup> Adelung, Johann Christoph, and Vater, Johann Severin, *Mithridates, oder Allgemeine Sprachkunde mit dem Vater Unser als Sprachprobe in bei nahe fünf hundert Sprachen und Mundarten* , Berlin 1806-1817.

glossaries of this kind.<sup>16</sup> The comparative method was common to both secular thinkers and Christians, enabling observations and analysis from even religious ethnography to be processed into useable data. Whately and Grey for their part used monogenism to demonstrate a degenerationist thesis.<sup>17</sup> Humankind in revolt ceased to possess full human capacities in the “savage” state, and therefore needed to come under the influence of higher culture-bearing peoples. In this series only contact with a *stirps generosa seu historica* ( a noble or historical race) promoted any people in the scale of civilization. The savage as we have seen was not on the stadial scale for them, but had to be brought onto it. Liberal Anglicans inherited from their 17<sup>th</sup> century Grotian and Arminian and Baconian origins, the distinction that Grotius had made between a foreign prince such as the Sultan of Johore and the “Brazilian” tribes, which he described as “*amentes et insensati*” (insensate and out of their minds).<sup>18</sup> Degenerationism as a concept though was not just the property of Christian apologists detecting impact sites from the Fall. Max Muller<sup>19</sup> and Henry Sumner Maine<sup>20</sup> were to insist upon theories of language degeneration, whereby originally distinct utterance degenerated into ritual formulae.

The ethnography that Grey and Whately practised sought the origins of human institutions in a stadial scheme of development, that was still a product of

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<sup>16</sup> Gallatin, Albert, *Synopsis*, pp. 305- 406, pp. 421-42.

<sup>17</sup> Grey, George, *A Vocabulary of the Dialects of South Western Australia*, 2<sup>nd</sup> ed. T. & W. Boone, London 1840.

<sup>18</sup> Grotius, Hugo , “De Mari Libero” in *De Belli ac Pacis Libri Tres*, Amsterdam caput II 1689 [ 1625] , pp 2-3.

<sup>19</sup> Muller, F.M. , *Essai de Mythologie Comparee*, A.Durand Paris 1859.

<sup>20</sup> Maine, Henry Sumner , *Ancient Law, its Connection with the Early History of Society and its Relation to Modern Ideas*, J. Murray London 1905.

Enlightenment thought and not yet social evolutionist.<sup>21</sup> That stadial model was undergoing extensive critique and modification. A hunter-gatherer stage of existence was succeeded by a pastoralist, and then by agrarian culture and then urban civilisation. In the Liberal Anglican scheme, “savages” had to be brought even to pastoralism under the influence of “superior” peoples. Grey’s procedure was comparative rather than philological or “genetic”,<sup>22</sup> yet the purpose of the procedure was to identify indigenous institutions and present them as evidence of the previous state of large portions of humanity. Finally in the great debate on the origins of religious practice, Grey was an animist and totemist and not a fetishist.<sup>23</sup> His ethnography was “American” for the source of its concepts, not “African”.<sup>24</sup> Learning from Gallatin’s *Synopsis* about totems in American Indian societies and identifying them among Australian aborigines,<sup>25</sup> Grey became the opponent of “fetishists” and Africanists such as Sir John Lubbock,<sup>26</sup> who was moreover a polygenist. The diffusion of totem institutions across continents and races as disparate as North America and Australia, Australian aborigines and American Indians served to reinforce the monogenist argument.

Such was Grey’s “pietas” towards Whatelyan anthropology however, that in 1869 he defended in 1869 Whately against Sir John Lubbock’s criticisms, as having been

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<sup>21</sup> Stocking George W. Jr. , *After Tylor: British Social Anthropology 1888- 1951* , The Athlone Press, London, 1996 p. 3, p. 6.

<sup>22</sup> Collini, Stefan, Winch, Donald and Burrow, John *That Noble Science of Politics* p. 207 ff..

<sup>23</sup> Stocking, *Victorian Anthropology* pp. 83, p. 155 .

<sup>24</sup> Stocking, *ibid* p. 195.

<sup>25</sup> Grey, George , *Journals* v II p. 228-229. for Grey’s quotation from Gallatin’s *Synopsis*, which Grey referred to as the *Archaeologia Americana*.

<sup>26</sup> Lubbock, John, *The Origin of Civilization and the Primitive Condition of Man* [ 1870] Peter Riviere (ed) Chicago 1978; and see Stocking *op. cit.*, p. 155.

“mainly right” in his ethnography.<sup>27</sup> He had after all been his collaborator. The check-list then of Grey’s anthropological allegiances must be offset by the modifications Liberal Anglican thinking brought to the subject. Analogy provided Liberal Anglicans with a methodology that corresponded to the comparative method. The comparative method could be made to do service for Christian apologetics. Analogical demonstration was the very *modus operandi* of Bishop Joseph Butler’s *The Analogy of Religion* of 1738.<sup>28</sup> The second volume of Grey’s *Journals* compares the Australian aborigines he observed with the state of early humanity as “evidenced” in the *Book of Genesis*.<sup>29</sup> Grey’s ethnography at this period may be essentially described as a Whatelyan “anthropology” still resorting to Arminian and Grotian conceptions of the “savage state”. As Whately taught, “savage” peoples had rejected grace and thereby fallen beneath the human norm. The savage for Whately and Grey was not the parent of civilised humanity, but rather a intractable rebel, while the propagators of human civilization had arisen from those peoples that had never entirely severed contact from providential powers, whether God or angels, nor alienated themselves from the intellectual and moral characteristics of humanity proper.<sup>30</sup> Unless arrested and brought under civilized institutions, human beings degenerated, aggravating the original Lapse. For such reasons Grotius had

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<sup>27</sup> Stocking, George W., op. cit., p. 87.

Grey, George, *Journal of the Anthropological Society of London* v. VII No. XXVII Asher & Co, London 1869 p. 418, reported comments from 1869 British Association conference.

<sup>28</sup> Brent, Richard, *Liberal Anglican Politics* p. 150 .

<sup>29</sup> Grey, George, *Journals* v II p. 227 for the reference to Abraham’s reply to Abimelech ( Genesis, xx. 12).

<sup>30</sup> Whately, Richard, *On the Origin of Civilization* pp. 9-10.

Whately, Richard, *Introductory Lectures on Political Economy*. p. 134-135.

distinguished the “barbaric” peoples of the Orient from New World and African “savages” proper.<sup>31</sup>

Whately and Grey did have differences however in their ethnographical speculations. Whatelyan savages lacked *virtu* and any civil capacity, whereas Grey’s savages were disqualified by their indigenous institutions, not by imputed intellectual or moral depravity.<sup>32</sup> They could be capable of considerable *virtu* and social organization. Whately’s savages are dehumanised and degenerate individuals and hordes.<sup>33</sup> Grey’s indigenes awaited only liberation from dreadful customs and institutions to attain full humanity.<sup>34</sup> As is evident from his Y.M.C.A. lecture of 1854, Whately never accepted Grey’s positive assessment of the Australian aborigines, while quoting his disciple with approval on New Zealand Maori.<sup>35</sup> Grey contributed an ethnography proper to Whatelyan anthropology and to the Colonial Office’s assessment of “savage” peoples. An “anthropology” in this discussion may be understood as the study of the universal characteristics and attributes of humankind, and their modifications, as Blumenbach<sup>36</sup>

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<sup>31</sup> Grotius, Hugo, *de Jure Praedae* ch. XII 97 “Furthermore the Indians of the Orient are neither insane nor irrational, but clever and sagacious, so that not even in this respect can a pretext for subjugation be found” - *Neque vero sunt Indi Orientis amentes aut insensate aut ingeniosi et sollertes, ita ut ne hinc quidem praetextatus subjiciendi posit desumi, qui tamen per se satis est manifestae iniquitatis*. As for New World indigenes, Grotius however (as Francisco Vitoria first rhetorically did in his *De Indis* I. i. 9 ) applied Seneca’s reflection on Ajax in the *de Ira* II 36.5 to a “Brazilian” tribe, to demonstrate their “insanity” :- *Gladiis et pugnare parati et incumbere* - “ready either to fight with the sword or to fall upon it”. It should be noted that the *de Jure Praedae* was only fully available in 1864 though the portions on savage peoples were available to Whately and Grey’s generations of readers. The *de Mari Libero* of 1625 reinforces the same ideas however.

<sup>32</sup> Grey, George, op. cit., v II p. 374 - paragraph 4.

<sup>33</sup> Whately, Richard, op. cit., p. 99.

<sup>34</sup> Grey, George, op. cit. v II pp. 218-19 .

<sup>35</sup> Whately, Richard, *On the Origin of Civilisation*, p. 4, p. 12, p. 15, pp. 25-26.

<sup>36</sup> Blumenbach, Johann Friedrich , *de Generis Humani Varietate Nativa*, V.A. Vandenhoeck, Gottingen 1776.

and Immanuel Kant<sup>37</sup> understood it, while an ethnography investigated the institutions and social development of peoples. Ethnography observed or assessed the observations of indigenous peoples for the purpose of applying models to account for their “institutions”, as well as for comparative purposes. In his *Journals* then, Grey argued two models, one that was theological and claimed to discern evidences of a special providence for Australian aborigines, so as to enable them to survive on such a hostile continent,<sup>38</sup> and the other institutional,<sup>39</sup> which recognized modes of social organization in Aboriginal societies observed among other peoples.

Grey learned ethnographic method from Albert Gallatin’s researches in North American Indians<sup>40</sup>. Albert Gallatin ( 1761-1849) had served as the Secretary of the Treasury under Thomas Jefferson and James Madison. Gallatin’s *Synopsis* of 1835<sup>41</sup> provided an exposition and classification of North American indigenous peoples for which the U.S. War Department required intelligence. Gallatin provided the ethnographic justification for the Jacksonian (and Jeffersonian) policy of Indian removal. On both American and British frontiers in the 1830s, the 1763 policy of aborigines protection had fallen out of official approval, no matter how much Chief Justice John Marshall opposed the Cherokee removal, or the 1837 Select Committee Report had insisted on established reservations and segregation from settlers.

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<sup>37</sup> Wood, Allen in Mary J. Gregor (trans. and ed.) *The Cambridge Edition of the Works of Immanuel Kant*, “Practical Philosophy”, Cambridge University Press 1996 p. xxx.

Kant, Immanuel, “Outlines for the Course on Anthropology” , 1776- 1784 from “Notes on Aesthetics” 15: 717-15: 840, pp 523- 528 ; in *The Cambridge Edition of the Works of Immanuel Kant* “Notes and Fragments” Cambridge University Press 2005.

<sup>38</sup> Grey, George, op. cit. v II p. 220 .

<sup>39</sup> Grey, George , ibid v II p. 223.

<sup>40</sup> Stocking, op. cit. p. 83.

<sup>41</sup> Gallatin, Albert , op. cit. pp. 109-113 note p. 111.

What Gallatin's *Synopsis* offered, was definitive description of the North American totem systems<sup>42</sup> and of the matrilineal moieties that identify with them. An anthropological authority such as Stocking insists on this. He was also the first to compile comparative glossaries of aboriginal language and demonstrate the existence of language families in Australia, in this instance the grouping later known as the Pama-Nyungan family of languages.<sup>43</sup> Even in modern linguistics his conclusions can still be of consequence. As Louise Hercus and Jane Simpson noted:-

“ The idea that the Nauo spoke an ‘ in between language’ fit is with what Grey proposed in 1845, in part on the basis of information from Clamor Schurmann and Edward Eyre. He provides a map of the dialects of southern Australia (Map 3), in which, going from west to east, he posits his first dialect (Nyungar languages), then a second dialect linking the Coffin Bay people (i.e. Nauo) with the people to the west (i.e. Wirangu and Mirniny), and a third dialect linking the people of the west coast of Spencer Gulf (i.e. Barngala) with the east ( i.e. Thura-Yura languages).”<sup>44</sup>

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<sup>42</sup> Grey, George, op. cit. v II p. 227 quotes from Albert Gallatin *Synopsis* p. 109.

<sup>43</sup> Hercus, Louise, Simpson, Jane , “The Tragedy of Nauo”; in Jane Simpson, David Nash, David, Mary Laughren, Peter Austin, Barry Alpher (eds.) *Forty Years On : Ken Hale and Australian Languages*, Australian National University, Canberra, 2001, pp. 273- 274.

Grey, George , “On the languages of Australia, being an extract of a despatch from Captain G. Grey, governor of South Australia to Lord Stanley” , *Journal of the Royal Geographical Society* 5: 365-7.

<sup>44</sup> Hercus, Louise, Simpson, Jane , “The Tragedy of Nauo”; in Jane Simpson, David Nash, David, Mary Laughren, Peter Austin, Barry Alpher (eds.) *Forty Years On : Ken Hale and Australian Languages*, Australian National University, Canberra, 2001, p. 273, which reproduces Grey's map of 1845.

Grey owed to Rev. L.E. Threlkeld the first grammatical description of an aboriginal language.<sup>45</sup> The significance of Grey's researches to the development of the discipline of Anthropology lies not in his religious speculations on the aborigines but in the institutional models he applied to them from his reading about North American Indians. Grey realized that the totem systems in the *Synopsis* were applicable to the aboriginal peoples of Western Australia, and therefore could be a universal phenomenon at a particular stage of human development. He was writing expedition journals not an academic paper, so he acknowledged Gallatin explication of totems in just two references. Gallatin was just as restrained with his authorities. The concept that he borrowed however was a major one. Degenerationist though he was, such institutions were not evidence of a lapse but of a recovery. The origin of totems was divine.<sup>46</sup>

It was Grey's fortune to encounter an indigenous people that appeared to live with institutions analogous to the American. The peoples of Southern Africa and New Zealand where he next served would have afforded no such opportunity. His findings attracted attention because he had been able to demonstrate a global distribution of such social structures among very different racial groups. Of course Grey's argument was read to reinforce stadial theory, as the Scots Enlightenment had presented it, even though it argued against the deistic foundations of stadialism. Grey did not intend to be inconsistent. Rather he was trying to make ethnography serve the Liberal Anglican purpose of Christian Evidences.

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<sup>45</sup> Threlkeld, L.E. , *An Australian Grammar, comprehending The Principles and Natural Rules of the Language, as Spoken by the Aborigines, in the Vicinity of Hunter's River, Lake Macquarie, & New South Wales*, Sydney, printed by Stephens and Stokes, 1834.

<sup>46</sup> Grey, George, *Journals* v. II p. 224 , p. 227.

Grey described the “kobong” or totem based institutions of native Australian societies in the terms of a trap :-

“ for there are these remarkable features about them, that some are of such a nature as to compel those who remain to them in a state of barbarism, whilst others are adapted to the wants and necessities of savage *races*, as well as to prevent too close intermarriages of a people, who preserve no written or symbolical records of any kind”.<sup>47</sup>

Totems were therefore proof of “design”, like William Paley’s watch in the wilderness.<sup>48</sup> As Australian aborigines were intellectually constrained by their culture, though not by their general attributes and “anthropology” as humans,<sup>49</sup> they would have been as incapable of devising social structures of such intricacy and inextricability after the Fall as other fallen humans. God had therefore designed their institutions.<sup>50</sup>

Grey for his part was the first observer to obtain a governorship by providing the Colonial Service with ethnographic analysis and modelling for colonial policy. Grey had to meet the Evangelical challenge in the 1837 Report if he was to convince readers of his argument for the amalgamation of indigenes. For Liberal Anglicans it was apparently God’s will that indigenous peoples were to be brought into the mainstream of humanity, not to be reserved and kept apart.<sup>51</sup> On this subject the Evangelicals had decided against the Utilitarians. According to Boyd Hilton,

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<sup>47</sup> Grey, George, *op. cit.*, v II p. 222.

<sup>48</sup> Paley, William, *Natural Theology; or Evidences of the Existence of the Deity Collected from the Appearances of Nature*, Frederick Le Gros Clark (ed.); Elibron Classics, Chestnut Hill, Massachusetts 2005, p. 9.

<sup>49</sup> Grey, George, *ibid* p. 367 , p. 374 .

<sup>50</sup> Grey, George , *ibid* p. 223-224, p. 224.

<sup>51</sup> Arnold , Thomas, *Introductory Lectures* p. 28 ff..

Evangelicals found it easier than Liberal Anglicans and Presbyterian Moderates to accept the conclusions of “infidel” Science of Political Economy.<sup>52</sup> The latter two groups persisted with Butlerian polemics against “deists” and infidels, as Grey himself had done in the *Journals*, whereas the Evangelicals had no such commitment to Butlerian apologetics. With respect to ethnography and racial policy, Grey was the Liberal Anglican able to collaborate with Political Economy and with infidel Science, when the Evangelicals had foresworn the opportunity to do so. As Grey himself expressed the conflation of a providential order with human development -

“ We may I think, fairly adduce this as a proof, that the progress of civilization over the earth has been directed, set bounds to, and regulated by certain laws, framed by Infinite wisdom; and although such views may be deemed visionary, I feel some confidence that these laws are as certain and definite as those which control the heavenly bodies”.<sup>53</sup>

Stadialism organized human development into predictable stages. Philosophers of the European Enlightenment found social structures in a classical trope. The four-fold scheme of hunter-gathering, pastoralism, agriculture and urban civilization was in fact derived from a three stage model devised in classical antiquity which omitted the hunter gatherers, or rather absorbed them into the pastoral stage.<sup>54</sup> The Liberal Anglicans were more conservative in their stadialism. Australian aborigines were deemed to represent a stage that never appeared in, or else pre-existed the three classical stages as a non-stage. Plato’s *Timaeus*<sup>55</sup> and *Laws*<sup>56</sup> present the spectacle of humanity repeatedly emerging out of global catastrophes, by precisely these same

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<sup>52</sup> Hilton, Boyd, *The Age of Atonement: The Influence of Evangelicalism on Economic and Social Thought, 1795-1865*, Clarendon Press Oxford 1988, pp. 24-25.

<sup>53</sup> Grey, George, op. cit., pp. 223- 224.

<sup>54</sup> Homer, *Odyssey* IX, Theocritus *Idyll* XI,

Publius Vergilius Maro, *Aeneid* VIII ll. 315-319.

<sup>55</sup> Plato, *Timaeus* 22 E.

<sup>56</sup> Plato, *Laws* III 677 B.

stages. Herdsmen not hunter-gatherers are the basis of humanity. The Greeks did observe and discuss hunter-gatherer peoples<sup>57</sup> but placed them in a scheme of geographical dispersion not in a stadial scheme within the temporal dynamics of self-improvement. Situated as far as the Greeks were concerned, at the extremities of the world like other marvels, and lacking the temperate mixture which the population of the middle lands possessed, hunter-gatherer peoples were undoubtedly freaks rather than a normal human condition.

Montesquieu,<sup>58</sup> Gianbattista Vico,<sup>59</sup> the Scots philosophers proposed versions of stadial schemes in which the productions of peoples were typified by the stage of development at which they existed and by the institutions they lived under.<sup>60</sup>

Enlightenment philosophers preserved the classical confidence in human self-amelioration, for that was how the ancients accounted for humankind's recovery from catastrophes. Most of these schemes reported that some humans had gone through all four stages while others reported that peoples remained at various inferior stages unless higher civilizations colonized or instructed them. Human development nonetheless occurred autonomously without reference to God, secondary causes, or "higher" peoples. Several schemes however jibbed at the transition from hunter-

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<sup>57</sup> Herodotus, *Histories* III. 99.

<sup>58</sup> Montesquieu, baron de, Charles de Secondat, *de L'Esprit des Lois* [1748] in *Oeuvres Completes de Montesquieu*, Andre Masson (ed.) Edition Nagel, Paris 1950 v I..

<sup>59</sup> Vico, Gianbattista, *Principj di Scienza Nuova d'intorno alla comune natura delle nazioni*: Concordanze e indici di frequenza dell'edizione Napoli di 1744, L.S. Olschki, Florence/Firenze 1997.

<sup>60</sup> Millar, John, *Observations Concerning the Distinction of Ranks in Society*. Ferguson, Adam, *An Essay on the History of Civil Society* Printed for A. Millar, T. Cadell, A. Kincaid, J. Bell, Edinburgh 1768.

gatherers to pastoralists, Adam Smith's for example.<sup>61</sup> Gallatin was to insist that it was only with extreme difficulty that American Indians could leap an entire stage to settled agricultural life even with the support of well-disposed settler authorities.<sup>62</sup> European ethnography manifested extreme resistance to acknowledging the lowest stage of savagery within Europe. Savages proper apparently occupied the peripheries of the Earth.

Military intelligence was the prime value of Grey's ethnographic researches. Grey expertly assessed the organizational and military capabilities of indigenous peoples.<sup>63</sup> Gallatin's information had been largely derived from the War Department of the United States.<sup>64</sup> Grey had served in the Tithe War in Ireland in the 83<sup>rd</sup> Foot, commissioned as lieutenant.<sup>65</sup> Indigenous and non-British nationalities presented military threats that needed to be assessed. Whereas in Western Australia Governor Stirling had led punitive posses against aborigines, Governor Hutt had prohibited them. Grey himself was to attempt in South Australia a mixture of reconciliatory and punitive measures as he insisted that the aborigines come under the Law.<sup>66</sup> Such was Grey's interest in frontier lands that he considered service in the United States after the Texan declaration of independence in February 1836, at the time the Whig

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<sup>61</sup> Smith, Adam, *Lectures on Jurisprudence* in R.L. Meek, D.D. Raphael, P.G. Stein (eds) *Liberty Classics*, Indianapolis, 1985; pp. 20-22, 27, 39, 107, 202-205, 208-210 228-229, 404- 408, 460.

<sup>62</sup> Gallatin, Albert, op. cit. p. 156.

<sup>63</sup> Grey to Earl Grey, 9 July 1849 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand*, [ 1280] 1850 pp. 190- 197.

<sup>64</sup> Gallatin, Albert, op. cit., Prefatory Letter New York 29<sup>th</sup> January 1836 p. 1 p. 2.

<sup>65</sup> Rutherford, James, op. cit. p. 5.

<sup>66</sup> Rutherford, op. cit. p. 57 and p. 59.

government contemplated bringing Texas into the British sphere of influence.<sup>67</sup>

Gallatin's *Synopsis* might have been preparatory reading for that venture.

In Grey's adoption of Gallatin's ethnography consistent life-orientations are evident. The argument of this thesis is that Grey was "Jeffersonian" in his personal political values. Grey was anti-utilitarian, anti-classical in Political Economy, a radical Whig who identified with American Democrats, and a Huguenot descent Englishman who was interested in Swiss Protestant francophone thinkers, such as Antoine-Henri Jomini on warfare, Jean-Charles-Leonard de Sismondi on political economy and Albert Gallatin on ethnography. Thomas Jefferson's debt to Harrington is a feature of Jefferson scholarship.<sup>68</sup> James Harrington's republicanism and Machiavellian thought entailed sociology and historiography of its own. J.W. Burrow warns, and Richard Brent concurs, that Liberal Anglicans could adhere to a more Machiavellian and Harringtonian stadialism from out of the English 17<sup>th</sup> century, than to stadial theory of Scots authorities such as James Millar. This applied to even those who had Scottish educations such as Lord John Russell. As Burrow notes :-

"This older, Machiavellian and Harringtonian political sociology was cyclical and more pessimistic; it was obviously the fruit of long meditation on the fate of Rome, history's greatest cautionary lesson, and the extension of a diagnosis into a law of the decay of states and the loss of liberty, as a result of the corruption of public virtue by opulence and luxury."<sup>69</sup>

The Liberal Anglicans were descended from the latitudinarian current of a peculiarly English early Enlightenment that emanated from the Great Tew Circle which Hugh Trevor-Roper identified about the household of Lucius Carey, 2<sup>nd</sup> Viscount

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<sup>67</sup> Clark, Charles Manning, *A History of Australia* v III p. 38.

<sup>68</sup> Pocock, John, *The Machiavellian Moment*, p. 515, p. 525 p. 532-533 p. 535.

<sup>69</sup> Burrow, J.W., *A Liberal Descent* pp. 29-30.

Falkland.<sup>70</sup> The insane and irrational savages of Hugo Grotius were now to be imagined living their degraded lives within the correspondence of Natural History with scriptural revelation for the purposes of a Natural Theology, that discovered in hunter-gatherer peoples the most lapsed and intractable of all post-lapsarian humans. Grey's Port Louis paper was written in the shade of that 17<sup>th</sup> century, and of the English Enlightenment of Butler's *Analogy of Religion*. The Harringtonian model taught that the metropolitan civilizations at the top of the scale declined, corrupted by empire and opulence, unless liberty and self-sufficiency were preserved. Colonial enterprises were projects for the recovery of *virtu*. A fallen civilization contributed to the stadial succession all over again, if not from the very bottom of the scale where "savages" were to be found.

Whately and Grey found in stadialism a scale by which the extent of a people's "lapse" from civilisation and the providential order could be assessed, as well as the degree of progress which the influence of more advanced races brought about. They modified the Enlightenment schemes to hand to propose a pre-history that described some peoples as in continual free-fall, and others as raised by the efforts of superiors. British peoples themselves had required colonisation and proselytization. They were far from alone at seeking to revising the template. Doubt at Enlightenment stadialism was prevalent by the early 19<sup>th</sup> century. Alexander von Humboldt contrasted the demoralization he found among American Indians with the achievements of Peruvian and Mexican civilizations, which had been achieved without metallurgy, and with pack animals only in Peru. Spanish colonization was responsible for this, as it had

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<sup>70</sup> Trevor-Roper, Hugh, *Catholics, Anglicans and Puritans:- Seventeenth Century Essays* University of Chicago Press 1987.

either corrupted or preserved Indian peoples in a static condition.<sup>71</sup> It was from Humboldt's entirely secular speculations that the Liberal Anglicans learned there had in all instances to be culture-bearing higher civilizations.<sup>72</sup> In fact much of Grey's amalgamationist programme responds to the kind of criticisms Humboldt made of the Spanish government administration of Indians:-

*“Ja die Indolenz der Regierung. Die Politik der Missionäre, welche das Zusammenwohnen der Spanier und Indianer verhindern, die Milde der Gesetze, welche der Indianer einem statum in statu zugesteht, alles trägt dazu bei, die letzteren in ihrem ursprünglichen Zustande zu lassen, ein Zustand, welcher so permanenter ist, als der amerikanischer Indianer wie die Schinese und Hindus an seinem Herkommen unerschütterlich haftet.“*<sup>73</sup>

Through American apertures Liberal Anglican theological speculations entered and proliferated, imagining imagined divine intervention and exceptional dispensations along with natural disasters on the Atlantean scale. So limited were “savage” peoples deemed that Joseph Butler had declared the minds of primitive humanity unfit to infer the existence of God unless it had been revealed to them.<sup>74</sup> Grey then was a Humboldtian colonial administrator, rather than the “Nietzschean Man” that Collier proposed.<sup>75</sup> Grey argued that it seemed “to have been willed” that Australian aborigines were subject to institutions that were effective at ensuring their survival as a people on the Australian continent, yet were so devised and so strictly observed as

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<sup>71</sup> von Humboldt, Alexander, *Reise auf dem Rio Magdalena, durch die Anden und Mexico*, Akademie-Verlag, Berlin 1986 Teil I p. 230 , p. 271, p. 278, p. 332 p. 271.

<sup>72</sup> Whately, Richard, op. cit. p. 244.

<sup>73</sup> von Humboldt, Alexander, op. cit., p. 153 “Indeed the indolence of the government, the policy of the missionaries, which prevents Spaniards and Indians from living together, the mild application of the laws, which entitle Indians to a state within a state, all contribute towards the situation, leaving the latter in their original condition, that is so permanent that the American Indian like the Chinese and Hindus adheres unshakeably to his traditions.” .

<sup>74</sup> Butler, Joseph, *The Analogy of Religion* ch VI p. 110.

<sup>75</sup> Collier, James, *Sir George Grey, Governor, High Commissioner and Premier:- An Historical Biography.*, pp. 224-225.

to prevent them being “abrogated” or even altered.<sup>76</sup> God in Australia was a law-making *deus absconditus*<sup>77</sup> who had left a Crusoean “footprint in the sand”<sup>78</sup> for only providential Europeans to discern.

Yet so separable was Grey’s work from its theological content that it was being interpreted in full social evolutionist mode by the mid century. John McLennan, the opponent of Lubbock and Maine, yet the heir to Scots stadialism, processed Grey’s account into the full social evolutionist scheme. In McLennan’s *Primitive Marriage*<sup>79</sup> Grey’s *Journals of Two Expeditions* provided the exemplary accounts of marriage by capture amongst Australian aborigines. Grey’s *Polynesian Mythology* further provided McLennan with proofs of the practice of children fleeing to their mother’s kindred, and of traces of polyandry amongst Maori. When totem systems were superseded by higher stages of social organization, an explanation of cannibalism could be attempted in social evolutionary terms from Grey’s researches:-

“ In New Zealand and in the Feejee and other islands of the Pacific, the capture of wives appears to have been conjoined with cannibalism – the object of intertribal war being at once to procure women for wives and men for food.”<sup>80</sup>

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<sup>76</sup> Grey, George, op .cit., II p. 223.

<sup>77</sup> *Deus absconditus*, a hidden or departed God.

<sup>78</sup> Defoe, Daniel, *Robinson Crusoe* , Thomas Keymer (ed) Oxford 2007 [ 1719] p. 130.

<sup>79</sup> McLennan. John F., *Primitive Marriage:- An Inquiry into the Origin of the Form of Capture in Marriage Ceremonies* p. 32 ; - quotes from Grey’s *Journals* v II p. 24.

<sup>80</sup> McLennan, John F., *ibid* p. 34.

The content of the observations, the use of the comparative method and the dedication to institutional ethnography ensured that Grey's work was cited until the First World War.<sup>81</sup>

Grey's researches were undertaken for an ethnography that had not yet emancipated itself from reference to the History of Jurisprudence or to Political Economy. The course of his life-work requires plotting in the wider current of anthropological debate lest it fall out of context. The emerging disciplines of History, Sociology and Political Economy still answered to a Natural History of Law for Grey. He for his part sought to make indigenes answerable to British Law. Grey's memorandum in 1840 insisted upon reinforcing the case for the enforcement of British law to all parties on the frontiers and upon applying utilitarian doctrine to indigenes.<sup>82</sup> The works of Henry Sumner Maine marked the moment when Law learnt from Ethnography how to equip itself with the social evolutionary model and provide itself with a sociology of Law.<sup>83</sup> Maine's researches into this subject commenced in the 1840s when Grey first published,<sup>84</sup> though the great impact of his thought occurred in the 1860s and 1870s.

The debate between the segregationists and assimilationists over Colonial policy mirrored considerably<sup>85</sup> the debate in the East India Company government that began

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<sup>81</sup> Kerenyi, Karl and Jung, Carl Gustav, *Prometheus ; The Science of Mythology* Routledge, London 2002, p. 57 which quotes from Grey's *Polynesian Mythology* p. 18.

<sup>82</sup> Grey, George, *op. cit.*, v. II p. 374 paragraph 4.

<sup>83</sup> Maine, Henry Sumner, *Ancient Law, its Connection with the Early History of Society and its Relation to Modern Ideas* J. Murray, London, 1905.

<sup>84</sup> Maine Henry Sumner, *Village-Communities in the East and in West* J. Murray, London 1876.

<sup>85</sup> This happened to a considerable, though not to a total extent. Settler colonies by definition had to either protect indigenes from their settlers, or reconcile them to the settler interest, if they did not in fact die out. The debate over allegedly imperfectly

between the Orientalists in Hastings' service and the Evangelicals and Utilitarians in Cornwallis' administration. <sup>86</sup> George Grey's native policy for the settler colonies corresponded to Charles Grant's evangelical condemnation of Indian institutions, <sup>87</sup> as well as to James Mill's. <sup>88</sup> The debate within the Colonial Service was conducted with reference to the 1837 Select Committee *Report* on Aboriginal Affairs. The Buxton Report adherents may be regarded as analogous to Thomas Munro, John Malcolm, Charles Metcalfe and Mountstuart Elphinstone. <sup>89</sup> Should indigenous institutions be utterly repealed, even when not "repugnant to the laws of humanity"? The proponents of the 1837 Select Committee *Report* were the counterparts for the Colonial Office of the Orientalists. Both Grey and James Mill however emphasised the utter incapacity of the classes of indigenous subjects they were commenting on, and insisted upon the direct intervention of a higher foreign race and substitution of indigenous practice. Indigenous institutions were disqualified for the purposes of amelioration even by a civilising foreign power. In most instances they made a people worse, and in so far as they were static, prevented a people from progressing. Australian aborigines according to Grey<sup>90</sup> and French Canadians according to Lord Durham were peoples trapped in a static condition<sup>91</sup> from which British administration and society should extricate them. Indigenous institutions constituted

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civilized or static civilized peoples did not proceed on exactly the same terms and to exactly the same conclusions as debates about indigenes. Debates over tribal peoples in India however would offer a better analogy.

<sup>86</sup> Stokes, Eric, *The English Utilitarians and India*, Oxford University Press Delhi 1957 pp. 1-80 p. 311 ff.

<sup>87</sup> Grant, Charles, *Observations on the State of Society among the Asiatic Subjects of Great Britain, particularly with respect to Morals; and on the Means of Improving it*. Privately printed, London 1797.

<sup>88</sup> Mill, James, op .cit., pp. 107- 164.

<sup>89</sup> Stokes, op. cit., p. 9-15 .

<sup>90</sup> Grey, George, op. cit. v II p. 223.

<sup>91</sup> Lambton, John George, 1<sup>st</sup> Earl of Durham, in Sir Charles Prestwood Lucas (ed.) *Lord Durham's Report on the Affairs of British North America.*, v II p. 31 .

the chief impediment to civilization and were the perennial cause of conflict on frontiers. James Mill in fact was the secular counterpart of Richard Whately in his insistence upon the unregeneracy of failed cultures and civilizations.

Grey derived an ethnography from both Whately and Gallatin and took it out into field observations between the 1830s and 1850s. The 1860s would be such a period of intense ethnographic debate in various nations, that every commentator and not just Grey, had been compelled to re-evaluate their ideas as social evolutionist paradigms triumphed. Grey for his part had insisted over 1840 and 1841 that “savages” were deadlocked in pernicious institutions from which they had to be released to participate in any more advanced economy. By 1869 he seemed to speak the language of the new social evolutionist Anthropology to the Ethnological Society, quoting from Lecky’s *History of Morals*.<sup>92</sup> The reason why the folklore of so many disparate peoples shared so many common elements, he argued, was because the intellectual capacities of peoples at primitive stages of existence could only produce a limited repertoire of story-lines and concepts. That in itself was a reassertion of the arguments of the 1830s as he went out of his way to demonstrate respect for the memory of Whately against their common antagonist, Lubbock.<sup>93</sup>

Grey’s ethnography of 1840 was subordinated to the task of constituting the settler state and of sustaining imperial policy. Would-be ethnographers were a rare type in the Colonial Service at that time. Yet if Grey stood out as a governor-ethnographer,

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<sup>92</sup> Lecky, William Edward Hartpole, *History of European Morals from Augustus to Charlemagne*, Longmans, Green and Co, London 1910, 2 vv..

<sup>93</sup> Grey, George, *Journal of the Anthropological Society of London*. (1869) p. 362 .

<sup>94</sup>he was heir to an established school of administration and research in British India. Sir Stamford Raffles' *History of Java* in 1817 practised the orientalist antiquities of East India Company officials as well as the techniques of ethnographic description.<sup>95</sup> While much of Raffles' work was concerned with establishing an historical record for Java, ethnographic and linguistic observations abounded. Raffles was not an orientalist in his policy, for all his dedication to antiquities and anthropology, but rather the free trade proponent of the zamindari revenue system on Java and no proponent of "native protection" or of "indirect rule".<sup>96</sup>

Grey was a pioneer of ethnographic practice in a Service that only emancipated itself from the Board of Trade and Plantations in 1801 and obtained its Permanent Under Secretary in 1825. Even in this respect his originality must be qualified. Both the East India Company government in India and its armed forces as well as the British Army proper developed the capacity to observe and make military political assessments of non-European subjects and allies, adversaries and protected people.<sup>97</sup> The Colonial Office was a new service with much to learn from India. George Borrow publicized his experiences and researches among Romany peoples,<sup>98</sup> Richard Francis Burton would soon join a cadre of experts in languages and cultures in the East India Company army. The "damned" and vagrant of the earth, and not just ancient

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<sup>94</sup> Cell, John Whiston, *British Colonial Administration in the Mid-Nineteenth Century: The Policy-Making Process*, Yale University Press, New Haven and London 1970, p. 50.

<sup>95</sup> Raffles, Sir Thomas Stamford, *The History of Java*, Oxford University Press Kuala Lumpur, New York 1965 [1817] 2 vv..

<sup>96</sup> Bastin, John, *The Native Policies of Sir Stamford Raffles in Java and Sumatra: An Economic Interpretation* Clarendon Press, Oxford 1957, p. xvii pp. 46 – 47.

<sup>97</sup> Stokes, Eric, op.cit. p. 21 p. 143.

<sup>98</sup> Borrow, George, *The Zingali; or, an account of the Gypsies of Spain*, John Murray London 1846 [1841].

civilizations and their languages had become subjects for investigation.<sup>99</sup> The post-Waterloo generation of young adventurers were as interested in nomadic and “savage” peoples as the previous generations of Anquetil du Perron<sup>100</sup> and Sir William Jones and the first Egyptologists had been in ancient literate civilizations. Nor was this activity confined to men. Lady Hester Stanhope<sup>101</sup> demonstrated that life among indigenes was an ultimate radical lifestyle for elite emancipated Britons.

It was critical for Grey who dissented from the Appalachian and 1837 Select Committee models of native protection, to demonstrate that he had ethnographic authority on his side, from observations in Australia, New Zealand and South Africa. Potential investors in that dissent and possible patrons had to discover in it a rival explanation for the “savage state” that was dialectically effective against the proponents of absolute native protection, while proposing an alternate language for humanitarian concern, and an alternate fate for indigenes. Grey’s ethnographic analysis appealed to the Colonial Office, because it worked on several levels and solved the right problems for them. The 1837 Select Committee *Report* proposed a policy of expensively indefinite native protection. Grey had at least proposed a policy of supersession in humanitarian language. Other Whigs would no more allow the policy of Lord Glenelg, the Colonial Secretary between 1835 and 1839,<sup>102</sup> to compromise the colonial policy that they had determined upon, than they would the

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<sup>99</sup> Borrow, George, *ibid*, p. 256.

<sup>100</sup> Anquetil-Du Perron, Abraham Hyacinthe; *Zend-Avesta, ouvrage de Zoroastre. Traduit avec des remarques & plusieurs traits par m. Anquetil du Perron*; Paris 1771 2 vv. .

<sup>101</sup> Stanhope, Lady Hester Lucy and Meryon, Charles Lewis, *Travels of Lady Hester Stanhope*, Henry Colburn, London 1846 3 vv..

<sup>102</sup> For Charles Grant, 1<sup>st</sup> Baron Glenelg 1778-1866, consult:- Martin, Ged, “Grant, Charles, Baron Glenelg ( 1778-1866)” in *Oxford Dictionary of National Biography*, H.C.G. Mathew and Brian Harrison (eds), Oxford University Press 2004, v. 23, pp. 293- 295.

Durham Report.<sup>103</sup> The Melbourne government critically engaged with these reports, and devised policy to find alternative solutions. It was moreover committed to imperial retrenchment. Just as the Union of the Canadas Act 1840 accepted and rejected features of the Durham Report, so was Grey's dissent countenanced to the extent that Earl Grey could refer in 1853 to the existence of a "New Zealand" system, which could be exported to the Eastern Cape.<sup>104</sup> George Grey had proposed a way whereby a colony could dissolve its own frontiers and indigenes without expensive long-term military and native protection establishments. It was this official attitude that Grey was anticipating and gratifying with the Port Louis paper. For the young George Grey had been something of a grooming project. James Stephen's mentoring of Grey had commenced at least as early as the summer of 1833, just after the ensign's return from service in the Tithe Wars in Ireland, at the age of 21.<sup>105</sup> Colonial Office clerk Gordon Gairdner was deemed to work in Grey's interest.<sup>106</sup> Archbishop Whately was responsible for recommending Grey to Lord Glenelg when the latter was Secretary of State for the Colonies, and for the promotion of Grey's scheme to explore North Western Australia.

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<sup>103</sup> Martin, Ged, *The Durham Report* p. 29 ff ..

<sup>104</sup> Henry George, 3<sup>rd</sup> Earl, *The Colonial Policy of Lord John Russell's Administration*, v. II p. 253 "I can see no reason why, what has been so far accomplished in New Zealand, should not be so likewise in Africa".

<sup>105</sup> Rees, William and Rees, Lily, *The Life and Times of Sir George Grey K.C.B.* p 470 . Grey related how James Stephen showed him one evening as they walked together the arbour in Hyde Park where Nassau Senior was working on the Poor Law Bill which would date the anecdote to the summer of 1833.

<sup>106</sup> McLintock, A.H., *Crown Colony Government in New Zealand*, Wellington 1958, p. 407. Gordon Gairdner ( 1803?- 1877) was from a loyalist American family of South Carolina. An employee of the Colonial Office 1824-1870, he was awarded the C.M.G..

Cell, John Whiston, op .cit., pp. 22-23 for Gaidner.

Grey failed to win the Royal Geographical Society medal he so coveted. The youngest expedition leader in Australian history and possibly the poorest expedition-planner, his explorations not only failed as expeditions but had the further misfortune of failing to discover resources and places of immediate interest, or to even achieve a geographically significant traverse.<sup>107</sup> After returning to Britain in 1840, he sought to capitalize on his expeditions. He promoted a settlement scheme in Western Australia in the neighbourhood of modern Carnarvon in competition with another speculation based at the Leschenault Inlet.<sup>108</sup> Grey needed tangible results from his Australian venture. As has been discussed, the Port Louis memorandum was well received at the Colonial Office. Lord John Russell expressed approbation and ensured that the report was circulated to all Australasian governors with official approval. Even Hobson received it in New Zealand. Without mentioning John Hutt the Governor of Western Australia, who had been his first Colonial Service superior, Grey was challenging his erstwhile superior's protectionist management of native affairs.<sup>109</sup> Russell concurred with the racial diagnosis which the Durham Report and Grey's memorandum proposed when they both argued that British settlements should absorb non-British minorities.

Far from being "unsolicited",<sup>110</sup> and deserving of reprobation on that account, the Port Louis paper was a contribution to policy discussion at the Colonial Office from a

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<sup>107</sup> Parker, Derek, *Outback: The Discovery of Australia's Interior*, Sutton Publishing Ltd, Thrupp Stroud Gloucestershire 2007 pp. 86-106.

<sup>108</sup> Crowley, F.K., *Australia's Western Third: A History of Western Australia*, Heinemann, Melbourne, 1960 pp. 15-16 .  
*Australian Dictionary of Biography*, Melbourne University Press 1966, v. I A.-H., 1788- 1850, Douglas Pike (ed.) p. 477.

<sup>109</sup> McHugh, Paul, *Aboriginal Societies and the Common Law:- A History of Sovereignty, Status and Self-Determination* p. 163.

<sup>110</sup> McHugh, Paul, *ibid*, p 165.

well-connected “aspirant” who was far from unknown.<sup>111</sup> It cracked open a career at last for Grey who had lost interest in the Army. He resigned his commission as captain in the 83<sup>rd</sup> Foot. Grey’s memorandum provided the Colonial Office with the ethnography it had been looking for. Having provided the ethnography of imperial retrenchment, he was sent to South Australia to retrench the first of the Wakefield colonies. The Colonial Office approved of none of Edward Gibbon Wakefield’s projects, neither his Political Economy nor his schemes for settler self-government. As George Cornwall Lewis made clear in his *Essay on the Government of the Dependencies*<sup>112</sup> Wakefieldian and Durhamite constitutionalism were not to be immediately applied to dependencies, as responsible government was a contradiction in terms with the status of British dependency, which settler colonies in frequent war with indigenes in fact were. Furthermore settler autonomy contradicted the policy of native protection for which the Colonial Office was responsible.

John Whiston Cell proposed the following parameters for the operation of the Colonial Office during Grey’s service. On the one hand he noted:-

The upper echelons of the permanent staff were fully capable of providing the knowledge and intellectual capacity for the formation of a purposeful and fairly consistent colonial policy, directed from this office, that was the focus of imperial decision making.<sup>113</sup>

On the other hand he insisted that:-

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<sup>111</sup> Buckner, Philip, “The Colonial Office and British North America”, in *Dictionary of Canadian Biography v. VIII 1851 to 1860*, Frances G. Halfpenny and Jean Hamelin (eds), University of Toronto Press, Toronto 1985; p. xxxiii.

<sup>112</sup> Lewis, George Cornwall, in C.P. Lucas (ed); *An Essay on the Government of Dependencies*, Clarendon Press, Oxford 1891 [1841], pp. 295- 301.

<sup>113</sup> Cell, John Whiston, op. cit., p. 24.

Yet the fact is that the Colonial Office did not control the flow of events. It drifted with them. No one “ran” the British empire.<sup>114</sup>

Within these limits, an informed policy culture was possible between governors, officials and British politicians, despite misunderstandings and differences:-

The governors and their staffs were essential to the formation and execution of a successful colonial policy.<sup>115</sup>

To such a policy culture,<sup>116</sup> Grey attempted to contribute, and with success, by writing and sending his Port Louis paper.

Historical research into political ideas must prove how individuals responded to ideological formations especially where cross-overs and unexpected oppositions or receptions occur. Grey’s ethnography and his corresponding policy of indigenous amalgamation is a Liberal Anglican approximation of the arguments that James Mill made in his *History of India*. One should not conclude that the two thought-systems of Whiggery and Utilitarianism excluded each other.<sup>117</sup> Real political and administrative careers would be ground into inexplicability by such an approach. Real political actors were at all times able to collaborate. The answer for Grey at least was that he was not at all unique in occupying an interface between Whigs and philosophical radicals. Lord Durham enacted the same role as a radical Whig deploying Radical

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<sup>114</sup> Cell, *ibid.*, p. 24.

<sup>115</sup> Cell, *op. cit.*, p. 47.

<sup>116</sup> Snelling, R.C., and Barron, T.J., “The Colonial Office: Its Permanent Officials 1801- 1914”, in Gillian Sutherland (ed) *Studies in the Growth of Nineteenth Century Government*, Routledge and Kegan Paul, London 1972, p. 141., p. 151. p. 152-153.

<sup>117</sup> Winch, David, “ Philosophical Whigs v. Philosophical Radicals” in Collini, Burrow and Winch *That Noble Science of Politics*, for how closely this position can be argued.

concepts.<sup>118</sup> Anti-classical in their Political Economy, Liberal Anglicans nonetheless consulted the *Westminster Review* and Utilitarian texts. Durham was a radical Whig, a colleague of Russell, and brother-in-law of Howick. Janet Ajzenstat<sup>119</sup> argues that Durham was a radical Whig who could work with radicals such as Charles Buller. Yet there is nothing new to this designation of Durham. Charles Prestwood Lucas made the same clear in his introduction to the Durham Report from the 1912 edition.<sup>120</sup>

The problem then of assigning Grey to intellectual and political cultures has nothing to do with the colonial sphere placing unique strains upon the explicability of live British politics and political discourse of the 1830s and 40s. Education was far from standardized, higher education was confined to few, and variable in curricula. Grey's education was standard for a high-achieving and self-educated army officer from a family with access to intellectuals, but definitely non-standard for a Peel or a Gladstone or a Stephen let alone a Russell. Even at elite level, Regency England was the product of various educational experiences, none of them distinctly hegemonic as a dedicated training for colonial administration. The East India Company college at Haileybury, the ancient English and the Scottish universities, the Royal Navy, the Royal Military Academy, the Inns of Court variously educated future colonial administrators. Admittedly the classically educated man from either Oxford or Cambridge was supposed to be *primus inter pares*, but that preparation had to be supplemented by referees, private research and contributions to policy debate. The Colonial Office was at the stage of its development when retired naval and army

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<sup>118</sup> Lambton, John George, 1<sup>st</sup> Earl of Durham in Lucas (ed) op. cit., v. I p. 2.

<sup>119</sup> Ajzenstat, Janet ,op. cit., p. 56.

<sup>120</sup> Lambton, John George, 1<sup>st</sup> Earl of Durham, op. cit, v I p . 2.

officers with few other credentials were beginning to be considered less qualified for employment than those who had developed a relevant expertise in governance.<sup>121</sup>

Grey was a recognized “savant” by the time he took up his post at Adelaide in May 1841. His uniqueness did not consist in that he collected interesting specimens, or recorded indigenous practices, or that he was both a governor and a man of scientific learning, for other governors considered themselves so. Grey was unusual because he was a colonial official who considered himself and was considered by others to be both an ethnographer and a constitutionalist. Ethnography and constitutionalism were not disparate activities for Grey but made up a unified field of activity. Admittedly Ethnography and constitutionalism were related in themselves, in that the mature civilised institutions of a constitutional polity in a modern economy were the terminus of a scale of institutions that descended to the savage. Throughout his career Grey brought these two practices into personal combination for the indictment and abrogation of indigenous society, and yet also for the admission of indigenes to a capacitarian colonial sphere.

The constitutional achievement of Grey’s ethnography was that he was able to demonstrate the apparently defective constitutions of indigenous societies by identifying totems and matrilineal moieties amongst Australian aborigines, as well as defective institutions of other indigenous societies. The institutions that constituted indigenous societies came from a universal repertoire and possessed common and

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<sup>121</sup> Francis, Mark, *Governors and Settlers – Images of Authority in the British Colonies, 1820-1860* Macmillan, Basingstoke 1992 p. 2.

Buckner, Philip, “The Colonial Office and British North America” in *Dictionary of Canadian Biography* v. VIII 1851 to 1860, Francess G. Halfpenny and Jean Hamelin (eds), Toronto University Press, Toronto 1985; p. xxiv.

predictable features. Ethnography analysed the pre-history of humanity while history proper could explain why defective civilisations failed, such as the India which James Mill compared to the Aztecs. The constitutions of indigenous societies not only retarded their development but prevented benign outsiders from exercising an ameliorative influence. They were therefore to be repealed by the civilized law and property institutions of the alternately colonizing and protecting power. As we shall find in the following chapters, the settler order was to be constituted for the purpose of managing the racial relations between colonists and the indigenes. Settler constitutions were to serve as capacitarian instruments for the induction and reception of indigenes for amalgamation into settler societies.

## Chapter Four

### The Port Louis Paper

On his return voyage to Britain from Australia, Grey despatched from Port Louis Mauritius in June 1840 a *Report upon the Best Means of Promoting the Civilization of the Aboriginal Inhabitants of Australia*,<sup>1</sup> which he addressed to Lord John Russell, who was then the Secretary of State for War and the Colonies. This “Port Louis Memorandum” was a bold, even insolent, yet at all events welcome, piece of policy advice. It outlined the general policy towards indigenous people that Grey was to pursue throughout his Colonial Service career and beyond. The document has been entirely misunderstood in all of its reviews to date even though it has been constantly referred to in discussions of Grey’s career. Recent Australian writing in the history of ideas has even claimed that Grey desired aborigines to remain under their own laws, when the reverse was the case.<sup>2</sup> This claim is perhaps less extraordinary when it is considered that the diffusion of indigenous rights discourse and of indigenous law throughout former British white settler colonies has created conditions for historical and legal debate in which the alternatives for “aborigines protection” between 1763-1840 may now be more intelligibly assessed. The focus has never existed before now for historians to consider it in its rightful perspective. The Port Louis Memorandum was no rewrite of the recommendations in the *Report* of the Select Committee on

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<sup>1</sup> Grey to Lord John Russell, 4 June 1840, CO 201/304 fos. 245 – 246a, enclosing “*Report upon the best means of promoting the civilisation of the aboriginal inhabitants of Australia*” fos. 247 – 263a.

Grey, George, *Journals* v. II pp. 372- 388.

<sup>2</sup> Gascoigne, John, *The Enlightenment and the Origins of European Australia*, Cambridge University Press, Cambridge 2002, p. 162. The footnote no. 89 for Gascoigne’s assertion does not refer to the Port Louis paper, or any document by Grey.

Aboriginal Affairs in 1837. <sup>3</sup>Grey's memorandum was in fact a point-by-point refutation of the Select Committee's *Report*.

Grey had served as a minor official on the Swan River Colony establishment. The policy for which he was arguing, was one that he had himself devised, and which he was subsequently employed by the Colonial Office to carry out within the parameters of Royal Instructions. This policy was not devised in a vacuum, but belongs to the context of constitutional and ethnographical discussions as they were conducted between the 1830s and 1850s. Grey's distinguishing activity was to undertake ethnographical research and speculation as well as to design constitutions. Grey's ethnology and constitutionalism served the Liberalism of Capacity. In short, Grey was applying the recommendations of the Durham Report relating to the French Canadians in Lower Canada, in the first instance, to the aboriginal population of Australia, but by extension also to the non-white indigenous peoples of Britain's Southern Hemisphere colonies. If Aborigines Protection as envisaged by the Select Committee was not on Grey's agenda, nor was mere "Assimilation" in the sense of making indigenes "like" settlers. Grey was to argue lifelong for integration and absorption of indigenes into white settler communities. The Port Louis paper has been frequently commented on and just as frequently misunderstood, not only by John Rutherford, but Alan Ward, <sup>4</sup> Charles Manning Clark,<sup>5</sup> Peter Adams <sup>6</sup> and Paul McHugh. <sup>7</sup>

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<sup>3</sup> Rutherford, James, *Sir George Grey K.C.B. 1812-1898:- A Study in Colonial Government*, p. 52.

<sup>4</sup> Ward, Alan, *A Show of Justice : Racial Amalgamation in Nineteenth Century New Zealand*, University of Toronto Press, Toronto, 1973, p. 36.

<sup>5</sup> Clark, Charles Manning, *A History of Australia Volume III The Beginning of an Australian Civilization 1824- 1851*, Melbourne University Press 1973, pp. 39 -40.

The first step in rendering Grey's career intelligible involves understanding the first policy paper of his career. In Albany Western Australia, Port Louis Mauritius and in East Sussex, and as a shipboard occupation, Grey wrote up and began to distribute and publish his reports of his Australian experiences over 1839-41. These writings consisted of the journals of both his expeditions in Western Australia, of his ethnographic and linguistic research, along with memoranda on law enforcement and on the administration of Australian Aborigines. Grey had just turned 28 and he was seeking to impress a prospective patron, to replace Lord Glenelg. Not only had Grey's explorations yielded no significant results, such as the inland rivers, and inland seas analogous to those of Central Asia, but these missions had been leadership disasters. On the first expedition Grey had been seriously wounded, on the second a comrade paid with his life. Out in the field Grey either ceased to dissemble his dissent or else decidedly turned against the Glenelg's policy towards indigenous peoples and openly opposed the Report of the Select Committee on Aboriginal Affairs of 1837, which was published while Grey was shipping out to Australia on board the "Beagle".

James Rutherford who wrote the only substantial biography of Grey to date in the 1950s offered the two following comments on this report. He first of all observed that:-

"idealism and wishful thinking wiped out the recollection of his practical experiences and he penned a report to Lord John Russell showing how the complete and speedy amalgamation of the two races might be effected....."

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<sup>6</sup> Adams, Peter, *Fatal Necessity: British Intervention in New Zealand 1830-1847*, Auckland University Press, Oxford University Press, 1977, p. 212.

<sup>7</sup> McHugh, Paul, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status and Self-Determination*, Oxford University Press, 2004; p. 162.

“ Russell, whose “Olympian logic’ was on the same exalted level as Grey’s abstract generalisations, was well pleased and commended Grey’s ideas to the Governors of Australia and New Zealand.”<sup>8</sup>

One can only regret without rehabilitating Grey’s advice in the slightest that these comments are caricatures in what is still however the best-researched most comprehensive and most factually reliable study on Grey to date. Far from forgetting the less than favourable results of his practical experiences, Grey wrote up a fair sample of his failures for public consumption.<sup>9</sup> Grey was young enough, or whimsical and confident enough, to show himself becoming a laughing stock and having the tables turned on him by indigenous peoples whose intelligence he was at pains to insist was equal to any European’s. Grey’s style of gentility was also on display. The Port Louis Paper in fact concludes and seals Grey’s *Journals of Two Expeditions* which abundantly included such anecdotes. In the writings of Richard Burton, George Borrow, Hermann Melville and in Edgar Allan Poe’s *The Narrative of Arthur Gordon Pym*, the adventurer is a centre of attention in the reading just as the expedition itself is, so that readers engaged with an autobiography of self-exploration, and not just a travelogue or official report. Grey was determined to entertain as well as to instruct and edify.

Rutherford continued:-

“ Grey’s basic precepts were substantially those of the Aborigines Committee report of 1837. On the strength of a brief experience amongst the Western Australian aborigines, he had produced a new programme of native civilization all ready for execution.”<sup>10</sup>

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<sup>8</sup> Rutherford, James, op. cit., p. 19.

<sup>9</sup> Grey, George, op. cit., v II p. 9, p. 43 p. 358 .

<sup>10</sup> Rutherford, op. cit., p. 52.

Comparison of Grey's Port Louis paper with the Select Committee Report reveals that Grey was rejecting the conclusions of the latter point by point and substituting his own alternatives. The respective native policies are entirely distinct. The rest of Rutherford's criticisms were reasonable.

Rutherford was an exponent of mid-20<sup>th</sup> century narrative history. Russell and Grey did "generalise", but then so did everyone literate in contemporary governance language. The very language of Political Economy worked arguments up to a high level of generalisation from empirical data. The revolution that has occurred in historical writing since Rutherford's time has been a change of focus from "what happened" in a story-line, and "why it happened" in a cause and effect sense, to an investigation of the thought-systems and languages for power and ideology. It was not just a young man's idealism and wishful thinking that produced such recommendations, nor was it the "Olympianism" of an aristocrat in mid-life that made Russell susceptible to such reports. British government at this time was fast becoming the Empire of Political Economy. Ambitious "new men" seeking to collaborate in government would deploy these new fluencies. Utilitarian writing would have struck mid 20<sup>th</sup> century readers as equally programmatic, just as idealist, just as filled with wishful thinking, definitely "abstract" and "leading" and as absolutely "Olympian".

Moreover the prose of such reports was machine-tooled to both propose policy and explain how it would be carried out. One begged the Secretary of state to understand that an entire situation could be altered on the most comprehensive terms if a particular alternative were attempted. The modern cabinet paper is just more

formatted, that is all. Grey had learned this mode of thinking from association with statesmen and with public policy-minded intellectuals since his boyhood and youth. He was arguing in what was fast becoming the in-house language of empire not in civic humanist or legal modes. The Port Louis Paper made the expected impression when James Stephen arranged for it to appear on Lord John Russell's desk at no 14 Downing Street. If the Port Louis Paper in fact contained nothing new as Rutherford argued, and was simply an enunciation of official policy from the 1837 Select Committee, then Russell's enthusiasm should surely have been confined to discovering a likely new recruit for the Colonial Service, who wrote all the right things and toed the official line. Grey's access to Glenelg has been attributed to his friendship with that peer's brother William Grant ( d. 1848). Both Grants were bachelors. <sup>11</sup>

One other criticism that can be made of Rutherford before this analysis closes in and compares the Port Louis Paper with the 1837 Select Committee Report, is that both reports were equally idealistic and generalist in their treatment of the problems aboriginal people presented colonial administrators over the entire empire. For what could be said of the Port Louis Paper could be said of the Buxton Report with compounded interest.

Grey had after all acknowledged that the Port Louis Paper consisted of "general principles" intended for wider application. <sup>12</sup>His express ambition in writing such a memorandum was to devise policy and identify operating principles for indigenous government for not just Australian Aborigines, but indigenous peoples anywhere who

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<sup>11</sup> Rees, William, and Rees, Lily, *ibid.*, p. 16 .

<sup>12</sup> Grey, George, *op. cit.*, v II p. 373 .

came into contact with British settlers commerce and law. By circulating Grey's memorandum to the Australasian governors, Russell was indicating that Grey had succeeded in fashioning a publishable overview of problems the Buxton Report had treated.

Rutherford's analysis of the Port Louis Paper has wrong-footed historians and legal scholars ever since. Since the publication of Rutherford's comments in 1961, commentary has been negative. The latest condemnation is from Paul McHugh who falls upon Grey after informing readers that he was a Royal Navy officer, and belabouring him for writing an "unsolicited" report to the Colonial Office.<sup>13</sup> McHugh entirely mistook the nature of "gentlemanly" relations.

Grey was a "gentleman", he held a commission in the army, his mother Lady Thomas was a baronet's widow, his family and in-laws were East Sussex gentry. He was in fact well-connected and highly literate and as has been seen, far from a "penniless subaltern". Nor was he socially secure either- the great challenge of his young adult life was to find career, acquire a reputation, make a fortune and secure a pension, either from a "service" or the Civil List, that would perpetuate gentlemanly life and create what E.G. Wakefield termed "social room",<sup>14</sup> and ideally reproduce that to his heirs. Grey eventually wanted more than that as he sought his image "in the nation's eyes".<sup>15</sup> In 1840 such megalomania lay decades in the future. Grey accordingly went and did what so many others did in "gentlemanly" circles of government. Amateur his

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<sup>13</sup> McHugh, Paul, *Aboriginal Societies and the Common Law: - A History of Sovereignty, Status and Self-Determination.*, p. 165.

<sup>14</sup> Lloyd Prichard, Muriel F., *The Collected Works of Edward Gibbon Wakefield*, Collins, London 1968, "A View of the Art of Colonization" (1849) p. 800.

<sup>15</sup> *N.Z.P.D.* v XXXV p. 350.

ethnography was, but ethnography was an amateur discipline in 1840.

Gentlemanliness was amateurism and dilettantism converted into the commanding lifestyle of the true virtuoso, whose only profession if he were so minded, was government. Grey was so minded and he needed the job to sustain gentlemanly expectations and to start a career outside of the Army.

To commence with a point by point comparison, the Select Committee recommended:-

“Whatever may be the legislative system of any colony, we therefore advise that as far as possible, the Aborigines be withdrawn from its control.”<sup>16</sup>

These are all indigenous peoples in every colony. This is a global recommendation.

Grey gave precisely the opposite advice:-

“ I would submit, therefore, that it is necessary from the moment the aborigines of this country are declared British subjects, they should as far as possible, be taught that the British laws are to supersede their own”.<sup>17</sup>

The Port Louis Paper related to the governance of Australian aborigines, but Grey too was pronouncing wider principles that he was to apply to any indigenous peoples that were to come under his rule throughout his subsequent career. The Port Louis Paper critiques the Select Committee recommendations and it does not do so by excepting the Australian Aborigines and making a special case for them. In fact the thrust of Grey’s expedition *Journals* to be published the following year insists on their full humanity and intelligence and their suitability for induction into the workforce of a

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<sup>16</sup> *G.B.P.P. Report from the Select Committee on Aborigines (British Settlements) 26 June 1837* [ 425] p. 77.

<sup>17</sup> Grey, George, *op. cit.*, v II p. 375 paragraph 6.

19<sup>th</sup> century settler economy. <sup>18</sup> Grey was to re-establish the Treaty of Waitangi order in New Zealand, if it in fact had ever really been established before war broke out, only to supersede it. The Treaty and its protectorate were a regime that had a use-by date. Aborigines Maori and Xhosa were all designed by him in this report to come ultimately under settler governance and then supposedly participate in settler markets, society and civicism.

The outcome that the Select Committee sought, was the protection of indigenous peoples from molestation, corruption and slaughter by frontier settlers. <sup>19</sup>The flag was to precede and pre-empt trade and settlement. <sup>20</sup>It was very much on this basis that Lord Normanby as Secretary of State for the Colonies had issued his instructions to Captain Hobson in 1839. In planning for New Zealand in 1839, the “Buxton Report” was the one to which the Colonial Office adhered, and for more reasons than those which the Committee had under its ambit. <sup>21</sup> French ambitions had to be pre-empted, and there were the Church Missionary Society, the Aborigines Protection Society and the New Zealand Company, each of them with their noble and notable patrons and investors.

Grey’s objective on the other hand was the “civilization” of indigenous peoples, which he variously categorized as either “barbaric”, a mere statement of fact under Grey’s pen, or as “savage” a term that alternated between an apparent statement of

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<sup>18</sup> Grey, George, op. cit., v II p. 374 and pp. 381-382, and p. 383.

<sup>19</sup> *Report of the Select Committee on Aboriginal Affairs*, op.cit., p. 5.

<sup>20</sup> Knaplund, Paul, *James Stephen and the British Colonial System 1813-1847*, University of Wisconsin Press, Madison 1953, pp. 83-84.

McLintock, A.H., *Crown Colony Government in New Zealand*, p. 50.

<sup>21</sup> Orange, Claudia, *The Treaty of Waitangi* p. 31.

fact or could be designedly pejorative in relation to the term “barbarian”.<sup>22</sup> Grey was challenging the purpose of the Select Committee Report, by arguing that it was impossible to bring peace to the frontiers and render aboriginal peoples “tractable”, for even to confine them within a reservation for their own benefit presumably required a measure of tractability, particularly if they were nomadic, or pastoralist, unless these peoples were proactively “civilized”.<sup>23</sup>

If a frontier persisted, in his view, between settlers and indigenous peoples, it would in itself become the perennial source of settler-aboriginal conflict:-

In considering the kinds of labour in which it would be most advisable to engage natives, it should be borne in mind that, in remote districts where the European population is small, it would be imprudent to induce many natives to congregate at any one point, and all the kinds of labour in which they should be engaged ought to be of such a nature as to have a tendency to scatter them over the country, and to distribute them amongst the separate establishments.<sup>24</sup>

Indigenes were to be dissolved as “hordes” or tribal associations, denied the opportunity to engage in nation-building and state-formation as far as was practicable, and reconstituted over generations as citizens of the new colonial polities under a liberalism of capacity, that placed greater tests upon them than upon the settlers, and made of them second-class citizens where they were even citizens at all. This policy entirely coheres to the Jominian analysis of frontiers, previously discussed.<sup>25</sup> In other words Grey intended a euthanasia, an extermination of human cultures, though not of the greater part of the individuals who belonged to such societies. “Peoples” were to survive yet be changed. Grey expressed the Jominian strategy to the situation thus:-

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<sup>22</sup> Grey, George, *op. cit.*, v. II p. 218, p. 220.

<sup>23</sup> Grey, George; *ibid* p. 373.

<sup>24</sup> Grey, George; *ibid* p. 385 paragraphs 31.

<sup>25</sup> Jomini, Antoine-Henri, *Precis de L'Art de Guerre*, pp. 293-294.

“Whilst in the well-peopled districts, where a force sufficient both to protect and control the aborigines exists, they should be induced to assemble in large numbers, for they work much more readily when employed in masses, and thus by assembling them on one point, their numbers are diminished in those portions of the colony which have a small European population.”<sup>26</sup>

In this we may find Grey targeting Andries Stockenstrom, the Swedish-Afrikaner who was the leading border official in the Eastern Cape, the leading informant of the Select Committee on Aboriginal Affairs. Grey’s great enemy of his South African years, Theophilus Shepstone, was to be the heir of both Stockenstrom’s policy and of the 1837 Select Committee Report.<sup>27</sup>

The Select Committee recognized frontiers as a basic governance tool, whereby their recommendations might preserve indigenous peoples from infectious disease, pernicious commerce, violence and irregular transfers of land or outright squatting “beyond the pale”:-

“Again in the cases of offences committed beyond the borders, British subjects are amenable to colonial courts, the Aborigines are not.....It would therefore on every account be desirable to induce the tribes in our vicinity to concur in devising some simple and effectual method of bringing to justice such as of our own people as might be guilty of offences against the Queen’s subjects. For that purpose, treaties might be made with the chiefs of independent tribes, defining with all practicable simplicity, what acts should be considered as penal, by what penalties they should be visited, and in what form of procedure those penalties should be enforced.”<sup>28</sup>

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<sup>26</sup> Grey, George, *ibid* v II pp. 385-385 paragraph 32.

<sup>27</sup> Rutherford, *op. cit.*, pp. 344-345.

Brookes, Edgar H., *The History of Native Policy in South Africa from 1830 to the Present Day*, J.L. van Schaik, Pretoria 1927 p. 98.

Sullivan, J.R., *The Native Policy of Sir Theophilus Shepstone*, Walker and Snashall, Johannesburg 1928.

<sup>28</sup> *Report of the Select Committee on Aboriginal Affairs*, *op .cit.* p. 80.

A paragraph as astonishing as this is sufficient proof that any of Rutherford's criticisms of Russell and Grey equally apply to the "Buxton" Committee. Surely if Grey had "ideally" abstracted that Report, the Report is "abstract" and "idealistic" itself.

Grey might have been an amateur ethnographer but the *Journals* are largely written with modesty, revealing care at trying to comprehend the institutions, the laws and customs and marriage customs of Australian Aborigines. Grey's simple liking of aborigines in 1841 was a contrast to other observers' contempt.<sup>29</sup> Grey was a good listener about camp-fires as he fraternized, and a sharp if manipulative, interrogator.<sup>30</sup> His contributions to ethnography included the first identification of interrelated Australian Aboriginal languages, of the group that is now known as the Pama-Nyangan language family and the first identification of the totem systems that governed their society.<sup>31</sup>

Frontiers such as the Select Committee presumed upon are of various kinds. They could be boundaries of sovereignty and suzerainty as in South Africa, they could be implicit borders within a British possession such the Australian colonies at that time, or it could just mean the penumbra of a settler colony, or even of a ranch. Orders in Council and proclamations could shift them by degrees, minutes and seconds. Grey did not just propose the dissolution of indigenous nations. To do so he proposed the dissolution of the frontiers themselves. The Select Committee had resorted to the segregationist native protection model. The policy was declared by Charles II in his

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<sup>29</sup> Grey, George, op. cit., v. II p. 317.

<sup>30</sup> Grey, George; ibid v. II p. 232.

<sup>31</sup> Grey, George, ibid v. II p.p. 225-229.

Letter to the Council of Foreign Plantations, yet found its most ambitious and influential expression as a form of government in the Appalachian Protectorate proclaimed in 1763 at the conclusion of the Seven Years War with the Treaty of Paris. The British Crown had then excluded white settlement and the sale of land in the territories west of the Appalachians ceded by France, and it had placed the Indians that had previously been allies of the French under a protectorate. It was debated after the Treaty of Paris in 1763 whether the various Indian nations brought into the British Empire were thereby constituted British subjects. Thomas Pownall had objected in 1764 to the British pretension of “dominion” over “the several Nations or Tribes of Indians with whom we are connected”.<sup>32</sup>

The Select Committee was affirming in 1837 the policy devised for the “conceptual model” of Natural Law that had developed in the European 16<sup>th</sup> and 17<sup>th</sup> centuries in the wake of the discovery and exploitation of the Americas. Developed by Spaniards, it was challenged by Grotius, so that *jus gentium* was transformed to refer to the relations of nation states in International Law.<sup>33</sup> The defenders of indigenes were obliged to stress their political capacity. Conceptual right Natural Law was a model that William Robertson among Scots Enlightenment thinkers endorsed, but which Ferguson, Millar, Hume and Smith denied, as they argued for the development of a moral science in historical time.<sup>34</sup> Robertson, a Presbyterian Moderate clergyman, assumed a position like that of the Butlerians and Liberal Anglicans in England.<sup>35</sup>

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<sup>32</sup> Pownall, Thomas, *The Administration of the Colonies*, London 1768 p. 262, p. 263, p. 265, p. 274.

<sup>33</sup> Gierke, Otto, *Natural Law and the Theory of Society 1500 to 1800*, trans. Ernest Barker, Cambridge University Press 1958, pp. 38-39.

<sup>34</sup> Pocock, John, *Barbarism and Religion* v. II pp. 268-270 ; and pp. 312-315.

<sup>35</sup> Robertson, William, *History of America*, Printed for W. Strahan, T. Cadell, J. Balfour, Edinburgh 1783.

Nonetheless it is to Adam Ferguson, who was also independent from Smith, Millar and Hume,<sup>36</sup> that we owe the assertion of civic capacity among so-called “barbaric” and tribal peoples in the Americas.<sup>37</sup> Protest at settlers’ rapacity and cruelty arose among the Spaniards themselves as early as 1510 among their churchmen. Scholars call this a conceptual model of Natural Law because it was derived from the principles of human reason and human nature itself, and not from Revelation or by analysis of human history. In this scheme the “savage” was no degeneration from current humanity or even our brother, but in fact our fallen father. Just as European civilization had risen from among barbaric and even savage peoples, along the marches of more advanced states, so should Indians be “reduced” ( i.e. “led back”) to civilization and the fullness of humanity and not be exterminated or enslaved. Before 1763 the British had had little experience of governing a multi-racial empire with a multitude of laws and languages. Spain offered remedies, moreover the Civil Law tradition behind International Law and sovereignty concepts were a zone apart from British Common Law that ensured the United Kingdom remained in legal conversation with its continental counterparts in the community of nations. Such law could be deployed in the marcher-lands and on frontiers against subjects.

It is to be noted however that reception of naturalist indigenous law appeared to inform the Appalachian Proclamation of 1763. The myth of the proclamation is that it created a hard and fast protectorate. True, there was a territory, into which settlers, missionaries, and unlicensed traders were forbidden to traverse, but it is wrong to believe that the protectorate was to be inviolable. What was agreed upon was that there ought to be a native protectorate, not a territory in perpetuity. The protectorate

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<sup>36</sup> Pocock, *op. cit.*, p. 330.

<sup>37</sup> Ferguson, Adam, *An Essay on the History of Civil Society*. pp. 97-98.

was primarily over peoples, for the territory had come under the British sphere of influence and could be alienated. It would be wrong to imagine by the term protectorate the concept as it had become by the time of the Berlin Congress. Sir William Johnson the Native Protector negotiated a vast cession of territory from Indian leaders with the 1<sup>st</sup> Treaty of Stanwix in 1768.<sup>38</sup> Thus began the American system of indigenous management and the beginnings of an American indigenous rights regime, which acknowledged the sovereignty of Indians nations as “domestic dependent nations”,<sup>39</sup> but sought the alienation of the territories attributed to them by Treaty. Whatever the Appalachian Protectorate was that Sir William Johnson protected, it was not a classic British protectorate or protected state of the Congress of Berlin period, like a Hyderabad, Johore, Nepal, Tonga, or Swaziland.

Grey might render frontiers invisible and porous as much as he liked, but he was obliged to place a gloss upon uncomfortable facts to justify the absorption of Australian Aborigines into the main population settlers for the period of their education and trades training. Town life with their own fellows was supposed to provide company and support, as well as to avowedly relieve the frontier of their presence, where European settlement was sparser and more exposed to attack.<sup>40</sup> From his association with his aboriginal friends “Warrup” and “Miago” in Perth, of whom he had made constant companions, Grey was aware that no indigene by him or herself could be a “Man Friday” by himself in the settler environment. They needed their fellows and required sociable labour:-

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<sup>38</sup>O’Toole, Fintan, *White Savage:- William Johnson and the Invention of America*, p. 273.

<sup>39</sup> Chief Justice John Marshall in *Worcester v. Georgia* 31 U.S. (6 Pet.) 515 ( 1832) .

<sup>40</sup> Grey, George, *op. cit.*, v II p. 387 paragraph 14.

In order that the work on which natives are employed in the vicinity of towns, should be of the most advantageous nature, it is necessary that it should be productive of benefit both to themselves and the Government which employs them, so that it cannot be complained of as a useless expense, whilst at the same time it should be of such a kind as to accord with that love of excitement and change which is so peculiar to this people.<sup>41</sup>

Without any irony Edgar Brookes pronounced that “one of the beauties of the Grey system” was that “the communal spirit was still to a large extent unimpaired” while the indigenous polity was broken up.<sup>42</sup> The entire indigenous society was to change and take its people with it. Furthermore, Grey would permit no legal “pidgin” on the frontiers such as the Select Committee proposed. Finding “simple” ways to bring settlers to justice before indigenes, and devising “with all practical simplicity” the best code of offences and penalties denied the complexity of indigenous institutions in any part of the world.<sup>43</sup>

Codifications of written alien laws were projects the British embarked upon in various possessions after 1763, commencing with Sir William Jones’ research into Sanskrit and into the law of Hindu scriptures. Major compilations continued during Grey’s own career, such as the codification of the laws of Malta by the jurist John Austin and the political economist George Cornwall Lewis over 1837-38,<sup>44</sup> or the one-man effort by des Voeux a governor of the generation after Grey, who single-handedly codified the laws and *coutume* of St Lucia.<sup>45</sup> The Buxton Committee considered it possible to

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<sup>41</sup> Grey, *ibid*, p. 386, paragraph 34.

<sup>42</sup> Brookes, *op. cit.*, p. 97.

<sup>43</sup> Grey, George, *op. cit.*, v II p. 376 paragraph 8.

<sup>44</sup> Austin, John and Lewis, George Cornwall, *Copies or Extracts of Reports of the Commissioners Appointed to Inquire into the Affairs of the Island of Malta and of Correspondence thereupon*, G.B.P.P. no 141, 1838-1839.

<sup>45</sup> des Voeux, Sir George William, *My Colonial Service in British Guiana, St Lucia, Trinidad, Fiji, Australia, Newfoundland, and Hongkong, with interludes*, London, 1903.

do the same with unwritten indigenous laws. In so far as it recommended the compilation and application of indigenous codes from oral sources, the 1837 Select Committee radically underestimated the amount of time and effort that would have gone into even constructing a “basic” if not “simple” legal regime of the kind they proposed, that was neither indigenous practice nor British Law. Grey, who had dedicated much effort to understanding aboriginal institutions, was committed to their abrogation.

Grey also expressly rejected the economic recommendations of the Select Committee Report. The Committee members had recommended that no aboriginal person be permitted to contract for service for a period longer than twelve months.<sup>46</sup> Their concerns were directed at covert forms of slavery persisting in British possessions in the aftermath of the *Abolition of Slavery Act* in 1833, and also at the abuses arising from indentured labour, supposed or otherwise. Instead of the seasonal short-term work the Report recommendations left aboriginal peoples eligible to participate in, Grey the military engineer proposed that Australian aborigines be encouraged to labour on road-works as an itinerant occupation.<sup>47</sup> Settlers were also to receive inducements for “civilising” and apprenticing aborigines. Roads were to become part of Grey’s repertoire of remedies for reducing and civilizing any indigenous people. He was to report that Maori had an amazing aptitude for road-building, very little different from the work habits of their extensive horticulture and flax-cutting,<sup>48</sup> and was to provide relief in the Xhosa famine zone for able-bodied young men able and

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<sup>46</sup> *Report of the Select Committee on Aboriginal Affairs*, p. 78.

<sup>47</sup> Grey, George, *op. cit.*, v. II p. 386 paragraph 35.

<sup>48</sup> Grey to Earl Grey, 9 July 1849 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand 1850* [ 1136] pp. 190-197.

willing to labour on his public works schemes.<sup>49</sup> With respect to the Australian Aborigines, Grey proposed that they be allowed to take their kangaroo dogs to road works, so that they could take breaks, go off and wander and hunt as they reasonably pleased, so long as the road was completed.<sup>50</sup> On a severer and more convincing note, he proposed that aboriginal youth undergo initiation and induction into British settler society through apprenticeships, rather than by means of their customary practices. Employment as stockmen or jackaroos such as the Select Committee encouraged, was too seasonal and inconsistent for the purposes of civilization.<sup>51</sup>

Grey's alternative policy relied upon one simple principle:-

“ The aborigines of Australia having hitherto resisted all efforts which have been made for their civilization, it would appear that if they are capable of being civilized, it can be shown that all the systems upon which these efforts have been founded, contained some common error, or that each of them involved some erroneous principle; the former supposition appears to be the true one, for they all contained one element, they all started with one recognized principle, the presence of which in the scheme must necessarily have entailed its failure.

“ The principle was, that although the natives should, as far as European property and European subjects were concerned, be made amenable to British laws, yet so long as they exercised their own customs upon themselves, and not too immediately in the presence of Europeans, they should be allowed to do so with impunity.”<sup>52</sup>

Grey's solution then was to pre-emptively close the frontier, and so conduct policy that closure would be sprung as a *fait accompli*. At the Cape where beyond any indigenous people lay another indefinitely, Grey did have to devise a multi-frontier system. In Australia and New Zealand however, Grey could consider that he had circumvented his supposed charges within his alternate system.

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<sup>49</sup> Grey to Labouchere 25 March 1857 CO 48/ 381.

<sup>50</sup> Grey, George, *op , cit.* v II p. 386 paragraph 35.

<sup>51</sup> Grey, George; *ibid* v II p. 381 paragraph 20.

<sup>52</sup> Grey, George, *ibid* v II p. 373-374 paragraphs 1 and 2.

George W. Stocking the American historian of Anthropology as a discipline has assessed both Darwin and Grey's appraisals of the Australian Aborigines. Whereas Charles Darwin could speculate:-

"I would not have believed how entire the difference between civilized & savage man is. – It is greater than between a wild & domesticated animal, in as much as in man there is greater power of improvement. " <sup>53</sup>

Grey could insist that:-

"they are as apt and intelligent as any other race of men I am acquainted with:- they are subject to the same affections, feelings, appetites and passions as other men, yet in many points of character they are totally dissimilar to them." <sup>54</sup>

Stocking observes that Darwin's attitudes were in fact less intellectually respectable in the 1830s at the height of Slavery Abolition and of the Aborigines Protection Movement than they would be within fifty years' time after the impact of Darwin's own researches and of Herbert Spencer's schematisations. "Savages" he noted rapidly depreciated in value not long after the publication of Grey's ethnographic researches, though of course not as a result of them. <sup>55</sup>

For there is much to criticise and condemn in Grey that the charm of his personality and the freshness and frankness of his views distract attention from. What then was Grey's ethnography?

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<sup>53</sup> Darwin, Charles, in R.D. Keynes (ed.) *"Beagle" Diary*, Cambridge University Press, 1988 p. 122 entry for 18 December 1832.

<sup>54</sup> Grey, George, op. cit., v II p. 374 paragraph 4.

<sup>55</sup> Stocking, *Victorian Anthropology* p. 107.

First of all Grey was a Prichardian in his ethnography. James Cowles Prichard argued what seems to us to be evident, but was not to 19<sup>th</sup> century European publics, that mankind had one common origin. Humanity was not “polygenous” in origin and derived from several initially independent species. Grey did not subscribe as many others did to a hierarchy of human beings and human-like simulacra.

Prichard was the definer for the British world at least, of the ethnographic project Grey had taken up as the handmaiden of his imperial mission. As mankind had a common origin the task of ethnography was to:-

“ trace the history of the tribes and races of men from the remote periods which are within reach of investigation, to discover their mutual relations, and to arrive at conclusions either certain or probable as to the affinity or diversity of origin”.<sup>56</sup>

Grey’s own definition of the purpose of ethnography appears in his discussion of the traditional laws of the Australian Aborigines in the *Journals*:-

“I believe, moreover, that they [ the laws] are capable, in some degree, of being studied and reduced to order, although no attempt to do so has hitherto been made; and the institutions of barbarous nations, their probable origin, the effects they have upon the people submitted to them, the evidences of design which they contain, and other similar questions, are those points to which in this enquiry attention should be particularly directed.”<sup>57</sup>

Grey was surprisingly the developer of a theory of Australian exceptionalism. The Australian Aborigines had a unique dispensation apart from the rest of humanity. If they had not been taught to live in Australia after the Fall, they would have

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<sup>56</sup> Stocking, George W.. *Victorian Anthropology* , p. 231.

<sup>57</sup> Grey, George; op. cit., v. II p. 224 .

perished.<sup>58</sup> If Grey had not insulated his argument in terms of what was called Natural Theology and of his ethnographic observations, he would have come dangerously close to accusations of polygenism because of the claims he made for the Australian Aborigines.

The cockpit for all of these theories one way or the other was the Scots Enlightenment. The great minds of 18<sup>th</sup> century Scotland had devised rich new narratives and theories for the progressive development of humanity. David Hume had investigated the origins of religion.<sup>59</sup> Adam Ferguson and Millar had devised respective “stadial” theories to account for the stages of development human societies manifested, stages which had to be gone through for civilization to emerge.

<sup>60</sup>Diversity existed in the Scots accomplishment, profound programmatic disagreement. If Prichard in one generation could assert the unity of the origins of humanity, Lord Kames in an earlier generation had insisted on the opposite.<sup>61</sup>

Scottish thought provided sites where Liberal Anglicans, Evangelicals and Utilitarians could discover competing affiliations.

So as to contribute to this wider debate Grey insisted upon his own credentials. He had lived among Aborigines and made observations of their mode of life and made inquiries of them. They in turn had wounded him for life, with the spear wound in his thigh, which was never to fully heal. They had also assisted his exploration party and

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<sup>58</sup> Grey, George; op .cit., v. II p. 221.

<sup>59</sup> Hume, David, *The Natural History of Religion*, A. Colver, J. V. Price (eds) Clarendon Press, Oxford 1976.

<sup>60</sup> Ferguson, Adam, *History of the Rise, Progress and Termination of the Roman Republic* , Edinburgh, 1783.

Millar, John , *Observations Concerning the Distinction of Ranks in Society*,

<sup>61</sup> Kames, Henry Home, Lord, *Essays upon Several Subjects Concerning British Antiquities, Composed Anno Domini MDCCXLV*, London 1749.

himself during his disastrous and fatal expedition in Western Australia, in which he overlanded from Shark Bay to Perth. Grey was also upfront with his Christian credentials. “Closet”, “Deistical” writers were particularly condemned for their incomprehension of the intricate system of laws the Australian Aborigines lived under.<sup>62</sup> These, presumably Scottish, deists, were wrong to attribute rudimentary organization to “savages”, thereby denying the proof of the intervention of a deity in Humanity’s Natural History. In his cover letter to Lord John Russell on the Port Louis paper, he insisted that his own

“ report is founded upon a careful study of the language, prejudices and traditional customs” of the Aborigines.”<sup>63</sup>

a claim which he was to make good with the following publication of his *Journals*. The Buxton Report had envisaged aboriginal protection officers of the calibre of William Johnson or Andries Stockenstrom. Such officers would learn the languages and customs of any given people in their care and report back on the employment and training opportunities for these people. Grey had taken the Committee at its word by furnishing such reports and implicitly offered his own version in the place of Stockenstrom’s.

Grey attributed the dissimilarity and the resistance of the Australian Aborigines not to any of the usual “shapers” of national character such as climate or landscape let alone to “race”, but to their laws and institutions. Change their laws and customs and society and one would supposedly civilize the people.<sup>64</sup>

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<sup>62</sup> Grey, George, op. cit., v. II p. 220.

<sup>63</sup> Grey, George, op. cit., v. II p. 372.

<sup>64</sup> Grey, George, op. cit., v II p. 377 paragraph 11.

“Again it would be unfair to consider the laws of the natives of Australia as any indication of the real character of this people:- for many races who were at one period subject to the most barbarous laws, have, since new institutions have been introduced amongst them, taken their rank amongst the civilized nations of the earth”.

The Port Louis Memorandum was therefore a dissent from the Buxton Report. It earthed ambient contemporary amalgamationist thought, and proposed a Jeffersonian policy of native administration for the purposes of Jominian strategic management. The question now is to consider how Grey practised this policy and undertook temporisations so as to advance his plans.

## Chapter Five

### New Zealand in 1845

#### *The Treaty of Waitangi*

The constitutional order that Grey took responsibility for in New Zealand in November 1845 consisted of a Crown Colony government and native protectorate.

<sup>1</sup>The Treaty of Waitangi, first signed on 6 February 1840, was not a Treaty of cession, but rather secured permission for annexation from the British view. Great Britain annexed New Zealand on 21 May 1840 after (and while still ) securing Maori approval. <sup>2</sup>The task of this chapter is to describe the New Zealand “constitution” at that time, detail the collapse of British government in New Zealand by 1845 and relate how Grey re-established it.

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<sup>1</sup> For the historiography on 1840s New Zealand, leading historians have been:- Adams, Peter, *Fatal Necessity: British Intervention in New Zealand 1830-1847*, Auckland University Press, Oxford University Press, 1977. Adams, Peter, “British Intervention in New Zealand 1830-46” Oxford (DPhil) thesis 1974.

Belich James, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland University Press, Auckland 1986 .

Belich, James *Replenishing the Earth*, Oxford University Press, Oxford 2009.

Dalziel, Raewyn, “Southern Islands: New Zealand and Polynesia” in Andrew Porter (ed) *Oxford History of the British Empire*, Oxford University Press 1999.

McLintock, A.H., *Crown Colony Government in New Zealand*, R.E. Owen, Government Printer, Wellington 1958.

Morrell, W.P., *British Colonial Policy in the Age of Peel and Russell* Oxford 1930.

Orange, Claudia, *The Treaty of Waitangi*, Allen & Unwin, Port Nicholson Press, Wellington, 1987.

<sup>2</sup> McIntock, A.H., *Crown Colony Government in New Zealand*, p. 61.

Government began in New Zealand by seeking at the consent of the indigenes who were to be governed. Both the Consul, James Busby's <sup>3</sup>"United Tribes of New Zealand" declaration in 1835 <sup>4</sup>and the Treaty insisted on this principle. The Treaty of Waitangi, from its first signings on 6 February 1840 became the instrument by which this consent was sought and obtained for the establishment of British government in New Zealand. To most British settlers, it rather concluded a process, dating from the first New South Wales extensions of jurisdiction over British subjects in New Zealand, and from William IV's assurance of royal protection in 1834, not commenced one.

The Treaty consists of versions in two languages, one in English the other in Maori and three articles in either version.<sup>5</sup> The Maori version purported to be a translation of the English text. The parties to the Treaty were Queen Victoria and the sovereign chiefs of New Zealand. The Treaty in 1840 undertook in the English version under its first article to establish both British sovereignty and government in New Zealand, <sup>6</sup>under its second to guarantee Maori possession and title to their lands forests and fisheries <sup>7</sup>and above all their self-government and autonomy under British government in New Zealand, and in its third, to extend the rights and obligations of

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<sup>3</sup> Orange, Claudia, "Busby, James 1802-1871" *Dictionary of New Zealand Biography*, updated 22 June 2007; <http://www.dnzb.govt.nz/>

<sup>4</sup> Orange, Claudia, *The Treaty of Waitangi*, Allen & Unwin, Port Nicholson Press, Wellington, 1987; pp. 225-226 Appendix 1. The Declaration took place on 28 October 1835.

McLintock, A.H., *ibid.* p. 24.

<sup>5</sup> Orange, Claudia, *The Treaty of Waitangi*, pp. 36-43, pp. 255-266 .

<sup>6</sup> Orange, Claudia, *ibid.*, p. 40.

<sup>7</sup> Orange, Claudia, *ibid.*, pp. 40-41.

British subjects to Maori with the promise that they would be regarded equally under the Law.<sup>8</sup>

The Maori version of the Treaty was distorted from the English text, by the act of translation itself, by the novel and totalising nature of some of the concepts such as sovereignty, the application of which being unfamiliar to Maori, and through deliberate emphasis and playing down of various points, so as efficiently secure Maori assent. The Maori version of the Treaty emphasizes that it is British government that is being introduced to New Zealand, sovereignty downplayed so as to be virtually invisible, that Maori *tino rangatiratanga* absolute autonomy, or the independent chieftainship of Maori leaders would be guaranteed, and that Maori would be treated the same as British subjects, no express statement being made in the Maori language that they were about to become British subjects.<sup>9</sup>

The basic achievement by 22 May 1840 was to pre-empt other powers from annexing portions of the archipelago, and to establish British Crown Colony government over the settler communities and their lands, and to establish a Protectorate for Maori.

French settlers had established a colony at Akaroa on Banks Peninsula.

The Treaty presented interpretative challenges during Grey's governorships of New Zealand. A conversation began in 1839 between the Colonial Office, prospective New Zealand governors, missionaries, settler leaders and Maori leaders, and various metropolitan pundits, over what New Zealand government was supposed to be. An

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<sup>8</sup> Orange, Claudia, *ibid.* p. 40, p. 42.

McLintock, *op. cit.*, p. 59.

<sup>9</sup> Ross, R. M., "Te Tiriti o Waitangi: Texts and Translations" *New Zealand Journal of History*, 1972, 6 ( 2).

able and ambitious mind such as Grey's did not refuse the challenge to interpret the Treaty for the convenience of his policy in New Zealand as he balanced the perils of alienating Maori against the apparent hazards of offending the settlers. His opinion of the Treaty conformed with the amalgamation doctrine of his Port Louis paper policy. In New Zealand however he officially represented the policy which the Colonial Office instructed him to observe. Grey was able to carry out his policy so long as he demonstrated that a system of amalgamation could operate incrementally and create a lasting peace, and not involve the British governments in more New Zealand wars. Reconciliation of the opposing policies might be empirically attained.

The Treaty then provided a significant basis for New Zealand's first constitutional order. As it was not the only one, it was not paramount to settler opinion, which concentrated on agitation against Crown colony government and on the politics of obtaining a New Zealand Constitution Act. What the Treaty meant and "did" was another matter. Hobson proclaimed British sovereignty over the entire archipelago, countered all attempts at rival jurisdictions, yet found himself at best an arbitrator between tribes when they went to war. Robert FitzRoy the second Governor ( 1843-45) entirely privatised land purchase and attempted to retrocede the dispersed settler colonies on the North and South Islands and absorb them into Auckland. The Crown pre-emption system, adopted from British North America and from the Appalachian Protectorate had nonetheless denied Maori the right to sell their land to whom they chose.<sup>10</sup> Authorities in Australia were involved, as the colony was subordinate to New

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<sup>10</sup> Martin, William CJ , judgment on *Queen v. Symonds (McIntosh's Case)* ; in Grey to Earl Grey 5 July 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand December 1847* [ 892] p. 68:- " I shall content myself with citing two passages from the well known "Commentaries on American Law" , by Mr. Chancellor Kent, of the State of New York. I quote this book, not as an authority in an English Court, but only

South Wales until 1841. The *New Zealand Land Claims Bill* in the latter colony provoked disagreement. Governor Gipps of New South Wales argued that Cook's annexation had extended British sovereignty by right of discovery, the very basis on which the Crown Colony government had not proceeded. William Charles Wentworth argued against the Bill on Vattelian terms, that such right of discovery had fallen into abeyance and Maori could sell to whom they wished.<sup>11</sup>

Maori too debated over the meaning of the Treaty. Southern tribes sought Crown pre-emption, northern tribes however had experience of land sales from the 1810s and felt competent to conduct sales for themselves. Grey dismissed the native protectors and acted as his native protector in a most characteristic dissent against the 1837 Select Committee policy. He then proceeded to temporise over the Treaty, true to the Port Louis paper, and applied the model of the Highland clans of Scotland to Maori tribes, approving of the post-Culloden abolition of clan institutions.<sup>12</sup> By 1847 the Colonial Office had to be reminded of the Treaty of Waitangi. Louis Alexis Chamerovzov of the Aborigines Protection Society insisted on Dr Joseph Phillimore's interpretation of the Treaty.<sup>13</sup> In his coup against the New Zealand Constitution Act 1846, Grey

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as a sufficient testimony that the principle contained in the rule of law laid down – and which same principle, with no other change than the necessary one of form, is still recognized and enforced in the Courts of the American Union, is understood to be derived from the period when the present States were Colonies and Dependencies of Great Britain. “The European nations (says Mr. Chancellor Kent, Vol 3, p. 379) which respectively established colonies in America, assumed the ultimate dominion to be in themselves, and claimed the exclusive right to grant title in the soil, subject only to the Indian right of occupancy. The natives were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion, though not to dispose the soil, at their own will, except to the Government claiming the right of preemption.”

<sup>11</sup> Orange, Claudia, *The Treaty of Waitangi*, p. 95.

<sup>12</sup> Grey to Earl Grey 29 November 1848 C.O. 209/ 63.

<sup>13</sup> Chamerovzov, Louis Alexis, *The New Zealand Question and the Rights of Aborigines*, London 1848 . “Appendix to the New Zealand Question being the

composed the despatch of May 1847 by reminding the Colonial Office of the original purposes and principles of the Treaty exercise.<sup>14</sup> It is not that the Colonial Office did not misunderstand the structure of the colonial system it set up in New Zealand, rather it had lost track under competing agendas of what the specific undertakings had been, what the structure was for.

*A New Zealand System?*

If by 1853 Lord Grey could deem that a “New Zealand system” existed, so as to be introduced in the Eastern Cape after 1847, then that system constituted a model, which could be historically reviewed by 1853, and not merely as the product of a New Zealand exceptionalism.<sup>15</sup> The “plan” then of that model resulted from the Treaty of Waitangi and from the 1837 Select Committee *Report* and ultimately on the “family” of segregationist native protection systems such as the Appalachian Protectorate and the “Plan of 1764”. Since the original “Plan of 1764” was far from immobile, and in fact provided for land purchase, the “New Zealand” system as it had operated under the Grey government was a mechanism whereby a steady pressure was kept on Maori so as to effect an end unknown to Sir William Johnson, the persistent amalgamation of an indigenous people.

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Opinion Thereupon of Joseph Phillimore, Esq., D.C.L. and Shirley F. Woolmer, Esq., of the Middle Temple, Barrister at Law” Thomas Cautley Newbly London 1848, pp. 1-53.

<sup>14</sup>Grey to Earl Grey 3 May 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand, December 1847* [ 892] p. 44.

<sup>15</sup>Grey, Henry George, 3<sup>rd</sup> Earl, *The Colonial Policy of Lord John Russell’s Administration.*, p. 253.

This chapter shall now proceed to a description of the Treaty, by considering the immediate constitutional order for which Maori apparently permitted the British to erect in their country. Much of this is implied within or implicit to the English language text. It will then consider the specific explicit undertakings in the respective texts. In the first instance the Treaty of Waitangi and the Protectorate that it had supposedly established were Buxton Report institutions. The Treaty agreement sought agreement from Maori in the English version that British government should be established in New Zealand for Maori as well as Pakeha under the sovereignty of Queen Victoria. That government would be Crown colony government, administering two governance entities in New Zealand, a British Crown colony and a native protectorate connected by a Governor and Legislative Council of officials. The same “government”, or *kawanatanga* would operate in both zones.<sup>16</sup>

New Zealand was not at all exceptional among British colonies in being constituted into two governance zones under the same administration. Two kinds of protectorate were available to the Colonial Office as models for New Zealand in the 1840s. The first was the native protectorate model devised to enforce the Appalachian Proclamation of 1763, though the basis of that system had commenced with the appointment of William Johnson as the first Superintendent of Indian Affairs in 1755. The second protectorate model was the kind of constitution the Ionian Islands had been governed by since 1817,<sup>17</sup> which became a series of Foreign Jurisdiction Acts from 1843 until the summary Act of 1890 empowered such entities.

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<sup>16</sup> Orange, Claudia, op. cit., pp. 255-266.

<sup>17</sup> Wight, op. cit., 52.

The Treaty of Waitangi however most definitely established a native protectorate. If pressure for organized British settlement had not affected Colonial Office policy, and if demand for Maori land had not required British Government in New Zealand to constantly convey Maori land by extinguishing aboriginal title, it is possible that the Maori New Zealand which Grey took responsibility for in November 1845 might have come “under” the *Foreign Jurisdiction Act 1843*.<sup>18</sup> This might have happened if Maori rejected the Treaty at the outset. The Fante of the Gold Coast hinterland had become the first Colonial Office protectorate over indigenes that was not a native protectorate in 1830, but they had immediately become subject to the Foreign Jurisdiction Act 1843 once that instrument was available.<sup>19</sup> In any case the Ionian Islands were the first British protectorate of that kind in 1817.<sup>20</sup> British settlers however desired Maori land, which involved a dissolution and permeation and restructuring of New Zealand space, so a Foreign Jurisdiction Act was hardly a suitable solution.

A governor of a settler colony that was attached to a Foreign Jurisdiction Act protectorate came to be termed a High Commissioner for the latter territory. A governor of a settler colony was a governor just the same, though he was supposed to govern the native protectorate through a native protector and native protector’s office. Grey was not the high commissioner in New Zealand, that he was to become in Southern Africa,<sup>21</sup> because the governor of the Cape Colony’s high commissionership

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<sup>18</sup> 53 & 54 Victoria c. 37 .

<sup>19</sup> Wight, *The Development of the Legislative Council 1606- 1945* p. 62.

<sup>20</sup> Wight, *ibid* p. 52.

<sup>21</sup> Baron, William Malcolm Hailey Hailey, *The Republic of South Africa and the High Commission Territories*, Oxford University Press, London 1963.

extended over Afrikaner and Coloured republics as well as yet un-annexed tribal nations and territory.<sup>22</sup> Nonetheless the Governor –in-Council considered as a legislature could well legislate for both a colony and a protectorate. The Governor of Fiji was High Commissioner for the Western Pacific, the Governor of Aden was “legislature” for both the colony and the protectorate.<sup>23</sup> The New Zealand Crown Colony Governor supposedly provided executive and legislative government for both a colony and a protectorate.

Another feature of the Appalachian Protectorate model is that while it did interpose a barrier to settler commerce and migration, the boundary proclaimed in 1763 was not intended to remain permanent, though it is often represented in principle as such. Though intended to be the only purchase of its kind, Sir William Johnson himself negotiated the first Treaty of Fort Stanwix in 1768, which ceded millions of acres to the Crown in New York, Pennsylvania, West Virginia and Kentucky.<sup>24</sup> His intent had been to secure the protectorate finally. This first Treaty of Fort Stanwix was a massive land purchase that replaced the system of direct purchase of Indian land by patents awarded by governors to speculators. The precursor of the Treaty of Waitangi order can be found mature in the Appalachian Protectorate along with all its repertoire of principles. The constitution of a Crown colony, an institution unknown in the 1760s, was to mediate and alter the policy of racial protection in New Zealand. It was no

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Benyon, J.A., *Proconsul and Paramountcy in South Africa: the High Commission, British Supremacy and the Sub-Continent 1806- 1910*; University of Natal Press, Pietermaritzburg, 1980.

<sup>22</sup> Collier, James, *Sir George Grey, Governor, High Commissioner and Premier*, pp. 192-93.

<sup>23</sup> Wight, op. cit., p. 155 note.

<sup>24</sup> O’Toole, Fintan; *White Savage:- William Johnson and the Invention of America* pp. 273-278.

Elliott, J.H., *Empires of the Atlantic World: Britain and Spain in America 1492- 1830* Yale, New Haven 2006.

rhetorical flourish when William Charles Wentworth protested that the British North American system had been introduced to New Zealand after the New Zealand Claims Bill was introduced in the New South Wales legislature on 28 May 1840.<sup>25</sup>

New Zealand was constituted a Crown colony after the Treaty. This then was the *kawanatanga* (government) that Maori were promised. Colonies were recognized to have constitutions before constitutional statutes granted them representative and responsible government. *Colonial Regulations*, first issued in 1837, recognized that Crown colonies could be classified according to their constitutional arrangements and anomalies. <sup>26</sup>To list them all, charters, Letters Patent and Royal Instructions for governors, the doctrine of Act of State, existing models of established colonies, agreements with foreign governments, agreements entered into with local authorities, the institutions of a native protectorate, recognition or otherwise of indigenous title in land, were the determinants of what forms the colonial sphere would take in a given colony and of its purported zones of operation.

“We are now one people” Hobson remarked at the first Treaty signing on 6 February 1840 – “He iwi tahi tatou”. <sup>27</sup>That one people were divided into two spheres of governance, yet it was and remains debatable whether Maori were in fact British subjects, or rather possessed a simulacrum of British rights and obligations. As

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<sup>25</sup> Orange, Claudia, op .cit., p. 95.

Melbourne, A.C.V., *William Charles Wentworth*, Briggs & Co pty Ltd, Brisbane 1932; p.p. 65-66, for Wentworth’s advice in 1840 to Maori chiefs in Sydney not to sign the Treaty of Waitangi, and his opposition to Gipp’s policy in New Zealand. Sweetman, Edward, *The Unsigned New Zealand Treaty* , Melbourne 1939 , chapters 4, 6.

<sup>26</sup> *Rules and Regulations for Her Majesty’s colonial service*, W. Clowes & Sons for H.M. Stationery office, London 1843.

<sup>27</sup> Orange, Claudia, *ibid.*, p. 55.

Claudia Orange has argued, it was the New Zealand Government, and not the Crown Colony government, that imposed British subject status on Maori in the late 1860s.<sup>28</sup> Neither the extension of a Foreign Jurisdiction Act nor the definition of protectorate status under international law constituted inhabitants of a country as subjects of the protecting power. Similarly with native protectorates Thomas Pownall insisted in 1764 that the Treaty of Paris and the Appalachian Proclamation of 1763 did not constitute Iroquois as British subjects in that native protectorate.<sup>29</sup> Paul McHugh notes that the assumption of British sovereignty over that Protectorate hardly amounted to an “unequivocal assertion” and notes it was never asserted that English law applied in the internal affairs of the Protectorates’ inhabitants.<sup>30</sup>

In any event “irresponsible” government was the norm in the 1840s, no facetious expression, but a distinction of gubernatorial government proper from responsible government practised by ministries selected from colonial legislatures. The Crown colony model, which was applied to New Zealand and first defined by the Quebec Act 1774, was neither a “royal” colony, nor a charter colony governed under a charter, nor a proprietary colony. It was “irresponsible”, that is unresponsive and not responsible to settlers and non-settlers, either represented or unrepresented. Under the Crown colony model, the pretensions to sovereignty were not at all “unequivocal” and the native protectors were subordinate to the governors of colonies. The “completion” then, in British terms, of the native protectorate model would require both the annexation of the protectorate into the Crown colony government, and then its segregation from the colony. Native protectors of the 1830s and 1840s were not

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<sup>28</sup> Orange, Claudia., *ibid.*, p. 182.

<sup>29</sup> McHugh, Paul, *Aboriginal Societies and the Common Law* p. 106.

<sup>30</sup> McHugh, Paul, *ibid* p. 106.

virtual peers of governors such as Sir William Johnson had been in the Appalachian Protectorate, but their distinct subordinates, unless as in Stockenstrom's case they attained gubernatorial status.<sup>31</sup>

“The Plan of 1764”<sup>32</sup> had a long life even though the *Quebec Act 1774*<sup>33</sup> superseded the Appalachian Proclamation with a new constitution. Treaty of Waitangi New Zealand owed most to the model inherent in the “Plan of 1764”. The 1837 Select Committee *Report* endorsed the segregationist native protection model for the settler Crown colony empire, of which the Appalachian Protectorate model had been a prominent example. 74 years on from the Appalachian Protectorate, the Report contended with different forces and had to work through the new Crown colony system, not apart from it. Grey's Port Louis' paper had at least argued the very shortest distance between Crown colony government and indigenous populations outside of the real colony. It was also contemporary with the moment in American history, when Jefferson's policy of land purchase and amalgamation, had been replaced by Jackson's policy of the appropriation of indigenous lands, and the removal of American Indians to reservations. The Cherokee were removed in 1832 from their lands in the Great Smokey Mountains to Oklahoma. Compared with segregationist native protection on the one hand, and appropriation on the other, Grey's policy then resembled Jefferson's. No less revolutionary than Jackson however, Grey resorted to the exploitation of indigenous stress to break native resistance and bring about a decisive amalgamationist event, of the kind that Mamdani has called a “smashing” of peoples.

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<sup>31</sup> McLintock, A.H., *Crown Colony Government in New Zealand*, Wellington 1958, p. 176.

<sup>32</sup> McHugh, Paul, *op. cit.*, p. 105.

<sup>33</sup> 14 Geo. III. c. 83.

Although settler rapacity was a problem in any colonial system, the native protectorate model nevertheless encountered far more powerful ideological opponents in settler colonies after the Napoleonic Wars than in 1760s America. For rapacious and unscrupulous settlers encountered an opponent that was also a potential ally, if also a short-term constraint on their demands, and that was the ideology of assimilation, whereby indigenous peoples were to be absorbed into the settler colony and economy. Instead of a contrast between humanitarians who would protect,<sup>34</sup> and settlers who would conquer and supplant, a situation came about whereby would-be regulators assumed the humanitarian language, science and ethnography of the former, and yet also assumed the interest of the settlers, with the agenda of managing native administration for the benefit of settlers.

Populations were to be assimilated into the liberal colonial sphere so as to develop “capacity” or else submit to it, because they were apparently incapable of developing it for themselves. The Evangelical and humanitarian case for long-lasting native protectorates was undermined by the capacitarian and stadial models. Those ideologies overpowered the reaffirmed model of native protection as surely as the American Revolution and Jacksonian native policy overwhelmed the remnants of the British protectorate system. Amalgamation, to use their own language of the 1840s and 1860s designated both a process that was itself stadial and an end result for stadially-assessed peoples, that had been assessed for their “capacity”. A ladder of being, or rather non-being, rung by rung defined the progress of peoples towards full

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<sup>34</sup> Mellor, George R., *British Imperial Trusteeship 1783- 1850*, Faber and Faber, London 1951, p. 249, p. 414, p. 424.  
McHugh, Paul, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status and Self-Determination*, Oxford 2004, pp. 121-123.

amalgamation up the assimilatory process. Herman Merivale designated these rungs as:- “master and servant”, “fellow labourers”, “common citizenship” and “intermarriage”.<sup>35</sup> He did this while commenting on Grey’s own proceedings with the Xhosa people in the Eastern Cape. Merivale, a fellow member of the Liberal Anglican circle, had been Grey’s superior, as Permanent Undersecretary of the Colonial Office 1847-59.<sup>36</sup> Although Permanent Undersecretary of the India Office at the time of these footnotes in the 1861 edition of his Oxford lectures on colonization from 1839-41, Merivale was expressly endorsing Grey’s policy at the time when Grey was reassigned to New Zealand from the Cape.

“The Liberalism of Capacity” is a modern academic discourse about political values from the age of Grey and Durham and Tocqueville. In his definition of capacitarian liberalism, Alan S. Kahan asks:-

“What did liberals mean by capacity? Where democrats talked about universal rights (and conservatives talked about historical or hereditary rights) liberals talked about capacity, who possessed it, who might acquire it, and by what means. It was the liberals’ emphasis on capacity, and the varied ways in which they defined it, that distinguished liberals from other groups and from each other. The discourse of capacity expressed liberalism’s intermediary stance between the dead world of aristocracy and the world of democracy liberals wanted to see born, but not prematurely.”<sup>37</sup>

Settlers and indigenes on a frontier were tinder and flint to one another. Yet some settler peoples were more equal than others - capacitarianism and civic “capacity

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<sup>35</sup> Merivale, Herman, *Lectures on Colonisation and the Colonies*, London 1861, p. 511.

<sup>36</sup> Strong, Rowan, *Anglicanism and The British Empire c 1700- 1850*, Oxford University Press, 2007 p. 273. No references to Whately.

<sup>37</sup> Kahan, Alan S., *Liberalism in Nineteenth Century Europe:- the Political Culture of Limited Suffrage*, p. 6.

building” in 21<sup>st</sup> century language, were deemed necessary. “Every settler is a missionary” to indigenous peoples, Whately insisted <sup>38</sup>and Grey reaffirmed in the Port Louis paper, thus marginalizing missionary clergy in colonies. <sup>39</sup>Even for Grey a priesthood of settler believers required tutelage. They were to manage native administration humanely, so as to absorb and not exterminate indigenes and continue Grey’s policy. Settlers were to include, not segregate indigenes. They were not to involve Britain in unnecessary frontier wars. For the time being there was to be separation of powers between the executive and legislature. When he departed from New Zealand on New Year’s Eve 1853, a responsible government was denied the colony, yet within a year it had been conceded. He was to meet the first Cape Colony legislature in March 1855 however, and ensure the deferral of responsible government. This disposes the myth of Grey’s incapacity and reluctance at managing colonial legislatures, which has been given as the reason for why he did not stay to meet the first New Zealand General Assembly in June 1854.<sup>40</sup> It was not until 1873 that the Cape was to be administered by its own governments.

Grey’s personal constitutional meta-narrative was “bilingually” American, and British. It was but a small step legally and constitutionally from the gubernatorial constitution of colonial America to the Constitution of the United States, compared with the gulf that lay between it and British parliamentary sovereignty. In Grey’s scheme, British governorships were to convert into independently mandated executives presiding over responsible ministries and cross that gulf. Those ministries were in time to acquire full control of the Executive, so that the Governor would act

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<sup>38</sup> Whately, Richard in Francis Bacon *Essays with Annotations* John W. Parker, London 1857, “On Plantations” p. 341.

<sup>39</sup> Grey, George, *Journals* v I. p. 4.

<sup>40</sup> Morrell, W.P. ,*The Provincial System in New Zealand 1852-1876*, p. 75.

on their advice.

Nonetheless constitutional developments had continued in the British Empire since the American War of Independence. Reinforcement and articulation of what Daniel Hulsebosch has called “the monarchical constitution” of the empire continued apace in remaining territories. The reform of colonial administration projected in the 1760s continued with the *Quebec Act 1774* and the *Canada Constitutional Act 1791*.

Governors ruled Crown colonies, not royal colonies or charter colonies or proprietary colonies, and were obliged to legislate through legislative councils, and govern through executive councils, instead of meeting with settler representatives.

Constitutional development then in the settler colonies of the 19<sup>th</sup> century came to be one of continued devolution, or a series of abdications from this gubernatorial monarch under the “constitution of the empire”, to “responsible” settler governments. This dynamic developed between the late 1830s until the 1850s.

It is vital to observe that our understandings of the language used for these institutions can be ahead of itself. By a protectorate in 1840 the Colonial Office did not mean a protected state such as Swaziland or Tonga, a class of state that survived even into the later 20<sup>th</sup> century.<sup>41</sup> The *Foreign Jurisdictions Act*,<sup>42</sup> which provided the basis for British rule for protectorates, was three years into the future,<sup>43</sup> while the Fante or Ionian Islands models were inappropriate for colonies of mass settlement. The Berlin Congresses of 1878 and 1884 were 40 years into the future, after which the language for protectorates was standardized in international law among the powers. For the

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<sup>41</sup> Wight, Martin, *op. cit.*, p. 52.

<sup>42</sup> 6 & 7 Vict. c. 94.

<sup>43</sup> Wight, *ibid.* p. 62.

purposes of the Treaty exercise and the impending annexation, Maori “sovereignty” was recognized by the British Government, either vested in the United Tribes of New Zealand that had been proclaimed in 1835, or among the various chiefs who had not been party to that exercise, yet the Treaty did not cede that aboriginal sovereignty, it was instead a consent to annexation in his English version. The Maori version rather emphasized that British government was being established in New Zealand. A native protectorate was constituted under a Native Protector and a Native Protector’s Office under the segregationist native protectionist model, of which the 1763 Appalachian Protectorate was a prominent example. It was not a reservation, a remnant of lands on which an indigenous people were to subsist, but rather the entire un-alienated property of Maori. Similarly a governor was a “constitutional” viceroy, even if he could hire and fire and go to war or legislate more or less as he pleased, because he ruled through a constituted legislative council, even if it was of his own officials. Taken aback by the advice of law officers in 1755 that the Nova Scotian government was unconstitutional, as the governor had ruled alone and without a long-promised Assembly,<sup>44</sup> the Board of Trade and Plantations devised the Legislative Council in the *Quebec Act 1774*, and then invented the Executive Council in the *Canada Constitutional Act 1791*,<sup>45</sup> as the instruments whereby a Crown colony without representative government could pass ordinances and orders in council and other make other enactments, without resorting to actual gubernatorial “monarchy”. Thereby “irresponsible” colonial government became responsible to the law as well as became the instrument of British parliamentary supremacy.

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<sup>44</sup> Wight, Martin, op. cit., p. xxx.

<sup>45</sup> 31 Geo. III. c. 31.

*Grey and New Zealand Settlers*

The settlers were practically the subjects of the Crown colony of New Zealand. They were in no respect subjects of a residual Maori sovereignty or under the authority of chiefs, as Hobson made clear when he ordered the lowering of the United Tribes of New Zealand flag at Wellington in 1840.<sup>46</sup> Their anxiety to obtain self-government and to assert control over native administration and the purchase of aboriginal lands was doubtless heightened by the frequent changes in the actual constitution of Crown colony government they lived under. From 1840 until 1848 they lived under a single Crown colony government divided into two “divisions”, a northern and a southern, which became the provinces of New Ulster and New Munster under Grey’s Provincial Councils Ordinance of 1851. Settlers then lived in one of two “provinces” with their own Lieutenant Governors and legislative councils subordinate to Grey as “Governor in Chief of New Zealand” and his general council. Made two-thirds elective in 1851,<sup>47</sup> this system lasted until 1853 when Grey proclaimed the New Zealand Constitution Act 1852. Those two provincial councils ceased to exist, when Grey issued writs for elections to the provincial and central legislatures in 1853.

Grey cannot be faulted for seriously upsetting people’s lives with such nominal devices. However a period existed until the first General Assembly met in June 1854 when Grey either governed or had else abandoned the colony, while provincial governments of Auckland, Wellington, New Plymouth and Nelson administered their territories. An “Administrator of the Colony” and not a governor met the first General

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<sup>46</sup> Orange, Claudia, *The Treaty of Waitangi*, p. 84.

<sup>47</sup> Grey to Earl Grey, 30 August 1851 *G.B.P.P. Papers Relative to the Proposed Constitution of New Zealand 3 May 1852* [ 1475] pp. 18-33.

Assembly, whose request for responsible government was granted in December 1854. The New Zealand Government came into existence with the first responsible ministry in 1856, ready for Grey to enter into “cohabitation” with it for his second governorship in 1861.

Such constant regime change frustrated politically-minded settlers. The two periods of rule by administrators left the Crown colony government without policy and independent executive control for three entire years. The earliest New Zealand Company immigrants waited 16 years to govern themselves as a country. Grey was the archaic apparition of arbitrary government to colonial seekers of liberty who would admit no impediment to their birthright. Yet it must be kept in mind that the “contents” and boundaries of that country were far from settled. There could have been a *La Nouvelle Zélande*. The French consolidated their gains on Tahiti instead. The Auckland Islands were for a short while a separate colony of both British and immigrant Maori settlers.<sup>48</sup> It was painfully long before any New Zealand government intervened on Rekohu, the Chatham Islands. Grey’s *Instructions* had pre-emptively included the coordinates of eastern New Caledonia in his territory.

Settlers to all intents and purposes governed themselves in (and from) small beachhead communities by force of local public opinion, while answering to the courts and Crown colony proclamations, regulations, imposts and duties.<sup>49</sup> The language of native protection aside, devices such as annexation, the doctrine of Act of

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<sup>48</sup> *G.B.P.P. 1855 [369] Correspondence Relating to the late Governor Mr Enderby 1854-1855*. Charles Enderby led a company colony on Enderby Island in the Auckland Islands group 1849-52.

<sup>49</sup> McLintock, A.H., *The History of Otago:- The Origins and Growth of a Wakefield Class Settlement*, Whitcombe and Tombs for Otago Centennial Historical Publications, 1949, pp. 350- 416.

state and the institutions of Crown Colony government, were the operational reality of settler Crown colony government. Almost all New Zealand settlers, whether official or private, regarded the Treaty of Waitangi as marginal or irrelevant to the settler colony, even though race relations were the main business of government. Though the terms and observance of the Treaty were of predominant concern to Maori leaders, most settlers regarded it on a sliding scale from a transitory convenience to an impediment to the “civilization” and colonization of Maori. In no way did it primarily constitute their right to live in New Zealand, even if Wellington settlers had been prepared to establish their colony under the United Tribes of New Zealand flag. Settlers did not resort to arms for their “Treaty rights”, even though Grey was to eirenicly argue that they enjoyed them too. They rather demanded their rights as British subjects. General settler opinion was that British institutions and instruments had superseded the Treaty.

Dissenters to this assumption existed such as the Attorney General, William Swainson,<sup>50</sup> who was subjected nonetheless to exemplary correction by the Colonial Office.<sup>51</sup> He had argued in 1842 that British sovereignty was incomplete over New Zealand because various tribes had not signed the Treaty of Waitangi.<sup>52</sup> Furthermore the significance of the Treaty to Maori did not preclude them from repudiating it. Grey assumed “command” of New Zealand while two wars of repudiation were raging, the Northern War with Nga Puhī ( 1844-46) and the Cook Strait War with Ngāti Toa ( 1843-47). The Treaty then was incidental to a New Zealand constitution for most settlers. Even the Governor, instructed to sustain obligations under the

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<sup>50</sup> Reid, Graeme, “Swainson, William, 1809- 1884” *Dictionary of New Zealand Biography* <http://www.dnzb.govt.nz/>

<sup>51</sup> Orange, Claudia, op. cit., p. 111.

<sup>52</sup> McLintock, A.H., *Crown Colony Government in New Zealand* pp. 61-62.

Treaty, cannot be regarded as “restoring” the Treaty. By restoring New Zealand policy from FitzRoy’s expedients, and then as we shall see Earl Grey’s instructions, Captain Grey nonetheless intended the entire redundancy of the Treaty system.

Settler leaders took a dissatisfied yet lively interest in such political proceedings as the legislative council sessions afforded them.<sup>53</sup> Apart from agitation on the spot, which Grey did his best to never acknowledge, settler politics retained a metropolitan dimension, as if colonists had never left British shores. The entire New Zealand system was the target of settler discontent, and not just the governors who administered it. That dissent had welled into disastrous attempts to take the law into their own hands, such as the Battle of the Wairau in 1843, when settlers tried to fight Ngati Toa warriors.<sup>54</sup>

As for the handful of imperial officials who conducted policy, Daniel Hulsebosch describes British North America in language that corresponds to the Colonial Office empire and not just the Board of Trade, imperium:-

“ The vision of prerogative power vested in a privileged bureaucracy rather than the gradually developing idea of the supremacy of Parliament, was the imperial agents’ mainstay throughout the colonial period.”<sup>55</sup>

Grey and his immediate Colonial Office superiors belonged to a privileged bureaucracy, while the clerks at 14 Downing Street too insisted on their gentlemanly

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<sup>53</sup> McLintock, *ibid.*, pp. 259- 275.

<sup>54</sup> Orange, Claudia, *The Treaty of Waitangi*, p. 117.  
McLintock, *ibid.*, p. 147.

<sup>55</sup> Hulsebosch, Daniel J., *Constituting Empire.*, p. 78.

quality.<sup>56</sup> Grey's practice of constitutional power in New Zealand was prerogative power inflected through the *Quebec Act 1774* and resulting institutions. The supremacy of Parliament was uncontested for Britons in the 1840s, but that was the doctrine for the United Kingdom, not a colony under the monarchical constitution of the empire as well as Parliament. The Crown colony paradigm defined a colony as a dependency and insisted that its officers answer to the British government and not a local legislature. George Cornwall Lewis and Herman Merivale all insisted on that in their publications, Lord John Russell insisted on the same in 1839 against the representative paradigm of the Durham Report.<sup>57</sup>

In 1847 once the Crown colony government in New Zealand had been re-established, the soon to be knighted George Grey was invited to participate in the Whig and Colonial Office devolution debate. A colonial governor of ability like Grey or Sir Edmund Head in Canada,<sup>58</sup> could be called upon to discuss constitutions as well as manage the politics of colonial devolution, as the primary political agent of a colony. Dispersed though they were about a large archipelago, New Zealand's settler leaders converged on their own metropolitan political patrons and managers as they contested Crown colony government's denial of their "rights of Englishmen". Grey fast became synonymous with the imperium over settlers.

The constitutional debate that mattered most to settlers was not the one about the Treaty of Waitangi, but the devolution of representative government to New Zealand.

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<sup>56</sup> Buckner, Philip, "The Colonial Office and British North America", in *Dictionary of Canadian Biography v. VIII 1851 to 1860*, Frances G. Halfpenny and Jean Hamelin (eds), University of Toronto Press, Toronto 1985; p. xxxiii.

<sup>57</sup> Lord John Russell 3 June 1839 *G.B.P.D.* v. 47, 3 June 1839 col. 1268.

<sup>58</sup> Kerr, D.G.G., and Gibson, J.A., *Sir Edmund Head: A Scholarly Governor*, University of Toronto Press, Toronto 1954, p. 83.

Once the *New Zealand Company Charter* of 1841 denied the company powers of government, a New Zealand Constitution Bill became the focus of political debate and expectation. No more than in mid 18<sup>th</sup> century America could one claim that “the prerogative and aristocracy”<sup>59</sup> were intrinsic to the government of 1840s colonial New Zealand and its officers. None the less a gentlemanly elite of imperial agents, Whig, Tory and Radical, were concerned to use both the prerogative and Parliamentary supremacy to bring about a representative government for New Zealand, from which control over native administration was withheld. That aristocratic and gentlemanly elite that presided over the empire, was obliged to be in communication with another gentlemanly elite associated with the New Zealand Company, and with lobby groups such as the Aborigines Protection Society.<sup>60</sup> As far as the New Zealand Company settlers, Auckland merchants and perhaps even beachcombers were concerned, 1840s New Zealand was to be a constitutional enterprise in devolution to a self-governing colony, not the product of a “Treaty moment”.

#### *The New Zealand Crisis of 1845*

By 1845 British government was in peril of collapse in New Zealand. Grey was appointed to replace Robert FitzRoy. The situation he encountered upon landing at Auckland in November 1845 was desperate for the Crown colony. Two “rebellions” had broken out, a Northern War led by the Nga Puhi chief Hone Heke Pokai, and a Cook Strait War led by Ngati Toa chief Te Rangihaeata. New Zealand’s oldest European settlement and former capital Kororareka had been systematically

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<sup>59</sup> Hulsebosch, Daniel J., op. cit., p. 78.

<sup>60</sup> Cain, P.J., and Hopkins, A.G., *British Imperialism 1688-2000*, p. 43.

ransacked and then destroyed by Hone Heke's forces.<sup>61</sup> Nga Puhi both bombarded and set fire to the town on 11 March 1845, in a disciplined operation that was intended to damage British prestige rather than take life.

At the opposite end of the North Island, the Cook Strait War menaced the existence of Wellington. Hostilities had commenced earlier there than in the Bay of Islands, with Ngati Tama incursions into the Hutt Valley in 1842 and with the battle at Wairau in 1843, which was a disastrous New Zealand Company attempt to arrest the Ngati Toa chiefs Te Rauparaha and Te Rangihaeata. Land sales lay at the root of Cook Strait disturbances. Ngati Tama had contested the land commissioner Spain's award of 71,900 acres in 1842.<sup>62</sup> Fighting between Nelson and Marlborough settlers and Ngati Toa at Wairau in 1843 had broken out over a survey that the chiefs tried to prevent. By the time Grey reviewed the situation, land communications to the north and eastwards back into the Hutt across the Tararua ranges, had been cut at Porirua. Warriors ambushed troops and besieged settlers in blockhouses in the Hutt Valley, which then provided the farmland for the pent-up Wellington settlement.

The situation demanded an immediate response that can be described as one of expediency, so as to re-establish the colony. As British "power" in New Zealand had been compromised by "savages" and by the maladministration of its own officers, a projection of power was required upon both the native protectorate and the Crown colony population so as to resolve the crisis. Educated British colonial administrators at both the Colonial Office and out on postings could understand their expedient

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<sup>61</sup> McLintock, *op. cit.*, p. 184.

Orange, *op. cit.*, p. 118.

<sup>62</sup> Rutherford, *Sir George Grey K.C.B. 1812-1898:- A Study in Colonial Government*, pp. 100-101.

actions as the practice that Machiavelli had termed *ragione di stato*. It must be appreciated however that this colonial “Realpolitik” is not necessarily an antonym to rational principle-based policy-formulation, nor should *Realpolitik* be regarded as a “rule of thumb” resort. Grey carried out his *Realpolitik* to further the principles of his policy. “Power” in the Palmerstonian English of the day required an education in its method, purpose and policy to be rightfully projected. Both the Colonial Office and its New Zealand administration were policy cultures, that at times disagreed or misunderstood what that policy might be. A colonial government could intrigue against the Colonial Office as we shall see. 14 Downing Street could at times try and redefine its apparent policy in a colony.<sup>63</sup> Although not yet the mature bureaucracies they became later in the century, the Colonial Office and its Colonial Service did attempt to design colonial orders.<sup>64</sup> In Grey’s resorts to *Realpolitik* against Maori and to official pressure against leading missionaries,<sup>65</sup> “no rule of thumb” improvisation can be discerned, rather concerted campaigns with the objects of subjugation and discrediting any rivals to the Governor’s control over the Native Protectorate, whether Maori or Pakeha. At times over 1845-46, Grey lost the initiative as his strategy and tactics failed him. In no respect however did the circumstances of war and bitter controversy with missionaries deflect him from the purpose of managing the native protectorate himself. Trained to “power” from a military education, instead of the Law or the Classics, Grey was far from unique in practising a colonial *Realpolitik*. Most governors could organize an armed posse or a military expedition, few however

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<sup>63</sup> Rutherford, op. cit. pp. 286- 268.

<sup>64</sup> Belich, James, *Making Peoples: A History of the New Zealanders*, Allen Lane The Penguin Press, Auckland 1996, p. 187.

McLintock, A.H., *Crown Colony Government in New Zealand*, p.p. 75-78.

<sup>65</sup> McIntock, *ibid.*, pp. 199-201.

could devise peacetime policy and plan violence for the purposes of *Realpolitik* as Grey did.

Grey's strangeness for the settlers arose from the untrustworthiness of his proceedings<sup>66</sup> and from the extent of official favour he enjoyed. By assigning Grey's conduct to the sphere of "power", historians would liberate assessments of Grey's governance style in Australia, New Zealand and Southern Africa from the moral and psychological insinuations they have relied on to date. "Personalism" hinders historical understanding of Grey, whether South African historians insist upon his exemplary evil, or their New Zealand counterparts divide between doing the same<sup>67</sup> or else trying to present a "more human" Grey.<sup>68</sup>

Policy and not just the disputes between settlers and Maori created the New Zealand crisis because Robert FitzRoy had brought his own government into discredit.

FitzRoy had attempted to reform the finances of New Zealand with catastrophic results. He had been obliged to find an alternate source of revenue after replacing customs revenue with self-assessed income and property taxes, which proved to be unworkable in settler conditions.<sup>69</sup> His Land Fund spent on normal expenditure, he lacked the money to buy land from Maori for the settlers. He proclaimed a waiver of the Crown purchase of Maori land in 1844 to permit speculators to negotiate direct

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<sup>66</sup> Wakefield to Rintoul 16 April 1853 *Canterbury Papers*, Edward Gibbon Wakefield Correspondence vol. II (1851-7).

<sup>67</sup> Dalton, B.J., *War and Politics in New Zealand 1855-1870*, Sydney 1967.

<sup>68</sup> Bohan, *To Be a Hero*, p. 13.

<sup>69</sup> FitzRoy to Stanley 27 October 1844 *G.B.P.P. Papers Relative to New Zealand 1845* [247].

with Maori chiefs, for a duty of 10 shillings an acre.<sup>70</sup> The waiver was also an attempt to appease speculators' lobbying and the demands of some Maori for direct purchase. Not only did this measure only exacerbate the potential for violence between the parties to a purchase, it produced so little revenue that FitzRoy had to revert to Customs duties.<sup>71</sup> Arms were the resort when judicial system was unable to operate normally in the native protectorate, and when the settlements amounted to beachheads<sup>72</sup> and the "protectorate" began just over a fence, often not far from the shore, not deep in a hinterland, as in 1760s Appalachia. To cap it all if the Crown colony government was destitute, the New Zealand economy starved of bullion.<sup>73</sup>

The initial confidence had evaporated at the Colonial Office that New Zealand would fund itself from land sales and customs revenue after some help from New South Wales and HM Treasury. In the first three years of the New Zealand administration under Hobson and Shortland,<sup>74</sup> the annual expenditure of 40,000 pounds a year had resulted in an 82,000 pound debt.<sup>75</sup> The Treasury largely wrote off the liability, and optimistically provided an annual grant of 7,565 pounds. Under FitzRoy however, the debt had increased to 75,000 pounds, annual expenditure climbed to 49,000 pounds

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<sup>70</sup> FitzRoy to Stanley 15 April 1844 *G.B.P.P. Papers Relating to New Zealand 14 March 1845* [131] p. 18.

<sup>71</sup> FitzRoy to Stanley 29 September 1844 *G.B.P.P. Papers Relative to New Zealand 11 June 1845* [369] p. 11.

FitzRoy to Stanley 9 April 1845 *G.B.P.P. Papers Relative to New Zealand 21 May 1846* [337].

<sup>72</sup> Darwin, John, "Imperialism and the Victorians:- The Dynamism of Territorial Expansion" *English Historical Review* 1997.

<sup>73</sup> McLintock, op. cit., p. 153.

McLean, G., *Governors: New Zealand's Governors and Governors-General*, Otago University Press, 2006, p. 36 for a less negative appraisal of the constrained circumstances under which FitzRoy worked.

<sup>74</sup> Anderson, Atholl, "Shortland, Edward, 1812?- 1893", *Dictionary of New Zealand Biography* updated 22 June 2007; <http://www.dnzb.govt.nz/> .

<sup>75</sup> Rutherford, James op. cit., p. 76.

while revenue shrank to 20,000 pounds subsidy even allowing for the Treasury subsidy. Incomes in the government service were 9000 pounds in arrears.<sup>76</sup> FitzRoy compounded his errors by issuing debentures, which he presumed HM Treasury would honour.<sup>77</sup> The habits of the quarter-deck were inappropriate for the demands of New Zealand government, yet even FitzRoy was attempting a policy amidst all of his improvisations, for his naval career had convinced him of the merits of the Free Trade cause<sup>78</sup> and introduced him to men of science. FitzRoy lacked the ability to prudently adhere to instructions in the first instance, and then to devise and coordinate policy principles, and conduct the politics of putting those policies into operation. A man of Science and commander of men at sea he may have been, he entirely lacked aptitude for terrestrial government.

Grey was chosen to replace FitzRoy for the following reasons. As it transpired, he was just 16 days voyage away at Adelaide. No other governor was available or possessed the array of Grey's other qualifications. Grey's credentials included the recovery of South Australia's public finances after that Wakefield colony had become insolvent. New Zealand's finances were in confusion.<sup>79</sup> Grey had both a military education and experience in subduing insurrection in Ireland. Grey had devised a native policy which a Secretary of State had approved. Astonishingly Grey brought 6000 pounds in gold with him to Auckland in October 1845 after leaving his South

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<sup>76</sup> Rutherford *ibid* p. 76.

<sup>77</sup> Stanley to FitzRoy 27 October 1844 *G.B.P.P. Papers Relative to the Affairs of New Zealand* 14 March 1845 [131] p. 16.

<sup>78</sup> FitzRoy to Stanley 14 July 1844 *G.B.P.P. Papers Relative to the Affairs of New Zealand 1845* [247], Address to the Legislative Council 14 May 1844.

<sup>79</sup> Price, A. Grenfell, *The Foundation and Settlement of South Australia*, F.W. Preece, Adelaide 1924, p. 208.

Australian government with an I.O.U. for HM Treasury.<sup>80</sup> Grey had been hoarding specie. In that very year he had insisted on being paid in bullion for the 20,000 pounds (at 1 pound an acre) copper ore-rich Burra Burra claim, and then preventing the Land Fund specie from circulating<sup>81</sup>. Despite these apparent qualifications, Grey was at least as expendable as FitzRoy had been if he should fail. If the grandson of a duke could be recalled in disgrace, then the step-son of an obscure, though eventually well-settled baronet, whose “seat” was nonetheless a country rectory, was both “provincial” and “Army”, with all to gain, and everything to lose. Grey was doubly disavowable, both as a man on the make and as a governor who had to take responsibility for devising policy in the field in emergency conditions, operating as his own commander-in-chief. His rank was only that of a captain of infantry. The posting of Governor General of Canada could enoble a governor but even a born nobleman had to endure squabbles with his fellow peers once he returned to England, though on equal terms denied to lesser men.<sup>82</sup> Australasian Crown colonies were never so favoured, and governors’ careers usually concluded if they controversially failed or lost favour.<sup>83</sup>

Had FitzRoy been a governor at whose touch every institution and policy calamitously failed? Official blame aside, New Zealand government presented extraordinary circumstances that menaced Grey, as they had Hobson and FitzRoy. The New Zealand colonial government’s predicament from 1840 can be characterized

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<sup>80</sup> Pike, Douglas, *Paradise of Dissent:- South Australia 1829-1857*, Melbourne 1957, p. 303.

<sup>81</sup> Pike, *ibid* p. 302.

<sup>82</sup> Martin, Ged, *Lord Durham’s Report* p. 32.

<sup>83</sup> William Bligh and Sir Thomas Gore Browne were reassigned to previous spheres or levels of action. Bligh returned to naval service while Browne was posted to Tasmania and Bermuda. He had governed only St Helena before New Zealand.

by its inability to finance itself so that it could support the native protectorate, as well as maintain its Crown colonial establishment.<sup>84</sup> The insecurity which its land purchase policies caused, had provoked a crisis of confidence among Maori, who either believed that their land would be confiscated for settlement, or were else dissatisfied at the administration of land sales and at the disputes that arose, from direct or government-mediated purchase. The Nga Puhi tribe of the Bay of Islands had been disaffected at the dampening effect of customs duties on previously free trade ports and roadsteads, such as the port they had protected at the town of Kororareka since the 1820s, renamed Russell after the Colonial Secretary in 1840.<sup>85</sup> Hone Heke could afford to fire the oldest settler town because trade had fallen off. The Treaty system had commenced amid much suspicion, rather than in high hopes. By 1845 those suspicions had been confirmed for Maori, and also for some settler leaders, who believed that the British government should not have intervened in New Zealand beyond asserting a protectorate to exclude the other powers.

Grey's first New Zealand coup was to raid the South Australian Treasury. Grey might have volunteered a plan of action for New Zealand to the Colonial Office, or at least intimated his readiness to attempt that governorship. Even though voyages could take 4-5 months between Great Britain and Australia, Grey had all of 1845 with calamitous New Zealand news and rumour reaching South Australian shores, to send an energetic proposal. Bullion retention and demands for bullion in the local economy were politically difficult actions for any colonial governor. In this case they

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<sup>84</sup> FitzRoy to Stanley 15 October 1844 *G.B.P.P. Papers Relative to New Zealand 12 June 1845* [369] p. 28.

<sup>85</sup> Orange, *op. cit.*, p. 118.

aggravated feuds with the local banks and alienated business clients.<sup>86</sup> No one has argued any purpose to this hoarding of bullion, which so disrupted the local economy and the wool receipts for 1845/1846, let alone for transportation to New Zealand as a war chest. The figure of 6000 pounds requires explanation as well, some appropriate figure might have been estimated as sufficient for initial expenses. Private correspondence no longer exists and is unattested. When Major Robe arrived to replace Grey in 1846, he withdrew the entire Land Fund from the banks and deposited 42,000 pounds in a vault under guard.<sup>87</sup> That Grey took 6000 and not 4000 or 10,000 pounds implies that he was on the receiving end of an information system terminating at H.M. Treasury that had arrived at an estimate, a process entirely beyond his resources in Adelaide.

A second series of coups assaulted both the missionary interest and the Native Protector's Office, a two-headed monster in Government House reckoning.<sup>88</sup> By May 1846, Grey had deprived the missionaries of any pretensions to an entrenched political role in New Zealand. The Church Missionary Society had maintained permanent mission stations in New Zealand from 1814. Certain missionaries had accumulated decades of experience in New Zealand affairs and expertise in the Maori language. Theirs were the first settler families.<sup>89</sup> Church establishment however was unknown to the New Zealand constitution from the first signing of the Treaty,<sup>90</sup> although it was the Church of England was the established church of New South

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<sup>86</sup> Pike, *op. cit.*, p. 303.

<sup>87</sup> *ibid* p. 303.

<sup>88</sup> McLintock, *op. cit.*, pp. 199-201.

<sup>89</sup> McLintock, *ibid.*, pp. 11-12 for the 1814-1817 period.

<sup>90</sup> Orange, *op. cit.*, p. 53: - Hobson had the following statement announced on 6 February 1840 "The Governor says the several faiths of England, of the Wesleyans, of Rome, and also the Maori custom, shall be alike protected by him."

Wales and of the Cape Colony. Methodist and French Roman Catholic missionaries had also arrived before the Treaty of Waitangi and made conversions. Hobson and FitzRoy both occasioned consternation by attending Methodist services. Grey as an Anglican however was determined not to be available to the C.M.S. interest. He was moreover a Liberal Anglican and not an evangelical as the C.M.S. missionaries were.

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Archdeacon Henry Williams laboured under Grey's allegation that his letters were part of a treacherous correspondence that Grey had recovered at the capture of Ruapekapeka pa in 1845. Grey had declared that he had destroyed them, when he proclaimed an amnesty for both Maori and Pakeha rebels.<sup>92</sup> In the Grey version of New Zealand's ills, Williams was the instigator of a missionary faction that compromised British rule of New Zealand's native protectorate.<sup>93</sup> What lent plausibility to such accusations was that missionaries of various faiths had involved themselves in indigenous unification and state formation movements throughout the Pacific. Missionaries had formed alliances with Pomare I on Tahiti, with Kamehameha I on the Hawaiian islands, with George Tupou I on Tonga and with Cakobau in Fiji. From Auckland the Catholic Bishop of New Zealand Jean-Baptiste Pompallier organized his own sub-imperial schemes for France.<sup>94</sup> Just as in the Middle Ages, the clergy sought to provide political advice and administrative services

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<sup>91</sup> McLintock *ibid.*, pp. 34 -35. On Exeter Hall and the C.M.S..

Hilton, Boyd, *The Age of Atonement: The Influence of Evangelicalism on Social and Economic Thought, 1795- 1865*, Clarendon Press, Oxford 1988; on Exeter Hall p. 206, p. 270, pp. 285-286.

<sup>92</sup> Government Notice 23 January 1846 *G.B.P.P* 1846/ 448 p 17.

<sup>93</sup> Grey to Earl Grey 10 February 1849 *G.B.P.P.Further Papers relative to the Affairs of New Zealand* July 1849 [1120] p. 72.

<sup>94</sup> Faivre, Jean-Paul, *L'Expansion Française dans le Pacifique de 1800 a 1842* Nouvelles Editions Latines, Paris, 1953. p. 441, p. 455, p. 459 p. 479.

for the new Pacific monarchies. Grey's insinuation was not only that C.M.S. missionaries desired control of New Zealand's native protectorate but that they could well support indigenous state-formation that was opposed to the interests of the British government and of the settlers.

For its part, the Native Protector's Office was a feeble and under-funded department, even allowing for the condition of the FitzRoy administration's finances. The Rev. George Clarke had nevertheless diligently performed its duties together with his son and Henry Tracey Kemp the son of fellow missionary James Kemp. Grey alleged that the office was mismanaged,<sup>95</sup> that Maori did not trust the Clarkes,<sup>96</sup> and that it was not establishing schools and hospitals, a deficiency that he was to remedy with show-case institutions. The department was accordingly re-structured, salaries were reduced for providing "really practical benefits". When Clarke declined the post of Native Secretary at a reduced salary, Grey assigned it to his own private secretary, Lieutenant J.J. Symonds.<sup>97</sup> Grey had become his own Native Protector.<sup>98</sup> Thus began the absorption of Maori New Zealand into the Crown colony administration. It is necessary however to nuance the disapproval that Grey had for Clarke. Clarke was no absolute native protectionist, as his opposition to the Attorney General William Swainson's proposals for native districts in 1842 proved.<sup>99</sup> He believed that legal integration could be deferred by means of coopting the chiefs into deliberative

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<sup>95</sup> Grey to Stanley 3 June 1846 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand June 1847* [ 837] p. 5.

<sup>96</sup> Grey ( 45) 10 May 1846 NZ-G 9.

<sup>97</sup> Grey to Earl Grey 4 February 1847 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand June 1847* [ 837] p. 92.

<sup>98</sup> Dalziel, Raewyn, "Southern Islands: New Zealand and Polynesia" in Andrew Porter (ed) *Oxford History of the British Empire*, Oxford University Press 1999, v. III p. 581.

<sup>99</sup> Minutes of the Executive Council, 28 December 1842, *G.B.P.P. Papers relative to the Affairs of New Zealand 1844*, [556] Appendix p. 457.

councils to consider claims. The last resort that Grey would countenance however was to establish the chiefs as a class.<sup>100</sup> The trend of his entire policy was to diminish their influence, wherever he was posted.

Moreover, Grey cultivated a feud over land sales with the missionary interest. Grey accused Henry Williams, Clarke, Kemp and other missionaries associated with the FitzRoy regime of advising his predecessor to waive the Crown right of pre-emption and then of taking advantage of the waiver for their own interests.<sup>101</sup> In the Port Louis paper Grey had insisted that every settler was a missionary. This hate campaign was Grey's first Harringtonian intervention in New Zealand against large estates. Grey sought to obtain control over New Zealand's Protectorate at the first opportunity. The lack of factual basis to his claims has always been commented on, regretted by his admirers, otherwise condemned outright, yet this feud's purpose was directed at assigning war guilt and destroying his victims' political standing. In the so-called "blood and treasure" despatch<sup>102</sup> to the Colonial Office, a vicious circle was attributed to the missionaries. It was they who had persuaded FitzRoy to waive Crown preemption, they had greatly benefited from a policy that had brought about New Zealand's wars. In this analysis, direct Maori-to-settler land conveyances had provoked disputes that were beyond the resources of the legal system to handle, and soon turned into open violence. While it would be wrong to imply that the legal system served gubernatorial policy, the courts provided Grey with arenas in which to

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<sup>100</sup> Ward, Alan, *A Show of Justice:- Racial "Amalgamation" in Nineteenth Century New Zealand*, University of Toronto Press, Toronto 1973, p. 85.

<sup>101</sup> Grey to Gladstone 25 June 1846 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand July 1849* [1120] p 78.

<sup>102</sup> Grey to Gladstone 23 June 1846 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand June 1847* [837] p. 32.

Grey to Gladstone (private) 25 June 1846, *G.B.P.P. Further Papers Relative to the Affairs of New Zealand 1848* [ 1002] p. 106.

fight the missionaries. Chapman's judgment in *Queen v J.J. Symonds* found that Grey's private secretary had the "best title" to land which McIntosh a clerk in the Survey Department had purchased directly during the waiver.<sup>103</sup> The New Zealand judiciary was no accessory of government however, for the Supreme Court found for the missionaries when Grey demanded the surrender of their grants, using the "best title" doctrine of *Queen v Symonds* against him.<sup>104</sup> Nonetheless the Judicial Committee of the Privy Council reversed that decision and gratified the Governor.<sup>105</sup> The Church Missionary Society dismissed Williams from their service after 26 years.<sup>106</sup> Personal resentment on both sides explains only so much. The fault of the missionaries for Grey was that they were opponents of his native policy and furthermore suspect for building a property base, which Grey interpreted politically.

Grey's most egregious actions however were against the inhabitants of the native protectorate and not their supposed protectors. He sought to reconcile yet also to inflict exemplary punishment. Apart from the advantage taken of the defenders' sabbatarianism,<sup>107</sup> Grey presided over the capture of Ruapekapeka Pa on 11 January 1846 with all appearances of clemency and diplomacy towards his adversaries.<sup>108</sup> He even refrained from replacing the flagstaff that Heke had felled at Kororareka, allowing his ally Tamati Waka Nene to erect one only across the channel at

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<sup>103</sup> *Queen v. Symonds (McIntosh's Case)* in Grey to Earl Grey 5 July 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand December 1847* [ 892] p. 64.

<sup>104</sup> *Queen v. Clarke* 24 June 1848.

<sup>105</sup> Earl Grey to Grey 30 July 1851 conveying the Order in Council July 1851 New Zealand National Archives-"Governor" 1/19 ( 1849-1851) Moore P.C. 77-85.

<sup>106</sup> Rutherford, J., *Sir George Grey K.C.B. 1812-1898: A Study in Colonial Government*, Cassell, London, 1961; p. 140.

<sup>107</sup> Rutherford, *ibid.* p. 90.

<sup>108</sup> Grey to Stanley 22 January 1846 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand 29 June 1846* [448] p. 14 .

Waitangi.<sup>109</sup> Grey commenced his review of the Cook Strait War in the same cautious spirit. He spent the months of February until April 1846 in that region, familiarizing himself with the military situation and the causes of disputes between Maori and settlers, professing himself convinced of Te Rauparaha's good faith despite the continuing hostilities of Te Rangihaeata's war party. Returning to Auckland and relying on the presence of British troops to deter further attacks, Grey was alarmed to learn that Te Rangihaeata's ally the Wanganui chief Te Mamuku had assailed Boulcott's farm on the Hutt Valley on 16 May. Having lost control, Grey determined to reassert it. Under suspicion of having abetted Te Rangihaeata, Te Rauparaha was kidnapped by a landing party at Plimmerton at daybreak on 23 July and brought to HMS *Calliope*.<sup>110</sup> Both his own presumption and rumours from Waikanae and Otaki chiefs convinced Grey of Te Rauparaha's complicity in the revolt.<sup>111</sup> Grey felt pressured to obtain a decisive result after losing tactical initiative during operations in July. He attempted to prevent the forces of Te Mamuku and Te Rangihaeata from joining. The boilers on board paddle steamer HMS *Driver* had burst, while the crew of HMS *Calliope* had been unable to land troops at the mouth of the Ohau River on account of the high surf, the intention being to intercept Te Mamuku.<sup>112</sup> Following the capture of Te Rauparaha, Te Rangihaeata abandoned his defences at Pauatahanui

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<sup>109</sup> Frederick Patten to Governor Grey 8 March 1846 *G.B.P.P. Papers Relative to the Affairs of New Zealand 1847* [763] p. 12 .

<sup>110</sup> Grey to Gladstone 23 July 1846, 31 August 1846 *G.B.P.P. Papers Relative to the Affairs of New Zealand 1847* [763] Enclosure 2 in No. 34 p. 44 Major Edward Last to Governor Grey.

<sup>111</sup> Grey to Gladstone 20 July 1846 CO 209/45 Military No. 76, fos. 32- 37b.

<sup>112</sup> Grey to Gladstone 21 July 1846 *G.B.P.P. Papers Relative to the Affairs of New Zealand 1847* [763] p. 40.

on 1 August after British forces, troops, militia and allied Maori caught it between their positions on the inlet and in the rear from the Hutt Valley.<sup>113</sup>

Te Rauparaha's "arrest" and detention at Government House caused a sensation among Maori.<sup>114</sup> Charges were never brought. Grey had shamed one of New Zealand's greatest chiefs in a calculated mana-breaking exercise. The institution of chieftainship had been challenged for the first time by British authority. Grey's action brought about protest, dread and resentment, yet had apparently asserted the prestige of the governorship amongst the mana of chiefs. Whether it really had or not, Grey did not wait to find out as he began to conciliate tribal leaders, even travelling with as small and vulnerable party as possible. Judicial murder he reserved for another victim however. The chiefs Te Waireaitu and Te Rangiatea, half-brothers of Te Mamuku had been captured at Pauatahanui. Te Waireaitu was brought before a court martial at Elliott's Stockade, Porirua, charged with having taken up arms against the Queen and also with taking part in a rebellion against British forces. Pleading not guilty to the first charge and guilty to the second, he was found guilty of both and summarily hanged on 17 September. Tried on the same charges, Te Rangiatea was found to be insane and sentenced to confinement at the Queen's pleasure, during which he died.<sup>115</sup> For these actions Stephen thought fit to caution Grey, while approving of the general result.<sup>116</sup> Te Rangihaeata and Te Mamuku the main protagonists of the Cook Strait War went uncaptured and unpunished. The results of Grey's *Realpolitik* were that he had made examples of the weak and unsuspecting, while showing restraint and

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<sup>113</sup> Grey to Gladstone 31 August 1846 *G.B.P.P. Papers Relative to the Affairs of New Zealand 1847* [ 763] pp. 44- 48.

<sup>114</sup> Grey to Earl Grey 24 December 1850 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand 7 August 1851* [1420] Enclosure 6 in no 46 p. 102.

<sup>115</sup> Grey to Stanley 23 October 1846 CO 209/ 45.

<sup>116</sup> Stephen minute 4 May 1847 CO 209/ 46.

respect towards the main protagonists of both wars. Thereby he had established himself as the dominant personality in Maori politics as no governor had done before.

*The Intellectual in Action*

So was Grey an apparent success because he was a man of action and energy or because he had a policy? Immediate results aside, how did the Colonial Office at that time regard principle-based government? The official mind thesis is inadequate for Grey's period<sup>117</sup>. Ged Martin's critical position offers a more secure platform for assessment.<sup>118</sup> James Stephen did confess to Lord Howick, the future 3<sup>rd</sup> Earl Grey:-

“It would be a very arduous task to vindicate the best of our colonial schemes of Government on the principles of political philosophy. All that can be said for them is, that they are as good as Parliament will sanction and the Colonists will accept.”<sup>119</sup>

That remark however dates from 1836, before the movement towards colonial devolution got underway. It refers to the permutations of Crown colony government.

The Colonial Office did go on to develop constitutional policy and consider schemes

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<sup>117</sup> Robinson, Ronald, and Gallagher, John, with Denny, Alice, *Africa and the Victorians:- The Official Mind of Imperialism*, Macmillan, London and Basingstoke 1981, pp. 4-5, pp. 463-464.

Cell, John Whiston, *British Colonial Administration in the Mid-Nineteenth Century: The Policy-Making Process* pp. 38-39, pp. 127-128, p. 135, p. 209.

Hyam, Ronald, “The Primacy of Geopolitics: The Dynamics of British Imperial Policy, 1763- 1963” in Robert D. King and Robin W. Kilson (eds) *The Statecraft of Imperialism: Essays in Honour of Wm. Roger Louis*, Frank Cass, London and Portland, Oregon 1999, pp. 27- 52, see pp. 34-37 for his modelling.

Hyam, Ronald “The Colonial Office Mind 1900-14” in *Journal of Imperial and Commonwealth History*, VIII 1979, pp. 30-55.

Young, D.M., *The Colonial Office in the Early Nineteenth Century*, Longmans, for the Royal Commonwealth Society, Imperial Studies No. XXII, London 1961, p. 139, pp. 115-116, pp. 256-257.

<sup>118</sup> Martin, Ged, *Lord Durham's Report* p. 42.

<sup>119</sup> Martin, Ged, *Britain and the Origins of Canadian Confederation* p. 120.

of native administration. Draft constitutions were altered by the Parliamentary process and settler politics and by the exigencies of indigenous affairs. Principle was modified by process. Process was informed though not dictated by principled policy. The Colonial Office show-cased “best-practice” policy and empirically supervised its practice abroad. As embarrassing and inconvenient as the Durham Report, the 1837 Select Committee *Report* on Aboriginal Affairs, revived policy, which the Colonial Office both upheld and yet was anxious to reconcile with, settler realities. Grey’s Port Louis paper as we have seen, provided the required alternative. The Colonial Office of the 1830s became concerned to discover principled approaches to colonial problems that worked within the Crown colony constitution. These had to appear in the Blue Books. Men who could manage principles and comprehend legal and constitutional issues were increasingly required. Grey had not just a military situation to resolve in New Zealand but also the basic terms of governance for the colony, because FitzRoy’s administration had jeopardized the colony’s institutions. Discussion about those principles could reduce them or render them unrecognizable. Cornwall Lewis insisted in 1841 that a self-governing colony was a contradiction in terms. By 1849 he deemed responsible government possible so long as it was honestly acknowledged that virtual independence had been granted.<sup>120</sup> In so far as a Grey regime was improvised, it was unlike FitzRoy’s, improvised along a clear and avowed policy.

Yet Ged Martin convincingly argues that the Durham Report lacked the impact upon its publication that myth has invested it with, and that policy continued without reference to it. It is notable however that *The Durham Report and British Policy: A*

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<sup>120</sup> Martin, Ged, *The Durham Report* p. 54 and p. 61.  
Lewis, George Cornwall, op. cit., pp. 295-301.

*Critical Essay* assesses newspaper coverage and then political elite and official response. We learn that major reports did not then have the paradigm shifting effect later policy-makers and historians may have ascribed to them,<sup>121</sup> and that a high society feud broke out between the Lambtons and the Howicks.<sup>122</sup> The channels of propagation and lobbying are ignored. To take two lobby groups, Grey had to resist the New Zealand Company, while he cultivated the Aborigines Protection Society. No reference to Wakefield refers to either his agitations or to the associations and companies founded to promote his schemes. The Wellington settlers had indeed made a mantra out of the Durham Report, even if their leaders were mostly only acquainted with it from old issues of *The Times*, or from programmatic formulae.<sup>123</sup>

As applied it to all “reports”, Martin’s argument should then also apply to the 1837 Select Committee *Report*. While it is true to say that “in colonial matters at least, politicians seem to have been little influenced by weighty reports”, Martin seizes on Russell’s political advice to Stephen, that debates on that trading floor for votes, the House of Commons, made the difference in colonial policy, not great reports.<sup>124</sup> Genre is at the heart of the question here. Ministers did not (and do not) regularly read long reports to prepare for debates or to be instructed in policy. What politicians require for debating success whether in a debating chamber or in committee or cabinet is clear and cogent policy preferably in bullet-pointed or enumerated format. The Port Louis paper was enumerated into 38 points. A memorandum is the requisite genre for such demonstration, not a volume. It was Grey’s Port Louis paper that won Russell’s

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<sup>121</sup> Martin, op. cit., p. 30.

<sup>122</sup> Martin op. cit., pp. 26 – 27.

<sup>123</sup> McIntyre, W. David, and Gardner, W.J., *Speeches and Documents on New Zealand History*, Oxford Clarendon Press 1971, Speech of Dr Isaac Featherston, Barrett’s Hotel, 18 April 1853, pp. 84-86, see p. 85 for reference to Lord Durham.

<sup>124</sup> Martin, op. cit., p. 42.

approval, while the 1837 Select Committee *Report* gathered dust, just as the Colonial Office and its Secretaries of State had done their best to develop an alternative to the inconvenience of the Durham Report.

Grey required direct control of the native protectorate to pre-emptively manage native affairs. He also required it as a power-base against the settlers. No settler interest, neither the New Zealand Company nor the Church Missionary Society, nor communities wanting to take the law into their own hands, were to intrude. The native protectorate had previously made governors weak, yet it was the zone of peril and for military and diplomatic deployments that would make an able governor strong against his settlers. A governor in apparent control of the protectorate would have the authority to persuade the Colonial Office of danger yet give assurance of progress.<sup>125</sup> Grey possessed the monopoly on propaganda from New Zealand as well as of military intelligence. Grey's command of native affairs was intended to be a stark contrast with the incapacity of the settlers for the time being. The New Zealand Company lobbied for land in both London and Auckland, yet the unmistakable inference from Company policy was that it lacked a credible native policy or else ignored the subject after the Wairau affray.<sup>126</sup> No measure for New Zealand government of the 1840s contemplated placing Maori under settler governments unless they resided within settler districts. The devolutions contemplated for settler colonies over the 1840s and early 1850s were intended to conduct a holding action against settler assumption of native policy. Otherwise Colonial Service policy sought to oblige settlers to work in "double government" with governors who still possessed control of native policy if not control over revenues. Such a dyarchy ceased in New Zealand's 1860s.

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<sup>125</sup> Grey to Stanley 3 May 1847 CO 209/52.

<sup>126</sup> Rutherford, *op. cit.*, p. 244.

From 1845 until 1853 Grey faced constant settler agitation for self-government just as he had experienced in Adelaide. “Gentlemen, you shall be taxed first and then represented” as he told a delegation in Adelaide.<sup>127</sup> Government House in Auckland was besieged by a vituperative press and a constant stream of delegations, and of agitators and lobbyists insisting upon personal interviews, reports of protest banquets and hostile toasts, and oppositional posters. Settler leaders and their wives professed offence at a governor who had nothing to say at his levees.<sup>128</sup> Like any Minister in Parliament he had to spend time monitoring and attempting to manage the media. Newspapers hovered in and out of his orbit.<sup>129</sup> He entertained little and presented a taciturn and aloof persona. He rarely committed himself and retained an extreme reserve as to his policy. He chose rather to save his income than win brief plaudits from settler communities for his hospitality. He was a man with a career and fortune to build. The limited resources of the regime went into making the office and person and financial credit of the governor indispensable to Maori politics.<sup>130</sup> Maori visitors were afforded generous hospitality at Government House. Personal influence with Maori leaders was crucial to the success of any New Zealand administration at this time. Grey dispensed patronage among Maori, entertained and distributed conspicuous gifts that would occasion report.<sup>131</sup> Not all of his policy can be

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<sup>127</sup> *South Australian Register* 10 September 1842.

<sup>128</sup> McLintock op. cit., p. 306.

<sup>129</sup> McLintock, op. cit., pp 448-449.

<sup>130</sup> Grey to Earl Grey 22 March 1849 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand 1850* [ 1136] p. 64.

<sup>131</sup> Grey to Stanley (confidential) 3 May 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand December 1847* [892] p. 42 .

characterised as “mana” politics and as show-case ventures.<sup>132</sup> His loans scheme for Maori flour-mill construction benefited 15 projects, 6 completed, 9 in progress at the cost of 1,400 pounds.<sup>133</sup>

### *Settler Resistance*

The language of the hostility to the Government House circle and its allies was constitutionalist. Grey’s family and friends joined the Governor in becoming a target in small and close settler communities. One would have to have been related, beholden or remarkably overwhelmed or of remarkably independent character to have associated with a governor who had become such a lightning rod for settler agitation. Grey’s government provoked a rash of Reform Bill agitation re-enactments. New Zealand Company settler leaders as a group had witnessed the excitement in Britain of 1831 first-hand unlike many of their Canadian or New South Wales counterparts. There had been no colony of New Zealand in 1831, and New Zealand was yet to produce a native settler leadership like those of more mature colonies. A public meeting in Wellington in September 1848 called for “salutary checks” upon the “exorbitant powers” the Governor possessed.<sup>134</sup> Settlers’ Constitutional Associations were established and held large meetings and reform banquets in the major towns. The first was founded at Wellington in December 1848.<sup>135</sup> They analysed and

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<sup>132</sup> Sewell, Henry, *The Journal of Henry Sewell 1853-1857*, W. McIntyre (ed) 2vv., Whitcoulls, Christchurch 1980, v II p. 170 [ 8 August 1854]: -“ Such was Sir George Grey’s policy. By bribes and cajolery he managed to keep the Natives Chiefs quiet.”

<sup>133</sup> Grey to Earl Grey 22 August 1849 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand 14 August 1850* [ 1280] p. 24.

<sup>134</sup> Grey to Earl Grey, 9 October 1848 *G.B.P.P.* 1850/1136, enclosure 12 September.

<sup>135</sup> McLintock, *op. cit.*, p. 298.

condemned the Governor's despatches as they appeared in the Blue Books.<sup>136</sup> They transmitted to Grey memorials of protest and discontent. A 1200 signature petition demanding representative government for New Munster had been compiled from Cook Strait settlements by April 1849.<sup>137</sup> The exercise had culminated in a Great Reform Banquet at Wellington on 1 March where 200 diners were wined and dined sumptuously in a stage-set to condemn Grey's nominee councils.<sup>138</sup>

Nor was the banqueting confined to the Antipodes. Wakefield, Charles Adderley and John Godley<sup>139</sup> organized a Colonial Reform Society and public dinner in London. The guests included Cobden and Bright, Francis Baring, Spencer Walpole, Sir William Molesworth, and the peers, Lyttelton, Kinnard and Talbot.<sup>140</sup> At such occasions in the colony Grey's facility with the quill was characterized in toasts as "the fallacies and sophistries of that Arch-Sophist Sir George Grey",<sup>141</sup> which were then denounced in alcohol-fuelled resolutions. Nor were the New Zealand Company settlers the only protestors. T.E. Forsaith a pre-Waitangi settler led an angry protest of 500 at Auckland in September 1849.<sup>142</sup>

The Governor enjoyed however the total confidence of Earl Grey after the interventions in 1847 as the Colonial Office's sole New Zealand expert. Grey responded to the settler agitation by writing the "delaying" despatches of 29

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<sup>136</sup> McLintock op. cit..

<sup>137</sup> Grey to Earl Grey 22 March 1849 *G.B.P.P Further Papers Relative to the Affairs of New Zealand 1850* [ 1136] p. 59 .

<sup>138</sup> *Illustrated London News* 12 January 1850 pp. 19-20.

<sup>139</sup> Hensley, Gerald, " Godley, John, 1814-1861" *Dictionary of New Zealand Biography*, updated 22 June 2007; <http://www.dnzb.govt.nz/> .

<sup>140</sup> McLintock, op. cit., p. 304 note 1.

<sup>141</sup> *Wellington Independent* 29 August 1849.

<sup>142</sup> *Southern Cross* 11 September 1849.

November 1848<sup>143</sup> and 22 March 1849<sup>144</sup> and 9 July 1849<sup>145</sup> in which he argued that the precipitate grant of representative government would undo the pacification of New Zealand by alarming Maori. No British government wanted New Zealand to remain the scandal in colonial administration that it had become under FitzRoy.<sup>146</sup> British governments at this period were besieged by lobby groups such as the New Zealand Company and the Aborigines Protection Society. At the same time Grey was also composing the preparatory despatches for a New Zealand Constitution Bill.<sup>147</sup> Measures such as the two provincial council ordinances he passed through the Legislative Council, were greeted with derision.<sup>148</sup> They nonetheless absorbed the attention of the Constitutional Associations for the time being. Grey had settled New Zealand affairs in the short term, and bought the British government time. If he was dogged by settler agitation, then the Colonial Office and its governor had initiated constitutional processes that were intended to provide them with self-government. The governor could be trusted to maintain a holding action until legislation was mature, and could be presumed upon to bring it into operation. For all its difficulties New Zealand had been restored by 1848 to the operational ideal of settler Crown colonies with substantial indigenous populations, and its administrators were preparing a first stage of devolution to the settlers, while doing their best to acquire and retain Maori allies and collaborators.

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<sup>143</sup> Grey to Earl Grey 29 November 1848 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand* 14 August 1850 [ 1280] p. 104.

<sup>144</sup> Grey to Earl Grey 22 March 1849 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand* 1850 [ 1136] p. 59.

<sup>145</sup> Grey to Earl Grey 9 July 1849 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand* 1850 [ 1136] p. 190.

<sup>146</sup> Sir William Molesworth *G.B.P.D.* vol. 106, c. 948 26 June 1849.

<sup>147</sup> Grey to Earl Grey 30 August 1851 *G.B.P.P. Papers Relative to the Proposed Constitution of New Zealand* 3 May 1852 [1475]. pp. 18- 40.

<sup>148</sup> *New Zealand Spectator and Cook's Strait Guardian* 9 September 1848.

## Chapter Six

### The Grey “Moment”?

#### *Earl Grey’s Despatch*

Grey was reviewing and designing constitutions before the Colonial Office invited him to propose drafts for its New Zealand Constitution Bill. The Port Louis paper was a constitutional document because it proposed an amalgamationist racial order for settler colonies and opposed a system of segregationist native protection. It became a significant document in an epistolary constitution. As will soon be seen, despite the significance of his intervention against Earl Grey’s constitutional despatch of 23 December 1846,<sup>1</sup> it would be wrong to think that Grey’s re-evaluation of that despatch was an introduction for him to constitutional design. Rather he was attempting to recover over 1847-48 a conversational footing with Secretaries of State that had been lost when Earl Grey became Secretary of State for the Colonies so late in the session in July 1846. Earl Grey’s despatch had obliged him to backtrack to the correspondence with Lord Stanley in 1845, to an understanding reached with Stanley’s successor, William Ewart Gladstone over the first half of 1846, that the colony be divided and placed under two provincial legislative councils, for New Ulster and for New Munster, that would remain subordinate to Grey.

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<sup>1</sup> Earl Grey to Grey ( No. 43) 23 December 1846 *G.B.P.P. Papers Relative to the Affairs of New Zealand 1847* [ 763] pp. 64-72.

New Zealand's crisis of 1847 was occasioned by the arrival of the long-rumoured New Zealand Constitution Act 1846<sup>2</sup> and the New Zealand Charter in April 1847<sup>3</sup> along with Royal Instructions in a despatch from Lord Grey dated 23 December 1846.<sup>4</sup> Settler colony constitutions both constituted orders for racial relations as well as the mechanisms for land acquisition and the creation of title in new territory. Nonetheless political debates in Britain on related topics such as municipalism and the enclosure of commons could influence colonial legislation by perceived analogies of circumstance, the application of general principles and the need for intellectual efficiency in public business.

Earl Grey's despatch however threatened the Crown colony regime that was being re-established in New Zealand with further breakdown. Uncultivated Maori land was to be regarded as wasteland and as taken over by the Crown.<sup>5</sup> Maori land deemed as such was to be registered.<sup>6</sup> New Zealand was to be subjected to a revolutionary land distribution of Roman or Biblical dimensions, while Maori were supposed to submit and appreciate the justice of it. Yet this state of affairs was to insinuate itself by means of a quiet revolution:-

“ Such are the principles upon which, if the colonisation of New Zealand were only now to begin, it would be my duty to instruct you to act; and though I am well aware that in point of fact you are not in a position to do so, and that from past transactions, a state of affairs has arisen in which a strict application of these principles is impracticable, I have thought it right that they should be explicitly stated ( as they are

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<sup>2</sup> 9 and 10 Victoria, cap. 103, 28 August 1846. “ An Act to make further Provision for the Government of the New Zealand Islands.” .

<sup>3</sup> Earl Grey to Grey, 23 December 1846 *G.B.P.P. Papers Relative to the Affairs of New Zealand 1847* [ 763] p. 72.

<sup>4</sup> Earl Grey to Grey, 23 December 1846 *ibid* pp. 76- 87.

<sup>5</sup> Earl Grey to Grey *ibid* pp. 68-69.

<sup>6</sup> Earl Grey to Grey, *ibid* p. 84 “The Queen's Instructions under the Royal Sign Manual and Signet” Chapter XIII sections 4-6.

in the Royal instructions to which it refers) in order that you may understand that, though in many respects you may be compelled to depart from them, still you are to look at them as the foundation of the policy which, so far as is in your power, you are able to pursue”.<sup>7</sup>

Captain Grey had only just concluded the Cook Strait War, while his government was facing a fresh challenge of arms in Wanganui. If the unworkable and novel mechanisms of the 1846 constitution were not cause enough for referral back to Whitehall, then Earl Grey’s application of Vattelian waste lands doctrine to New Zealand, as mediated by Dr Arnold,<sup>8</sup> would have destroyed the indigenous property base of the country and provoked a fresh round of warfare, as Maori found their worst suspicions confirmed, that the British were determined upon a general confiscation of aboriginal lands. Arnold had affirmed Vattelian doctrine by stating of “civilized nations” :-

“ It is true, they have often gone further and settled themselves in countries which were cultivated, and then it becomes robbery; but when our fathers went to America and took possession of the mere hunting-grounds of the Indians –on lands on which man had hitherto bestowed no labour –they only exercised a right which God has inseparably united with industry and knowledge”.

In what was the only successful coup of its kind in his career, Captain Grey critiqued these documents with extreme tact, and political care, and referred the Act, the Charter and the Instructions back to the Colonial Office, sparing no effort to render his own alternatives politically possible for Lord Grey in despatches dated 3 May<sup>9</sup> and

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<sup>7</sup> Earl Grey to Grey, *ibid.*, p. 69.

<sup>8</sup> Earl Grey to Grey *ibid* p. 68, referring to an article by Arnold of 11 June 1831 ‘The Labourers of England’ in *The Englishman’s Register* No. 6 which can be found in *The Miscellaneous Works of Thomas Arnold: Collected and Republished*; B. Fellowes, London 1845 p. 157.

<sup>9</sup> Grey to Earl Grey [ Confidential] 3 May 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand* December 1847 [ 892] p. 42.

13 May 1847.<sup>10</sup> While he coordinated his actions with the protest led by the Bishop of New Zealand and the Chief Justice, the governor took care to leave the polemics to them, and to distance himself from the disapproval which they would incur, so as to concentrate upon persuading Earl Grey not to revise Maori property rights and to revert to the constitutional arrangements which he and Gladstone had previously agreed upon for a subsidiary New Munster province. The Governor however encouraged and offered facilities to Maori protest.

Grey's objections were in every respect sustained either overtly or tacitly. The portions of the Act which corresponded to the Gladstone - Grey plan were proclaimed,<sup>11</sup> those which did not were consigned to a five year limbo by a Suspending Act,<sup>12</sup> which allowed time for new legislation to be prepared. The result was that the General Legislative Council was convened to create New Ulster and New Munster. Grey as Governor-in-Chief presided over the New Zealand Legislative Council and supervised Lieutenant-Governor Eyre in New Munster. Major-General Pitt became New Ulster's Lieutenant Governor. Grey was then invited to propose the design for another Act.<sup>13</sup> Earl Grey's letter resulted in a renewal of discretion when the governor was permitted to propose policy on his own terms. Sir George Grey was to learn however with the New Zealand Constitution Act 1852 that the parliamentary process was beyond the influence of even the ventriloquising prose of his despatches.

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<sup>10</sup> Grey to Earl Grey ([ Confidential ] 13 May 1847 *ibid*, p. 45.

<sup>11</sup> Henry Labouchere, House of Commons *G.B.P.D.* 13 December 1847, vol. 95 cols. 1003-1010.

<sup>12</sup> 11 and 12 Victoria, cap. 5, 7 March 1848.

<sup>13</sup> Earl Grey to Grey (private) 26 February 1848 Grey MSS Auckland Public Library.

*The New Zealand Government Act 1846*

To consider first the technical features of the 1846 constitution, the New Zealand Government Act 1846 and its New Zealand Charter were the abortive culmination of the “municipalist” paradigm for the settler colonies. It would be wrong to infer that by the mid 1840s Whigs, Tories and Radicals had largely persuaded themselves of the Wakefieldian version of municipalism.<sup>14</sup> The provision of municipal institutions was one of the defining constitutional innovations of the “Age of Reform”. Wakefield and the Tories did not intend the same thing by the term. Edward Gibbon Wakefield intended a reference to the competence of the 17<sup>th</sup> century British American colonies, palatine jurisdictions under the “dominium” of proprietary government and under British sovereignty and that could undertake real powers of government such as the purchase of indigenous lands. Peel’s speech in the great New Zealand debate in the Commons of June 1845<sup>15</sup> was the first government endorsement of a “municipal” doctrine for New Zealand. Lord Stanley’s version of municipalism assigned the settler beachheads “municipal” powers on the model of the Municipal Corporations Act 1835,<sup>16</sup> distinguished from those of government proper. The British Government had no intention of reverting to the 17<sup>th</sup> century and departing from the 1835 Act even out in lone settlements. A Municipal Corporations Ordinance had been passed by FitzRoy’s Legislative Council.<sup>17</sup> These were to be town councils and not all-purpose colonial governments for the separate settlements. The result of the Municipal

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<sup>14</sup> Wakefield to Gladstone 21 January 1846 *New Zealand Company*, 20<sup>th</sup> Report ( 29 May 1846) appendix, correspondence, 3. .

<sup>15</sup> Peel, Sir Robert *G.B.D.P.* v. 81 19 June 1845 p. 951.

<sup>16</sup> 5 & 6 William IV. c. 76.

<sup>17</sup> *Legislative Council of New Zealand*, Session III, Ordinance No. xii, 9 July 1844.

Corporations Act 1835 had been that “local government was entirely municipalised”,<sup>18</sup> the old oligarchies and protectionist “red tape” swept away, jurisdiction separated from administration and town clerks and treasurers to be appointed as local body officers. Colonial constitutionalism was never debated in isolation from related subjects in the British political community.

Earl Grey’s justification of this restricted sense of municipalism was based on a capacitarian assessment of both the settlers and the indigenous people they lived with:-

“ We know also that hitherto Parliamentary government has not been carried into successful operation for any considerable time, in any other country but our own, and that it is little more than ten years since it was first attempted in any of our Colonies.....Even this short experience of its working in the Colonies, would seem to show that it is suitable only to a community which is not a very small one, to a population at an advanced stage of civilization, which has had the advantage of some training by the working of a free constitution of a simpler kind.....In a small community the successful working of this system of government is rendered difficult, by the necessarily restricted number of members of the Legislature, and of persons qualified by their intelligence and education to fill the principal offices of government, and at the same time in possession of sufficient means to devote their time to the public service, without adopting such employment as a permanent profession.”<sup>19</sup>

Governor Grey would not have objected to the capacitarian assumptions in this communication. While opposed to the formation of a colonial gentry and plutocracy, he could confide his abhorrence of colonial “sans culottes”.<sup>20</sup> The 1846 constitution was nonetheless a design of extraordinary complexity. The system divided settler New Zealand into two provinces and three tiers of government. Settlers possessed of

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<sup>18</sup> Redlich, Josef and Hirst, Francis Wrigley, *Local Government in England* Macmillan, London 1903 v I p. 213.

<sup>19</sup> Grey, Henry George, 3<sup>rd</sup> Earl, op. cit., v I pp. 34 ff..

<sup>20</sup> Dillon, Hon. Constantine, 8 February 1850, *Letters*, Alexander Turnbull Library, Wellington.

the franchise could only vote for municipal corporations. The mayors, aldermen and councillors would constitute an electoral college for the election of Members to a House of Representatives for each province. Each province was bicameral, for each province was to have its own governor and lieutenant governor, who were to appoint a nominated legislative council over and above their houses of representatives. Furthermore these provinces and governors and assemblies were to be loosely coordinated by a Governor-in-Chief for the entire country who possessed a bicameral “General Assembly” of his own, to which he would nominate legislative councillors but to which the two provincial houses of representatives would delegate members from among themselves. These dual provinces were “New Ulster” and “New Munster”, Auckland and Wellington their respective capitals. In other words this constitution opened out in a system of extended delegation, from the municipal bodies, to remedy a perceived lack of settler capacity. It was anticipated that the General Assembly would meet “rarely” to deliberate on a limited schedule of subjects, on which it had paramount authority. The franchise qualification to all intents and purposes excluded Maori. There was no intention to enfranchise Maori. Tribal areas and native districts were to be constituted, remaining outside the operation of the Common Law. That alone would have been anathema to the Governor, who was radically committed to legal integration. Grey’s Legislative Council had already passed an ordinance in 1846 to appoint Resident Magistrates from among Justices of the Peace. <sup>21</sup>The powers of the General Assembly were to be only the regulation of Customs duties, the establishment and determination of the jurisdiction “and course and manner of proceeding “ of a Supreme Court, to regulate currency, and the issue of “Bills, Notes and other paper currency,” the determination

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<sup>21</sup> *New Zealand Legislative Council*, 7 November 1846 Session VII, No. 16 sections 1 and 2.

of weights and measures, the regulation of post offices and of the carriage of mail, the establishment of bankruptcy and insolvency laws, the erection and maintenance of lighthouses and beacons, and finally the imposition of dues and charges on shipping.<sup>22</sup>

McLintock dismissed this mechanism as “doctrinaire”, once again revealing the mid-20<sup>th</sup> century bias against the intellectual culture to the political reasoning of the period. It was not bluff common sense and pragmatism that repealed it, rather the acute political intelligence which the governor supplied that could undertake the requisite constitutional analysis. Such a chimaera was passed without comment because competing demands on the British Government’s legislative programme affected the constitution’s design and the attention given it. Since New Zealand affairs were only of occasional interest to busy British politicians, the Bill could attract no debate when it was rushed through Parliament, because it was an enabling Act expressed in the broadest of terms to which municipalist measures were affixed.<sup>23</sup>

The New Zealand Charter and the Royal Instructions filled in the blanks.

The 1846 constitution has struck commentators outside of Westminster and Whitehall circles both at the time and ever since as anomalous.<sup>24</sup> It was undoubtedly easy to discredit, particularly since it could be so easily replaced by the model that Grey and Gladstone had discussed, which it none the less contained in principle. Stripped of its provisions for representative government and reconsidered as a scheme for legislative

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<sup>22</sup> “The Queen’s Instructions under the Royal Sign Manual and Signet” in *G.B.P.P. Papers Relative to the Affairs of New Zealand 1847* [ 763] pp. 76 – 87.

<sup>23</sup> Morrell, *The Provincial System in New Zealand 1852- 1976*, Longmans, Green London, for the Royal Empire Society, 1932, p. 79 and read Chapter VI.

<sup>24</sup> Rutherford, , *Sir George Grey K.C.B. 1812-1898:- A Study in Colonial Government.*, p. 148 .

McLintock, *Crown Colony Government* p. 287.

Morrell , W.P., *The Provincial System in New Zealand* , p. 38.

council government, it was in fact implemented as New Zealand's first statutory constitution. Apart from description of the contents, the political ideas to this constitution have been neglected for comment. W. P. Morrell set the tone among historians in 1932 when he remarked that "an elaborate analysis of their provisions would be a waste of time".<sup>25</sup> Disraeli spoke for politicians in 1848 by describing it as "an absurdity the most gross that has been perpetrated for a long series of years".<sup>26</sup> New Zealand historians have failed to renovate the history of New Zealand constitutional thought, which fell into discredit as the Whig school of settler constitutionalism declined.

The question for a history of political ideas, that has never been asked about this statute, is how it that such a scheme had seemed plausible? It is not enough to say with McLintock: -

"The constitution of 1846 might well serve as a classic illustration of the extent to which the doctrinaire mind can divorce itself from the plain facts of reality".<sup>27</sup>

Earl Grey's despatch and constitutional scheme are an instance of a text that immediately upon receipt, developed meanings and implications for the New Zealand situation, which the author could not possibly have intended.<sup>28</sup> That in fact is how he later excused himself against the protest at his proposed imposition of a waste lands

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<sup>25</sup> Morrell W.P. *ibid*, p. 37.

<sup>26</sup> Benjamin Disraeli *G.B.D.P.* 14 February 1848 v 96 cols 608-609.

<sup>27</sup> McLintock *op. cit.*, p 287.

Rutherford *op. cit.*, pp. 148-149 .

Morrell *op. cit.* p. 38.

<sup>28</sup> Skinner, Quentin, *Visions of Politics* Volume I "Regarding Method", Cambridge University Press 2002 p.101 .

policy upon Maori land.<sup>29</sup> Secretaries of state could not have expected their Instructions and instruments to be controverted as “freaks”.<sup>30</sup> Yet what is of value to the historian is how Sir George Grey deployed himself as the exemplary reader of Earl Grey’s despatch and then rendered an interpretation that serve to stabilize the process. Sir George Grey refuted Earl Grey’s policy by appearing to salvage and interpret it. Grey behaved as an ironist, deploying irony eirenically and not polemically against his noble correspondent.<sup>31</sup> Rather than just as a controversially self-promoting writer,<sup>32</sup> Grey should also be regarded as an exponent of satire if we are to analyse his performances adequately.<sup>33</sup> He also reminded Earl Grey of how troubled race relations were by interposing between the despatches of 3 and 13 May another despatch relating the murder of a settler mother and her children in the Wanganui district.<sup>34</sup>

### *Grey and Dr Arnold*

The principles of the New Zealand Government Act and of the Instructions could indeed be affirmed for Grey, so long as they were applied to support his policy, and so long as he appeared to assist the definition of the policy, and not oppose it outright.

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<sup>29</sup> Earl Grey to Grey No. 44 30 November 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand December 1847* [ 892] p. 83, p. 84.

<sup>30</sup> Roebuck, John Arthur, *The Colonies of England : A Plan for the Government of some Portion of our Colonial Possessions* ; John W. Parker London, 1849, p. 117 footnote:- “New Zealand has been a favourite field for the freaks of Colonial Secretaries of State”.

<sup>31</sup> Skinner op. cit., pp. 111- 122.

<sup>32</sup> Sinclair, Keith, *The Origins of the Maori Wars*, p. 32 for a measured statement on Grey’s writing:- “His despatches were so clearly coloured by his immediate objectives and interests...” etc.

<sup>33</sup> White, Hayden, *Metahistory : The Historical Imagination in Nineteenth Century Europe*; Johns Hopkins University Press, Baltimore 1975 p. 29.

<sup>34</sup> Grey to Earl Grey 11 May 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand December 1847* [ 892] p. 54.

Both Grey and the late Dr Arnold proposed Harringtonian policies among the Liberal Anglicans, arguing for affordable land and the prevention of land monopolies out in the colonies. The issue is not that Grey and Arnold were at variance, as if “Harringtonians” were a sect, but rather that Harringtonian language was deployed and negotiated in different ways, though for the same ends. Since Grey was conducting an amalgamationist racial policy like Jefferson, as Arnold was not, he acquired an ideology of indigenous assimilation into the settler community, that could account, as Arnold’s scheme could not, for how Maori were to be converted into subjects and then supposedly into citizens. He could refer to his government’s process of land–acquisition and its apparent success at civilisation and at Maori self-civilisation. Arnold diagnosed the Roman model of public lands, which Harrington had critiqued in *Oceana*, as a cause of decline and social dissolution. The appropriation of land from another people in ancient Rome resulted in three kinds of land, land retained by the former occupiers, land distributed to Roman settlers, land reserved for public use as domain land, which were in fact appropriated by the nobility, as Arnold demonstrated and Harrington had previously noted:-

" at Rome nothing could alienate them except a regular assignation, and as various circumstances from time to time added to their amount, on the whole their extent went on increasing rather than diminishing.....The effects of these enormous tracts of domain land are well known, and will require our notice hereafter. But from the beginning they must have greatly injured the spirit and life of Italy. The whole spring of social and civil activity in the ancient world lay in its cities; and domain land and cities could not exist together. Towns, therefore, which had been taken at the first conquest of the country, and their inhabitants massacred or sold for slaves, becoming in many instances the domain of the conqueror, were condemned to perpetual desolation. Their old population was dispersed or destroyed; and the wealthy Roman, who became the occupant of the territory, allowed a large part of it to lie waste, and settled the slaves he employed in cultivating the remainder.”<sup>35</sup>

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<sup>35</sup> Arnold, Thomas, *History of Rome*, v. III, T. Fellowes; Rivingtons; B.B. & H.H. Hodgson; J. Bain; Simpkin, Marshall & Co.; and Bickers and Son, London 1869 [1838-43] p. 17 – 18.

Harrington argued in precisely the same terms in “Oceana”. Grey as a colonial governor could not write despatches as if they were tracts of Political Economy, so he is to be interpreted correspondingly by his actions and policy. Both Arnold and Grey sought the concentration rather than the dispersal of population whereas the evil of domain land was that it kept population sparse, as in Western Australia. Grey however practised the Jeffersonian land purchase policy for extinguishing aboriginal title and the native policy of assimilation, to which Arnold and his disciples had no answer because native policy was never one of their questions, as it had been for Whately and Grey. The Governor was aware that the concentration of Maori land-use on *their* waste lands required time. Unlike Gallatin’s observations about American Indians, Grey’s positive accounts of Maori land-use did not stress the difficulty of the transition.<sup>36</sup> On these grounds alone Grey was able to avert a clash in principle and demonstrate the expediency and affordability of his government’s mode of land acquisition in New Zealand.<sup>37</sup> His ability to obtain credit from a New South Wales bank provided the funds with which land could be purchased with cash up-front. As Grey argued, still in the terms in which he affirmed John Dunmore Lang’s arguments about aboriginal land-use in 1841:-

“ I should also observe that the position I understand to be adopted by the New Zealand Company’s Agent, that if actual tracts of land are not in actual possession and cultivation by the natives, that we have, therefore, a right to take possession of them, appears to me to require one important limitation. The natives do not support

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Harrington, James, *The Commonwealth of Oceana*, John Pocock (ed.) Cambridge University Press 1992 [ 1656] p. 44 .

<sup>36</sup> Grey to Earl Grey 7 April 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand December 1847* [ 892] where Grey still adheres to the argument in *Journals* v. II p. 233.

<sup>37</sup> Grey to Earl Grey 15 May 1848 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand July 1849* [ 1120] p. 24 .

themselves solely by cultivation, but from fern-root, -from fishing, - from eel ponds, - from taking ducks, - from hunting wild pigs, for which they require extensive runs, and by such like pursuits. To deprive them of their wild lands, and to limit them to lands for the purpose of cultivation, is in fact, to cut off from them some of their most important means of subsistence, and they cannot be readily and abruptly forced into becoming a solely agricultural people.”<sup>38</sup>

Concerned though he was about the prospect of Maori rebellion, Grey was anxious to ensure a balance of land distribution in New Zealand for the colonists that ensured a political “balance” in the colony between small and large land-holders, and did not result in a “squattocracy”. He consequently feuded with the New Zealand Company and the other Wakefieldian associations, for the imbalance they would introduce to the colony by the land-ownership they promoted. Arnold’s reading of Vico had persuaded him that the development of societies progressed from aristocracies to oligarchies of the wealthy and then to raw numbers of the people. For both Grey and Arnold the undue influence of an external indigenous interest, or of an aristocracy or of a plutocracy in a colony was undesirable.

The governor’s virulent reaction in 1846 against missionaries’ acquisition of a landed base, his dogmatic attempt to sell Canterbury Association lands cheaply in 1853,<sup>39</sup> demonstrate the agenda. If the Crown were able in fact to appropriate waste lands, an interest of larger landowners and speculators would purchase them en masse from the Crown in the first instance, to sell on to settlers, much as Grey’s government had embarked on the purchase of vast tracts from Maori. Emigration was necessary in the first place for Arnold and Grey because of the unjust tenure of lands in Britain and

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<sup>38</sup> Grey to Earl Grey 7 April 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand December 1847* [ 892] p. 16.

<sup>39</sup> Grey to the Duke of Newcastle 14 June 1853 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand 10 April 1854* [ 1779] p. 259.

Ireland. Grey would not have approved of the replication of a landed gentry in New Zealand, for that would have corrupted the colony right at the start.<sup>40</sup> Grey had no intention of aggrandizing further the Wakefieldian settlement associations. The experience of other colonies such as New South Wales, Western Australia and the Cape Colony was that a surfeit of public lands was sold prior to survey to major contractors or large landowners, as colonial governments on new territory lacked the resources and outlets to package and retail land. The practical effect nonetheless of Grey's cheap lands policy was that speculators bought them up quickly in any case, not that Grey minded when his target was the monopoly of the Wakefield system in the first instance. He hoped such speculators would be less interested in planting a gentry.

Earl Grey and Sir George Grey were as much in agreement that New Zealand governors were to remain "irresponsible", and retain control of native policy, just as Governor Grey and Gladstone had previously been.<sup>41</sup> The question then was how to design and structure purely "municipal" and central institutions, through which the settlers could manage and coordinate all of their government apart from native policy, which was to be reserved from them, and to define whether the municipal institutions would in fact be municipal or rather provincial in scope, with greater powers than a municipality.

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<sup>40</sup> Stanley, Arthur Penrhyn (ed) *The Life and Correspondence of Thomas Arnold D.D.: Sometime Head-Master of Rugby School and Regius Professor of Modern History in the University of Oxford*, Ward, Lock, London 1890, Thomas Arnold to Sir Thomas Pasley, 25 January 1840.

<sup>41</sup> Grey to Earl Grey 30 August 1851 *G.B.P.P. Papers Relative to the Proposed Constitution of New Zealand 3 May 1852* [1475] p. 23.

*Grey and Gladstone*

Earl Grey's advent to office interrupted the negotiation between Gladstone his predecessor and Captain Grey.<sup>42</sup> While the Permanent Under Secretary of the Colonial Office James Stephen had been extremely influential under Glenelg and Russell, he was less so under Stanley, Gladstone and Lord Grey.<sup>43</sup> The New Zealand Company was able to assiduously lobby Stanley and Grey. Gladstone had decided to correspond with the governor on the colony's constitution. As he intimated to Grey:-

“At this distance, writing at a time when possibly your mind may already have arrived at a mature judgment on the issues to which I refer, and I must also add, having these objects before me in a confused mass, without any clue as to the regular connexion and clear apprehension of them as I trust your reports will afford, it is less injurious to leave you in suspense, by avoiding the communication of definite conclusions, than to run the risk of embarrassing or obstructing you by their premature announcement. On this ground, you will readily account for the indeterminate and simply suggestive nature of this despatch.

“It would afford me sincere gratification if I should hereafter find that your thoughts, guided by experience, have taken a direction so far corresponding with that of mine, so as to afford me the assurance that this communication may, at least have tended in no degree to aggravate the difficulties of the office with which you are charged.”<sup>44</sup>

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<sup>42</sup> Grey to Stanley 27 January 1846 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand* 26 August 1846 [ 690] p 7.

Gladstone to Grey 31 January 1846 *G.B.P.P. Papers relative to New Zealand* 21 May 1846 [ 337] p. 159 .

Gladstone to Grey 26 May 1846 *G.B.P.P. Papers Relative to the Affairs of New Zealand 1846* [ 712] p. 37 .

Grey to Gladstone 7 October 1846 *G.B.P.P. Papers Relative to the Affairs of New Zealand December 1847* [ 892] p. 1.

<sup>43</sup> Knaplund, Paul, *James Stephen and the British Colonial System 1813-1847*, p. 32.

<sup>44</sup> Gladstone to Grey 18 March 1845 *G.B.P.P. Papers Relative to New Zealand 21 May 1846* [ 337] pp. 168-169.

Gladstone meant that he was most interested in Grey's proposals, especially if they concurred with the "simple" constitution that he had proposed for the colony, of two subsidiary legislative councils, with the Executive vested in just one province, the right of disallowance vested in the Governor of the colony, so that, as Gladstone proposed, the new created province of New Munster would bear the same relation to the Crown colony government as the whole did to the British. Using a theological analogy, he remarked that New Munster would find its "headship" in the Governor in New Ulster, just as the entire colony found its headship in "the mother country".<sup>45</sup>

"I cannot exclude the supposition that it may possibly be found expedient to resort to a division of the colony, which shall give one tolerably complete organization to the northern part of the Northern Island, with Auckland for its capital, and should make Cook's Straits the centre of another, attaching to it the southern districts of the Northern Island, or any portion of them, and probably the whole of the Middle Island. If such an arrangement should be found advisable, I consider it most likely that Her Majesty's Government would also find reason to conclude, that the two bodies of colonial institutions thus established ought not to be absolutely coordinate and independent one of the other, but that there should be an Executive attached to one of them, which should be in some sense the head of the other, while the mother country would, of course, retain its position in relation to both."<sup>46</sup>

Grey had correctly understood Gladstone's invitation to mean, that he should accept his plan and adapt it for the purposes of convenience.

### *Grey and Earl Grey*

The circuits of conversation kept changing. In an age when constitution-making was regarded as the summary and nomothetic activity of government, laurels awaited successful constitutionalists. The party seeking those laurels in this transaction was Earl Grey, who eventually accumulated a constitutional bibliography of his own

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<sup>45</sup> Gladstone to Grey, op .cit., p. 168. Gladstone referred to I Corinthians 11.3.

<sup>46</sup> Gladstone to Grey, op. cit., p. 169.

publications, not George Grey. The New Zealand governor nonetheless was given the official credit for the exercise, as will be seen.

What was James Stephen's contribution to this discussion? Stephen for his part was a civil servant who was required to conduct the policy of a new government and not to maintain an independent policy. He supervised negotiations and transactions between Secretaries of State and governors. He annotated governors' correspondence for the benefit of their common superior. Moreover British governments throughout the 1840s were in a state of flux as they considered schemes for colonial constitutions. Stephen was disinclined to intervene in ever-shifting debates across so many colonies. Governors and Colonial Secretaries could reason with or misunderstand one another on case-by-case situations, which were nonetheless heavily theorized. "Principles" provided the constant language of resort in the midst of contending policy options. They were the bearings and coordinates for the long voyages of policy. Stephen had in fact warned Earl Grey of the governor's temperament as advance despatches arrived from New Zealand filled with warnings and forebodings.<sup>47</sup>

"Govr Grey, as you will see is alarmed about the Constitutional Act. ...I hope that no one entertains an higher esteem or regard for Capt. Grey than I do, and that it is not incompatible with those feelings to say that he is something of an Alarmist and Croaker – one of the bravest men living in the presence of danger; but possessed of a very grave, not to say melancholy temper, which always induces him to magnify an approaching evil, and depict it in dark colours. He always begins with gloomy predictions, & hitherto at least, has always ended with success".

This early attempt to appraise Grey's psychology proves that his Colonial Office superiors were immune to the insinuations and exaggerations on which historians

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<sup>47</sup> Stephen minute of 28 Sept 1847 in Co 209/ 51 fos. 279- 280 b. :- Grey's despatches only arrived in November 1847.

have long indignantly commented and nowadays ritually condemn when they comment on the prose of his despatches.<sup>48</sup> Grey's modus operandi and temperament were well-known.

Stephen was not without his own constitutional preferences. He promoted the establishment of small regional assemblies with a common assembly to coordinate them. Gladstone, as he informed Earl Grey had overruled him about the necessity for a central legislature.<sup>49</sup>

Gladstone as Stanley's successor as Secretary of State for the Colonies had been conversing with Grey on a New Zealand constitution. Grey's proposals to Gladstone were consistent with his second protest despatch of 13 May 1847 to Earl Grey<sup>50</sup> and in the main with the system that came into operation in late 1848 from the parts of the New Zealand Government Act that had not been disallowed. Largely concurring with Gladstone's proposals, the Governor had proposed that New Zealand have one Governor-on-Chief and Legislative Council with two Lieutenant Governors for the two provinces, which were to be New Ulster and New Munster, each with their own legislative councils consisting of official and nominee members.<sup>51</sup> While the southern division could be immediately granted representative institutions, the northern required delay because most of the Maori population lived in the North Island. For the New Ulster Council never met, its Lieutenant- Governors, Pitt and Wynyard were

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<sup>48</sup> Stephen to Earl Grey minute 28 September 1847 CO 209/51.

<sup>49</sup> Ward, John M., *Earl Grey and the Australian Colonies 1846-1857 A Study of self-Government and Self-Interest*. Melbourne University Press, Melbourne 1958; p. 35.

<sup>50</sup> Grey to Earl Grey, 13 May 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand December 1847* [ 892] p. 45.

<sup>51</sup> Grey to Gladstone, 27 January 1846 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand 26 August 1846* [ 690] p.7.

army officers on active service, while the risk of uprising remained the constant excuse for this permanent state of abeyance. Only Pitt and Wynyard became active while Grey was absent in New Munster. Grey had done his utmost to ensure that what survived the Suspending Act would correspond to the original plan discussed between Gladstone and himself, of a single subsidiary province beneath a general government. The differences were that Grey had introduced a general legislative council and two subordinate lieutenant governors.

As was to occur at the Cape Colony in 1850,<sup>52</sup> Gladstone and Grey agreed that a legislative council was the best institution for creating representative government for a settler colony, rather than an Act of Parliament.<sup>53</sup> This was indeed a convenient gubernatorial argument for constitutionalism. Such councils would then create representative legislatures by means of their own ordinances without reliance upon Westminster, without taking up space on the Order Paper. Not only did Grey and Gladstone agree that Wakefield and the New Zealand Company were wrong to exclude Maori residents of the proposed settler provinces, from qualification to the franchise, they concurred that settlers should have no power of legislation over Maori in native districts.<sup>54</sup> In their model the Governor-in-Chief would retain control of the native protectorate, while Lieutenant Governors would confine themselves to their respective settler communities.<sup>55</sup> Through his own Legislative Council, the Grey Governor-in-Chief would supervise provincial legislation through the system of

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<sup>52</sup> Wight, Martin, *The Development of the Legislative Council 1606-1945*, p. 114.

<sup>53</sup> Grey to Gladstone 7 October 1846 *G.B.P.P. Papers Relative to the Affairs of New Zealand December 1847* [ 892] pp. 1- 2.

<sup>54</sup> Gladstone to Grey 31 January 1846 *G.B.P.P. Papers Relative to New Zealand 21 May 1846* [ 337] p. 160.

<sup>55</sup> Grey to Gladstone 27 January 1846 *G.B.P.P. Further Papers Relative to New Zealand 26 August 1846* [ 690] pp. 7-8.

referral for allowance. This provision supposedly ensured combined management for the entire colony if the Governor-in-Chief was able to manage his two subordinates effectively.<sup>56</sup>

Neither the Gladstone-Grey nor the Earl Grey schemes provided for an Executive Council, such as the *Canada Constitutional Act 1791* had invented,<sup>57</sup> and the practitioners of the *Union of the Canadas Act 1840* reinvented, on which a governor and settler representatives would coexist and practise executive government by negotiation with a legislature, as the preliminary to responsible government.<sup>58</sup>

Executive government was to continue “irresponsibly” in New Zealand as much as ever. The emphasis on municipal institutions in Earl Grey’s scheme in fact allowed for a trade-off. In return for exclusion from executive government in such a war-prone colony with such sensitive race relations, the settlers would by compensation obtain the fullest competence of municipal powers.<sup>59</sup> Only nine subjects were reserved to the central government. Sir George Grey imposed the same deferral of ministerial government at the Cape Colony when he met its legislature in 1855. Nevertheless the main principle that George Grey and the Colonial Office borrowed from Earl Grey for the *N.Z.C.A.* was not the Tory and Wakefield doctrine of “municipalism” but the concept of a trade-off between gubernatorial control of native affairs and the generous powers given to the several provincial “governments”.

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<sup>56</sup> Grey to Gladstone, 7 October 1846 *G.B.P.P. Papers Relative to the Affairs of New Zealand December 1847* [ 892] p. 1.

<sup>57</sup> Wight, Martin, *The Development of the Legislative Council 1606- 1945* p. 45.

<sup>58</sup> Buckner, Phillip, *The Transition to Responsible Government: British Policy in British North America 1815-1850* p. 295 , pp. 299-300 .

<sup>59</sup> Grey to Earl Grey (No. 106) 29 November 1848 CO 209/63.

One of the strangest constitutional statutes that Westminster ever passed, it has only to be compared with the “norm” of the New South Wales and Van Diemen’s Land Government Act 1842<sup>60</sup> for its strangeness to become salient. To the east of the Tasman Sea, colonists were to be made party to a “municipalist” constitutional experiment providing for delegation and extreme diffusion of the representative principle, while on western shores, Australian colonists who met the property franchise of 100 pounds per annum and were over 21 years of age were able to vote directly in electoral districts for 12 members out of 36 on a single Legislative Council for their colony. An Australian Colonies Government Act<sup>61</sup> followed in 1850 to provide representative and the beginnings of responsible government. Despite the eventual provisions of the Australian Government Act, Earl Grey had also intended the model of the New Zealand Government Act 1846 and its “pyramidal” constitution for the Australian colonies. <sup>62</sup>Captain Grey’s rejection of it for New Zealand damaged the model considerably as a working proposal. <sup>63</sup>

As Earl Grey had been anxious to disarm the potential manifested at the Battle of Wairau in 1843 for settlers to cause confrontations with Maori, he had proposed a scheme that never transcended its fundamental cantonization. He was not without antecedents, in fact he was adhering to a recent trend in colonial government. Lord Stanley had instructed Grey to provide the settlers with municipalities.<sup>64</sup> Captain Grey’s experiences of the Adelaide Town Council had alienated him. <sup>65</sup>On that

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<sup>60</sup> 5 & 6 Victoria cap. 76.

<sup>61</sup> 13 & 14 Victoria cap. 59.

<sup>62</sup> Ward, John M., *op. cit.*, p. 86.

<sup>63</sup> Ward, John M., *op. cit.*, p. 87.

<sup>64</sup> Stanley to Grey 27 June 1845 *G.B.P.P.* 21 May 1846 [ 337] p. 74.

Stanley to Grey 29 November 1845, *ibid.* p. 103.

<sup>65</sup> Rutherford, *op. cit.*, p. 147.

occasion the governor relied on the long voyages between South Australia and Britain for the issue to lapse once he objected, a forerunner of his response to the despatch from Lord Grey. Wakefield and Buller referred so much to the palatine 17<sup>th</sup> century models, that they had been lobbying Stanley and Peel to devolve land purchase from the Crown colony to the proposed municipalities.

The motivations of Governor Grey's response to the arrival of the despatch from Lord Grey in April 1847 remain a subject for debate. It has entered the historiography as either Grey's best moment in New Zealand, or else it is damned with faint praise. "Greyolatry" is no more the business of a history of political ideas than a prosecution of Grey. McLintock who was the historian of the New Zealand Company perspective, and Claudia Orange the historian of the Treaty of Waitangi agree across their pronounced ideological lines that Bishop Selwyn<sup>66</sup> and Chief Justice William Martin and William Swainson the Attorney General deserve the credit for organizing the assault. Orange proposes that Grey was "temporising". Suspicion that he was doing so incited the intervention by Selwyn and Martin.<sup>67</sup> W.P. Morrell<sup>68</sup> and James Rutherford<sup>69</sup> however insisted that Grey's response made the greatest difference. No evidence exists that Grey had agreed to a waste lands regime in New Zealand. He was most definitely not consulted about Lord Grey's project. Grey's constitutional despatches to the Peel government disclose a developing yet consistent trend of

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Grey to Earl Grey 30 August 1851 *G.B.P.P. Papers Relative to the Proposed Constitution of New Zealand* [ 1475] 3 May 1852.

<sup>66</sup> Limbrick, Warren E., "Selwyn, George Augustus 1809- 1878" *Dictionary of New Zealand Biography*, updated 22 June 2007; <http://www.dnzb.govt.nz/> .

<sup>67</sup> Orange, Claudia, *The Treaty of Waitangi*, p. 127.

<sup>68</sup> Morrell, W.P., *The Provincial System in New Zealand*, Whitcombe and Tombs Christchurch 1964, p. 38.

<sup>69</sup> Rutherford, J., *Sir George Grey K.C.B. 1812-1898: A Study in Colonial Government*, p. 153.

reasoning, interrupted only when Earl Grey came into office. Careerism does not exclude conscientious policy in a professional administrator. The significance of the Selwyn and Martin protest cannot be understated however. Selwyn's protest attracted attention and some controversy in Britain, while Martin's pamphlet demolished the legal argument for waste land doctrine in New Zealand.<sup>70</sup> In *England and New Zealanders*, Martin repeatedly quoted Captain Grey as the correct enunciator of New Zealand waste lands policy. Government House had developed its own mindset on the colony, which coincided with the views of the Bishop and Chief Justice.

An advantage the Auckland conspirators had was that a breach had opened in communications between the New Zealand Company settlers and their representatives in Great Britain. Not only was news of the New Zealand Government Act at best received with indifference, it was condemned as "visionary" by Nelson settlers at a public meeting on 30 January 1847. It was not so much New Zealand that had become divisible as the New Zealand Company itself. Where such a rupture between settler realities and a reinvented tradition of municipalism had grown, the officials could intervene.

### *Waste Lands*

Both Stanley and Earl Grey professed themselves disciples of Dr Arnold's waste lands doctrine. Lord Stanley had attempted to introduce a twopence an acre land tax when FitzRoy was governor. FitzRoy as we have seen attempted to raise revenue

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<sup>70</sup> Martin, William, *England and New Zealanders. Part I. Remarks upon a despatch from the right hon. Earl Grey to governor Grey. Dated Dec. 23 1846.* Bishop's Auckland, College Press 1847. See pp. 11, 15, 67, 68, 70 for quotations from Captain Grey.

from land sales of 10 shillings an acre so that this attempt to encourage land sales was not practised. New Zealand governors then in the mid 1840s were fending off advice and instructions from London to deny Maori property in apparent “waste lands”. Even FitzRoy’s waiver of Crown pre-emption was premised on the title he acknowledged in tribal territories:- why permit an open property market if one were not satisfied the vendors possessed title? As with municipalist doctrine, British parliamentary debate and legislation for metropolitan circumstances impacted on colonial policy. Peel’s government had passed a General Enclosures Act in 1845 and established an Enclosure Commission so that there was no longer any need for a separate Act each time an enclosure was made. Policy for other colonies reinforced the same theme, the Canadian clergy reserves <sup>71</sup>and The Waste Lands (Australia) Act 1846 for example. In fact Earl Grey introduced his instructions on New Zealand land policy by referring to the Australian legislation. Why should New Zealand lands and the rights of “New Zealanders” be different from British villagers and Highlanders or the indigenes of other colonies?

The portion of the Royal Instructions concerning waste lands must not be regarded as separable at this stage from the 1846 constitution. As documents they all arrived in the same despatch and were interrelated. Historians then must regard them as impartible and interrelated. Moreover settler constitutions were in the first instance racial and land distributionist orders. Even if Captain Grey was able to obtain a revision of those Instructions, and a stripped down application of the constitutional

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<sup>71</sup> Hincks, Francis, *Religious Endowments in Canada: The Clergy Reserve and Rectory Question- A Chapter of Canadian History*; Dalton and Lucy, London, 1869. Wilson, Alan, *The Clergy Reserves of Upper Canada*, The Canadian Historical Association, Historical Booklet No. 23, Ottawa 1969, p. 19. Wilson, Alan, *The Clergy Reserves of Upper Canada: A Canadian Mortmain*, University of Toronto Press, Toronto 1968.

machinery, he had only succeeded in refuting one policy and not the general principle that the disposal of lands and the disposition of constitutions were inseparable. Earl Grey's despatch was understood to mean that while previous undertakings were to be respected, no lands were to be subsequently acknowledged as under aboriginal title unless Maori qualified as owners in Vattelian terms with the "admixture of labour" to the soil.<sup>72</sup>

Emerich de Vattel the eminent Swiss jurist had stated the following principles for public and international law in 1758:-

*La culture de la terre n'est pas seulement recommandable au gouvernement pour son extrême utilité, c'est encore une obligation imposée à l'homme par la nature. ....Chaque Nation est donc obligée, par la loi naturelle, à cultiver le pays qui lui est échu en partage, et elle n'a droit de s'étendre, ou de recourir à l'assistance des autres, qu'autant que la terre qu'elle habite ne peut lui fournir le nécessaire. Ces peuples, tels que les anciens Germains, et quelques Tartares modernes, qui, habitant des pays fertiles, dédaignent la culture des terres, et aiment mieux vivre des rapines, se manquent à eux-mêmes, font injure à tous leurs voisins, et méritent d'être exterminés comme de bêtes féroces et nuisables. Il en est d'autres qui, pour fuir le travail, ne veulent vivre que de leur chasse et de leurs troupeaux. Cela pouvait se faire sans contradiction dans le premier âge du monde, lorsque la terre était plus suffisante par elle-même au petit nombre des habitants. ....Ceux qui retiennent encore ce genre de vie oisif usurpent plus de terrain qu'ils n'auraient besoin avec un travail honnête, et ils ne peuvent pas se plaindre, si d'autres Nations, plus laborieuses et trop resserrées, viennent en occuper une partie. Ainsi, tandis que la conquête des empires polices du Pérou et du Mexique a été une usurpation criante, l'établissement de plusieurs colonies dans le continent de l'Amérique septentrionale pouvait, en se contenant dans de justes bornes, n'avoir rien que de très -légitime.*<sup>73</sup>

Maori political capacity would have been denied in this scheme not on ethnographic grounds but on the characteristics of political society that Vattel derived from Hobbes.

Between the Natural Law of Mankind, and the Natural Law of states, a marked

<sup>72</sup> Earl Grey to Grey 30 November 1847 *Papers Relative to the Affairs of New Zealand* G.B.P.P. December 1847 [892], p.p. 83-84.

<sup>73</sup> de Vattel, Emerich; *Le Droit des Gens, ou Principes de la Loi Naturelle appliquée à la Conduite et aux Affaires des Nations et des Souverains*; J.-P. Aillaud, Paris 1830 [1758], Book I, Ch. VII, pp. 113-114.

distinction existed and indigenous peoples belonged to the former as pre-statal.<sup>74</sup> Maori did work the soil, they were expert fishers and fowlers, hunted pigs in the forests and regarded pig-runs as property, yet in the Vattelien scheme they used the land inefficiently. Grey noted in the case of Wellington Maori that the more efficient their agriculture became, the more land would be available for his government to purchase for settlers. Maori lay between hunter-gatherers and laborious peasantries in the Vattelien scheme. John Pocock has noted that horticulture amounted to a missing “stage” in stadial development schemes. The solution for Grey then was that Maori should be encouraged into intensive agriculture as soon as possible. In his mind their undoubted right of occupancy had to be weighed against the needs of immigrant landless peoples. As this thesis will later demonstrate, Grey was to manifest tipping-points in this balance, with his “smashing” of the Xhosa in the Eastern Cape over 1857, and in his operations against Waikato and Taranaki Maori in 1863.

Arnold propagated a distinct Liberal Anglican imperialism. It is necessary to emphasize that the Liberal Anglicans were not a sect or an ideology. We may not apply what Skinner has called the “mythology of doctrine” to them.<sup>75</sup> In the difference between him and Captain Grey on waste lands, it is again apparent that Liberal Anglicans were a programme for the application of Christian Evidences and of the 17<sup>th</sup> century cultures they had inherited, to contemporary reform, and modern disciplines and sciences. Disagreement between Liberal Anglicans revealed not dissent and rupture as rather the natural interaction of robust gentlemanly and

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<sup>74</sup> Hobbes, Thomas, *De Cive*, the Latin version, entitled in the first edition, *Elementorum Philosophiae sectio tertia de cive*, and in later editions *Elementa Philosophica de cive*, Howard Warrender (ed) Oxford, Clarendon Press, 1983. cap. XIV/ 4 .

<sup>75</sup> Skinner, Quentin, *Visions of Politics*, v. I. Regarding Method, p. 65.

individualised minds. Whether in the prize speech he gave in June 1815<sup>76</sup> or in the volumes of his *History of Rome* 25 years later, Arnold referred to Harringtonian doctrine against luxury and commerce, and condemned the dispossession of smallholders by the great estate owners in ancient Rome.<sup>77</sup> Grey was in substantial agreement with this reasoning, when he acted against apparent or actual monopolists in lands purchase or mining claims in South Australia and New Zealand. As Vattel insisted above, he argued lifelong that the land's resources must be made available to the labour and industry and ownership of as many people as possible, and not just wastefully or unfairly possessed by a few.

#### *Grey's Coup d'Etat*

No one has denied that Grey's despatches of May 1847 were not masterly compositions and that in tone and argument they were calculated to convince the Secretary of State and not to offend him. The Grey minimalists would ascribe that to his pernicious rhetorical skills.<sup>78</sup> Yet the accomplishment can be measured from the fact that the argument was immediately won and that a memorandum war did not break out. It was Selwyn who incurred the blame for the "agitation" in the Commons.

<sup>79</sup> Gladstone, Sir Robert Peel, the President of the Board of Trade Henry Labouchere

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<sup>76</sup> Arnold, Thomas, *The Effects of distant Colonization on the Parent State:- A Prize Essay Recited in the Theatre at Oxford June 7, 1815*, Oxford 1815.

<sup>77</sup> Arnold, Thomas, *History of Rome:- From the End of the First to the End of the Second Punic War*. T. Fellowes; Rivingtons; B.B. and H.H. Hodgson, J. Bain; Simpkin, Marshall and Co; and Bickers and Son, London 1869 v. III pp. 17-19.

<sup>78</sup> McLintock, op. cit., p. 405 .

<sup>79</sup> Labouchere 9 February 1848 *G.B.D.P.* v. 96 p. 349. For Henry Labouchere 1<sup>st</sup> Baron Taunton ( 1798-1869) consult:-

Barker, G.F.R., (revised Matthew, H.C.G.) " Labouchere, Henry, 1<sup>st</sup> Baron Taunton ( 1798-1869" in *Oxford Dictionary of National Biography*, H.C.G. Matthew and Brian Harrison (eds), Oxford University Press 2004, v. 32., pp. 161-163.

quoted the Grey despatches in the Commons.<sup>80</sup> The governor for his part had taken care to distance himself from the agitation in his colony, so as to preserve influence with the Colonial Office, by mildly censuring Martin for the record and disowning Selwyn's passionate language.<sup>81</sup> The governor then had written despatches of the requisite quality and scope and tone of argument for extensive quotation in the House. McLintock argued that as Earl Grey left the governor the discretion of when to proclaim the 1846 constitution, Grey had leave to argue for its alteration.<sup>82</sup> What is to be understood is that the governor of a colony had been arguing against Royal Instructions and Government policy and against an Act of Parliament which he had been ordered to bring into effect, and not merely asking for "more time". Governors were invited by despatch to engage in constitutional conversation and did not take it upon themselves to propose the review of matured policy. Resignation or recall were the likely consequences of unilaterally altering the policy of the British Government, as Grey learned in 1859 when he proposed a federation of settler states and colonies in Southern Africa. After instigating and encouraging requests for federation from the Orange River State and the South African Republic, Grey was recalled by the second Derby government and then reinstated by Lord Palmerston's, under express instructions not to resume his plans for federation.<sup>83</sup> He risked the same consequences twelve years earlier. On that occasion he was proposing the revision of legislation which he had been instructed to proclaim. At any event Grey had informed

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<sup>80</sup> Gladstone 9 February 1848 *G.B.D.P.* v. 96, p. 333; Henry Labouchere 14 February 1848 *ibid* p. 599; Sir Robert Peel 14 February 1848 *ibid* p. 613.

<sup>81</sup> Grey to Earl Grey 30 November 1847 *G.B.P.P.* 1847 [ 892] p. 82.

<sup>82</sup> McLintock, *op. cit.*, p. 289.

<sup>83</sup> Goodfellow, Clement Francis, *Great Britain and South African Confederation 1870-1881*, Oxford University Press, Cape Town 1966, pp. 15-21. Morrell, W.P., *British Colonial Policy in the Mid-Victorian Age:- South Africa, New Zealand, The West Indies*; Clarendon Press, Oxford 1969; p. 103, pp. 110-113, pp. 114-18, p. 473.

Rutherford, J., *op.cit.*, ch. 28 "Federation and Recall", pp. 406- 426.

Selwyn and Martin that he would resign if his advice were not accepted. If Grey's motivations must always be regarded as careerist then he had dramatically recruited two prominent witnesses to the contrary. The imputation that Grey chose to ride the agitation after being in two minds about it may be dismissed. Captain Grey had already stated his position for the record. In April a few weeks before the despatch arrived from Earl Grey, the governor had sent him a despatch warning against appropriating Maori land with waste lands doctrine:-

“Such an attempt would be unjust, and it must, for the present, fail because the natives would not submit to it....the natives are now generally very willing to sell to the Government their waste lands at a price, which, while it bears no relation to the amount for which the Government can resell the land, affords the natives (if paid under a judicious system) the means of rendering their condition far more comfortable than it was previously.....I am satisfied that to have taken the waste land I have now purchased by other means than those I have adopted, would once more have plunged the country into an expensive war, which, from its supposed injustice, would have aroused the sympathies of a large proportion of the native population against the British Government, and would thus have retarded for many years the settlement and civilization of the country.”<sup>84</sup>

Grey's position resembles Thomas Jefferson's Indian policy, and no other, of purchase and gradual cession while “incorporating” Indians into the United States. He took careful not to directly challenge the authority of Arnold and Vattel in the despatch as that would challenge Earl Grey himself.<sup>85</sup> Yet the Instructions completely worked against the policy of Grey's New Zealand government and its magistrates as it attempted to recover its lands policy from the debacles of FitzRoy's waivers of the Crown right to pre-emption and the penny-an-acre proclamation. Grey was able to add Justice Chapman's judgment in the test case *The Queen v J.J.*

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<sup>84</sup> Grey to Earl Grey (31) 7 April, *G.B.P.P.* 1847/ 892 see also Grey to Earl Grey (secret) 8 April 1847 G 25/2.

<sup>85</sup> Grey to Earl Grey *G.B.P.P.* 3 May 1847 *G.B.P.P.* 1847 [ 892] p. 42.

*Symonds* as an enclosure to his despatch of 5 July 1847.<sup>86</sup> Chapman found that the Queen's seisin in fee did not apply to her native subjects, although it applied to the lands of her European subjects, and that Crown right of pre-emption was no global assumption of title to lands over which the Crown had Sovereignty, nor the right to be the first purchaser, but rather the right to extinguish aboriginal title. That title defined as a "modified" and qualified dominion, not an original and absolute dominion, which should be conveyed by purchase to the Crown for selling onto settlers, so that aboriginal title to the "enjoyments" of the property they had possessed, would be entirely extinguished. Thus had pre-emption doctrine developed since Jefferson understood it to mean a Crown appropriation over the native protectorate, to which he had objected.<sup>87</sup>

Grey therefore temporised to secure the eventual result of a land policy that would bring about the same result as waste lands doctrine without the risk of violence, from the conversion of Maori lands by Crown right of pre-emption, and the amalgamation of Maori. He was after all the opponent of the 1837 native protection model. As has been argued before in this thesis, Grey was the Liberal Anglican proposing Utilitarian solutions on racial policy where one would normally expect an evangelical, a critical stance that was entirely possible when it was evangelicals such as Lord Glenelg and Fowell Buxton who were the proponents of the 1837 Select Committee report. Yet Grey remained fundamentally anti-classical in his political economy like other Liberal Anglicans, and remained as "anticlassical" in his economics as Thomas Jefferson. The

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<sup>86</sup> Grey to Earl Grey 5 July 1847 *G.B.P.P. Papers relative to the Affairs of New Zealand*, December 1847 [ 892] ; Martin, William CJ, judgment on Queen v. Symonds (McIntosh's Case) p. 64.

<sup>87</sup> Jefferson, Thomas, *A Summary View of the Rights of British America* Printed by Clementina Rind, Williamsburg Virginia, Reprinted G, Kearsly London 1774.

land was to be bought and not “assumed” by the Crown as waste land, lest the processes of “civilization” and of amalgamation be interrupted. How counter-intuitive such a pro-Maori and anti-classical attitude on the waste lands question would have seemed is expressed by the entirely conventional, yet Utilitarian, views of John Arthur Roebuck in 1849:-

“ I say, that for the mass, the sum of human enjoyment to be derived from this globe which God has given us, it is requisite for us to pass over the original tribes that we find existing in the separate lands which we colonize. When the European comes into contact with any other type of man, the other type disappears. Let us not shade our eyes, and pretend not to see this result. Hypocrisy is by far such a proceeding added to all the evils which we must encounter. The result is the same. The aborigines *disappear*”.<sup>88</sup>

As Selwyn had caused offence with his “agitation” and as even the Chief Justice had required a reprimand,<sup>89</sup> Grey had to convince Earl Grey and the Colonial Office of the following points to entirely prevail against the 1846 constitutional system and not merely obtain a partial result from an adept critique.

Grey had to persuade his superiors of the military situation,<sup>90</sup> reminding them of the *Realpolitik* of the New Zealand situation in language that did not contradict the humanitarian purpose.<sup>91</sup> The outbreak of violence at Wanganui in April 1847 served the purpose of reminding the Colonial Office that pacification was not only incomplete, but that irruptions of violence could break out at any time if the provocation were sufficient. While scarce credit would have been given Grey’s

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<sup>88</sup> Roebuck. John Arthur, *The Colonies of England : A Plan for the Government of some Portion of our Colonial Possessions*, p. 138.

<sup>89</sup> Grey to Martin 6 Oct 1848 NA-G 36/2.

<sup>90</sup> Grey to Lord Stanley 11 March 1846 *G.B.P.P.* 1847 [ 763] p. 2 .

Grey to Earl Grey 1 July 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand 1847* [ 892] p. 59.

<sup>91</sup> Grey to Earl Grey 3 May 1847 , *ibid* p. 43, p. 45.

warnings of a general insurrection, warfare with only a few tribes had proven embarrassing enough, and in fact turned into a protracted insurgency 20 years later. No one in Whitehall wanted New Zealand in the news any longer and a topic for Commons debates any longer than necessary. Nor did Grey give his superiors the impression that the military situation was intractable. He was able to provide evidence of Maori who were willing to sell lands and to protest by due process.<sup>92</sup> Grey himself turned agitator and facilitated the protest letter of the great Tainui chief Te Wherowhero to the Colonial Office.<sup>93</sup>

Against the mechanisms and doctrine of the New Zealand Government Act, Grey insisted that Maori be represented on the same terms as the settlers, on the principle that there should be no taxation without representation:-

“ At present, the natives are quite satisfied with the form of government now existing, and as the chiefs have always ready access to the Governor, and their representations are carefully heard and considered, they have practically a voice in the government and of this they are well aware; but under the proposed constitution they would lose their power and the Governor would wholly lose his influence over them... The Natives, are at present, certainly not fitted to take a share in a representative form of government; but each year they will become fitted to do so, and each year the numerical difference between the two races will become less striking; so that a great advantage would be obtained by delaying even for a few years the introduction of the proposed constitution into the northern parts of New Zealand”.<sup>94</sup>

In this extract the time intervals for this events were made to seem proximate, by the reiteration of “ each year” and “ a few years”. The insinuation is why should current policy that was succeeding be interrupted for an unknown result? The Colonial Office

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<sup>92</sup> Grey to Earl Grey 26 March 1847 and 7 April 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand* 1847 [ 892] p. 7, p. 14.

<sup>93</sup> Grey to Earl Grey 3 May 1848 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand* 1848 [ 1002] 1848 p. 144.

<sup>94</sup> Grey to Earl Grey 13 May 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand* [892] 1847, p. 45.

required reminding of what the New Zealand experiment was in fact about. Although careful of the British interest in New Zealand, Grey offered no illusions about the settlers. By introducing the proposed constitution, the Queen would -

“give to a small minority of one race the power of appropriating as they think proper, a large revenue raised by taxation from the great majority of her subjects of another race”.<sup>95</sup>

Grey was able to insist that a “majority” of adult Maori had become literate in their own language. Why then did that attainment disqualify them as it might an illiterate people? To support this argument, Grey adduced the French and German settlers to New Zealand, who would thus be excluded on the basis of their ignorance of English and of their isolation in allophone communities.<sup>96</sup> The most compelling argument that Grey was able to advance was that Maori dwelling in the native protectorate were substantial contributors to the revenue of the colonial government. Should qualified Maori then be denied the franchise, for duties and imposts they would have to pay for goods and services rendered through the settler beachheads and the offices of the colonial government?<sup>97</sup> Should Maori be politically subordinated and their rights threatened? These arguments amounted to a picture of Maori progress towards civic capacity<sup>98</sup> which a British Government lately relieved of the burden of war in New Zealand, should have been reluctant to disturb. Grey reverted to what Gladstone had proposed,<sup>99</sup> that in the absence of the Native Protector’s Office that was usual in

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<sup>95</sup> Grey to Earl Grey 3 May 1847 CO 209/52.

<sup>96</sup> Grey to Earl Grey 3 May 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand* 1847 [ 892] 1847, p. 44.

<sup>97</sup> Grey to Earl Grey *ibid* p. 45.

<sup>98</sup> Grey to Earl Grey 1 October 1847 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand* 1848 [ 899] p.24.

<sup>99</sup> Gladstone to Grey 31 January 1846 *G.B.P.P. Papers Relative to New Zealand* 21 May 1846 [ 337] p. 159.

settler colonies, the Crown reserve to itself the protection of Maori, and allow the settlers only to govern themselves. Gladstone's "municipalism" was indeed informed by the colonial experience of 17<sup>th</sup> century America, and not by the Municipal Corporations Act 1835 with its narrower scope for cities and boroughs.<sup>100</sup> For Grey, a province encompassed an entire municipal zone and its hinterland, and did not merely amount to harbour towns of a few thousand people at most, which is what passed for a municipality in New Zealand. He was therefore able to adhere to the Gladstone plan that had remained within Earl Grey's. With reference to the Municipal Corporations Act, Grey was soon able to refer to the "more extended municipal powers"<sup>101</sup> that New Zealand provinces were to have, as the replacement New Zealand Constitution Bill was prepared. The "municipalism" of the American colonies was not only practically attractive, but afforded a concept for provincial government that united the Governor, the Secretary for the Colonies and the New Zealand Company, when Grey and the Company were frequently at loggerheads.

Grey was at all times to insist upon the military capacity of Maori as has been seen from his despatch of April 1846. The fullest analysis of the Maori capacity for war-fighting occurs in a despatch of 1849 to Lord Grey, which can serve as the typical expression of that argument, as it appears in the form of a military intelligence report on indigenous war-fighting capabilities such as he had learned from Albert Gallatin's *Synopsis* :-

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<sup>100</sup> Gladstone to Grey No. 75 18 March 1846 *G.B.P.P. Papers Relative to New Zealand* 21 May 1846 [ 337] p. 168.

William Ewart Gladstone MP in *G.B.P.D.* vol. 121, cols. 953-956.

<sup>101</sup> Grey to Earl Grey 30 August 1851 *Papers Relative to the Proposed Constitution of New Zealand* G.B.P.P. 3 May 1852 [ 1475] pp. 18-33, see p. 24.

“ These natives are generally armed with rifles or double-barrelled guns; they are skilled in the use of their weapons and take great care of them; they are addicted to war; have repeatedly, in encounters with our troops, been reported by our own officers to be equal to any European troops; and are such good tacticians that we have never yet succeeded in bringing them to a decisive encounter, they having always availed themselves of the advantage afforded by their wilds and fastnesses. Their armed bodies move without any baggage, and are attended by the women, who carry potatoes on their backs for the warriors, or subsist them by digging fern-root, so that they are wholly independent of supplies, and can move and subsist their forces where our troops cannot live.”<sup>102</sup>

Grey therefore argued against the despatch of 23 December 1846 by respectfully insinuating an alternative. Such an approach involved taking care not to make a frontal attack on either Earl Grey or Dr Arnold and Vattelien doctrine, while yet persuading his superiors of a New Zealand “exceptionalism” on the basis of Maori capacities, institutions and progress in civilization. The implication was that current policy would obtain the same result. Moreover it was a published ethnographic expert who was arguing so, and no casual observer. Grey’s despatch visions of race relations have been condemned as either wilful self-delusion or deliberate propaganda by which specific developments were dressed up to suggest a general situation.<sup>103</sup> What is to be insisted on here is that these were reports that presented a dynamic situation of intensive change that was being promoted as ordered and self-motivated and not at all chaotic or just as the results of demoralization. The despatches were unrealistic because social change and anxiety among Maori were transformed into a propaganda narrative that confidently asserted the impending accomplishment of his amalgamationist policy. British humanitarian policy had to be recapitulated and affirmed to support the challenge. The New Zealand constitutional order would consist of British institutions for the settler colony into which Maori were to be

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<sup>102</sup> Grey to Earl Grey No. 58 9 July 1849 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand* 1850 [ 1136] p. 190.

<sup>103</sup> Sewell, Henry, Sewell, Henry *Journal* W. McIntyre (ed)., 13 March 1853.

absorbed supposedly as citizens with equal rights, and not of separate Maori institutions for Maori national governance in the native protectorate.

Thirdly Grey had to deal with points of principle just as he had done with the Port Louis paper seven years before. Political principles had resulted in Earl Grey's despatch of 23 December. Grey wisely chose not to fall into the trap of engaging in intellectual controversy and rather avoid a direct assault. In this way ministers of British governments, current and recent were not embarrassed any more than necessary. Grey's strategy was to appear to affirm Earl Grey's principles, while proposing other applications.<sup>104</sup> Extreme deference, the strategy of appearing to derive the requisite principles for New Zealand policy from Earl Grey's own language produced documents that could be quoted in both the House of Commons, and in publications:-

“Such a form of institutions had already in their main outline been sketched by your Lordship, and these in their main features presented a constitution than which nothing better could be devised here, although alterations in the details appeared necessary to adapt them to this country and to the feeling of its inhabitants.”<sup>105</sup>

Grey rather insisted in a battery of despatches on the exceptional circumstances of Maori, from the labour they expended on their lands,<sup>106</sup> the destitution to which they would be reduced if forced into too close a territory for subsistence,<sup>107</sup> the progress

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<sup>104</sup> Grey to Earl Grey 29 November 1848 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand* [ 1136] 1850 p. 11.

<sup>105</sup> Grey, Henry George 3<sup>rd</sup> Earl, op. cit., v. II p. 133.

<sup>106</sup> Grey to Earl Grey 30 August 1851 *G.B.P.P. Papers Relative to the Proposed Constitution of New Zealand* [ 1475] 3 May 1852 p. 20.

<sup>107</sup> Grey to Earl Grey 21 April 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand* [ 892] December 1847 p. 36 .

they were making with agrarian and pastoral farming,<sup>108</sup> which would presumably reduce their requirement for such extensive lands, and above all their political capacity and commercial acumen. Jefferson had argued that the more efficient land-use of agriculturalists would preserve Americans Indians better, than if the Federal Government protected wide-ranging lands on which they hunted and trapped. The picture that Grey created was one of barbaric “virtue” and industry, of warlikeness combined with an emergent peasant agriculture, out of a less efficient “slash and burn” horticulture, that necessitated more land to practice.<sup>109</sup>

Pacification assured, Grey’s fundamental message to Earl Grey during his governorship was that an exceptional result could be expected from an exceptional people:-

“ This process of incorporation of the native population into the European settlements has, accordingly, for the last few years, been taking place with a rapidity unexampled in history. Unless some sudden and unforeseen cause of interruption should occur, it will still proceed, and a very few years of continued peace and prosperity would suffice for the entire fusion of the two races into one nation.”<sup>110</sup>

The British government should not then interfere in what the New Zealand economy and what social development among Maori were achieving, nor should settlers be permitted to prevent the apparent natural outcome of this process. The less interference, the faster the consummation of New Zealand colonization and native protection. The concomitant was that Grey had to demonstrate that he could in fact affordably procure land by means of the Crown’s right of preemption. His

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<sup>108</sup> Grey to Earl Grey 30 August 1851, *G.B.P.P.* [ 1475] 3 May 1852, op. cit., p. 21 sections 16 , 17.

<sup>109</sup> Gladstone 9 February 1848 *G.B.P.D.* v. 96 ; pp. 333-334.

<sup>110</sup> Grey to Earl Grey, 30 August 1851 *G.B.P.P. Papers Relative to the Proposed Constitution for New Zealand* [ 1475] 3 May 1852, p. 21.

administration had indeed been able to resume the purchase of lands that had broken down under FitzRoy. A year after hostilities with Ngati Toa for example he was able to buy from them 25,000 acres in the Porirua region for 2000 pounds. He was also able to acquire Ngati Toa's rights to about 3 million acres in the Wairau region of what became Marlborough for 3000 pounds<sup>111</sup>. 1 pound sixpence per acre was his usual maximum price.

It took until November 1846 for Grey's despatches of May to arrive at 14 Downing Street.<sup>112</sup> It was Henry Labouchere who introduced the Suspending Bill on 13 December 1846. Grey had had no need to argue his case polemically because he knew that the political process would be difficult enough for Earl Grey. He wanted to convince the Colonial Secretary, not offend him. Gladstone for his part accused the Colonial Secretary of letting his zeal outrun his discretion, and then stated in the language of racial "improvement" rather than of native protection –

“they had in the case of the islands of New Zealand – with, perhaps the single exception of their West India islands – the most interesting and hopeful juxtaposition between European civilization and aboriginal races which the world could present: and he believed that if the House would exhibit towards the New Zealanders that paternal care and tenderness which it was their bounden duty to extend to them, they might witness a satisfactory, a peaceful, and glorious issue to the Christian, philanthropic and enlightened labour which had been bestowed on the colony.”<sup>113</sup>

Earl Grey concluded the exchange with a private message to the governor dated 26 February 1848 in which he confided to him the “difficulty of judging what may be suitable arrangements for the very peculiar circumstances of New Zealand” while

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<sup>111</sup> Grey to Earl Grey; 26 March and 7 April 1847 *G.B.P.P.* 1847[ 892] op. cit., p. 7, p. 14.

<sup>112</sup> Earl Grey to Grey 30 November 1847, 1 December 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand* [ 892] 1847 p. 82, p. 84.

<sup>113</sup> Gladstone *G.B.D.P.* 1847 v 95 13 December 1847., cols 1009- 1014.

noting “ that it imposes upon you a load of responsibility which I shd. have shrunk from imposing upon an ordinary governor”.<sup>114</sup> He was to review his administration of the Colonial Office in a book he published in 1853 *The Colonial Policy of Lord John Russell's Administration*<sup>115</sup> which consisted of fictitious correspondence from himself to Lord John Russell. Discussing New Zealand he stated:- “any general insurrection was averted”.<sup>116</sup> The Governor’s alarms had prevailed. While admitting that the Government had arrived in office so late in the 1845-46 session that it did not give proper consideration to its New Zealand legislation, and had arrived at “a hasty and erroneous conclusion”,<sup>117</sup> he was able to argue in the language that Sir George Grey had supplied him: -<sup>118</sup>

“ The leading principle of the Act of 1846 – the division of authority between subordinate Provincial Legislatures, and a general Legislature for the whole Colony – has been adhered to”.

Unwittingly foreshadowing Sir George Grey’s immediate future, he went on to propose the application of a New Zealand model in Africa.<sup>119</sup> Commenting on Sir Harry Smith’s annexation of Xhosa territory on 23 December 1847:-

“ The policy thus adopted was, in fact, precisely the same as that which has been followed with such success in New Zealand”.

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<sup>114</sup> Earl Grey to Grey (private) 26 February 1848, Grey MSS, Auckland Public Library.

<sup>115</sup> Grey, Henry George, 3<sup>rd</sup> Earl Grey , *The Colonial Policy of Lord John Russell's Administration* R.Bentley London 1853, 2 vv. .

<sup>116</sup> *ibid* p. 133.

<sup>117</sup> *ibid* p. 154.

<sup>118</sup> *ibid* p .158.

<sup>119</sup> Price, Richard , *Making Empire: Colonial Encounters and the Creation of Imperial Rule in Nineteenth-Century Africa* , Cambridge University Press 2008, p. 267 ff..

That success could indeed be the retrospective of 1853, when George Grey was in fact preparing to abandon his colony, although it was not at all the situation in 1847 when New Zealand policy was so unsettled. Earl Grey however confidently proposed:-

“I can see no reason why, what has already been so far accomplished in New Zealand, should not be so likewise in Africa”.<sup>120</sup>

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<sup>120</sup> Price, *ibid* pp. 253-254.

## Chapter Seven

### The New Zealand Constitution Act and the Constitution of the Empire

*A Federal N.Z.C.A?*

Ged Martin remarked in *Britain and the Origins of Canadian Confederation 1837-1867* : -

“ There is much to be said for taking as an explanatory starting point the idea of confederation, and seeking to explain why this mental construct became fastened upon a set of circumstances to which it does not seem to have been a particularly appropriate response, rather than assuming that it was indeed the correct answer to the challenges of 1864 and then adopting an essentially descriptive strategy which supports this thesis”.<sup>1</sup>

Martin was right. Colonial devolution from 1840-1867 occurred while political models were in contention. The prerogative-based language of the imperial constitution was not in contention, but the modes of devolution were debatable. Political and mental constructs of varying degrees of appropriateness abounded, yet they must be seen in relief against the monarchical constitution of the empire. In the 1840s particularly, a general settlement seemed elusive in Canada, in fact was not even considered possible at times from the variety of colonies across the world, especially as there was no consensus as to whether a Westminster model could or should be devolved out of the gubernatorial and conciliar systems. The precursor for colonial self-amendment in this tranche of devolutions might have been the

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<sup>1</sup> Martin, Ged, *Britain and the Origins of Canadian Confederation 1837- 1867* p. 30.

Newfoundland Act 1832<sup>2</sup> yet “fancy” constitutions were at times proposed for unique colonial circumstances. Constitutions were fastened upon circumstances. In Newfoundland for example, James Stephen had proposed a measure that was to prove abortive, the union of the nominated council with the legislature.<sup>3</sup> Colonies were quick to develop multiple constitutions, as settlers and crown agents argued among themselves, or else when indigenous peoples constituted for themselves, or sought to negotiate with the settler states.<sup>4</sup> In all of this, constitutions were considered primarily as relationships between imperial and colonial jurisdictions.<sup>5</sup> By the early 1850s however, a standard devolution to parliamentary government was agreed upon, to which New Zealand eventually conformed, as the Cape Colony, New Zealand and the Australian colonies followed in the wake of the British devolution to the Canadian colonies of responsible parliamentary government.<sup>6</sup>

Martin’s “starting point” requires a caveat. Confederation was the starting point for the Canadian exercise he was discussing, but to what extent was the idea of a federal system a starting point for New Zealand in the late 1840s and early 1850s? Some mode of associating half a dozen scattered colonies was required. The *N.Z.C.A.* produced a general government and provincial governments. Was this in fact a

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<sup>2</sup> 2 & 3 Wm IV. c. 78. .

<sup>3</sup> Gunn, Gertrude E., *The Political History of Newfoundland 1832- 1864*, University of Toronto Press, Toronto, 1966; pp. 11-12.

McLintock, A.H., *The Establishment of Constitutional Government in Newfoundland, 1783-1832:- A Study of Retarded Colonisation*, Longmans, Green and Co, London 1941, pp. 185-190.

<sup>4</sup> Hulsebosch, Daniel *Constituting Empire*, p. 75.

<sup>5</sup> Hulsebosch, Daniel, *ibid* p. 7.

<sup>6</sup> Earl Grey to Sir John Harvey, Governor of Nova Scotia, 7 November 1847 which was shown to Elgin before his departure to become Governor General of Canada (see Buckner *op. cit.*, p. 309). The same policy, of appointing ministers who possessed the confidence of the legislature, was reaffirmed in the private letter from Grey to Elgin of 22 February 1848, reproduced in Bell and Morrell, *op. cit.*, p. 107.

“quasi-federation” as has frequently been claimed?<sup>7</sup> This chapter will demonstrate that Sir George Grey and Earl Grey sought a federation in so far as it was compatible with the systems of disallowance and reservation of assent under the Royal Assent throughout its levels. The monarchical constitution was necessary to comprehend Maori, both with respect to their rights against settlers, but above all to ensure their amalgamation. Legislative review then provided the prime structure, in contradiction to purist definitions of federations.

For now it is essential to note that George Grey and Earl Grey’s version of federation was converted by the Derby government into a unitary government over supposedly municipal governments. Once in operation, it was convention that soon made the system into a “quasi-federation”, not the *N.Z.C.A.*. Canada was to become the first parliamentary government confederation in the world, not New Zealand. Yet the significance of New Zealand’s experiment is not that it preceded the British North America Act, and the provinces ceased to exist by 1876. That had been the Whig constitutionalist emphasis. Rather the constitution was obliged to in its various versions, the Greys’, Pakington’s Bill and the Act, to articulate the system of reservation for assent and disallowance. Those provisions however failed to interpose the Crown and Crown agents between the settlers and Maori. By the 1860s neither Grey nor the British Government were disposed to maintain a native protection regime against the settlers.

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<sup>7</sup> Madden, Frederick and Fieldhouse, David (eds.) *Select Documents on the Constitutional History of the British Empire and Commonwealth* Volume IV: Settler Self-Government 1840-1900 – The Development of Representative and Responsible Government; Greenwood Press, Westport Connecticut, p. 791.

Edward Augustus Freeman was to define a federal constitution by virtue of the doctrine that the governments on the respective levels of a federation could not interfere in each other's law.<sup>8</sup> In the terms of Freeman's definition -

“ A Federal Commonwealth then in its perfect form is one which forms a single state in its relations to other nations, but which consists of many states with regard to its internal government.”<sup>9</sup>

Nothing of the kind was ever entertained for New Zealand. The referral of provincial legislation for the Governor's allowance or disallowance mirrored the Governor's referral of the General Assembly's Acts to the British Government. The *N.Z.C.A.* provided for up to five stages of review, for the provinces to review the municipal councils, for the General Assembly to review the provinces, for the Governor to respectively interpose reservation of assent or disallowance upon provinces and on the General Assembly and for the general Acts of New Zealand to be reviewed by the British Government. The British North America Act would provide for executive review within Canada under its sections 56 and 90. The Governor General in Council was thereby empowered to disallow provincial legislation that was reserved to him by the Canadian Lieutenant Governors.

By Freeman's definition then, New Zealand between 1853 and 1876 was never formally a federation. Yet Grey's proposals provided for biennially elected Superintendents and provincial councils, and for provincial representation in the Legislative Council. The councils were to be two thirds elected and one third nominated like elective legislature councils. The *N.Z.C.A.* provided however for

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<sup>8</sup> Freeman, Edward Augustus *History of Federal Government in Greece and Italy* Macmillan, London 1893 ch. II p. 8.

<sup>9</sup> Freeman, Edward Augustus, *ibid* ch. II p 7.

quadrennial superintendents while denying provincial delegation to the upper chamber. Sir John Pakington was to concur with Grey that the logic of the prerogative system demanded that Governor should review provincial legislation, even though to Pakington's mind, provincial councils were merely "municipal".

The *N.Z.C.A.* has nonetheless been considered the first British attempt at organising a federation-like polity. Rutherford described it as "a comprehensive quasi-federal plan of government". Madden and Fieldhouse thought the same when they entitled a section of select documents "New Zealand –The Collapse of a Quasi-Federal Government".<sup>10</sup> McLintock correctly but incompletely insisted: - "Thus the Act of 1852 gave New Zealand a unitary and not a federal constitution".<sup>11</sup>

More judiciously, W.P. Morrell noted that while the supremacy of the General Assembly qualified the New Zealand constitution as unitary and not federal, the –

"dovetailing of the two governments, general and provincial, into one another was by no means inconsistent with the terms and intentions of the Constitution Act."<sup>12</sup>

He terminated his review of the formal and operational aspects of the system with the peerless formulation :-

"So long as the people of New Zealand were, so to speak, federally minded, the constitution could be worked as a federal constitution."<sup>13</sup>

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<sup>10</sup> Madden, Frederick and Fieldhouse, David (eds.) *Select Documents on the Constitutional History of the British Empire and Commonwealth* Volume IV: Settler Self-Government 1840-1900 – The Development of Representative and Responsible Government; Greenwood Press, Westport Connecticut, p. 791.

<sup>11</sup> McLintock, *Crown Colony Government in New Zealand*, p. 347.

<sup>12</sup> Morrell, W.P., *The Provincial System in New Zealand*, p. 66.

<sup>13</sup> Morrell, W.P. *ibid* p. 68.

New Zealand settlers between 1856-1858 were so minded. They were not so twenty years later. Yet is debatable as to how accurate even the best of these definitions are. It was convention that made the constitution a virtual federation when parliamentary responsible government required trade-off between provincial governments and central government. So little regard had been paid to plain constitutional symmetry, that the General Assembly was quinquennial while the life of provincial councils was quadrennial.

The federal versions of the constitutions occurred both before the Derby government in 1852, and after responsible government commenced in 1856. Gubernatorial disallowance of provincial ordinances conceded that provinces could be more than Peelite municipalities. Moreover the Act itemized in section 19 what the provinces could not do in relation to the General Assembly, otherwise they were left to their own discretion. If the constitution was operational as a “quasi-federation” by the outbreak of the 1<sup>st</sup> Taranaki War, it was in fact because it was operating both as less than a federation, as well as more than a federation. No express statement in the Act made it a federation. Participants in the parliamentary debates denied it was. Yet the election of provincial superintendents to the General Assembly, enabled the officers of provincial governments not only to operate in the General Assembly but to form, reform and unmake ministries. While no American governor sat in Congress, New Zealand superintendents formed the nucleus of legislative actions from the start.

Previously known only in the United States or in classical text- books, if not in the cantons of Switzerland, the British were obliged to consider federalism for their Crown colonies in the 1840s, if even to discount the prospect. Even the Swiss only modernized their institutions between 1847- 1849.<sup>14</sup>No more than the Holy Roman Empire had, did the German Confederation of that time under the presidency of Austria, constitute a common government for the German lands. The British context in which federalism was considered by imperial statesmen and officials, was in New Zealand between 1846 and 1852 when the *N.Z.G.A.* and *N.Z.C.A.* were contemplated. The Union of the Canadas Act 1840 had accomplished the opposite, though W.G. Ormsby noted:-

The terms of union and the constitutional principle upon which it was based contained the seeds of a quasi-federal system within the framework of a legislative union.”<sup>15</sup>

The Derby Government twelve years later had had no intention of federalizing New Zealand to any extent.<sup>16</sup>The Greys’ proposals for financial powers reveal that the governor and the Whig Colonial Secretary had. Earl Grey and Sir George Grey had a federalizing agenda. Earl Grey entertained a federal scheme for the Australian colonies, which the colonists rejected,<sup>17</sup>and briefly considered one for southern Africa, before dismissing it after consultation with Lord John Russell.<sup>18</sup>

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<sup>14</sup>Martin, William, *A History of Switzerland; An Essay on the Formation of a Confederation of States*, ( Grace W. Booth trans.) Grant Richards Fronto Limited, London 1931, p. 266- 287.

<sup>15</sup> Ormsby, W.G., *The Emergence of the Federal Concept in Canada, 1839 – 1845*, University of Toronto Press, Toronto 1969, p. 56.

<sup>16</sup> Sir John Pakington 4 June 1852 *G.B.P.D.* v. 122 col. 22.

<sup>17</sup> Ward, John M., *Earl Grey and the Australian Colonies:- A Study of Self-Government and Sel-Interest*, Melbourne University Press, Melbourne 1958; pp. 58-67.

<sup>18</sup> Goodfellow, Clement Francis, *Great Britain and South African Confederation 1870-1881*, Oxford University Press, Cape Town 1966; pp. 12-15.

The Tories entirely understood that they were trying to remove the Whig federal proposals of Earl Grey and of the current governor. The financial powers given the General Assembly were distinctly anti-federal, to make the point that the provinces were merely “municipal”. The General Assembly had the power of appropriating all general revenue from taxation and the disposal of the wastelands of the Crown, dividing the surplus between the provinces.<sup>19</sup> Yet when Grey had proposed that the Governor of New Zealand meet the General Assembly only when necessitated, rather like the pre-18<sup>th</sup> century Irish Parliament,<sup>20</sup> he was intending that the provinces provide the main engines for appropriation and governance. To accomplish this he put through his General Legislative Council a Provincial Councils Ordinance in May 1851 that introduced election of two-thirds of Members so as to pre-empt the issue for Parliament.<sup>21</sup>

The *N.Z.C.A.* was a result of trying to comprehend and coordinate “municipal” institutions for the scattered settlements. The General Assembly in the *N.Z.C.A.* version was correspondingly omniscient, so as to over-ride any concurrency in jurisdiction between the provinces and the General Assembly.<sup>22</sup> The clear non-federative intention of Parliament was nonetheless soon smudged over. The Act emerged on 30 June 1852 creating the 6 provinces of Auckland, New Plymouth,

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<sup>19</sup> *N.Z.C.A.* section 72.

<sup>20</sup> Moody, T.W., Martin, F.X., Byrne, F.J., *A New History of Ireland v. III Early Modern Ireland 1534- 1691* ; Oxford Clarendon Press 1991, p. 778.

<sup>21</sup> Fox, William in the *Lyttelton Times* 24 July 1852.

Morrell, W.P., *Provincial System in New Zealand*, pp. 35-36.

<sup>22</sup> *N.Z.C.A.* sec. 52.

Wellington, Nelson, Canterbury and Otago.<sup>23</sup> Sir William Molesworth referred to these in the Commons as the “Hexarchy”.<sup>24</sup> There were eventually ten, with additions of Hawke’s Bay and Marlborough, though never more than 9 at any one time, as Southland and the West Coast provinces phased in and out of existence. Grey brought them into existence before the General Assembly so as to give his version of New Zealand a head-start, internally-devolved with a strong executive managing in native affairs with as little recourse to the General Assembly as possible. Both among themselves and between the two tiers, these governments were forced to develop conventions and negotiate agreements amongst themselves outside of the constitutional framework. Superintendents sat in the House of Representatives as no American state governor did, a Superintendent’s Deputies Act in 1856 allowing their subordinates to manage provinces for them while they did do. Moreover, the commanding tier of the New Zealand government was itself a “double government” as G.W. Rusden observed,<sup>25</sup> between gubernatorial and ministerial governments.

In the *N.Z.C.A.* debates of 1852, Members of Parliament insisted however upon the municipal description for these provinces. The Act ensured that like Municipal Corporations Act corporations, provinces were not jurisdictions. Gladstone had compared the proposed provincial institutions to Roman municipalities, and exhausted American comparisons for New Zealand’s imminent institutions, while avoiding federal analogies. Pakington and Molesworth persistently referred to mere “municipalities”. For Gladstone the powers of the provinces were comparable to “an enlarged and liberal Rhode Island” charter, despite the fact that Rhode Island had

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<sup>23</sup> *N.Z.C.A.* sec 2;- Auckland, New Plymouth, Wellington, Nelson, Canterbury and Otago.

<sup>24</sup> Sir William Molesworth, *G.B.P.D.*, v. 121 p. 922 ff.

<sup>25</sup> Rusden, G.W.; *op. cit.*, v. II p. 77.

lapsed into civil strife 11 years before in agitation to abolish its 17<sup>th</sup> century charter.

<sup>26</sup>Municipalities did not constitute federations. What Grey was concerned to provide, was self-government for the settler beachhead. The conceptual consensus intended provinces to be non-palatine government entities that were not to be expressed in the legislature of a country, either federally, or as French localities have been represented since 1875 by two-stage election to the French *Sénat*. Yet both Sir George Grey and Earl Grey agreed that the provincial councils would in time decline to district councils, as the General Assembly increased in capacity and competence. <sup>27</sup> The governor's airiness about town councils can be explained as a refusal to anticipate the eventual role of the provincial councils by interposing a system of mere municipalities. The system therefore was another temporisation within the New Zealand setting, for settlers in this respect and not for Maori, whose institutions, indigenous or officially supplied, were to run down. New Zealand then presented a complicated picture of two start-up systems destined to redundancy, before a true national government could be formed. Its constitution in the governor's version was something of an orrery, a system built to manage a multiple of changes, primarily the changes to bring about racial amalgamation. It was intended to disperse government centrifugally while concentrating power to the advantage of the Executive.

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<sup>26</sup> William Ewart Gladstone MP in *G.B.P.D.* vol. 121, cols. 953-956.

<sup>27</sup> Earl Grey to Grey 2 April 1851 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand; in continuation of Papers* [1420] 7 August 1851, p. 198 .

*The Dispersal of Government and Concentration of Power*

Native districts were not to have comparable institutions. Whereas provincial governments were separated from any judicial competence, the native districts that were to be provided under section 71 provided the institutional base for runanga councils and native district courts. Three member courts, two Maori assessors from among the chiefs and an itinerant European judge were to dispose of crimes that were not capital crimes or less than 10 pounds in value.<sup>28</sup> This represents a continuance into the native protectorate of the borough and county J.P.s of pre-1835 Britain.<sup>29</sup>

The precedent for election of legislative council members in Crown colonies was actually in the Dutch colony of Demerara that the British took over in 1803.<sup>30</sup> Grey instead proposed in 1851 that the provinces delegate provincial councillors to the Legislative Council.<sup>31</sup> Under the *N.Z.G.A. 1846* municipalities were to become the basis for ascending stages of government. Grey's scheme was to separate provincial government from central government as far as possible, subject to legislative review, keep municipal corporations proper separate from the next two tiers of government proper, and to provide for the representation of provincial council members in the General Assembly's Legislative Council. Grey preserved the feature of delegation from the provincial council to the Legislative Council, obsequiously attributing the proposal to Earl Grey.

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<sup>28</sup> *Native Districts Circuit Courts Act 1858*; see Ward, Alan; *A Show of Justice*, p. 107.

<sup>29</sup> *Municipal Corporations Act 1835*.

<sup>30</sup> Wight, Martin, *The Development of the Legislative Council 1606- 1945*, p. 49.

<sup>31</sup> Grey to Earl Grey 30 August 1851 *G.B.P.P. Papers Relative to the Proposed Constitution of New Zealand 3 May 1852*, [ 1475] pp. 18- 33.

The Act provided for the elected provincial “superintendents”<sup>32</sup> to be removed for misconduct upon the petition of provincial councillors to the Governor.<sup>33</sup> As mini-executives they presided over their own executive councils and “met” provincial legislatures. The term “superintendent” was less curious in 1852 than it is nowadays. It was the usual title of a non-gubernatorial official charged with the administration of a single settlement, whether the British Honduras<sup>34</sup> or Port Phillip District in Australia. Grey’s federation scheme for southern Africa involved provincial executives of this kind, with a responsible ministry eventually conducting central government in place of gubernatorial rule.<sup>35</sup>

Grey’s purpose for the constitution was to disperse government within the colony so that the Executive could conduct native policy as unfettered as possible. His despatch of 30 August 1851<sup>36</sup> insisted that municipal government should remain provincial and not be confined to purely municipal bounds. Such municipal government that already existed in New Zealand was defective. The beachheads needed to govern their hinterlands. Provincial “legislative councils” would obviate the need for frequent meetings of a general assembly “at least for several years to come”.<sup>37</sup> Above all the provincial governments were to be trade-offs for the lack of a central government.

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<sup>32</sup> *N.Z.C.A.* sec. 3.

<sup>33</sup> *N.Z.C.A.* sec. 4.

<sup>34</sup> Wight, *op. cit.*, p. 163.

<sup>35</sup> Grey to Bulwer-Lytton 19 November 1858 in *The Recall of His Excellency Sir George Grey K.C.B. Governor of the Cape of Good Hope : Correspondence respecting the Recall of Governor Sir George Grey, K.C.B. from the Cape of Good Hope and his Subsequent Reappointment to the Government of that Colony –reprinted from Papers ordered by the House of Commons to be printed 17 April 1860*; Willis and Southeran, London, 1860, pp. 58 -74.

<sup>36</sup> Grey to Earl Grey 30 August 1851 *G.B.P.P. Papers Relative to the Constitution of New Zealand 3 May 1852* [ 1475] pp. 18-33.

<sup>37</sup> *ibid*, p. 26.

According to Grey, the New Zealand system was to be so organised that a caucus of provinces with fewer Maori inhabitants would always be able to outvote and outweigh public opinion in provinces in which Maori and settlers might frequently come into conflict. It is interesting that the Governor included such an *arcanum* in a despatch to be published in the Blue Books. The tactical purpose of such an arrangement was that the Governor would then supposedly rely upon such apparently more disinterested provincial governments against the more bellicose and conflicted. As Grey argued:-

“ If any questions of an exciting kind should arise between the European and native populations, the majority of the provinces, from the small number of natives in them, would have no great personal interest in such questions. Their inhabitants and legislatures could therefore form a dispassionate and unprejudiced opinion on such questions. Hence the general Government, in pursuing such line of policy towards the natives as justice and humanity might demand, could be certain that it would not be compelled to yield to momentary passions, prejudice or self-interest; because there would be a large number of persons, and several regularly constituted legislative bodies, on which it could rely for support. On the other hand, if the General Government, weakly yielding to public clamour and prejudice, was about to give effect to the momentary merely popular will of any province by committing some act of injustice towards the natives, regularly constituted legislative bodies would be in existence to give expression to their opinion and thus to check its action.”<sup>38</sup>

Provinces did not behave the way Grey expected. In the event the subsidization of the North Island provinces by the South Island after 1858 ensured that the latter had an interest in ensuring that the North Island provinces secured an adequate land base for themselves and no longer require assistance.<sup>39</sup> Provincial governments became heavily implicated in New Zealand government, to the extent of subventing war, and promoting a bellicose policy.<sup>40</sup>

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<sup>38</sup> Grey to Earl Grey, 30 August 1851; *G.B.P.P., Papers Relative to the Proposed Constitution of New Zealand* 3 May 1852 [ 1475], p. 26.

<sup>39</sup> Morrell, W.P., *The Provincial System* p. 125.

<sup>40</sup> Morrell, *op. cit.*, p. 124.

A great ambiguity of the Act lay in the native districts that could be proclaimed under section 71 in which native laws and custom for the time being could be practised so long as they were not repugnant to the laws of humanity. This measure ran contrary to Grey's policy. Yet apart from personal government of Maori by the governor, Grey offered no specific advice on institutions for native administration. Grey did not want formal native districts, nor he did proclaim them. He was however to work with such institutions in southern Africa and introduce them in his second New Zealand term while making them serve his amalgamationist policy and not the Buxton Report policy of segregation. The Aborigines' Protection Society condemned the provision of proclaimed native districts outright. For Chamerovzow, native districts were zones of segregation for indigenes before their absorption:-

“A very dangerous clause (*setting apart districts in which native laws and customs are to be observed*). Under the guise of granting a boon to the natives, it keeps them and their territory in reserve, ready to be absorbed by British authority and White ascendancy.

“ It is very important to the future interests of the native race not to admit of any distinction of this kind, in relation either to particular parts of the islands, or to the natives as individual citizens. The remedy to this clause is suggested by the remark already made on sec. 2. Nevertheless it may be found needful to allow some portions of native law and custom, where not “repugnant to the general principles of humanity”, and not likely to interfere with the operation of the English law, to be tolerated for a longer or shorter period.”<sup>41</sup>

Grey and the Society agreed on native districts, while disagreeing on the desirability of amalgamation. The Society's remedy was liberal capacitarian. A broad-based electorate should be created in New Zealand with capacitarian qualifications placed

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<sup>41</sup> *The Colonial Intelligencer; or, Aborigines' Friend*” *Aborigines' Protection Society v. IV* nos III & IV June and July 1852. Submission to Pakington signed Thomas Hodgkin and Chamerovzow.

upon candidates. Prince Louis Napoleon provided the exemplary model.

Chamerozvow was to idolize both Grey and Napoleon III. <sup>42</sup>On section 7 he reported, with reference to Prince Louis Napoleon:-

“Without appealing to universal suffrage, as the President of France has done to obtain the basis of his authority, it would certainly be expedient to secure the adhesion of the mass of the people; and for this purpose it seems very important greatly to reduce the required qualifications of electors, whilst leaving unaltered the proposed qualification of the elected. As far, at least, as the natives are concerned, there does not seem to be even the possibility of mischief being placed in their hands by the possession of the electoral privilege; but it would establish between them and the elected, and even between them and the candidates for election, a connection, which like the relations between patrons and clients, would be reciprocally binding and advantageous.” <sup>43</sup>

The Cape Colony had pioneered a “colour-blind” franchise. The Cape Colony Constitutional Ordinance returned from the Board of Trade and Plantations in 1853 with a franchise that either admitted voters by virtue of ownership with occupancy of premises worth 50 pounds, or rental of premises for which an annual rent of at least 10 pounds was due, or in receipt of a salary or wage of not less than 50 pounds per annum or 25 pounds per annum with board and lodging included. <sup>44</sup>By 1892, 24% of the electorate was non-European, though only a small proportion of the non-European population. <sup>45</sup> Under section 7, the *N.Z.C.A.* apparently admitted everyone male over 21 years who had 6 months previous possession of 50 pounds worth of property or had held 10 pound leasehold for that time. Maori who met the franchise qualification

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<sup>42</sup> Chamerozvow, Louis Alexis, *Man of Destiny*, 2vv, London 1861. A novel with Louis Napoleon as hero.

<sup>43</sup> Chamerozvow op. cit., p. 65.

<sup>44</sup> McCracken, J.L. *The Cape Parliament 1854-1910* The Clarendon Press, Oxford 1967; p. 15.

<sup>45</sup> McCracken, J.L. *ibid* p. 80.

did enrol, but qualifying Maori were scarce.<sup>46</sup> What New Zealand lacked were sufficient Maori wage-earners, sufficient Maori freeholders or leaseholders, and the history of inclusive initiatives that preceded the Cape Franchise, such as the extension of liability for jury service in 1828.<sup>47</sup> The Law officers of the Crown, Sir Richard Bethel and Sir H. Keating reported in December 1859 that the 50 pound freehold did not apply as a right of franchise to Maori, because Maori were not entitled under Article III of the Treaty of Waitangi to all the rights and privileges of British subjects, and because their communal tenure disqualified them:-

“ natives cannot have such possession of any land used or occupied by them in common as tribes or communities, and not held under title derived from the Crown as would qualify them to become voters.”<sup>48</sup>

Despite Grey reporting Maori bond holders, shipping owners, entrepreneurs and flour mill managers and bank account holders in his despatches, very few Maori qualified in contrast with the Cape Colony, in which the coloured population, as well as a small but increasing number of Africans qualified through in freehold and leasehold tenures. W.M. Macmillan<sup>49</sup> proposed that there had been no imperial plan to the Cape franchise, and that it was an entirely local solution. The Board of Trade and plantations had in fact amended a high franchise into a lower so as to admit coloured voters. The *N.Z.C.A.* was lukewarm by comparison. As it was determined in 1858 that all Maori possessed of tribal tenures were excluded, the General Assembly was

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<sup>46</sup> Ward, Alan, *Unsettled History: Treaty Claims in New Zealand Today*, Bridget Williams Books, Wellington 1999, p. 110.

<sup>47</sup> McCracken, J.L. *The Cape Parliament 1854-1910*, p. 63.

<sup>48</sup> Rusden, G.W.; *ibid* v. I p. 477

<sup>49</sup> Macmillan, W.M, *The Cape Colour Question: A Historical Survey*, Faber and Gwyer, London 1927 p. 262.

left to consider the problem, and resolved in Maori Representation Act 1867 upon allowing the universal franchise for Maori males over 21 in a separate tenure qualification based upon collective tribal tenure of lands.

### *Constitutional Design*

Ged Martin's "starting point" of inappropriateness was also correct for the history of political ideas. Whereas he emphasized political contingency, the task of the historian of ideas is to consider which ideas were available, how and why they were deployed, and with what effect, to bring about these less than "appropriate" results. The repertoire of proposals under real consideration was never extensive, despite the complexity concerning New Zealand. Valuable though Martin's argument is, it misses how a "mental construct" that was not "a particularly appropriate response" could insisted upon all the same to produce chimerical results by statesmen who did command the repertoire of constitutional options, and not just a smattering of political learning, as capacity-challenged colonists were imputed to have. We also fail to assess the damage done to ideas and principles and to debates when live politics tore them apart, rendering them unintelligible, if we do not respect constitutional plans as conscientious intellectual productions. New Zealand nonetheless relapsed into warfare for economic and racialist reasons, and not just for the want of a perfect constitution. A constitution might have been a Paleyan watch discovered in the wilderness<sup>50</sup> but it never made the wilderness, nor indicated much about it.

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<sup>50</sup> Paley, William, *Natural Theology: or, Evidences of the Existence and Attributes of the Deity, collected from the Appearances of Nature*; Printed for R. Faulder, New Bond-street by Wilks and Taylor, London 1802.

The *N.Z.C.A.* was to a considerable extent despatch-designed. Despatches as series of epistolary constitutions re-made the settler empire about the monarchical constitution as proposals were discussed.<sup>51</sup> This new settler empire was “stricter”<sup>52</sup> than the colonial American system no matter how much settlers and British statesmen harked back to it. This imperial system subordinated instead of coordinated. The principle of disallowance supplied the architecture of the Act, as practised in the constitution of the empire as it had been revised since the Seven Years War, to express parliamentary sovereignty through the instruments of the monarchical government of the empire.<sup>53</sup> Disallowance was to a colonial statute of this time what Poyning’s Law had been to the Irish Parliament, the difference being that while the British Government could disallow Acts of colonial legislatures, they could not as originally provided for in Poyning’s Law, veto or amend draft bills in the English Privy Council.<sup>54</sup>

Disallowance descended in a potential cascade of vetos, from Whitehall to Auckland to Dunedin or New Plymouth. Where correspondences were debatable was in the contrast of the gubernatorial Executive with the elected Superintendents. On the one hand, the symmetry of descent of executive authority within the empire was interrupted, as the series of Queen and British Government, Governor and Superintendent to town council was broken by superintendents’ independent mandates. Four stages of review theoretically existed, though not sequentially, for no one regulation would ascend the entire scale.

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<sup>51</sup> Hulsebosch, Daniel, *Constituting Empire*, p. 77.

<sup>52</sup> Hulsebosch *ibid*, p. 168.

<sup>53</sup> *N.Z.C.A.* sec 56-58.

<sup>54</sup> Powell, Martyn J., *Britain and Ireland in the Eighteenth Century Crisis of Empire* Palgrave Macmillan, Basingstoke 2003, p. 6.

For all its complication, the New Zealand system was not unprecedented in British constitutional design. New Zealand was expected to operate a version of 18<sup>th</sup> century British North America in miniature. The assemblage of provincial governments in their relations to one another and central authority resembled the proposals from Benjamin Franklin, which the Albany Congress in New York debated in June –July of 1754,<sup>55</sup> for the representation and combination of the colonies in a general council and a governor-in-chief. Franklin’s scheme permitted the autonomy of the several colonies, rejecting a nominated council, while it retained, as Franklin wrote “too much prerogative in it” for the taste of the colonial assemblies, to which it was referred. The Albany Congress also included Six Nations representatives as delegates, while the Maori Representation Act 1867 introduced seats for Maori Members. These pre-revolutionary American schemes characterize constitutional activity that can be defined in Hulsebosch’s terms as relations between states. The same pertained in New Zealand. “Consolidation” was to be the work of New Zealand’s 1860s and 1870s, inciting war, abolishing the provinces, confiscating Maori land.

The exceptional political circumstance of the *N.Z.C.A.* was that the original Whig Bill, which Sir George Grey and Earl Grey had prepared, was intercepted by the brief first Conservative government of Lord Derby in 1852, and amended to Derby government and New Zealand Company requirements. No one interest prevailing, the Act contained contradictions. While not the cause of breakdown in New Zealand, it was none the less incapable of providing the stance or the mechanisms to temporise

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<sup>55</sup> Van Doren, Carl, *Benjamin Franklin*; Viking Press, New York, 1938; pp. 223 -224. Labaree, Leonard W., and Bell Jnr., Whitfield J., (eds) *Papers of Benjamin Franklin*, v. 5, Yale University Press, New Haven and London 1962, pp. 361-364 “ Short hints towards a Scheme for a General Union of the British Colonies on the Continent” [ June 28 1754].

and resolve crises. For no other constitutional statute of this time was “arrested” in the same manner, by an administration other than the one originally sponsoring it. The *N.Z.C.A.* was to be the first Conservative government constitutional exercise before the British North America Act 1867. Even the astonishing New Zealand Government Act 1846 had been a new concoction by Earl Grey when he and the Whigs succeeded Gladstone. George Grey was involved in an entirely different constitutional discussion with Gladstone before Earl Grey started another. Yet as has been seen, Gladstone and Pakington had very different notions as Conservatives of colonial municipalities.

Apart from insisting upon Peelite provincial municipalities, the Derby Government contribution was a nominated Legislative Council as a supposed hand brake on “Demos”. The nominated Legislative Council failed to be a hand brake on either “Demos” or settler rapacity. The uproar in the Cape Colony at its elective Legislative Council provided Pakington with a reason not to extend the principle of election to a New Zealand Legislative Council, even by the two-stage method which Grey salvaged from Earl Grey’s *N.Z.G.A.*.<sup>56</sup> Pakington stated that there was no precedent in the British constitution for such a measure, and that as such hostility had erupted at the Cape, that the British Government was not prepared to countenance its introduction in New Zealand.<sup>57</sup> The Greys’ second chamber resembled French models, depending on the provincial councils to act as capacitarian electoral colleges. Guizot’s capacitarian influence was at its height. It was not until the *lois*

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<sup>56</sup> Morrell, *The Provincial System in New Zealand*, p. 54.

<sup>57</sup> Rose, John Holland (ed), *Cambridge History of the British Empire* v II Cambridge University Press, 1940, p. 683.

*constitutionnelles* of 1875<sup>58</sup> that France itself adopted the principle for two-stage election of the Senate by an electoral college of the *grands électeurs* of the *départements*. Rutherford was wrong to blame the ruin of the N.Z.C.A. on the Legislative Council, which was no worse designed than the Canadian Senate and other nominated chambers.<sup>59</sup>

The N.Z.C.A. failed to comprehend the native protectorate. No such coordinate system between self-governing colonies and native protectorates existed in the 19<sup>th</sup> century, just as there was mutual subordination between communities in Crown colonies and some protectorates under the same Governor in Council, as in Aden.<sup>60</sup> Only in South Africa were territories such as Lesotho and Swaziland eventually retained within the imperial constitution and not devolved to the settler government.<sup>61</sup> Grey did try to get ahead of the anticipated crisis that responsible government would occasion in New Zealand, by proposing the deployment of constitutional arrangements and stratagems to avert settler attack on Maori interests. Maori were meanwhile supposed to deny settlers cause for resentment, by accepting “civilization” and selling land, in much the same way that Jefferson proposed that American Indians afford “gratifications” to settlers by alienating their lands when required.<sup>62</sup> Grey believed that Maori would continue their ongoing agricultural revolution, concentrate their holdings, and convert

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<sup>58</sup> Ardant, Philippe, *Institutions Politiques et Droit Constitutionnel*, Editions LGDJ, “Manuels”, Paris 2003, *Constitution de 1875 Lois Constitutionnelles*.

<sup>59</sup> Rutherford, op. cit., p. 251.

<sup>60</sup> Wight, *The Development of the Legislative Council*, p. 63.

<sup>61</sup> Grotper, John J., *Historical Dictionary of Swaziland*, The Scarecrow Press, Metuchen, New Jersey, 1975.

Haliburton, Gordon, *Historical Dictionary of Lesotho*, The Scarecrow Press, Metuchen New Jersey, 1977.

<sup>62</sup> Wallace, Anthony F.C., *Jefferson and the Indians: The Tragic Fate of the First Americans*, Jefferson to Benjamin Hawkins 18 February 1803, p. 214.

from communal to individual title.<sup>63</sup> They should soon by his reckoning require less land as their agricultural revolution proceeded. The Maori “commons”, identified banefully as “collective title” or as “communistic,” were supposed to decline, just as the commons were doing in the English countryside before enclosures.<sup>64</sup> Reception of title back from the Crown would qualify them as citizens. For their part, Maori developed their own constitutions through *kingitanga*.<sup>65</sup> They were concerned for how negotiations might be constituted between themselves and the governors, and what their relationship might be with the settler government, once it was formed in 1856. These in themselves constituted an interface that was in itself constitutional. Whenever Maori have been formally denied a presence of their own in a New Zealand constitution, that interface has persisted. For Maori as much as British governments and British settlers, British constitutionalism was about relationships, and those relations for them were guaranteed for them in the Treaty of Waitangi.

Meanwhile responsible government for the settlers was to be indefinitely postponed until they had developed sufficient “capacity” for humanitarian management of racial amalgamation.<sup>66</sup> By official assessments, settlers lacked the capacity to disinterestedly sustain the racial policy of the British Government in New Zealand. Capacitarian discourse of the 1830s and 1840s doubted the easily accumulation of political skill in a settler community, or the imitation by settler leaders of Westminster. As Earl Grey opined for public consumption in 1853: -

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<sup>63</sup> Grey to Earl Grey 21 April 1847 *G.B.P.P. Papers Relative to the Affairs of New Zealand* December 1847 [ 892] p. 36.

<sup>64</sup> Thompson, E.P. , *Customs in Common* , The Merlin Press, London 1991 p. 97.

<sup>65</sup> *Kingitanga* is often crudely translated as “The King Movement” but it refers in fact to the Maori possession of a king to represent and embody their rights and sovereignty, with respect to, and over against the Crown and the New Zealand Government. At this period *kingitanga* was an attempt at state formation.

<sup>66</sup> Rutherford, James, *op.cit.*, p. 262 .

“ It was my object while I held the seals of the Colonial department, without relinquishing the power possessed by the Crown, gradually to bring these legislative bodies more under the influence of the opinion of the intelligent and educated inhabitants of these Colonies”.<sup>67</sup>

Most liberal regimes at this period were avowedly capacitarian. Far from “one man one vote”, franchise qualifications either excluded persons, communities and classes deemed to lack political capacity. The *N.Z.G.A. 1846* was the most extreme exercise of this kind, resembling the two stages of election for the French Legislative Assembly of 1791, for how a central legislature could result from multi-stage electorates and delegation from electoral colleges.<sup>68</sup> The French Constitution of 1793 with its universal male franchise served as a caution not as an inspiration for the British Government and colonial administrators alike. The Reform Act removed 56 boroughs from the House of Commons, and halved the representation of 30 dual member seats, replacing them with twenty 2 Member seats and 19 single Member seats, and granting 8 urban seats to Scotland. In the boroughs the franchise was set at 10 pounds worth of property. In the counties, various qualifications applied, but the Chandos clause admitted tenants-at-will worth 50 pounds.<sup>69</sup> The 1<sup>st</sup> Reform Act increased the electorate from almost half a million to 813,000 out of 24 million people.

Nor was even the United States yet a fully “democratic” nation even for white males.

A variety of franchises in the constituent states admitted a proportion of adult males

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<sup>67</sup> Grey, Henry George, 3<sup>rd</sup> Earl, *The Colonial Administration of Lord John Russell*, v. I p. 30.

<sup>68</sup> Note that the Constituent Assembly had also proposed a suffrage censitaire for the higher-level electors.

<sup>69</sup> Brock, Michael, *The Great Reform Act*, Hutchinson University Library, London 1973, p. 228, pp. 310-312.

as low as 10% in Rhode Island. At the time of the Reform Bill agitation in Great Britain, the “Jacksonian” revolution had just begun the transformation of the United States from a patrician to a democratic republic. To use Charles Austin Beard’s argument, a transition occurred from a bondholder elite with an interest in “personalty”, to Jacksonian democracy.<sup>70</sup> The 1824 presidential election was the first in which, apart from 6 states, an electorate under universal franchise for the white male electorate could participate.

During his first New Zealand administration, Grey was committed to Maori property rights precisely for the temporising purpose of definitely extinguishing them. As far as Grey was concerned, settlers were not to get in the way of the policy of amalgamation. As far as the Colonial Office was concerned, settlers were not to involve the British Government in wars they provoked. Grey however did always rule in the ultimate interest of the settler colony, neither of the British government nor indigenous polities. When admonished by Bulwer- Lytton in 1859 for advancing federation in southern Africa, Grey insolently proposed appeal to local public opinion and institutions.<sup>71</sup> Only modern Treaty of Waitangi teleology in New Zealand historiography reads back into Grey’s manoeuvrings in 1847 a defence of “Treaty” rights, as if Grey could be a precursor to the modern grievance resolution process. Just like commons in the English countryside, just as courts leet<sup>72</sup> declined in relevance in England,<sup>73</sup> so in time for Grey would the court system of resident

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<sup>70</sup> Beard, Charles Austin, *An Economic Interpretation of the Constitution of the United States*, The Macmillan Company, New York 1913, p. 253.

<sup>71</sup> Grey to Bulwer-Lytton 19 November 1858 in *The Recall of His Excellency Sir George Grey K.C.B. Governor of the Cape of Good Hope*. pp. 58 -74.

<sup>72</sup> Brooks, Christopher W., *Law, Politics and Society in Early Modern England*, Cambridge University Press 2009, pp. 244- 261.

<sup>73</sup> Brooks, Christopher W., *ibid*; p. 261.

magistrates and native assessors decline among Maori as they merged into the general community. Grey was not just imposing the similitude of British institutions upon Maori, he was trying to impose the same trajectories of transformation, from the “commons” of collective title and exceptional local courts, to enclosure, individual title and general judicial institutions. The institutions of assimilation are to be regarded as vehicles as much as they were static structures. As the British politician Charles Adderley noted of the first year of Grey’s second New Zealand governorship:-

“Sir George Grey set on foot a Native Commission and established native villages and councils. His distinctive idea seems to have been rather to introduce English institutions among the natives as an alternative, than to make use of theirs”.<sup>74</sup>

Naturally the settlers were always ahead in this process<sup>75</sup> of re-visiting the British temporal sequence upon the rural districts of New Zealand, none of them desiring the revival of their own ancient county institutions for themselves in the colonial setting, and impatient at the communalism of Maori property.

British constitutional language for itself only attained definitive stability for parliamentary government after the settler colonies had received their respective devolutions. In fact this language only began its development just as the paradigm of parliamentary and ministerial government had won out in the colonies. Yet by 1873 parliamentary government by ministries operated everywhere from British Columbia to the Cape Colony and New Zealand as the paradigm for devolution, yet colonies

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<sup>74</sup> Adderley, C.B.. M.P., *Review of “The Colonial Policy of Lord John Russell’s Administration”*, - by Earl Grey, 1853, and of *Subsequent Colonial History*, Edward Stanford, London, 1869, Part I, p. 144.

<sup>75</sup> Thompson, E.P., *Customs in Common*, pp. 197-184.

such as New Zealand and the Cape Colony had started off otherwise in their devolutions, as the exigencies of sustaining frontiers and native protection prevailed at the earlier period. The leading constitutionalists of the Victorian era, such as Edward Augustus Freeman <sup>76</sup> and James Bryce <sup>77</sup> and A.V. Dicey <sup>78</sup> began their careers in the 1860s as the wave of colonial constitutional legislation from the 1830s was ending. John Stuart Mill's contribution to the subject *On Representative Government* belongs to 1861. <sup>79</sup> Walter Bagehot's *The English Constitution* dates from 1867. <sup>80</sup> An academic intelligentsia contributed too late for the devolutions of responsible government. Constitutional thought as an academic "subject" or profession was only established by the time of the Third Reform Act in 1884. Nor were there yet any reference books such as Alpheus Todd's <sup>81</sup>. Erskine May's great work first became available in 1844. <sup>82</sup> Academic constitutionalism is related to the florescence of Public Law after the Victorian mid-century and to the appointment of James Bryce and A.V. Dicey to established Oxford Chairs. <sup>83</sup>

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<sup>76</sup> Freeman, Edward Augustus *The History of the Norman Conquest of England*, Oxford 1877 [ 1867-1879].

Freeman, Edward Augustus, *An Introduction to American Institutional History*, Baltimore 1882.

<sup>77</sup> Bryce, James , *The Holy Roman Empire* Macmillan, London 1904,

Bryce, James, *The American Commonwealth* Macmillan, London 1888.

<sup>78</sup> Dicey, Albert Venn, *Introduction to the Study of the Law of the Constitution* London 1897.

<sup>79</sup> Mill, John Stuart, *On Representative Government*, George Routledge and Sons, London 1904 [ 1861].

<sup>80</sup> Bagehot, Walter, *The English Constitution* , H.S. King, London 1872 [ 1867].

<sup>81</sup> Todd, Alpheus , *On Parliamentary Government in England* London 1867.

Todd, Alpheus *Parliamentary Government in the English Colonies*, London 1880.

<sup>82</sup> May, Erskine; *A Practical Treatise on the Law, Privileges, Proceedings and Usage of Parliament* ; Sir Barnett Cocks (ed.) Butterworths, London 1971 [ 1844].

<sup>83</sup> James Bryce was appointed Professor of Civil Law at Oxford in 1870, Albert Venn Dicey Vinerian Professor of English Law in 1882.

As Earl Grey admitted, “ordinary” governors could not sustain constitutional dialogue. “Able” governors might participate in constitutional arcana along with real statesmen. Whereas Governors General in Canada and India, Lords Lieutenant of Ireland might share, or come to share the same social rank and political experience as Colonial Secretaries, the governors of New Zealand and other colonies did not. No collections of correspondence were published between peers and such governors, or of real communications between Lord Sydenham and Russell. Grey did belong to this select group of “able” governors by 1848, yet Lord John Russell and Lord Grey took pains at various times to state that they had never “had the pleasure” of meeting him, and that he was not even a relative.<sup>84</sup> This disavowal of favouritism served to remind Grey of his place beneath the closed circles of inter-related magnates, whose commodity was power.

Grey’s constitutional despatches should be regarded as a counterpart to the essays in *The Federalist*.<sup>85</sup> Grey was no more the draughtsman or literal author of the *N.Z.C.A.* than Alexander Hamilton and James Madison drafted the Constitution of the United States. The circle of constitutional conversation was just as close however.

Constitutional “authorship” required a relationship whereby a Governor would be asked by the Colonial Office in despatches, to compose constitutional reflections for his colony, and to do so for the public record. The Colonial Office needed confidence that its officer could reliably perform this task of thinking aloud what was to become public. The language and education and intelligence of the governor had to do credit

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<sup>84</sup> Grey, Henry George, *The Colonial Administration of Lord John Russell*. v. II p. 136 note.

<sup>85</sup> Grey to Earl Grey (121) 30 August 1851 *G.B.P.P. Papers Relative to the Proposed Constitution of New Zealand 3 May 1852* [ 1475] pp. 18-33 ; and Grey to Earl Grey ( 154) 13 December 1851 *A.J.H.R.* 1883 A3.

to the exercise. Grey was formally discussing a New Zealand constitution with Gladstone as early as 1846. Yet surely the mundane “rule” of an “able” governor qualified as constitutional performance by itself, as they negotiated or manoeuvred around instructions from London, and managed settler politics and indigenous peoples. Grey’s resistance to Earl Grey’s instructions in 1847 negatively shaped the coming constitution for New Zealand,<sup>86</sup> as surely as his 1851 Provincial Councils Ordinance attempted to positively shape it.

McLintock fell into the error of ridiculing Grey’s accounts of his constitutional role in 1878 while meanwhile accepting the generous praise that Earl Grey, Pakington, the Parliamentary Under-secretary for War and the Colonies Frederick Peel, and James Stephen gave the governor.<sup>87</sup> Grey’s versions of his contribution in later life were indeed greatly exaggerated, but McIntock failed to clearly propose just what his contribution might have been. New Zealand’s governor had proved to be a capable drafter for a scheme that could then be modified in preparation for a Bill. As Grey wrote to Earl Grey in a private letter in 1851:-

What I have rather striven to do is to devise a form of Constitution wh. whilst it is suited to the present circumstances of the country, contains also within itself, the necessary elements for providing for its future adaptation to the changes wh. may from time to time be found requisite.<sup>88</sup>

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<sup>86</sup> Ward, John M., *Earl Grey and the Australian Colonies:- A Study of Self-Government and Sel-Interest*, Melbourne University Press, Melbourne 1958, p. 37.

<sup>87</sup> McIntock, op. cit., p. 331.

<sup>88</sup> Grey to Earl Grey, 13 December 1851, *Papers of Henry George Grey, 3<sup>rd</sup> Earl Grey*, Durham University Library, GRE/ BOO/ 6A/ 14-36. p. 35.

Away from the public performance of despatch writing, the governor was able to assume the first persona singular, and set aside the language of impersonality and deference, and refer to his own authorship of what he called “the plan”.<sup>89</sup>

Oxford University bestowed the honorary degree of Doctor of Laws on Grey in June 1854. Performance of constitutional “authorship” has been misunderstood.

Conventions of protocol and modesty prevented Earl Grey from claiming as much for himself.<sup>90</sup> Earl Grey implicitly demonstrated management of the process throughout his book, and then included his own speech on the Constitution Bill in the appendix.

#### *The N.Z.C.A. and Counterparts*

To refer to Martin again, the *N.Z.C.A.* was undoubtedly even in terms of the constitutionalism of the day an “inappropriate” response. It was the experiment of a brief moment of the 1840s and early 1850s in Colonial Office and British Government circles to consider non-parliamentary and “American” institutions for the colonies, which were rather re-evaluations of the ancient representative colonial constitution of the American colonies for the devolutions to Crown colonies. Its chimerical features aside, the *N.Z.C.A.* was nonetheless exceptional among the colonial statutes of the time, because unlike its counterparts in Canada<sup>91</sup>, the Australian colonies,<sup>92</sup> and the Cape Colony,<sup>93</sup> the statute and the discussions that created it, undertook six separate tasks in all, which no other colonial constitution Act

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<sup>89</sup> Ibid, p. 35.

<sup>90</sup> Grey, Henry George, 3<sup>rd</sup> Earl, *The Colonial Policy of Lord John Russell's Administration*, v II pp. 156-158; and Appendix B p. 386.

<sup>91</sup> 3 & 4 Victoria, c. 35 *Union of the Canadas Act 1840*.

<sup>92</sup> 13 & 14 Victoria, cap. 59 *The Australian Colonies Government Act 1850*.

<sup>93</sup> *Cape Colony Constitutional Ordinance 1852*.

attempted. In the first instance it attempted to grant representative government to colonists. It secondly created new territories for government and thirdly created subsidiary provincial governments for those territories. Fourthly it tried to subordinate provincial governments to the central government and prevent a federation. Fifthly it provided for native administration. Finally it devolved control of wastelands as had been done in no other colony.

To compare the *N.Z.C.A.* to its contemporaries, the Australian Colonies Government Act 1850 undertook the first task, the establishment of representative government, as well as the second, of founding another colony, Victoria.<sup>94</sup> The *Terra nullius* doctrine, together with the apparent absence of recognizably “political” indigenous societies, obviated the need for a constitutional statute to express institutions for native representation. “Protection” Boards of the kind that Sir Thomas Gore Browne contemplated for New Zealand in 1860 were eventually introduced instead.<sup>95</sup> Federation discussions only began in the 1880s.<sup>96</sup> Australian colonies were however first considering federal proposals in the 1850s, after initial rejection.<sup>97</sup> The colonial governments of New South Wales and Tasmania were in any case longer established than New Zealand’s, founded as they were in 1788 and 1804. They were not virtually coeval with the constitution that defined their relationship to central representative government. The Cape Colony Constitutional Ordinance of 1852, to which the Board of Trade and Plantations assented in 1853, provided a long-established colony with

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<sup>94</sup> 13 & 14 Victoria, cap. 59, The Australian Colonies Government Act, sec. 32.

<sup>95</sup> Sir Thomas Gore Browne to the Duke of Newcastle 22 May 1860 No. 46 CO 209/154.

<sup>96</sup> Norris, Ronald, “Towards a Federal Union” in Bruce W. Hodgins, Don Wright, W.H. Heck (eds) *Federalism in Canada and Australia: -The Early Years*, Wilfred Laurier University Press, Waterloo Ontario, 1978; pp. 173 – 193.

<sup>97</sup> Ward, John M., *Earl Grey and the Australian Colonies 1846- 1857:- A Study of Self-Government and Self-Interest*, Melbourne University Press 1958, p. 98, p. 124.

representative government. Grey himself as Governor of the Cape Colony and High Commissioner for Southern Africa, attempted the further stage of southern African federation in 1859. The Canadian constitutional statutes, the Canada Constitutional Act 1791<sup>98</sup> and the Union of the Canadas Act 1840<sup>99</sup> belonged to a gradual succession of enactments for British possessions in North America from before the American War of Independence. The former had granted representative government to Upper and Lower Canada, after they had been divided by Order-in-Council, while the second reunited the two Canadas and founded common legislative institutions. These statutes did not legislate for native protection.

By contrast with all of these colonies, only 12 years had elapsed since the Treaty of Waitangi when the *N.Z.C.A.* obtained the Royal Assent. New Zealand lacked the generations of colonial “pre-history” that other colonies had. The post-Treaty decade filled with wars and governmental collapse, only in the 1850s did conditions seem propitious to start legislating for specific institutions for Maori New Zealand. The British North America Act 1867<sup>100</sup> did broadly jump many of the rails that the *N.Z.C.A.* jumped. Though responsible government was by 1867 long established in the Canadian colonies, that Act nonetheless both federated<sup>101</sup> and devolved native administration<sup>102</sup> to the dominion government.<sup>103</sup> The purpose of enumerating these tasks is not to argue that the *N.Z.C.A.* failed because it attempted six tasks all at once for a young colony. It is rather to emphasize the difficulties of constitutionalizing for

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<sup>98</sup> 31 George III, c. 31.

<sup>99</sup> 3 & 4 Victoria, c. 35.

<sup>100</sup> 30 & 31 Victoria, c. 3.

<sup>101</sup> *B.N.A.* 1867 ss 3-7.

<sup>102</sup> *B.N.A.* 1867 s 91. 4.

<sup>103</sup> Hodgins, Bruce W., “The Canadian Elite’s Attitudes Toward the Plan of Union” in Hodgins, Wright, Heck (eds) *Federalism in Canada and Australia: The Early Years*, pp. 43- 59.

a colony with a significant non-British minority, adept at diplomacy and war. The N.Z.C.A. was an over-determined constitution for an over-determined situation.

The *N.Z.C.A.* moreover was a constitutional order that became unworkable in record time. No other Act collapsed as fast. No one constitutional statute in Britain's first great age of exporting parliamentary government could negotiate between centralists and provincialists, sustain a war government and war debt, and either resist or acquiesce in the subversion of the Crown's responsibility for native protection, without undergoing severe change. Convention rendered it workable, conventions that permitted provincial superintendents to sit in the House of Representatives, above all the conventions that established responsible government. Convention soon developed to include Maori. The Maori Representation Act 1867 introduced indigenous representation for (and by) indigenes.

The constitution was a fatal prize for its putative author. His policy compromised, his mother dying in Sussex and his wife detesting New Zealand, Grey abandoned his command on New Year's Eve 1853 in contravention of "Colonial Regulations".<sup>104</sup> On 3 January 1854 Colonel R.H. Wynyard assumed the administration of New Zealand.<sup>105</sup> The consultations over New Zealand's constitution between 1845- 1851 made Grey an ambitious constitutional performer. Whether designing a constitution for Natal in 1855,<sup>106</sup> or a Southern Africa federation in 1859,<sup>107</sup> or Irish Home Rule in 1869,<sup>108</sup> or participating in New Zealand politics 1875-1895, whether opposing Imperial

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<sup>104</sup> *Colonial Regulations* no 15.

<sup>105</sup> McLintock, *op. cit.*, p. 411.

<sup>106</sup> Grey (High Commissioner 34,35 ) 24 November 1855.

<sup>107</sup> Grey to Bulwer-Lytton 19 November 1858 *G.B.P.P.* 1860/ 216.

<sup>108</sup> Grey, George; *The Irish Land Question*; London 1869.

Federation or representing New Zealand at the Australian Federation Convention at Sydney in 1891,<sup>109</sup> Grey lived in the shadow of his frustrated first constitutional performance, one which he became determined to redeem.

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<sup>109</sup> *Official Record of the Proceedings and Debates of the National Australian Convention, held in the Parliament House, Sydney, New South Wales, in the Months of March and April 1891* Government Printer, Sydney 1891.

## Chapter Eight

### Responsible Government and an Irresponsible Governor

#### *The Development of Responsible Government*

Crown agents produced an intelligentsia that structured the empire and constituted colonies. The legal thought of John Austin and George Cornwall Lewis had begun to shape the settler colonies as Grey's career commenced. Austin had in fact trained both Lewis, and Charles Buller, who served as Durham's secretary in Canada. Austin wrote *The Province of Jurisprudence Determined*,<sup>1</sup> Lewis for his part his *Essay on the Government of Dependencies*. Austin's achievement had been to forge a Benthamite and Hobbesian synthesis to serve as a positive constitutional law for the empire. Lewis in particular expressed the terms of dependency of a colony and its legislative competence in relation to British parliamentary sovereignty. The reaffirmation was timely as the only previous authority that Lewis would refer to was Anthony Stokes' production of 1783.<sup>2</sup> Both men served as a commission to review and codify the laws of Malta. It was to Lord John Russell and Earl Grey's interpretations of Lewis' doctrine that Governor Grey adhered in his *N.Z.C.A* contributions.

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<sup>1</sup> Austin, John, *The Province of Jurisprudence Determined* Wilfred E. Rumble (ed) Cambridge University Press, Cambridge 1995 [ 1832].

<sup>2</sup> Stokes, Anthony, *A View of the Constitution of the British Colonies in North America and the West Indies, at the Time the Civil War Broke Out on the Continent of America*; 1763. Reprint, London, 1969.

The problem that Utilitarian jurists faced was their own authorities assured them that devolutions could not be done. Adam Smith had denied that any power would ever voluntarily relinquish a dependency.<sup>3</sup> The challenge was to make it a transaction within the realms of political possibility, that other powers could not exploit. When British political thinkers pronounced on what it was that made the British constitutional process different from the American it was “responsible” government that they invoked. James Bryce’s *The American Commonwealth* of 1888 identified as the four principles that inform responsible government :-

“ The head of the executive (be he king or governor) is irresponsible. Responsibility attaches to the cabinet, i.e. to the body of ministers who advise him, so that if he errs, it is through their fault; they suffer and he escapes. The minister cannot allege, as a defence for any act of theirs, the command of the Crown. If the Crown gives them an order of which they disapprove, they ought to resign.

“The ministers sit in the legislature, practically forming.....a committee of the legislature, chosen by the majority for the time being.

“The ministers are accountable to the legislature and must resign office as soon as they lose its confidence.

“The ministers are jointly as well as severally liable for their acts: the blame of an act done by any one of them falls on the whole cabinet, unless one of them chooses to take it entirely upon himself and retire from office.”<sup>4</sup>

Arriving at this state of affairs was the difficulty. Merivale dated that achievement to 1846 in Canada,<sup>5</sup> observing:-

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<sup>3</sup> Smith, Adam , *An Inquiry into the Nature and Causes of the Wealth of Nations* W. Colles, R. Moncrieffe, G. Burnet, Dublin 1785, v II ch. VII pt III p. 443.

<sup>4</sup> Bryce, James, *The American Commonwealth* 2vv. The Macmillan Company, New York 1911 ; v. I pp. 92-93.

<sup>5</sup> Merivale, Herman , *Lectures on Colonisation and the Colonies*, Longman, Green, Longman, and Roberts, London 1861; appendix to 22<sup>nd</sup> lecture p. 637.

“the change to responsible government was one which required no legislative process to effect it.

“It consisted merely in this: that the Executive Council, or a certain number of them, were appointed with the understanding that they would have to resign office in case of an adverse note of the legislature.”

Lord John Russell was the operationalizer of representative government under the imperial constitution. The core of Russell’s position was that a Governor could not be a minister of the British Government at the same time as acting on the advice of the responsible ministers for his colony. The immediate situation necessarily became one whereby ministers were responsible for departments of government that were reserved for the British Parliament in its imperial capacity. Imperial repugnancy laws, <sup>6</sup>disallowance and referral were the instruments built into colonial constitutions to protect the British interest within the constitution of the empire.

Lewis had defined a colonial dependency thus:-

“ A dependency is a part of an independent political community which is composed of the supreme government.

“That part of the independent political community which is composed of the supreme government, and of the persons immediately subject to such supreme government, may, with reference to the dependency, be styled the *dominant community*, or *country*.

“A subordinate government is a government which acts by delegated powers, but which possesses powers applicable to every purpose of government.”<sup>7</sup>

“It differs from a sovereign government in this; that it is subordinate to, or, in other words, in the habit of obeying, the government of another political society.”<sup>8</sup>

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<sup>6</sup> Swinfen, D. B., *Imperial Control of Colonial Legislation 1813- 1865*, Clarendon Press, Oxford 1970, p. 43, pp. 46-47, pp. 55-62.

<sup>7</sup> Lewis, George Cornwall, in Charles Prestwood Lucas (ed) ; *An Essay on the Government of Dependencies*. p. 72.

<sup>8</sup> Lewis *ibid* pp. 72-73.

“ few acts of parliament relate to the internal government of any English dependency, excepting so far as they determine the structure or powers of the subordinate government; as the late Act renewing the charter of the East India Company, or the acts relating to the constitution of Canada.”<sup>9</sup>

As Hulsebosch has argued, both the ongoing British reforms in 18<sup>th</sup> century North America, and the federation of the United States between 1787-1790, were in fact processes of greater integration, and subordination, whether in the Empire, or the Federation. The coordinate relation of the colonies prior to the Declaration of Independence was in fact more truly “federal”, argues Hulsebosch.<sup>10</sup>

Lewis thus characterized the error in imperial government:-

“ The English government, in framing the political institutions of its dependencies, has not been sufficiently careful to give them such a form as might suggest the idea of their subordinate character. So far, indeed, has it been from observing this caution, that it had formed them after the model of the supreme government, and has acquiesced in the use of forms and language by the legislature of the dependency, which seem to imply that its government was coordinate with, and not subordinate to, the government of the dominant country.”<sup>11</sup>

Bentham had denied that a comprehensive separation of legislative and executive powers was possible in his *Tactique des Assemblées législatives*.<sup>12</sup> As Lewis argued the point:-

“A complete separation of the legislative and executive powers cannot exist in any constitution. For in every constitution the sovereign person or body must possess the power both of making laws, and of carrying them into execution.

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<sup>9</sup> Lewis, op. cit., p. 81.

<sup>10</sup> Hulsebosch, *Constituting Empire*, p. 8 .

<sup>11</sup> Lewis ibid p. 301.

<sup>12</sup> Lewis ibid v. ii p. 344.

“In most countries the supreme legislature, or its component parts, have performed some executive functions; and all governments have delegated extensive legislative powers to their executive functionaries.”<sup>13</sup>

For his part, Lord John Russell stated:-

“ Lord Durham has stated that an analogy existed between the representative of the Crown in the Colony and the constitutional responsibility of the ministers in this country.....Now, the resolution of the House on this subject was in these terms: “*Resolved*, That while it is expedient to improve the composition of the Executive Council of Lower Canada, it is unadvisable to subject it to the responsibility demanded by the House of Assembly of that Province.” This House upon my motion came to that resolution.<sup>14</sup>

Russell turned to the imperial constitution proper:-

“In the first place, there is an obvious difference in matter of form with regard to the instructions under which the Governor of a colony acts. The Sovereign in this country receives the advice of ministers and acts by the advice of those ministers, and indeed, there is no important act of the Crown for which there is not some individual minister responsible. There the responsibility begins and there it ends. But the Governor of Canada is acting, not in that high and unassailable position in which the Sovereign of this country is placed. He is a Governor receiving instructions from the Crown on the responsibility of a Secretary of State.”<sup>15</sup>

Russell, who published histories of the Whig cause and of Whig constitutionalism, offered a history lesson on the hazards of arriving at the contemporary English constitution:-

“ The constitution of England, after long struggles and alternate success, has settled into a form of government in which the prerogative of the Crown is undisputed, but is never exercised without advice. Hence the exercise only is questioned, and however the use of the authority may be condemned, the authority itself remains untouched.

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<sup>13</sup> Lewis, op. cit., pp. 47-48.

<sup>14</sup> Lord John Russell 3 June 1839 *G.B.P.D.* v. 47, 3 June 1839 col. 1268.

<sup>15</sup> *ibid.*

“This is the practical solution of a great problem, the result of a contest which from 1640 to 1690 shook the monarchy, and disturbed the peace of the country.”<sup>16</sup>

How could colonial farmers and lawyers easily arrive at the constitutional balance that eluded the ruling classes of England so traumatically? The solution lay with the governor of the settler colony:-

“it may be said that I have not drawn any specific line beyond which the power of the Governor on the one hand, and the privileges of the Assembly on the other, ought not to extend. But this must be the case in any mixed government. Every political constitution in which different bodies share the supreme power, is only enabled to exist by the forbearance of those among whom this power is distributed. In this respect the example of England may well be imitated. The sovereign using the prerogative of the Crown to the utmost extent, and the House of Commons exerting its power of the purse, to carry all its resolutions into immediate effect, would produce confusion in the country in less than a twelve-month. So in a colony: the Governor thwarting every legitimate proposition of the Assembly; and the Assembly continually recurring to its power of refusing supplies, can but disturb political relations, embarrass trade, and retard the prosperity of the people.

“The Governor must only oppose the wishes of the Assembly where the honour of the Crown, or the interests of the empire are deeply concerned; and the Assembly must be ready to modify some of its measures for the sake of harmony, and from a reverent attachment to the authority of Great Britain.”<sup>17</sup>

The governor was to distribute public offices as those of departments of state, refraining from expressly stating at that time that such positions would depend upon the confidence of the legislature.

“ You will understand, and will cause it to be generally known, that hereafter the tenure of colonial offices held during Her Majesty’s pleasure, will not be regarded as equivalent to a tenure during good behaviour; but that not only will such officers be called upon to retire from the public service as often as any sufficient motives of public policy may suggest the expediency of the measure, but that such a change in the person of the governor will be considered as a sufficient reason for any alterations

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<sup>16</sup> Kennedy, *Statutes, Treaties and Documents of the Canadian Constitution*, Russell to Poulett Thomson 14 October 1839 p. 423.

<sup>17</sup> Kennedy, *op . cit.*, p. 424.

which his successor may deem it expedient to make in the list of public functionaries.”<sup>18</sup>

The offices concerned did not include the colonial judiciary but “chiefly, though not exclusively” Colonial Secretary, the Treasurer, or Receiver-General, the Surveyor-General, the Attorney and Solicitor-General, the Sheriff, or Provost Marshall.

A coherent mode of devolution then for responsible government was arrived at in Canada between 1839-49. These proceedings provided the model for New Zealand devolution 1856- 63, and for Grey’s management of Executive Councils at Cape Town and in Auckland. To take a moment *in media res* of the Canadian process, Metcalfe’s despatch in review of Lord Durham’s recommendations and of Lord Sydenham’s policy, seems the most appropriate. Metcalfe attributed the origin of the term “responsible government” to Lord Durham. It was however a slogan for local autonomy in Upper Canada from the 1820s.<sup>19</sup> The criticism that Metcalfe raised in comparing Durham’s proposals with Sydenham’s practice, was that Durham had proposed that the governor and his secretary be responsible to the British Government, while the executive council members as heads of department were responsible to the legislature. Sydenham’s error lay in regarding the secretary as responsible to the legislature as well. Governors therefore had no means of accessing control of day to day administration and policy, and of enabling conjunct government between themselves and their “ministers”. Although this was unmentioned in these communications, Durham’s proposal and Metcalfe’s criticism resemble the situation of the Irish constitution and Irish Parliament at the time of the repeal of Poyning’s

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<sup>18</sup> Kennedy, *op. cit.*. Russell to Poulett Thomson 16 October 1839 p. 423.

<sup>19</sup> Kennedy, *op. cit.*, p. 490 note to Metcalfe to Stanley, 5 August 1843.

Law,<sup>20</sup> when Lords Lieutenant appointed their own secretaries to manage the administration and Parliament for them.

Such resorts might have bought time if the *N.Z.C.A* had in fact been allowed to operate without responsible government in former Irish or current Cape Colony conditions. Yet G.W. Rusden deemed responsibility in New Zealand an accident:-

“There was not one word in the Constitution to provide for the establishment of responsible government. Not one word on the subject had been said in debate on the Constitution Act of 1852. Speeches must not be called in to construe a statute, but silence in this case is amply confirmed by the silence of the statute”.<sup>21</sup>

There could not have been. No such act ever referred to the existence of premiers and cabinets, which were the creatures of convention.

Despite the changes of government at Westminster in the 1850s, the Colonial Office reserved native policy when Browne governed New Zealand between 1855-1861. As the Colonial Secretary Henry Labouchere informed Browne :-

“ They consider that, notwithstanding all the respect due to the principle of Responsible Government, the management of native affairs should remain present mainly in the hands of a governor responsible for it to the Crown. They are of the opinion that the circumstances which justify this decision are the terms of the constitution itself which withholds this subjects in good measure, as regards land dealings, from the control of the Local Legislature to which the Local Executive is responsible; the still subsisting or apprehended danger in certain parts of New Zealand; the necessity arising from this danger for maintaining in the Colony a large force at the expense of the Mother Country, a force of which the discipline, control and application must remain in the hands of the Governor as the servant of the Crown, the large amount of the native contributions to the local revenue (as shown by

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<sup>20</sup> Wight, Martin, *The Development of the Legislative Council 1606-1945*, p. 25 :- “ In one aspect, the development of crown colony government has been, with the progress in communications, the universalization of Poyning’s Law.”

<sup>21</sup> Rusden, *History of New Zealand*, v. I p. 476.

yourself) while from unavoidable circumstances they remain almost unrepresented in the Legislature; and the fact that the mass of the native population is found in one or two provinces only while the greater part of the European community with preponderant influence in the Legislature has in reality no direct concern in native affairs.”<sup>22</sup>

During this transitional period, the conventions of colonial monarchical government by governors were more conservative than parliamentary convention in Great Britain. Grey’s practice largely resembled the paradigm for government under Queen Anne.<sup>23</sup> He sought to work through his Cape Colony and New Zealand ministers when he participated in representative government even when he reduced them to staff officers. George III selected ministries to his liking, but he rarely attended their deliberations and handed over their management to the individual whom we now denote by the office of prime minister. Colonial governors, like Queen Anne, had to attend councils, and do politics with the ministers whom they had selected. The reign of Anne provides the benchmark, because it was only under her that the convention was established that the monarch governs through designated ministers who receive the royal warrant. As late as William III, monarchs could govern through whom they pleased.<sup>24</sup> Grey presumed to do the same when it suited him, though he preferred to work through an Executive Council.

Sir George Grey had no antipathy to Lord Elgin and his policy of responsible government, as Bohan insisted he had.<sup>25</sup> Responsible government was delayed at the Cape under Grey, and other governors, until 1852, yet Grey definitely intended

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<sup>22</sup> Labouchere to Browne 10 December 1856 *G.B.P.P. Further Papers Relative to the Affairs of New Zealand, July 1860*[ 2719] p. 461.

<sup>23</sup> Keir, *The Constitutional History of Modern Britain since 1485*, p. 281.

<sup>24</sup> Keir, *op. cit.*, p. 307.

<sup>25</sup> Bohan, Edmund, *To Be a Hero*, p. 109, p. 122.

ministries to eventually replace gubernatorial government there.<sup>26</sup> The provisional order of governors managing legislatures however was not to be of brief duration. The first Cape Assembly briefly met in July 1854 in as unedifying circumstances as the New Zealand General Assembly had in Auckland the previous month.<sup>27</sup> Not until December 1872 was the Molteno ministry was formed at the Cape and responsible government commenced. Native protection, even under a temporising policy such as Grey's became difficult in New Zealand once the General Assembly was granted full powers of appropriation.<sup>28</sup> It was not impossible, because New Zealand ministers were loath to accept responsibility for native affairs. When Colonial Secretary Sir George Grey Bart.<sup>29</sup> formally consented to responsible government on 8 December 1854,<sup>30</sup> the Whigs neither found nor sought any obstacle to it. The first ministry took office in 1856. Responsibility had been effectively conceded by section 66 of the *N.Z.C.A.* which gave the General Assembly the entire power of appropriation. The initiative in money bills was reserved to the Governor under section 54 as was and is normal in British parliamentary government.

The settler "Whig" constitutional historians of the first half of the 20<sup>th</sup> century represented the development of responsible government in the "white" dominions as one of the legislature and parliamentary practice eating away at the "irresponsible" rule of colonial governors. It would be more accurate rather to propose for the

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<sup>26</sup> Grey to Bulwer-Lytton 19 November 1858 in *The Recall of His Excellency Sir George Grey K.C.B. Governor of the Cape of Good Hope.* pp. 58 -74.

<sup>27</sup> Walker, Eric A., *A History of Southern Africa*, Longmans, Green and Co. , London 1959 p. 244.

<sup>28</sup> *N.Z.C.A.* sec. 65.

<sup>29</sup> Sir George Grey, 2<sup>nd</sup> Baronet Grey of Fallodon (1799- 1882) the Whig statesman, grandfather of the 1<sup>st</sup> Viscount.

<sup>30</sup> Sir George Grey, Bart., to the Officer Administering the Government, *G.B.P.P. Further Papers Relative to the Affairs of New Zealand*, 30 March 1855, [ 160] p. 39.

constitutional devolutions between 1840 and 1854, that representative government was fitted onto the monarchical “constitution of the empire”. Sir George Grey certainly wrote and acted “constitutions” as if that were the case. In the colonies it was the Crown, not “Parliament” that was incorporating new citizens under the constitution of the empire. Parliament might have passed the *N.Z.C.A.*, but settlers were not being incorporated into political society with it, like eligible British subjects in Britain were, under the Reform Act. Rather it was the “Crown”, and not Parliament, that was creating their political society by means of the monarchical constitution of the empire.

*Grey the Harringtonian Governor*

Grey’s own constitutional paradigm may be interpreted as neo-Harringtonian. Once the New Zealand historiographic myth of the autocratic Grey, unwilling to devolve power at all, is disposed of, how is Grey’s gubernatorial monarchy reconciled with the eventuality of responsible government, for which he doubtless prepared? That interpretation would be that he was the Harringtonian dictator who would hand over to government by rotation of ministers dependent upon the confidence of the legislature, instead of the intricate devices of the Venetian ballot extended over a whole country, that Harrington had proposed. One could in fact make Harringtonian principles work with the constitution of the empire to bring about Russellian devolutions of representative and responsible government. In Grey’s own career however, the Russellian governor became conflicted with the constitution of the empire, as Grey identified with the colonial interest of the Cape Colony and New Zealand against the British Government. He became in more senses than one an

“irresponsible” governor. Reconciliation between Harringtonianism and the imperial system was possible in the first instance because the royal prerogative was much stronger in the colonies, than in Great Britain. Its power was neither onerous nor obnoxious in a colony for Harringtonian political language. According to the Irish Commonwealthman William Molyneux in 1698, it was a protection to Irish subjects that the prerogative was stronger in Ireland than English, because Ireland could then be protected from the pretensions of the English Parliament, which could not then diminish the prerogative abroad.

“ It is *against the king’s prerogative*, that the parliament of England should have any co-ordinate power with him, to introduce new laws, or repeal old laws established in Ireland. . . . If therefore the *legislature* of Ireland stand on this foot, in relation to the king, and to the parliament of Ireland; and the parliament of England do remove it from this bottom, and assume it to themselves, where the king’s prerogative is much *narrower*, and as it were *reversed*, (for there the king has only a *negative vote*) I humbly conceive ‘ tis an *incroachment* on the king’s *prerogative*.”<sup>31</sup>

A trope of loyalist American Whigs who desired restored equilibrium in the imperial constitution during the Stamp Act controversy, Molyneux’s argument required rethinking for the circumstances whereby parliamentary sovereignty did not diminish the royal prerogative abroad, but rather took it over, and ensured that it was exercised under the advice of ministers who possessed the confidence of Parliament. It also required rethinking when colonial legislatures exercised responsible government in imitation of that Parliament. That was a predicament unknown to the Crown agents of Daniel Hulsebosch’s *Constituting Empire* in the 1760s and 1770s. It is true as Hulsebosch argued that a Crown agent such as Grey belonged to a “privileged

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<sup>31</sup> Molyneux, William, *The Case of Ireland’s Being Bound by Acts of Parliament in England Stated* August Long Dublin 1749, p. 58.

bureaucracy” that rested upon the exercise of “ prerogative power”.<sup>32</sup> But Grey did not exercise the prerogative to “integrate” the empire.<sup>33</sup> In the first place the legal and constitutional integrations proposed in the 1760s had already occurred by the time Grey was appointed to his first governorship in 1840. Furthermore neither Grey nor his superiors believed that the colonies would indefinitely remain dependencies. For so long as they were dependent upon Britain, the imperial government required a constitution abroad that enabled it to govern the colonies in its own interest as a great power. Yet as Hulsebosch noted, it was Crown agents in the colonies who gave the prerogative its meaning.<sup>34</sup>

The prospect was open then for a governor to use that imperial prerogative against, or in disregard of, the British Government and Parliamentary Sovereignty. A governor then would attempt to deny Parliamentary government within his colony, and not the monarch. A governor of ordinary ability might have blundered into such a situation. FitzRoy and Eyre’s New Zealand failures underscore this hazard. Grey was an intelligent and gifted governor, who understood both the constitution he operated under and yet held principles of political thought and native policy for which he could assume the stance of resisting British policy for the good of the colony. The Executive Council became his site for gubernatorial dissent, and conniving attempts at negation. Grey had in New Zealand implicitly refused instructions before. In South Africa and in his second New Zealand term, the prudence of Grey’s earlier practice was replaced by the governor presuming on his coordination with the British government, instead of subordination. It is possible then to propose a crisis of the Russellian governor, of

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<sup>32</sup> Hulsebosch, *Constituting Empire* p. 78.

<sup>33</sup> Hulsebosch *ibid* p. 76.

<sup>34</sup> Hulsebosch *ibid* p. 82.

the gubernatorial conductors and mentors towards responsible government, which Grey as a Colonial Service constitutionalist acted out. Grey was a governor whom Russell had especially commended. It was in him however that the potential for an overly independent governor erupted. Grey was caught in a conflict between the formal constitution of empire, and Harringtonian doctrine and the other ideologies, that had influenced him. Not even an expertly temporising governor such as Grey, could temporise any longer between these contradictions.<sup>35</sup>

George Cornwall Lewis felt obliged to single out Harringtonian doctrine for refutation in his “Essay”.<sup>36</sup> Russell however was a “court Whig”, not a latter-day Harrington like Grey, despite the 17<sup>th</sup> century sources and authorities they shared, and the cooperation between the Earl of Shaftesbury, Whig “martyrs” such as Algernon Sidney and William Russell, and the neo-Harringtonians. Great differences also existed between Grey and “the court Whigs” who took him up as the fashionably exemplary governor of the early 1850s. Tensions with the imperial constitution are evident in the dispute with Bulwer-Lytton over imperial policy for South Africa, a dispute that was really about the constitution of the empire. That constitution was mobile for Grey in the conditions of devolution to responsible government, shifting towards a *translatio imperii* of the kind that Thomas Arnold exemplified in 1815 his discussion of the Portuguese evacuation to Brazil in 1807. Grey accordingly insisted to Bulwer-Lytton that he be judged by the judiciary and public opinion of the colony

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<sup>35</sup> Cell, John Whiston, *British Colonial Administration in the Mid-Nineteenth Century: The Policy-Making Process*, p.p. 198-199. Cell proposes that Lytton was “in effect, and perhaps in intention, setting a trap for Grey.” p. 199.

<sup>36</sup> Lewis, George Cornwall, in Charles Prestwood Lucas (ed) ; *An Essay on the Government of Dependencies* , Clarendon Press, Oxford 1891 [ 1841]. Source in Lewis for Molyneux and Ireland see “Author’s Notes” Note L on p . 153 on p. 354.

for which he exercised the prerogative. Eventually Grey was to be regarded as the pioneer of South African unification, albeit on a federal plan.<sup>37</sup>

In Harringtonian literature, it is possible to identify an argument that explains Grey's constitutional position in both his New Zealand governorships and at the Cape. Lewis had argued with concentration and vigour against William Molyneux's tract of 1698 on Irish legislative rights. Why a tract 143 years old should be so dangerous, requires explanation. Both court Whigs like Russell and Harringtonians were an embarrassment for genuine Radicals no matter how much they agreed with Whigs on the structure of the empire. That consensus did not extend to the Harringtonians. In his tract Molyneux argued for the legislative independence of the Irish Parliament and its coordination with the British, occasioning such controversy that an Act of Parliament was passed against it at Westminster. While Lewis stated correctly that Molyneux was a friend of John Locke, he should also be associated with the groupings of the radical Commonwealthmen and neo-Harringtonians. Colin Kidd most definitely does so in his discussions of "Euro-Gothicism" in the 17<sup>th</sup> century. Neo-Harringtonian Robert Molesworth's investigation of ancient Danish institutions in his *Account of Denmark as it was in the year 1692* influenced Molyneux considerably.<sup>38</sup> Andrew Fletcher of Saltoun, who is prominent in J.G.A. Pocock's canon of Country party Harringtonians,<sup>39</sup> defended Molyneux's tract against its

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<sup>37</sup> Thompson, L.M., *The Unification of South Africa*, Oxford, Clarendon Press 1960, p. 2, p. 101.

Walton, Sir Edgar H., *The Inner History of the National Convention of South Africa*; T. Maskew Miller Cape Town and Pretoria, Longmans, Green and Co, London 1912, p. 9.

<sup>38</sup> Kidd, Colin, *British Identities before Nationalism: Ethnicity and Nationhood in the Atlantic World, 1600-1800*; Cambridge University Press, 1999 p. 229.

<sup>39</sup> Pocock, J.G.A., *The Machiavellian Moment:- Florentine Political Thought and the Atlantic Republican Tradition*, Princeton University Press 1975, pp. 426- 431.

critics. Molyneux was most definitely a “Commonwealthman” appearing in reputable listings of them, whom Harringtonians felt they should defend. Conversely he was the writer whom Lewis believed he had to refute, along with the entire experience of the independence of the Irish Parliament between 1782 and 1800. Ireland, according to Lewis had attained a formal break from dependency, but remained practically dependent upon Great Britain, and therefore its constitutional pretensions were inconvenient to itself and to the “dominant community”. Ireland was for Lewis the enacted experiment in coordination, such as the Americans had sought, that had exemplarily failed, from which all should take warning in 1841.

As Lewis was a Utilitarian, Russell a court Whig, it is hard not to detect the political agenda of 1841 in such a representation. Refuting on old author such as Molyneux meant taking on the Russellian Whigs and their ancient constitutionalism, as redefined under the new German historiography as British Teutonism. As Kidd states:-

“Indeed, scholars are agreed that by the early nineteenth century a qualitative difference had appeared between the old language of English Gothicism – whose previous significance had been predominantly constitutional – and a new Teutonism which had a “a more distinctly racial meaning”.<sup>40</sup>

Another otherwise correct and insightful statement by Kidd may be inverted to explain Grey:-

“the Euro-Gothicist perspective, devoid of its neo-Harringtonian gloss, helped shape modern court whiggism.”<sup>41</sup>

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<sup>40</sup> Kidd, Colin, op .cit., p. 98.

<sup>41</sup> Kidd, *ibid* p. 227.

Grey was not a court Whig. He was a colonial governor who lived abroad for most of his life. Lord John Russell and the Holland House set to which Whately had access, was the epitome for Lewis of court Whig constitutionalism. It was rather these Euro-Gothicist and Harringtonian perspectives, in the absence of any real induction by court Whigs, in the absence of classical Political Economy and Utilitarian Radicalism, shaped Grey's constitutionalism, and his ethnography and native policy as well. Whether a so-called "irresponsible" governor or a governor of a colony with responsible government, Grey was determined to be responsible to what he conceived to be the interest of the colony, in Harringtonian terms.

To conclude, Grey was to contribute to the tradition of Irish neo-Harringtonian himself, after he ceased to serve as a colonial governor in 1868. Uninhibited by a governorship or the regulations of the Colonial Service after 1868, Grey was able to speak his mind. Of particular note is a pamphlet he published in 1869,<sup>42</sup> which provoked the ire of Lord Granville, supporting Irish Home and land tenure reform. Grey's pamphlet in fact preceded pamphlets by the Irish Protestant Political Economist and Home Ruler Isaac Butt on the same subject, but was written after Butt's book on the subject. Grey then was responding to Butt's writings and to the Irish political debate. At the commencement of his pamphlet *Irish Federalism ! Its Meaning, Its Objects and Its Hopes* Butt acknowledged:-

“ Even so recently as last year, Sir George Grey proposed the concession of such a

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<sup>42</sup> Grey, George, *The Irish Land Question*, Hall and Foster Printers, London 1869.

constitution as the only remedy for Irish disaffection, and influential English journals expressed their cordial concurrence in his views.”<sup>43</sup>

The temporary influence of the Grey-Butt proposals were not inconsiderable.<sup>44</sup>In 1874 59 Federalist Home Rulers were elected to Westminster.<sup>45</sup> That influence fast abated.

“Butt’s imperial sentiments were not representative of the spirit of Irish nationalism”<sup>46</sup>

as McCaffrey diagnosed the ultimate failure of the Butt federal plan, to the failure of that exercise in Anglo-Irish Protestant hegemony over Irish Catholic nationalism. Parnell succeeded Butt as the leader Home Rule because he accepted that Irish nationalist feeling was anti-imperial.

Ireland remained a profound imperial site for Grey, as a colonization that had gone wrong, and as a source of settler literature, and as a fount of Harringtonianism. Such a governor before the prospect of responsible government regarded himself as necessarily the Harringtonian dictator, who would hand over to a republic governed by the comings and goings of ministries.

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<sup>43</sup> Butt, Isaac, *Irish Federalism! Its Meaning, Its Objects and Its Hopes*; John Falconer Dublin 1870 p. 4.

<sup>44</sup> Lyons, F.S.L., *Charles Stewart Parnell*, Collins, London 1977, pp. 42-43.  
Foster, R.F., *Modern Ireland 1600-1972*, Allen Lane Penguin Press, London 1988, p. 398.

<sup>45</sup> McCaffrey, Lawrence J. , “Irish Federalism in the 1870s: A Study in Conservative Nationalism” in *Transactions of the American Philosophical Society* v. 52 part 6 1962 p. 22.

<sup>46</sup> McCaffrey, *ibid* p. 49.



## Chapter Nine

### The New Zealand Constitution Act and the Outbreak of War.

#### *Grey's Return to New Zealand*

The immediate history of the *N.Z.C.A* is the story of its “consolidation”. It was revised by a series of devolutions of responsible government, definitively by the devolution of responsibility for native policy. The New Zealand Government “consolidated” both the native protectorate,<sup>1</sup> and the provincial governments. Maori were to be brought under direct government in the New Zealand Wars, while the provinces ceased to exist in 1876. The full details about the negotiations over “responsibility” between the Colonial Office, the New Zealand governors and the New Zealand Government “responsibility” have been judiciously related by A.F. Madden, in the form of a sequence of footnotes and annotations on selected documents.<sup>2</sup>

The business of this chapter is to assess Sir George Grey’s contribution to the revision of the very constitutional order of which he was the “author”. Professor Jock Brookfield argues a revolutionary breakdown of the Treaty of Waitangi in New Zealand.<sup>3</sup> This is helpful as an insistence upon Maori constitutional perspectives. A leap from “protected autonomy” to native administration through native districts did

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<sup>1</sup> Sinclair, *The Origins of the Maori Wars* p. 37.

<sup>2</sup> Madden, Frederick and Fieldhouse, David (eds.) *Select Documents on the Constitutional History of the British Empire and Commonwealth* Volume IV pp. 491-516.

<sup>3</sup> Brookfield, F.M., *Waitangi and Indigenous Rights: Revolution, Law and Legitimation*, Auckland 1999.

occur. It was all the difference in the South African context between the Basuto of Moshoeshoe (temporarily) retaining their autonomy and the Xhosa of the Eastern Cape coming under Grey's native administration plan of 1855, during and after Nonqaquse's prophetic mission and the fame that resulted from the cattle-killing she prescribed.<sup>4</sup> In New Zealand, some tribes sided with the New Zealand Government as a "Queen's Party" of native allies,<sup>5</sup> while the adherents of the Maori king resisted pressure both to sell land and to be governed in native districts.<sup>6</sup>

In 1863 Grey and the settler government carried out by war the effective replacement of the Treaty of Waitangi order by the institutions of racial legal integration. The *kingitanga* movement sought to revise and reinterpret the Treaty of Waitangi order to withstand the influx of land-hungry settlers and assert Maori sovereignty. Both sides revisited the original compact under the stress of the situation. Maori allied with the Government sought to secure the best terms possible under the new racial regime. If, as Professor Brookfield has done the Waikato War can be regarded as New Zealand counterpart to an event like the so-called "Glorious Revolution", then it is to the Williamite regime in Ireland not in England that the land confiscation must be compared, after which native Irish were left with the ownership of 9% of the land. The proportion of land under aboriginal title in 21<sup>st</sup> century New Zealand is barely the same.

Between 1861-64 Grey ensured that his New Zealand ministers accepted responsibility for native affairs. A colonial constitution for Grey served the purpose of

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<sup>4</sup> Mostert, Noel, *Frontiers:-the Epic of South Africa's Creation and the Tragedy of the Xhosa People.*, pp. 1167- 1177 .

<sup>5</sup> Sinclair, op.cit. p. 102.

<sup>6</sup> Sinclair ibid pp. 78-84. For the King Movement, see pp. 314-315.

racial administration. Grey's unique contribution to the colonial constitution, which both the Colonial Office and his own ministers admitted, was amalgamationist racial policy, and not just the "invention" of provinces. Grey resumed that native policy upon arriving in New Zealand by imposing the native districts councils scheme.

<sup>7</sup>Maori were to come under a system of native administration and to no longer live in autonomy as the Treaty had promised. What had been zones for native segregation could be operated as zones of integration. A "native district" was no longer a realm of Maori independence, but an administrative district. Grey's earlier scruples about confiding the government of Maori to settlers had passed. Just as in the Eastern Cape, circumstances seemed propitious for a revolutionary "surge" in the process of amalgamation. With the mechanisms of native administration in place, and devolution of native policy, settlers would attain the capacity to manage the process of amalgamation for themselves.

### *Grey and South Africa*

War applied policy that lay encoded in the *N.Z.C.A.*. Change lay in Grey's willingness to countenance confiscation as an instrument of amalgamation. <sup>8</sup>What had intervened in a decade was Grey's South African governorship. New Zealand historians have not considered "their" history as a continuation of South Africa's. Colonial governors moved between postings, practising personal policy repertoires. One posting could bear on another, regardless of late 20<sup>th</sup> and early 21<sup>st</sup> century nationalist organizations of history. In the Eastern Cape, Grey had carried out a revolutionary and invasive

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<sup>7</sup> *Appendices to the Journals of the House of Representatives* 1862, E-2. pp. 10 ff..

<sup>8</sup> Ward, Alan, *A Show of Justice:- Racial "Amalgamation" in Nineteenth Century New Zealand.*, University of Toronto Press, Toronto 1973, p. 177.

intervention into the Xhosa nation, exploiting the chaos and social breakdown caused by cattle-plague, chiliastic prophecy, and famine.<sup>9</sup> Amalgamation not only required steady pressure, a general stress upon “protected” indigenous communities, such as settler immigration, but the exploitation of seemingly propitious circumstances so as to break indigenous nations, and integrate them into the settler economy and power sphere. Grey inflicted the Ciskei upon the Waikato. Edgar Brookes much as his contemporary de Kiewiet insisted on the Jominian dimension to Grey’s policy:-

“ Sir George Grey had definitely decided no longer to treat the Native question as a mere problem of frontiers.”<sup>10</sup>

The features of Grey’s native administration scheme of 1855 were a policy of public works, into which Xhosa were labour, the imposition of hut taxes, to encourage them to do so, the introduction of resident magistrates and the pensioning of chiefs, so as to alter the indigenous Xhosa constitution.

“The plan I propose to pursue....is to attempt to gain an influence over all the tribes included between the present north-eastern boundary of this Colony and Natal by employing them upon public works which will tend to open up their country; by establishing institutions for the education of their young and for the relief of their sick; by introducing among them institutions of a civil character suited to their present condition; and by these and other means to attempt gradually to win them to civilization and Christianity, and thus to change by degrees our at present unconquered and apparently irreclaimable foes into friends who may have common interests with ourselves.”

“Under such a plan the worst part of the Kaffir polity is broken down. Every Chief of importance will receive a certain regular income, for which he will be dependent upon the Government of the Country, and will therefore have the strongest interest in its maintenance and success. European laws, will by imperceptible degrees, take the place of their own barbarous customs, and any Kaffir Chief of importance will be daily brought into contact with a talented and honourable European gentleman, who

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<sup>10</sup> Brookes Edgar H., *The History of Native Policy in South Africa from 1830 to the Present Day*, p. 92.

will hourly interest himself in the advance and improvement of the entire tribe, and must in the process of time gain an influence over the Native races which will produce very beneficial effects.”<sup>11</sup>

This began the proletarianization of Xhosa, a process which began for Maori in New Zealand after the wars. The scheme of the Port Louis paper was adhered to the letter, to reduce indigenes to a labour proletariat,<sup>12</sup> committed to public works, a process that de Kiewiet described as a conversion from “barbarism to pauperism”.<sup>13</sup>

### *The Imperial Origins of Responsible Government*

New Zealand followed the same trajectory towards responsible government as Canadian colonies. Durham advised responsible government while proposing that the governor retain and exercise powers beyond those of the monarchy in Great Britain.<sup>14</sup> As has been seen, Russell’s despatch of 19 October 1839<sup>15</sup> instructed that representative government be in good part allowed while effectively denied, by means of gubernatorial supervision of ministers, who could possess the confidence of legislatures. The essential transformation was deemed to be that of the conversion of the governor from a minister of the British Government to a colonial executive, who acted upon the advice of the ministers in his colony. For responsible government to come about, the poles of responsibility had to be entirely reversed, the settler constitution remagnetised. The site of this transformation was to be the Executive

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<sup>11</sup> Sir George Grey K.C.B, to Sir George Grey Bart., 22.12.1854 *G.B.P.P. Further Papers relative to the Kaffir Tribes*, July 1855 [1969] pp. 36-38.

<sup>12</sup> Mostert, Noel, op. cit., p. 1170.

<sup>13</sup> de Kiewiet, C.W., *A History of South Africa Social and Economic*, Oxford University Press 1941, p. 85.

<sup>14</sup> Lambton, John George 1<sup>st</sup> Earl of Durham, in Sir Charles Prestwood Lucas (ed.) *Lord Durham’s Report on the Affairs of British North America*, v. II p. 279.

<sup>15</sup> CO 42./ 297.

Council. The formation of “party” was regarded as a necessary instrument to effect this development.

New Zealand constitutional policy belonged to the second wave of constitutional devolution. While Lord Elgin was overseeing the devolution to responsible government in Canada, from the formation of the Baldwin-LaFontaine ministry in 1848,<sup>16</sup> Southern Hemisphere colonial constitutions were only in process of being drafted and passed, such as the Australian Colonies Act 1850,<sup>17</sup> the Cape Constitutional Ordinance 1852 and the New Zealand Constitution Act 1852. The *N.Z.G.A.* may conversely be assigned to the immediate Whig response to the Durham Report in 1839, that responsible government be withheld, or to Earl Grey’s construction on the exceptional New Zealand circumstances of effectively organized warlike indigenes and scattered settlements about a large archipelago.

In Canada the admission to Executive Council of representatives possessing at least the acquiescence of their assemblies was conceded in 1839, the structuring of cabinet-like bodies by Sydenham in 1841, the development of ministry-like formations under Metcalfe in 1843 and 1844, the admission of responsible government under Lord Elgin in 1847. New Zealand obtained representative government in 1854, ministerial government in cohabitation with the governor in 1856, and exclusive responsible government over 1862/63, after a period in which Sir George Grey managed to invert the terms of responsible government to get the Fox<sup>18</sup> ministry to accept the full

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<sup>16</sup> Kennedy, *Statutes, Treaties and Documents of the Canadian Constitution*, Lord Elgin to Earl Grey 13 July 1847 p. 500.

<sup>17</sup> 13 & 14 Victoria cap. 59.

<sup>18</sup> Dalziel, Raewyn, and Sinclair, Keith, “Fox, William, 1812?-1893”, *Dictionary of New Zealand Biography*, updated 22 June 2007; <http://www.dnzb.govt.nz/> /

responsibility for native administration, by getting his ministry to advise that they accept the Governor's own advice on native policy.

It should be appreciated that this development was an arcane process to most colonial politicians, that colonial politicians had not themselves participated in Westminster politics, nor had governors apart Canadian governors general, and that the Canadian governors general and lieutenant governors who developed a process with their executive council members to reliably bring about responsible government, without severing British oversight and reserved authority, arrived at this incrementally, governor by governor, convention by convention, in epistolary constitutional conversation with successive Colonial Secretaries. Grey applied in early 1860s Auckland what had become a technique. His concluding constitutional contribution to New Zealand as governor, was the assignment of full responsibility for native affairs to the New Zealand Government.

Getting New Zealand ministries to accept responsibility for native affairs was the counterpart to the introduction of gubernatorial initiation of money bills in Nova Scotia, a function which was deemed to lure colonial politicians to capture the executive for themselves.<sup>19</sup> Acceptance was elusive after initial avidity in 1856. The reservation of native affairs was the means to implicate Britain in a war. By 1863 New Zealand ministries were formed that were not just willing to prosecute the war, but capable of doing so, such as the Domett ministry. Domett was in fact a long-term associate of Grey from the time of Grey's residences in Wellington during his first government. The Weld "self-reliant" ministry 1864-65 was the first ministry

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<sup>19</sup> Buckner, Phillip A. *The Transition to Responsible Government: British Policy in British North America 1815-1850*, p. 303.

independent of the governor.<sup>20</sup> By 1864 with the formation of the Weld ministry, fully responsible and independent ministries were operating in New Zealand.

Upon Grey's return to Auckland from Cape Town in 1861, the New Zealand Government was reduced to a council of ministers for a de facto "gubernatorial" government, rather than the largely "responsible" government it had been since 1856. Yet Grey was determined to oblige the New Zealand government to accept responsibility for native affairs, which had been reserved to the imperial government. The constitutional doctrine on this point was that by granting an assembly to a colony, the British Parliament relinquished all legislative competence to a colony, unless it expressly reserved responsibility for aspects of it.<sup>21</sup> The satire of the situation, by which Grey conducted his executive council as if it were a general staff, or a ministers such as Sydenham had appointed in Canada, while obliging those ministers to assume responsibility, was far from lost on the governor, as will be seen.

Grey was determined that he would "govern" New Zealand much as he had the Cape Colony, where responsible government would not commence until 1872, and would require an Act to effect.<sup>22</sup>

The stages by which British superintendence devolved parliamentary-style responsible government can be characterised in the following. Governors in the first instance appointed members of assemblies to their Executive Councils as non-officials along with officials for the period that they enjoyed the confidence of the legislatures. Governors next appointed members of legislatures to dedicated

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<sup>20</sup> Morrell, *The Provincial System in New Zealand*, pp. 149 ff..

<sup>21</sup> Wight, Martin, *The Development of the Legislative Council 1606- 1945* p. 60.

<sup>22</sup> Kilpin, *The Old Cape House.*, p. 20.

departments. In Nova Scotia in 1840 the positions of Attorney General, the Solicitor General and Postmaster General were reserved to members of the legislature on that basis.<sup>23</sup> Governors composed cabinets out of their executive councils. Lord Sydenham was the first colonial governor to construct a cabinet out of a colonial executive council. He insisted upon remaining its leader however.<sup>24</sup> Sir George Grey was to revert in Auckland to Sydenham management of the Fox ministry in 1861.<sup>25</sup>

The development of party or partisan politics occurred whereby governors selected executive councils of ministers from members who possessed the confidence of the House from party bases that afforded more secure government for the colonies.<sup>26</sup> At first this process did not exist as such. Colonial Secretaries and governors were working their way towards parliamentary systems that would afford reliable and stable self-government to colonies, which would in turn not embarrass the interests of Great Britain. Although each colony arrived at full responsibility in its own time, it was evident to imperial administrators at least, that a process had emerged. Much of this process remained arcane to the colonial politicians. Lobbying by organizations such as the New Zealand Company could convey information suitable for political agitation, such as the Durham Report, which could become more of a mantra out in a colony after newspapers had lost interest.<sup>27</sup> A Governor General of Canada could exploit from personal knowledge the arcana of parliamentary government at Westminster. Other governors approximated Westminster from the Canadian

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<sup>23</sup> Buckner, Phillip A. , *The Transition to Responsible Government: British Policy in British North America 1815-1850* Greenwood Press, Westport Connecticut 1985, p. 276.

<sup>24</sup> Buckner, *ibid* p. 263.

<sup>25</sup> Sinclair, *op. cit.*, p. 249,

<sup>26</sup> Buckner, *op. cit.* p. 338.

<sup>27</sup> McLintock, *Crown Colony Government*, p. 322.

precedent and from their personal political knowledge. As Phillip Buckner remarked of the process in Nova Scotia:-

“Whether they realized it or not, the liberals were shifting the balance of power out of the hands of the Assembly into those of the responsible executive. Party government was an important step in this direction since it gave the executive a more reliable body of support in the Assembly than it had possessed in the past.”

“Because of the refusal of the Assembly to surrender to the executive the exclusive right to initiate money bills, the centralization of power in the hands of the ministry would evolve slowly in Nova Scotia, but it would evolve steadily”<sup>28</sup>.

The British constitution in New Zealand for Sir George Grey on the eve of the Waikato War could be described as formally an executive government on the advice of ministers according to the conventions between Queen Victoria and her ministers at that time. In reality, Grey governed like William III at times, not even working to the convention established by Queen Anne that the Executive is conducted through the departmental ministers.<sup>29</sup> Yet that description is an unhelpful picture of anachronism. The anachronism is not between the British monarchy at various reigns, but rather between the monarchical constitution of the empire and the colonies’ representative institutions. Formally governors remained commissioned officers of the royal prerogative, whilst the change took place from the North American assemblies of the 17<sup>th</sup> and 18<sup>th</sup> centuries to approximations of responsible government as practised at Westminster.

Grey was a governor who did his utmost to sustain the monarchical constitution of the empire in the new constitutional context, against even the British Government itself.

His refusal to be responsible to the British Government and Parliament, when he

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<sup>28</sup> Buckner, op .cit. p. 303.

<sup>29</sup> Keir, *The Constitutional History of Modern Britain since 1485.*, p. 307.

thought the interests of “his” colony and policy required it, became a repetitive pattern that destroyed his career and the promotion he sought.

*New Zealand after the First Taranaki War*

Upon Grey’s return to the “command” of New Zealand in 1861, a complex breakdown was occurring between Maori and Pakeha, as well as within the Pakeha constitutional order. As Grey had predicted in his first New Zealand term of office, the North Island provinces became avid lobbyists for war and land confiscation. The law firm of Whitaker and Russell on Auckland’s Queen Street and the Bank of New Zealand had an interest in war and confiscation. Frederick Whitaker<sup>30</sup> as premier would propose a confiscation of millions of acres in the North Island.<sup>31</sup> Some provinces became as belligerent and prone to internecine strife as the Afrikaner republics. One was ephemeral. Southland was a province for just 1868-72. The West Coast became one in 1873 after its creation as a county in 1868. Marlborough, an archetypical gentlemanly run-holder province descended into schism in 1862 as the provincial superintendent and his provincial council anathematised one another, a stand-off ensuing that resulted in the rival capitals of Picton and Blenheim in 1865, and armed posses riding forth, to capture their opponent’s minute books so as to pass the motion to constitutionally abolish their rivals.<sup>32</sup>

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<sup>30</sup> Stone, R.C.J., “Whitaker, Frederick, 1812-1891” *Dictionary of New Zealand Biography*, updated 22 June 2007; <http://www.dnzb.govt.nz/>.

<sup>31</sup> Rutherford, *Sir George Grey K.C.B 1812- 1898*, p. 496.

<sup>32</sup> Morrell, *The Provincial System*, pp. 165-166. Marlborough affairs climaxed at the height of the war against Maori.

Meanwhile the New Plymouth colony was actually at war with Taranaki tribes. The former New Plymouth colony had been founded in 1842, its population declined as the life prospects of colonists diminished, as the settlers made little headway in land purchase against the Taranaki tribes.<sup>33</sup> The 1<sup>st</sup> Taranaki War broke out in 1860 after the contested and incorrect purchase in 1858 of the Waitara Block.<sup>34</sup>

Browne insisted upon gubernatorial control of native policy in conditions of responsible government.<sup>35</sup> Merivale reluctantly agreed, questioning whether it was not too closely associated with domestic administration for the Governor to control.<sup>36</sup> Thus began the “condominium” as Rusden called it of the governors with the New Zealand government, which officially lasted between 1856 and 1863, and in practice lasted longer as governors sought to retain influence while hostilities persisted, arguably features of it persisted in the remainder of Grey’s second term and Sir George Bowen’s term 1868-1873.

Browne who deemed that governors could prevail by “personal character” and “by being completely above politics and intrigue”,<sup>37</sup> noted Grey’s attitude towards responsible government in his diary. Browne, who was no back-seat governor himself, recorded that Grey would consider his ministers to be his staff-officers furnishing the finances and administration and if they did not like that to resign.

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<sup>33</sup> Sinclair, *op .cit.* p. 110.

<sup>34</sup> Belich, James, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland University Press, Auckland 1986, p. 76-80.

<sup>35</sup> Sir Thomas Gore Browne to Labouchere, 30 April 1856 *G.B.P.P.* July 1860 [2719] p. 207.

<sup>36</sup> Sir Thomas Gore Browne to Labouchere, *ibid.*, Enclosure no 2 Minute 15 April 1856 signed Thomas Gore Browne, Henry Sewell, Frederick Whitaker.

<sup>37</sup> Browne to Bowen 17 September 1864 Gore Browne MSS.

Grey's despatch of 30 November 1861<sup>38</sup> announced the entire responsibility for native as for all other matters to ministers, while bringing about a state of affairs in which "responsible government" was in effective abeyance. This despatch is a virtual satire upon colonial responsible government by a man whose mental powers were as yet unimpaired, even if within a few years his conduct of policy, his health and his character appeared to be broken. Grey's responsible ministers of the Fox ministry he reported, had agreed to advise the Governor to act upon his own advice, in native affairs, while accepting responsibility for native affairs. The Governor therefore became technically responsible to his ministers, and no longer a Minister of the British Government for New Zealand.

*Grey's Amalgamationist Crises in the Eastern Cape and in New Zealand*

It is an as yet unassessed fact that Grey had returned to New Zealand for a second governorship in September 1861 after his tenure as Governor of the Cape Colony and High Commissioner for Southern Africa. That experience greatly affected him. Conversely he had never ceased to revisit his vision for the *N.Z.C.A.* while in South Africa. For the Eastern Cape he had introduced a policy of native administration in 1855 involving native districts and resident magistrates, to be funded by hut taxes and other imposts. The system was financially self-supporting through the hut tax system. Theophilus Shepstone had in fact innovated hut taxes in Natal, yet an old yet paternalist expert authority such as Edgar Brookes insisted on the distinction between Grey's "Policy of Identity" and the Shepstone's "Policy of Differentiation".<sup>39</sup>

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<sup>38</sup> CO 209/165.

<sup>39</sup> Brookes Edgar H., *The History of Native Policy in South Africa from 1830 to the Present Day*, J.L. van Schaik, Pretoria 1927., p. 98.

Controversy only erupted when Grey in 1859 had attempted to federate the white colonies and states in Southern Africa, so that they could support his policy of amalgamation.<sup>40</sup> South African provinces were to be ruled by New Zealand-like elected executives, while responsible central ministries were to succeed governors in southern African government.<sup>41</sup> However Grey had been recalled and then upon arrival in England reinstated by the Duke of Newcastle after the fall of the second Derby government, on condition that he did not resume his federalizing policy.<sup>42</sup> Otherwise Grey devised a constitution for Natal in 1856 that bore all the hallmarks of his provincial New Zealand institutions in the aftermath of the New Zealand Government Act 1846.<sup>43</sup>

What eluded New Zealand governors was an adequate and independent revenue base and bureaucracy for the sector of native affairs that had been reserved from the settler government. 7000 pounds per annum had been voted New Zealand governors by the British Parliament to fund a Native Civil List.<sup>44</sup> Gore Browne's first native secretary Francis Fenton succumbed to a feud with Donald McLean, so that the Land Purchase Department that McLean managed, took over the Native Department proper.<sup>45</sup>

Governor Browne proposed a Council for Maori Affairs, which Frederic Rogers the

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<sup>40</sup> Grey to Bulwer-Lytton 19 November 1858 in Bell and Morrell *Select Documents* p. 181.

<sup>41</sup> Grey to Bulwer-Lytton 19 November 1858 in *The Recall of His Excellency Sir George Grey K.C.B. Governor of the Cape of Good Hope*. pp. 58 -74.

<sup>42</sup> Bell and Morrell, *British Colonial Policy* , p. 194 note.

<sup>43</sup> Hahlo, H.R., and Ellison, Kahn, *The Union of South Africa: -The Development of its Laws and Constitution*, v. 5 of George W. Keeton (ed) *The British Commonwealth: -The Development of its Laws and Constitution*; Stevens & Sons, London, Juta & Co. Cape Town, 1960; p. 65-66.

<sup>44</sup> McLintock, *Crown Colony Government in New Zealand* , p. 433. N.Z.C.A. 1852 Schedule.

Ward, Alan , *A Show of Justice:- Racial "Amalgamation" in Nineteenth Century century New Zealand.*, pp. 92- 93.

<sup>45</sup> Sinclair, *Origins of the Maori Wars* , p. 101.

Permanent Under Secretary of the Colonial Office worked on and sought to apply to imperial prerogative mechanisms.<sup>46</sup> The New Zealand Government protested at what it regarded as an invasion of its rights, with the result that an imperial Bill was never introduced.<sup>47</sup> This institution was never applied in New Zealand but was exported rather to Victoria 1869, New South Wales 1883, Western Australia in 1886 and Southern Rhodesia in 1930. Lasting in Australia until 1969 they were invasive and destructive institutions for social control and “civilization” and far from instruments of “native protection”. Just as with the New Zealand policy that Grey applied in southern Africa, the New Zealand once again gave rise to an instrument of native control that it was unable to implement or else fully operate for its own circumstances.

Keith Sinclair commented thus on Grey’s New Zealand policy of 1861:-

“ Grey however was too ambitious to appreciate gradualness, and hastened on. Perhaps he was misled by his South African experience. Certainly there he had been able to act rapidly, but only because of the peculiar circumstances. The Kafirs had slaughtered their cattle, in an effort to destroy the Europeans by invoking magic where arms had failed, and thereby committed social suicide”.<sup>48</sup>

Grey rather only too well appreciated “gradualness” and temporisation, for which the Aborigines’ Protection Society praised him, but appreciated a revolutionary opportunity all the more, when presented to him by the circumstances of plague, famine and apparent rebellion.<sup>49</sup>

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<sup>46</sup> Browne to Newcastle 22 May 1860 no 46 CO 209/154.

<sup>47</sup> New Zealand National Archives G/30, Lewis to Browne 26 July 1860 No. 47.

<sup>48</sup> Sinclair, *op. cit.*, p. 243.

<sup>49</sup> Rutherford, *op. cit.*, p. 355.

Grey to Labouchere 27 August 1856 CO 48/ 346 No. 88.

Prudery shrouded Grey's responsibility for the disaster in the Eastern Cape for even mid 20<sup>th</sup> century liberal historians. W.M. Macmillan refers to the Xhosa famine as a regrettable "blot" on his career.<sup>50</sup> Rutherford assured his readers: -

"Grey rose to the occasion magnificently and again displayed all those qualities which make him remarkable amongst the colonial governors of the century. Throughout this crisis, he was at his best, and his best was superb".<sup>51</sup>

Rutherford's Grey suspected a military conspiracy emanating from Moshoeshoe, as he notes that Grey had from Te Rauparaha in 1846, and credited Moshoeshoe for planning to exploit the cattle-killing and the resulting famine, from having formed an alliance with Kreli, and resumed cattle-stealing in the Orange River Sovereignty.

<sup>52</sup>Rutherford represents Grey in July 1856 as devising a defensive war and relief plan in just ten days that also factored in the diplomatic manoeuvres with Moshoeshoe and Kreli so as to avert war.<sup>53</sup> Grey's officials and commanders were in fact more alarmed at the imminence of war, Grey the more sceptical and conservative.<sup>54</sup> Six regiments would be used as a mobile and not as a stationed force, so to deter the conspirators who might take advantage of the situation.<sup>55</sup> Famine itself would disarm the potential insurgents. In the aftermath he would arrest the chiefs whom he regarded as offenders and extent direct rule over the Xhosa, and use the relief system to convert Xhosa to labourers on public works.

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<sup>50</sup> Macmillan, W.M., *Bantu, Boer and Briton: The Making of the South African Native Problem*, Clarendon Press, Oxford 1963 p. 341.

<sup>51</sup> Rutherford, op. cit., p. 350.

<sup>52</sup> Rutherford, op. cit., p. 349; Grey to Labouchere 16 August 1856 no 76, 25 August 1856 no. 86, 27 September 1856 no. 94 CO 48/376.

<sup>53</sup> Rutherford, op. cit., p. 358.

<sup>54</sup> Rutherford *ibid*.

<sup>55</sup> The 2<sup>nd</sup>, the 6<sup>th</sup>, the 45<sup>th</sup>, the 60<sup>th</sup>, the 73<sup>rd</sup> along with the 85<sup>th</sup> from Mauritius.

Jeff Peires' Grey however suspected a conspiracy, was as credulous as everyone else, and then had to retrospectively find proof that there had been one in the aftermath. Peires discounts the reality of the conspiracy, that obsessed Grey and his officers, rather emphasising the stress that Xhosa suffered from the ravages of lung-fever amongst their cattle.<sup>56</sup> Noel Mostert strangely attempted to extenuate Grey's responsibility by proposing that Major Maclean might unduly have influenced him.<sup>57</sup> Yet the same author notes that Grey had intervened against Maclean to ensure that a notorious "dealer in human flesh", or labour agent by the name of Hart, had access to Xhosa as Hart's activities "tended to disperse the Kaffirs in the interior of the colony".<sup>58</sup> Thus the doctrine of Port Louis paper of 1840 was operative two decades later. Relating the debate over Grey's culpability in the Eastern Cape, is not just to demonstrate the chaos in which the historiography on Grey quickly falls, but to demonstrate the incoherence of any account of Grey's behaviour without reference to an established doctrine and practice of power on colonial frontiers. It is impossible to discuss the resort to war in New Zealand in 1863, and the determination to reduce Maori autonomy to native administration under the terms of the *N.Z.C.A.*, without referring to the recent catastrophe in the Eastern Cape. New Zealand history is not an isolate from the rest of the empire, no matter how much nationalist agendas and Treaty discourse have made it seem exceptional at times. Nor was it an isolate from Grey's recent experiences.

Jeff Peires and Clifton Crais represent Grey as culpable for a disaster. There can be no doubt whatsoever that the consensus of modern historiography at least considers Grey

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<sup>56</sup> Peires, J. B. *The Dead Will Arise*, p. 218.

<sup>57</sup> Mostert, Noel, *Frontiers:-the Epic of South Africa's Creation and the Tragedy of the Xhosa People*, p. 1198.

<sup>58</sup> Mostert, op. cit., p. 1218.

as responsible for exploiting the crisis. Grey sought to provide relief through labour contracts, the “able-bodied”, to sign contracts for labour in the Cape Colony, the dependent were to be supported by the labour of their fathers abroad.<sup>59</sup> The argument of this thesis is not the personalist or psychological one that Grey’s personality had changed, and that the man who returned to New Zealand was remorseless compared with the man as he was before he was 40, in New Zealand. Rather that it was inherent in his Port Louis memorandum, and was factored into his Jominian military strategy, that opportune indigenous stress or else a trial of strength with indigenous authorities should be exploited, through circumstances as propitious as could be contrived. Grey had announced his plan for native administration in 1855 in the Eastern Cape and used the catastrophe of 1857 to impose it. The Port Louis paper of 1840 attained its most catastrophic implementation amid the loss of at least 40,000 lives. 150,000 had been displaced.<sup>60</sup> As for Grey’s relief plan, by the end of February 1858, 25, 362 Xhosa had been “relieved” of whom 22,150 or 87% were sent to the Cape Colony as labourers.<sup>61</sup> His South African record proves that when Grey found an opportunity to exploit indigenous vulnerability, he would not fail to take it so as to advance his amalgamationist programme. Racial amalgamation by gradual pressure would give way to invasive methods aimed at breaking the “nationality” of a people.

Complicity in these events outranked Grey himself. Herman Merivale expressed his appreciation for Grey’s policy in the Eastern Cape when he republished his lectures on colonisation in 1861.<sup>62</sup> By that time Permanent Undersecretary of the India Office,

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<sup>59</sup> Rutherford, op. cit., p. 367.

<sup>60</sup> Peires, J.B., op .cit., p. 288.

<sup>61</sup> Peires, J.B. ibid p. 263.

<sup>62</sup> Merivale, Herman, *Lectures on Colonisation and Colonies*, 1861 p. 511; and 511 n..

he recalled Grey's policy in South Africa so as to itemize the intended scale by which amalgamation was to be achieved. A master and servant relationship was to come about at first, then a relationship of "co-labourers", then intermarriage and finally common citizenship.<sup>63</sup> Grey also intended the white emigration to southern Africa, should produce a white population to match the black population. Lord Durham's purpose of "swamping" the French Canadians<sup>64</sup> and denying essential "differentiation" was enforced wherever Grey administered in the Southern Hemisphere. South Africa and New Zealand were destined to become mixed race populations to Grey's mind. Merivale's account is an endorsement for an agreed-upon policy for gradual racial amalgamation rather than after-the-fact rationalisation for exploiting plague and famine.

Damen Ward argued for a dichotomy between Grey's resident magistrates and the Fenton scheme of native districts and district commissioners.<sup>65</sup> The concept of "marches" developing between settlers and indigenes on the borderlands, once the frontier was denied and comprised by Jominian means, obviates the need for this distinction, both for Grey and modern scholars. The nuanced way to express this, is to say that Grey had no objection as such to district commissioners in his scheme of racial amalgamation. Rather the proponents of the Buxton Report scheme of native protection insisted upon district commissioners because they wished to protect indigenous peoples from the application of British law. Grey either applied resident magistrates either in place of district commissioners, or else used district

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<sup>63</sup> Merivale, Herman, *Lectures on Colonisation and the Colonies*, 1861, p. 511.

<sup>64</sup> Lambton, John George 1<sup>st</sup> Earl of Durham, in Sir Charles Prestwood Lucas (ed.) *Lord Durham's Report on the Affairs of British North America*, Clarendon Press, Oxford 1912., p. 290.

<sup>65</sup> Ward, Damen, "The Politics of Jurisdiction: British law, indigenous peoples and colonial government in South Australia and New Zealand, c. 1834-60", p. 48, p. 276.

commissioners and native districts as instruments of legal integration. Native districts were to be a temporary feature of marchlands.<sup>66</sup> Once a formal frontier was dissolved, a concentration of indigenous peoples was broken up by pressure from white settlers and from competition for land and resources, native districts could in fact persist as islands or virtual reservations for the time being, so long as they served the purpose of legal integration, and of racial amalgamation. Sir William Johnson in 1767 had distinguished between “Marches and Frontiers” to Lord Shelburne.<sup>67</sup> Grey himself had no special repugnance for native districts so long as they provided an instrument of amalgamation. Rather than propose that Grey adopted the scheme of Francis Fenton’s scheme in 1856, after 1861, to operate native districts, it is more useful to propose that he operated them for his own purposes. The native districts scheme was first proposed in New Zealand by Native Secretary Francis Fenton in 1858<sup>68</sup> resulting in the Native Districts Regulation Act 1858. The ideological controversy in this lay in that Donald McLean Grey’s former pupil in native governance and the head of the Native Purchase Department, had argued however for government through the chiefs.<sup>69</sup> That was a policy Grey had rejected as well in southern Africa and New Zealand.

Reduction of indigenous peoples to a “helotry” of wage labour was an essential component of amalgamation.<sup>70</sup> In 1855 Grey exploited the lung-fever plague in cattle

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<sup>66</sup> Hulsebosch, *Constituting Empire*, pp. 333-334 .

<sup>67</sup> Sir William Johnson to the Earl of Shelburne 3 December 1767, in John Romeyn Brodhead and E.B. O’Callaghan, (eds.) *Documents Relative to the Colonial History of the State of New-York: Procured in Holland, England, and France*; v. 7 p. 1001.

<sup>68</sup> Sinclair, op. cit., pp. 100-102.

<sup>69</sup> Sinclair, *ibid* p.100.

<sup>70</sup> Grey, George, *Journals* v II p. 385 paragraph 30.

to implement the resident magistrates and direct rule.<sup>71</sup> By 1856 he was responding to the cattle-killing with a multi-lateral containment plan.<sup>72</sup> In his assessment, the cattle-killing and resultant famine provided an opportunity:-

“ instead of nothing but dangers resulting from the Kaffirs having during the excitement killed their cattle and made away with their food, we can draw very great permanent advantages from the circumstances, which may be made a stepping stone for the future settlement of the country.”<sup>73</sup>

It would seem in any case that Grey's leading officers and officials shared the paranoia. In John Maclean the Assistant Commissioner for British Kaffraria, Grey found a willing collaborator.<sup>74</sup> The inability of imperial officials to interpret indigenous mindsets may be an issue with both the Eastern Cape disaster and the Waikato. This could have been interpreted as an issue of “trust” so that pre-emptive action as taken where this was lacking. Grey had been “rewarded” by his superiors, and derived many apparent political benefits for his kidnapping of Te Rauparaha in 1845. The reductionist machines of the army and bureaucracy were unleashed one after the other upon both of Grey's frontiers and marcherlands between 1855-63 in the Eastern Cape and the Waikato. Bureaucracy was by far the more effective, as Grey's resident magistrates expeditiously conducted labourers to the Cape Colony and his public works schemes for which he had borrowed heavily. Meanwhile Grey elaborated the crisis, making heavy play of his understanding of indigenous motivation, and exploiting the confidence of his superiors.

Realpolitik and paranoia reinforced each other in the minds of Grey and his collaborators. For as Merivale attested, Grey was:-

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<sup>71</sup> Mostert, Noel *op. cit.*, p. 1178.

<sup>72</sup> Mostert, Noel *ibid* p. 1209.

<sup>73</sup> Rutherford, *op. cit.*, p. 329 or p. 355.

<sup>74</sup> Mostert, *op. cit.*, p. 1174.

“One of those rare men who can enter into and represent themselves to, the savage mind.”<sup>75</sup>

Grey’s prime motivation was the practice of amalgamation policy by taking advantage of distress or political circumstances. The apparent paranoia that Peires commented on, could be a wish-fulfilling fiction or “winding up” of a “grand opera”, as Frederic Rogers wrote, to win over the Imperial Government. It also served to emotionally prepare Grey and his associates in power for the impending ordeal.

Certainly on the Waikato Grey’s operations feel “inevitable”. James Belich remarked that “this conclusion seems difficult to avoid, and it does not mean that Grey was some kind of inhuman warmonger.”<sup>76</sup> Belich’s assessment of Grey’s attitude towards the King Movement was that:-

“No doubt Grey would have preferred to remove it by peaceful means, but it is very hard to believe that he considered this realistic after about the middle of 1862. Grey’s ‘peace policy’ might better be described as his indirect preparations for war.”<sup>77</sup>

Belich correctly noted of Grey’s amalgamationist policy, that the governor believed it to be the only chance for Maori advancement or even survival,<sup>78</sup> and that his preference was for to avoid war, if he could. It is important not to confuse defensive and deterrent measures with “peace”. Events in the Eastern Cape demonstrate that Grey was capable of manipulating a natural calamity or a situation of great stress to

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<sup>75</sup> Merivale, Herman, *Lectures on Colonisation and the Colonies* 2<sup>nd</sup> Edition 1861, p. 511, footnote.

<sup>76</sup> Belich James, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* ; Auckland University Press Auckland 1986 p. 120.

<sup>77</sup> Belich *ibid* p. 122.

<sup>78</sup> Belich *ibid* p. 120.

produce results worse than those that a war could have produced. War in the Eastern Cape would not have delivered Grey the cheap labour that the famine supplied. In New Zealand the purpose of Grey's operations were to create a party of Maori leaders, who would support and fight for the government, and accept his plans for native administration. They were also to ensure that his government and British forces had as few enemies to fight as possible. He was unable however, despite his attempts to exploit divisions, to reduce the combination of *kingitanga* tribes.

*Myths of Grey in Crisis and in Peace*

The quality of Grey's decision-making has always been arguable in Grey historiography.<sup>79</sup> Peires noted the excitement that came over Grey during frontier visits, yet insists on the "clarity and consistency of his goals".<sup>80</sup> That statement belongs to the same lineage as, is perhaps a response to, Rutherford's assessment of the same events of 1856 that Grey's "health was poor, but that did not impair his judgment or curb his activity."<sup>81</sup> That assessment may be considered as definitive for the assessment of Grey's strategic decisions during his Colonial Office career. Despite occasional operational and tactical errors, Grey was able to apply his principles of frontier dissolution and indigenous amalgamation and improvise clear plans of implementation, despite frequent interruptions of illness, or alleged outbreaks of mental excitement. Errors naturally arose when those to be subjected to these plans did not behave as expected, or were else presumed to have done so. The phase of

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<sup>79</sup> Gorst, John, *The Maori King; or, The Story of our Quarrel with the Natives of New Zealand*, Macmillan, London 1864.

<sup>80</sup> Peires, J.B., *op. cit.*, p. 112.

<sup>81</sup> Rutherford, *op. cit.*, p. 352.

Grey's life when he could neither coherently plan public policy or operations nor hold public office to do so, lie outside of the bounds of this thesis, though it appears to have been imminent.<sup>82</sup> There can be no doubt though that Grey made a correct military decision not to contract the line of defence from the Keiskamma to the Fish River in early 1857 when General Michel advised him to.<sup>83</sup> His policy in New Zealand between 1861-63 was not in itself irrational, despite the strained and even hysterical tone of his despatches to the Duke of Newcastle. Regardless as to whether Grey suffered physical wounds<sup>84</sup> or psychiatric conditions,<sup>85</sup> that produced states of "demonic energy",<sup>86</sup> of alleged mania and hyperactivity, the historian's concern must be with the governor's policy, not with retrospective diagnosis. That policy is distinct, no matter what colony he served in.

Keith Sinclair nuanced the myth of Grey's first governorship thus:-

"But beneath the surface calm, before Grey left, a movement was beginning among the Maoris of much greater importance than Hone Heke's revolt. This was the *kotahitanga* or unity movement".<sup>87</sup>

In the light of Grey's persistent policy for racial amalgamation, a Grey "moment" for New Zealand during his first governorship can only be posited with the deepest irony. Peace and prosperity gave Maori the opportunity to deliberate amongst themselves about British policy for New Zealand. Halcyon descriptions of this period of peace and economic development gloss over profound Maori anxiety and suspicion, no

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<sup>82</sup> Grey's ministry of two years in New Zealand between October 1877 and October 1879 was known as the "self-destructing" ministry.

<sup>83</sup> Rutherford, op. cit., p.p. 364- 65.

<sup>84</sup> Peires, J.B. op. cit., p. 112.

<sup>85</sup> Bohan, *To Be a Hero*, p. 163, p. 228.

<sup>86</sup> Peires, J.B. op. cit., p. 112.

<sup>87</sup> Sinclair, op.cit., p. 66.

matter how much they engaged with the Governor. It was one of the extraordinary features of Grey historiography that in every colony he governed a tranche of settler “golden age” writing can be found about those periods.<sup>88</sup> Contemporaries could convince themselves of it. Even the Wellington settlers, whose Constitutional Association had been so hostile towards him, presented the departing governor in 1853 with plate inscribed “Fundatori Quietis”.<sup>89</sup> It can only be posited so long as it is understood that the “moment” was just a “moment” for Grey as well, and that he intended at all times to exploit the inherent instability to such situations, to further his policy, and that he knew himself how to exploit such times after he had facilitated propitious economic conditions. The Grey “moment” in a colony was an uneasy juggling act, intended to be un-done, and supposedly resolved by the further unfolding of the native policy to which it was dedicated. The welcome suspense lay in the settlers’ minds. 1850s Maori were stressed and anxious, while Xhosa were involved in utter catastrophe.

### *Maori Resistance*

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<sup>88</sup> Reeves, William Pember, *The Long White Cloud - Ao Tea Roa* Ch. 12 “Good Governor Grey” p. 217.

Price, Grenfell A., *The Foundation and Settlement of South Australia 1829-1845: -A Study of the Colonization Movement, Based on the Records of the South Australian Government and on other Authentic Documents*, F.W. Preece, Adelaide, 1924, p. 244.

Molteno. P.A., *A Federal South Africa: A Comparison of the Critical Period of American History with the Present Position of the Colonies and States of South Africa, and a Consideration of the Advantages of a Federal Union*, Sampson Low, Marston, London 1896, p. 62.

de Kiewiet, *A History of South Africa Social and Economic* p. 135.

<sup>89</sup> Collier, James, *Life of Sir George Grey*, Whitcombe and Tombs, Christchurch 1909, p. 92. “To the Author of the Peace” is how Collier translated it.

Beneath the apparent pacification and prosperity of mid century New Zealand then, Maori were in ferment. The agitation of the settlers for self-government was paralleled by conferences and discussions among Maori to protect their rights and govern themselves. The two movements towards respective autonomy could not be coordinated. Attempts had been made by Governor Sir Thomas Gore Browne between 1855 and 1861 to maintain a dual system of consultation and self-governance in New Zealand. The Kohimarama conference near Auckland in 1860 however was convened to recruit the support of Maori leaders for Browne's insistence upon supporting Wiremu Kingi's contested sale of land at Waitara in Taranaki, which provoked the first Taranaki War. It was also convened to oppose a *kingitanga hui* in the Waikato. In Browne's gestures towards Maori autonomy, the incipient bid to create a "Queen's" party of Maori leaders can be discerned, rather than a genuine embrace of annual parliaments and Maori government, as despatches stated.<sup>90</sup>

The *Kotahitanga* movement to which Sinclair referred, commenced amongst intertribal runanga and conferences in the late 1840s.<sup>91</sup> There was no plan to the discussions at first. They began as a political conferral among Maori leaders and turned into a constitutional project. Tribal leaders had sought to confer with one another as they considered opposition to land sales. A new economy was quickening in New Zealand, radiating out of the beachheads into the interiors. While the country lacked an internal market between settlements as Grey could note in 1851,<sup>92</sup> coastal shipping he observed, about much of New Zealand was largely in the hands of Maori, mostly to supply settlements that provided the beachfront stores for the tribes of a

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<sup>90</sup> Browne to Newcastle 28 August 1860 CO 209/ 155 No.88.

<sup>91</sup> Grey to Earl Grey 30 August 1851 *G.B.P.P. Papers Relative to the Proposed Constitution of New Zealand 3 May 1852* [ 1475] paragraph 27 p. 23 .

<sup>92</sup> Grey to Earl Grey 30 August 1851 *ibid*, paragraph 27 p. 23

region.<sup>93</sup> Yet no matter how scattered and intermittently in contact the settlements were, North Island Maori were fast appreciating that they all held in common a resource that did constitute a market, which was their land. In a cash-starved economy, bullion was welcome to Maori for paying accounts at the beachfronts. Pakeha were to be attracted so as to provide a captive market for tribal enterprise. Land was a commodity that could bring a considerable amount of bullion to a tribe in a single series of transactions. When Sinclair related the mesmerizing effect of the sight of money on Maori in land negotiations, he overplayed the unilateral appeal of money.<sup>94</sup> Maori needed specie to satisfy their debts as well as to obtain more trade goods. Pakeha storekeepers and tradesmen needed money as well. Grey in the great purchases of his first administration indirectly subsidized Pakeha traders and creditors in business with Maori. Belich notes above all that while economic interests were significant, the King Movement's assertion of sovereignty was extremely attractive to Maori:-

“ During the 1850's, however, Maori reluctance to sell land increased throughout the island. This shift of opinion was related to the emergence of a movement for Maori confederation: the King Movement.”<sup>95</sup>

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<sup>93</sup> Monin, Paul, “Maori Economies and Colonial Capitalism”, in Giselle Byrnes (ed.) *The New Oxford History of New Zealand*, Oxford University Press, South Melbourne 2009, pp. 125- 146.

<sup>94</sup> Rutherford, op. cit, ch. 13 “Land Purchase” pp. 163- 187.

Sinclair, op .cit., p. 83.

<sup>95</sup> Belich, James, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland University Press 1986, p. 75.

Grey was not unaware of the change of mood amongst Maori during his first governorship. As early as 3 May 1847 while he responded to the N.Z.G.A. despatch from Earl Grey, he warned:-

“ the mutual jealousies and animosities of the tribes have largely disappeared, and a feeling of Class or race is largely springing up, and has been greatly fomented by the efforts which have been made by designing Europeans to obtain their lands from them for a merely nominal consideration”.

Their ability to conduct “extensive conspiracies” facilitated by their literacy, Grey reported:-

“ I feel satisfied that many of them have entertained the design, if a favourable opportunity offers, to set up a national government.”<sup>96</sup>

The Port Louis policy of amalgamation would be politically impossible if Maori were permitted to create their own “nationality” and government.

The 1830s literacy revolution of the 1830s not only facilitated communication among Maori,<sup>97</sup> Maori thereby informed themselves of global history and of models of government, ranging from the Bible and the Hebrew state formation of the *Books of Samuel* and the *Books of Kings*, to the Haitian Revolution.<sup>98</sup>

Early in 1853 a deputation from Otaki led by Matene te Whiwhi bore a letter from Tamihana Te Rauparaha who had visited Britain in 1851 and been received in

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<sup>96</sup> Grey to Earl Grey 3 May 1847 CO 209/52.

<sup>97</sup> Parsonson, Gordon, “The Literate Revolution in Polynesia” *Journal of Pacific History* v 2 1967 pp. 39-57.

<sup>98</sup> Sinclair, op. cit., p. 78, *Te Hikioi* 24 May 1863.

audience by Queen Victoria.<sup>99</sup> They met Sir George Grey and Bishop Selwyn at Wanganui, showing them the letter. Sinclair represents Grey as unaware of the political potential to this mission.<sup>100</sup> This must be questioned. The Governor and the Bishop doubtless appreciated the importance of intelligence-gathering unresponsively and with a poker face. Grey had, as has just been seen, reported on the specific ambient “danger” to the colony, which he had upgraded in 1847 from tribal revolts such as he had pacified between 1845-47, to a national movement. The Governor received threats, dubious statements of loyalty, news of conspiracies all the time. In any case the Otaki chiefs were not to swear allegiance to the King.<sup>101</sup> Grey judged their particular mission correctly. Nor could a governor of New Zealand ever possess the power to prevent Maori politics from taking place. He was not a real autocrat, simply the Pakeha with the monopoly on British politics in the colony at that time.

Te Whiwhi and Te Rauparaha nonetheless started a cycle of deliberations however that led to constitutional determinations by 1858. The mission of the Otaki chiefs inspired the *hui*<sup>102</sup> named *Taiporohenui*, or “The Completion of the Work” at Manawapou, which was hosted by Ngatiruanui in April 1854 and was attended by Taranaki, te Atiawa and Otaki chiefs.<sup>103</sup> The results were inconclusive, but it gave rise to the settler myth extensively reported in newspapers, that a “land league” had been formed to prevent the sale of lands to settlers.<sup>104</sup> “Land league” was a term appropriated from the colonial experience of Ireland, the antipodean reversal in semantics that occurred, was that the landowners were represented in the role of the

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<sup>99</sup> Sinclair, op. cit., p. 69.

<sup>100</sup> Sinclair, *ibid* p. 69.

<sup>101</sup> Sinclair op. cit., p. 70.

<sup>102</sup> A *hui* is Maori for a conference.

<sup>103</sup> Sinclair, *ibid.*, p. 70.

<sup>104</sup> Sinclair *ibid* p. 71.

tenants and the Anglo-Irish land-owners in one case were the European settlers and prospective land owners of the other. Maori for their part did not lack effective media organs. On the eve of war the newspaper *Te Hikioi* told Europeans:-

“ cease annoying us. Allow us to do our work, to discover which is right, and which is wrong. Withdraw your hand from purchasing land. That is, from things which create confusion and which are pressing heavily upon us. For remember what you were in your former days, did you not clothe yourselves in goat-skins?”<sup>105</sup>.

No pattern to these conferences was emerging, until Wiremu Tamihana Tararapipi began his mission in 1857 to promote the election of a king from among leading chiefs. Two *hui* were held over 1857 and 1858 to discuss this proposal.<sup>106</sup>The Tainui paramount chief was elected king to become Te Wherowhero Potatau I in 1858 by most of the Waikato and Taupo tribes, by representatives of East Coast and Hawke’s Bay tribes. The Taranaki tribes refused to acknowledge the king because Te Wherowhero had ravaged their lands in the Musket Wars. Nonetheless a genuine movement to protect Maori land and sovereignty developed for which the King movement became the focus. A Queen’s Party also emerged from these deliberations from Maori determined to cooperate with the British order and secure the best terms they could.

Previous historical literature has concentrated on the constitutionalism of only the officials and settlers. That occurred all throughout settler polities between the First World War and the 1960s, as British settler “Whig” historians derived the constitutions of young nation-states from the Durham Report. Indigenes were either negatively present, to be excluded and “ differentiated”, or else ignored, when their

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<sup>105</sup> Sinclair *ibid*, p. 76 referring to *Te Hikioi* 26 April 1863.

<sup>106</sup> Sinclair *ibid* pp. 73-74.

inclusions and co-options were not regarded as anomalous or quaint. Such an approach in the New Zealand instance ignored the sense of a Maori constitution, that had developed alongside and in response to the *N.Z.C.A.* originated constitution. That approach also ignored the interconnections between the Maori and general New Zealand constitutional orders.

Maori too were constitutionalizing, as they reconsidered the Treaty, just as the Nelson settlers had in 1851 with their all-day public meeting, designing in one long session a draft constitution for the colony.<sup>107</sup> Both sides were radically revising the terms of the Treaty and going beyond the unstable status quo, which was merely a suspension, rather than a “Golden Age” or delusory calm. Pakeha wanted to unlock land by means of confiscation and the procedures of the Native Land Court, and they wished to impose a native administration upon designated Maori districts.<sup>108</sup> Wiremu Tamihana and the proponents of kingitanga, insisted that the king, Matutaera Potatau II, to be known as Tawhaio after 1864, was equal with the Governor and occupied the same relation as the Governor to the Queen in the New Zealand order.<sup>109</sup> This would perhaps have translated into a Basutoland High Commission territory such as Sir Philip Wodehouse was to negotiate between 1863-65. Nonetheless Basutoland was absorbed into the Cape Colony between 1871 and 1884.

The mountain redoubt of modern Lesotho was the result of guile and duplicity on the part of Governor Wodehouse towards the Cape General Assembly, the Orange Free State, Natal and Moshoeshoe himself the Sotho king that rivalled Grey’s mendacity,

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<sup>107</sup> McLintock, *op. cit.*, p. 311.

<sup>108</sup> Ward, Alan, *op. cit.*, pp. 151-152.

<sup>109</sup> Sinclair, *op. cit.* p. 75.

and was achieved at the cost of the best land to placate the Orange Free State.

<sup>110</sup>There was no *kingitanga* High Commission territory in the Waikato, because the lands were too desirable, for speculators and land-starved settlers alike, Maori would neither surrender nor sell them, moreover the territory was no mountain redoubt as Lesotho is, but covered the midriff of the North Island from coast to coast, from where the island is exiguous, near Auckland, to the widest extent between Taranaki and Hawke's Bay and the Bay of Plenty. Belich discusses the existence of an independent Maori state nonetheless in the King Country until the 1880s. <sup>111</sup>

### *Grey's Failures*

Waikato Maori had no confidence in negotiations with Grey. Sinclair's assessment from 1957 remains the best available. <sup>112</sup>Sinclair argued that even if Grey wanted pacification, he had in fact provoked war by extending the road to defend Auckland from Te Ia to Mangatawhiri. The king and his supporters had no intention of attacking Auckland. Rewi Maniapoto had closed the Waikato river to steamers. <sup>113</sup>All that the road extension brought about was the failure of pacification policies that were intended to divide the King's adherents. Grey was obliged to defend Auckland from

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<sup>110</sup> Sanders, Peter, *Moshoeshoe Chief of Sotho*, Heineman, London 1975 pp. 302-307.

<sup>111</sup> Belich, James, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland University Press 1986, p. 306.

<sup>112</sup> Sinclair, op. cit., pp. 237- 252.

<sup>113</sup> Sinclair, op .cit. p. 248.

attack and to bring the war to the Waikato away from Auckland. Grey's intervention in a Coromandel dispute in 1862 was of the same order. <sup>114</sup>

It was not a general policy of pacification that failed but his attempt at divide and rule. His alleged proposal for a Waikato Maori "province" was the same. Authorized by the Duke of Newcastle to recognize the king and to allow a Waikato Native Council to forward laws for assent to both the Governor and the king, Grey refused to recognize the king. <sup>115</sup>In fact he was to claim that he had offered the Waikato and Ngati Maniopoto tribes full provincial government instead. As there is no proof for Grey's claim, according to Ward, the meaning of Grey's claim is that he offered corresponding institutions from the N.Z.C.A., so as to supplant those of the king. <sup>116</sup> Implementation would however have required Maori to break with the king. In no wise could a Maori provincial government have prevented either an accretion or an influx of Pakeha and deny them rights in that territory. Moreover amendment of the *N.Z.C.A.* section 19 to enable a Maori provincial council to pass laws for Maori land and districts might have provided a precedent for the other Pakeha-controlled provinces. <sup>117</sup>The overbearing miscalculations that brought about the 2<sup>nd</sup> Taranaki war in May 1863 were intended to divide Maori and present settlers with just one front of war. <sup>118</sup>

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<sup>114</sup> Gorst, John, *The Maori King, or, The Story of our Quarrel with the Natives of New Zealand.* p. 299.

<sup>115</sup> Ward, Alan, *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand,* University of Toronto Press, Toronto 1973, p. 156.

<sup>116</sup> Ward, op. cit., p. 157.

Grey to Granville, 27 October 1869 *A.J.H.R.*, 1870 A-1B pp. 81-82.

<sup>117</sup> *N.Z.C.A.* sec. 19 subsec. 10.

<sup>118</sup> *A.J.H.R.* 1863 E-2 pp. 8-10.

Grey's manoeuvres in Taranaki failed to close the prospect of war in that province, so that he could better concentrate on the Waikato tribes alone.<sup>119</sup> The intentions of the king and his supporters however were defensive rather than offensive in the Waikato.<sup>120</sup> They had however advised Taranaki tribes to go to war when Grey ordered troops to occupy the Omata block, in a heavy-handed demonstration of force. The Omata block had been land that Maori had occupied as retaliation for the settler occupation of the Waitara block. The result was the Oakura ambush on 4 May 1863. While the Waikato and Taranaki presented no opportunities for genocidal distress such as the Eastern Cape had, Grey was determined to break the King Movement, just as he had the Xhosa nation.

The Colonial Secretary the Duke of Newcastle did not believe that Grey's pacification policy would succeed.<sup>121</sup> The Governor kept all options open for if it did not.<sup>122</sup> As he eliminated none of those preparatory measures for war, and unstintingly applied pressure, while applying himself to negotiations, the truth is rather that he thought pacification would fail, and that war was more likely than peace, and that he had better secure the best vantage for that occasion. Pacification policy for Grey was a reductionist method for confronting as few enemies as possible, and for ensuring that there were enough neutral tribes and enough Maori support for the New Zealand government to find allies among them. That government was also still to be represented as supposedly working in the interest of Maori.

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<sup>119</sup> *Appendices to the Journals of the House of Representatives* 1863 E-2 p. 15; E-7 p. 8.

<sup>120</sup> New Zealand National Archives, Rewi Maniapoto to Taranaki *runanga* 15 April 1863 G 13/3.

<sup>121</sup> Newcastle minute on Grey 23 November 1861 CO 209/ 165 No 23.

<sup>122</sup> Grey to Newcastle 7 January 1862 CO 209/ 167 No 2.

Sinclair proposed that Grey's previous experience of Maori perhaps made it harder for him than a stranger to understand the King movement, and that the methods applied to pacify them peacefully aroused suspicion.<sup>123</sup> Grey understood all too well within the bounds of his comprehension. He no longer cared to know. At such a juncture he should be regarded as the revolutionary enactor of his own policy rather than as the humanitarian native protector, which was his role in the first New Zealand governorship. Yet naturally he preferred less trouble rather than more, and in all events wished to preserve a personal influence over Maori. In these respects his final lone visit to the Waikato tribes on New Year's Day 1863 makes sense. Assuring Waikato of his hostile intentions before he was taken ill, and obliged to withdraw, Grey was demonstrating that influence could be used to intimidate as much as persuade. He was determined, from his performance in the Eastern Cape, to whittle opposition down, exploit catastrophe and then introduce his institutions for native administration.

The Governor abetted his ministers' policy of confiscation, discovering a popularity among settlers that he had never previously obtained in New Zealand. He had countenanced confiscation as early as when he received instructions at Cape Town to relieve Browne in New Zealand. The property franchise of the *N.Z.C.A.* was supposed to incentivize the conversion of collective lands to individual freehold tenure, which Maori themselves were supposed to take advantage of. In reality only a few chiefs and Maori entrepreneurs were qualified. The *N.Z.C.A.* until the introduction of the Maori Representation Act 1867 presented an effective exclusion to Maori political participation outside of the Native Department's administration and the Governor's

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<sup>123</sup> Sinclair, *op. cit.*, p. 241.

reservation of native policy and civil list. Confiscation represented a revolutionary engine in Maori economics and labour relations with Pakeha. Hitherto Maori land and not labour had been the objective of governments in New Zealand. Dispossession of land rendered Maori a rural labour force, effectively helotizing them. Policy on the Eastern Cape and in the war zones of New Zealand thus corresponded to one another under the same imperial agent, so that in a perspective from the 1840s, one could just as easily say that New Zealand had “South Africanized” as that Southern Africa had adopted “the New Zealand system”, as Earl Grey had remarked to Lord John Russell.

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Amidst such destruction the New Zealand Constitution was highly adaptable in its first two decades of operation. Paternalist native administration was to replace Maori autonomy. The provinces were to become redundant in time and reduce to local bodies in power, by even Grey’s admission.<sup>125</sup> Although no appreciable period of gubernatorial rule eventuated as in Grattan’s Parliament in Ireland, responsible government was neither alien to its intention, nor to even Sir George Grey’s aspirations for eventual settler self government. The *N.Z.C.A.* then can be regarded as an exercise in provisional government, that government remaining provisional until the native policy expressed by that Act became operational.

The Governor who contributed to the Act, made it operate during his second term as gubernatorial government in so far as it was possible through Executive Council, so

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<sup>124</sup> Grey, Henry George, 3<sup>rd</sup> Earl Grey, *The Colonial Policy of Lord John Russell’s Administration* R.Bentley London 1853, v. II p. 204.

<sup>125</sup> Morrell, *The Provincial System*, p. 53, referring to Earl Grey to Grey 23.2.1852 *G.B.P.P. Papers Relative to the Constitution of New Zealand 20 May 1852* [1483] p. 5.

as to carry out the native policy that had been his chief contribution to the exercise. Grey constitutionalized primarily for the purposes of racial subjugation and for the amalgamation of indigenous peoples into the settler markets and eventually civil society. The future culminating goal of the Grey scheme for racial amalgamation, a common civic order with political rights for Maori, was to be prefigured in the General Assembly's concession of the Maori Representation Act 1867. As we have seen the late Confederate States of America had been the first polity that allowed indigenous representation, representing Five Nations allies in its 1<sup>st</sup> and 2<sup>nd</sup> Congresses. Between 1868-72, Maori Members of the House of Representatives, Legislative Councillors and Executive Councillors first became features of the constitutional order.

Thus colonial politicians sought to induct Maori leaders into responsible government, as they themselves were inducted. The discipline for the separate capacitarian processes was different however, a brief apprenticeship for the settlers, a long tutelage supposedly for Maori, if they were not intended to die out as a separate race altogether. The racial system then was the most permanent feature of the start-up *N.Z.C.A.* system, so much else of the constitution becoming redundant or else improved. A commentator closer to his own age and to his capacitarian liberal and paternalist values best assesses what Grey actually achieved. Edgar H. Brookes' commentary on Grey's system as it was applied in South Africa shall serve as the conclusion:-

“ A less striking personality, he was content to create a system and to delegate freely to others: thus, when he was withdrawn, his policy survived him”.<sup>126</sup>

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<sup>126</sup> Brookes, Edgar, op. cit., p. 92.

For the remainder of his term, Grey depended on the chaos of war as his power-base and spent much time close to or involved in hostilities, seeking to replace or support commanding officers as much as ministries in Auckland, and after 1865, Wellington, after the change of capitals. He was relieved of his active powers as commander-in-chief in March 1867.<sup>127</sup> His colonial service career concluded with a barely disguised recall.<sup>128</sup>

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<sup>127</sup> Madden, Frederick and Fieldhouse, David (eds.) *Select Documents on the Constitutional History of the British Empire and Commonwealth*, p. 514 note 1.

<sup>128</sup> Duke of Buckingham to Grey 18 June 1867 *G.B.P.P. Correspondence and Papers Relating to New Zealand 8 July 1869* [ 307] p. 408.

## Chapter Ten

### Conclusion

One of Grey's superiors, a fellow Liberal Anglican, who understood his mind and temperament, and approved of his general policy offered his explanation of the governor in 1859. While still Permanent Undersecretary of the Colonial Office Herman Merivale wrote of Grey in 1859:-

“ It may be that he trumpeted his own success too much. It may be that he talked pompously of systems when.....he introduced none. The truth is, he had the Maoris well “in hand.” He could govern them and lead them towards civilization; and he did so. Very probably this was mainly owing to his personal qualities; his knowledge of their character: his nobleness of spirit and intention: even the romance and enthusiasm which lay in his character & responded to theirs.”

He concluded:-

“perhaps.. he unconsciously attributed too much to his regulations, too little to his own personal qualities. But a merely conceited man would have done just the reverse.”<sup>1</sup>

Thus much Grey's contemporaries understood of him. This thesis has integrated the sundered national historiographies concerned with George Grey to produce an imperial perspective for the first time. It has done so by analysing Grey's first New Zealand administration between 1845 and 1853. Grey's government of New Zealand exemplified the entire programme he first enunciated in the Port Louis Memorandum of 1840 and his *Journals of Two Expeditions* of 1841. Government by Grey was government that imposed amalgamationist racial orders upon the indigenes of settler

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<sup>1</sup> Merivale, 21 August 1858 on Despatch CO 209/ 145 no. 43.

colonies, and yet constituted those societies as polities so as to effect amalgamation in capacitarian conditions. This thesis has analysed the consequences for the first time of what it meant that Grey opposed the segregationist native policy that the Select Committee on Aboriginal Affairs revived from the Appalachian Protectorate that arose from the Seven Years War. Amalgamation was in the atmosphere of Liberal Anglican circles, for Thomas Arnold commended the Romans for their integration of peoples and compared them with the segregationist Carthaginians. Amalgamation was the remedy of the Jeffersonian and Harringtonian political thought, that Grey received and adopted. The remedy of settler intelligentsias from Tudor Ireland and Stuart Virginia, it was re-emphasized in the debates preceding the American War of Independence against the policy of Crown agents in the Appalachian protectorate. From British India and British government in Malay states and possessions, the option of legal integration presented itself as James Mill and Sir Stamford Raffles argued against the “Orientalists”.

The thesis has argued however that Grey was not just an “exponent” of amalgamation, but a deviser of policy who was able to present and practice his programme taxonomically. His policy was developed out of ethnographical observation and thought, and referred to the constitutional arrangements of the “receiver” colonies that were to absorb indigenes. His predecessor in this general scheme was undoubtedly Lord Durham, who had proposed swamping of French Canadians by British emigrants, and the requisite constitutional instruments to supposedly effect that. Before Durham, Thomas Jefferson had managed a variety of related policies from before the American Revolution. At all events Grey was the first British official to apply amalgamation to peoples considered as “uncivilized”, as

distinct from anciently or allegedly deficiently civilized literate nations and peoples. Grey's powers of ethnographic and military explanation were more sophisticated than Jefferson, yet Gallatin's *Synopsis* as an anthropological text, and Jominian doctrine at West Point were accomplishments of the early American Republic. Grey was the first however to capture the offices of Crown agents in colonies to apply the policy, for Crown agents had hitherto applied segregationist native protection on the Appalachian model, and it was settler intellectuals who had opposed them by proposing amalgamation and legal integration. From that vantage Grey practised the policy at two tempos, temporisingly and incrementally, and then at a revolutionary pace when he took advantage of indigenous stress. So far then from devising an "ethno-constitutional" order for colonies from his ethnographic and constitutional concerns, Grey devised what was only the second of only three policies for the administration of indigenes in the British Empire. If Sir William Johnson's policy of segregation in the Appalachian protectorate preceded Grey, "Indirect Rule" was to succeed him throughout the empire.

Grey's native policy was conducted in tandem with the constitutionalism he practised in settler colonies. He served as a colonial governor precisely when the British Government was managing devolutions of representative and then responsible government to settler colonies. He was admitted while governor of New Zealand to the closed circuit of constitutional conversation, in preparation for the New Zealand Constitution Act, after he had succeeded in arguing that the New Zealand Government Act 1846 was unsatisfactory. It was in New Zealand that Grey was challenged to both apply his native policy and find the constitutional order to express it. Publicly praised through abundant honourable mentions in the Houses of

Parliament, and awarded an honorary doctorate of Law at Oxford University, Grey was to identify throughout his subsequent career as the constitutionalist of racial amalgamation as evidenced by a “New Zealand system”. In that character Grey made interventions in South Africa and Irish politics that at least rendered him a nuisance to British governments of the day. Grey was the “man of a moment”, and that moment depended upon the devolution of representative and responsible government to the settler colonies after the publication of the Durham Report in 1839. It depended upon the respect and forbearance of Whig statesmen such as Lord John Russell and Earl Grey, and upon a Tory such as William Gladstone, who understood how to engage with the Governor of New Zealand.

Grey was the deviser of a sophisticated and articulated native policy and he argued for the constitutional structures to accommodate that. A temporiser and yet an exponent of a colonial Realpolitik, Grey proposed and practised dynamic processes. Political and purely policy histories have failed to arrive at this integrated and imperial explanation for Grey. The sources and structure for his policy have required the history of political ideas that this thesis has first attempted. The situation out “in the field”, the politics that affected the Colonial Office, settler interests, and increasingly indigenous histories have previously been factored in. Yet even excellent and classic work, arguably the best to date, though from the inter-war period, such as C.W. de Kiewiet’s comprehension of the Grey system, failed to comprehend Grey as an imperial officer, who conducted policy in other colonies, and failed to attend to the ideas that constituted Grey’s policy, though it is almost apparent at times that de Kiewiet might have understood them, and written about them, if in fact historical writing had permitted more theoretical representations then.

In the first instance Grey was educated as a soldier and self-educated as a savant. From Grey's own Port Louis papers, and other military assessments of frontiers and marcher-lands, from de Kiewiet's own elucidations of how Grey treated frontiers, it is clear that Grey was practising a specific military strategy for both ethno-sociological and security reasons. It has been the task of this thesis to identify that strategy, and it is the military thought of the Baron de Jomini, who enjoyed global fame, though an indifferent British reputation, as an explicator of the battles and campaigns of the Seven Years War, the Revolutionary and Napoleonic Wars. Jomini's strategy influenced the two great terrestrial European colonial empires of the 19<sup>th</sup> century, Russia, in the service of which he entered, and the United States. Grey was the British exponent of Jominian theory for the hinterlands of British settler colonies. The particular respect to which Jominian theory brought unrivalled power of explanation at that time was in its treatment of colonial frontiers. Frontiers between settler colonies and indigenes had been cartographically expressed, regulatory regimes imposed on them for settlers and indigenes alike, military investment placed into holding the line. Jominian analysis dissolved the frontier as militarily useless. Grey applied this analysis to the indigenous "hordes" and tribes of Australia, New Zealand and southern Africa and argued that the security of the colony lay in its porosity towards indigenes and its ability to prevent them from accumulating at points along a frontier, and to absorb and "civilize" and include them according to the stadial capacitarian models he deployed.

Grey possessed the racial theory and ethnography to articulate his policy. As an adherent of Blumenbach's racial theories, Grey viewed the racial creolization of

settler society with equanimity. As an ethnographer he argued the common origin and full humanity of indigenes, while insisting that it was their social structures customs and institutions that prevented their development. The most eligible means for Grey to effect indigenous development was to homogenize them in a so-called “policy of identity” with settlers.

To secure the cooperation of the settlers, Grey deployed a discrete tradition of constitutional and political thought. To ensure their non-interference in his policy, and subordination to his programme, he admittedly resorted to the some of the repertoire of emotional and social manipulations he employed with indigenous leaders. He could range from being prepossessing and arrogant to mysterious and strangely enervated, creating suspense about his intentions. When seeking to secure cooperation, he could be charming and confiding. Emotional exploitations aside, Grey was securing cooperation with a policy when he managed executive councils and prepared for responsible government. That policy was Jeffersonian and Harringtonian in its origins. Harringtonianism was avowedly in the colonial interest, privileging the moment of “over-balance” in a colony. It accounted for official interference against “land-jobbing” and “squattocracy” preventing the formation of great run-holdings and estates for the sake of a citizen body of freeholders, who would constitute the political community and govern it in their interest, preventing the domination of an Ascendancy or commercial interest, that would corrupt the polity. Such policy explained what was wrong with Great Britain in the first place, that its subjects emigrated from it, and critiqued other colonial regimes as reproductive of those evils. It was doubtless Grey’s hope that just as other settler colonies in Ireland and America had developed settler intelligentsias that propounded Harringtonian values and legal

integration and racial amalgamation, he might be able to instigate and mentor such liberal intelligentsias in the Southern Hemisphere. The most potent aspects of Harringtonian thought doubtless served as self-justification and endowed Grey with the astonishing intellectual confidence he manifested at this period. In the first place the Harringtonian repertoire contained in the thought of William Molyneux a comprehensive justification of the stronger royal prerogative in a subsidiary polity of the British Empire. This thesis proposes that the thought of William Molyneux and that the policy of George Grey can be added to the otherwise masterly argument of Daniel Hulsebosch. Grey was a Crown agent who exploited the monarchical constitutional of the empire, just as Hulsebosch argues, yet he did it for the settler interest, as Molyneux and Thomas Jefferson proposed, and specifically for the settler interest in the amalgamation of indigenes. Furthermore Harrington's thought explained at least to Grey himself, if not to the Colonial Office, the British Government, settler and indigenous leaders, why he had to use gubernatorial prerogative in ways that were regarded as autocratic and eventually as hubristic. Machiavelli's legacy to James Harrington was the concept of the nomothetic start-up dictator, of a constitutional order in which the dictator would be supplanted by mechanisms and institutions of routine government that should no longer require such extraordinary personalities to conduct the routines of government and complete the programme of racial amalgamation.

Sir George Grey was a uniquely committed soldier savant and intellectual in the Colonial Service. Like Dr Arnold, Archbishop Whately, Sir Edmund Head, Herman Merivale and Sir Travers Twiss, he was a Liberal Anglican involved in imperial policy. He especially belonged to the subset of Liberal Anglicans who responded to

“ancient constitutionalist” and Harringtonian themes. The Liberal Anglicans were not a sect, one may not talk about a “Liberal Anglicanism”. Nor were Liberal Anglicans evangelicals. Sir George Grey did not contribute to an “Age of Atonement”. They were a reading and social circle dedicated to defending and demonstrating Christian evidences on the basis of probability and reasonableness that was argued in Bishop Butler’s *Analogy of Religion*. From Richard Whately, Grey derived a Natural Theology of fallen mankind, which he reconciled with Blumenbachian racialism and the ethnography he acquired from Albert Gallatin and Thomas Jefferson. The Liberal Anglicans had also accessed the writings and researches of Alexander von Humboldt, who had also declared himself a proponent of proactive amalgamation of indigenes in his critique of the previous three centuries of Spanish rule in the Americas. The intellectual context then in which Grey developed and practised his policy was always the Harringtonian section of the Liberal Anglicans. American receptions provided him with a modern ethnography and a policy for expressing that political and intellectual formation, as did the Utilitarian policy in India and the Malay states.

Since the Evangelicals were committed by the Buxton Report to opposing Utilitarian policy in India, a Liberal Anglican such as Grey was able to effect that borrowing instead from the Utilitarians and argue for the amalgamation of indigenes from the example of British practice in South and South-East Asia. For the norm was that Evangelicals would borrow from the Utilitarians and “infidel” sciences as the Liberal Anglicans would not. There is no need to posit as Peires did, a chimerical Grey that was a Carlylean Benthamite. Whereas Humboldt offered a melange of ethnographical observations and American antiquities, Grey was able to make the leap to argue for the amalgamation of indigenes in the terms that James Mill and Sir Stamford Raffles

proposed, because he had developed an ethnography, that was able to replace the research into antiquities to which Raffles had dedicated himself in Java, for native policy among indigenous peoples.

Grey was uniquely a soldier among Liberal Anglicans, though he was far from alone as a publishing intellectual or savant in the British Army of that time. Jominian strategy endowed Grey with great powers of analysis and explanation. His contention that amalgamation was the better policy than segregation was abetted by both ethnographic and military analysis, a formidable combination. His Harringtonian values affirmed the general character of settler populations, rather than denigrated them, as had been the practice of Sir William Johnson in Appalachia and of much evidence before the Select Committee on Aboriginal Affairs. Singular to Grey was his interest in the writings of francophone political economists and in Swiss francophone Protestants, Albert Gallatin's ethnography, Jomini's military strategy and Physiocratic political economy. Though one would not wish to labour this point, such a combination of authorities corresponded well with the capacitarian political thought of the French Protestant statesman Francois Guizot, who greatly interested Whig constitutionalists. Guizot was an ambient influence in the culture of political thought, and one need not adduce that because Grey's mother was of impeccable Huguenot provenance, that Grey had a pronounced enthusiasm for some lost birthright or alternate heritage of thought. That he had such interests and how he used them has been the concern of this thesis, which has refrained from indulging in the abundant and usually inconsequential psychological and *ad hominem* observations that Grey's career attracts.

Grey then was the doctrinaire capacitarian liberal for settler and indigene alike, desirous of training up settlers to continue his policy, as he was to “civilize” indigenes. In him crisis became manifest that was not entirely attributable just to his personality and psychological difficulties. It has been the business of this thesis to indicate that a settler empire founded on the “Liberalism of Capacity”, rather founded on difficulties and contradictions, from trying to reconcile the respective British and non-British populations of the colonies, and trying to preserve the supervisory constitution of the empire in conditions of devolution, when the governor might convince himself that he had captured the prerogative for the settler interest, rather than used it in the interest of the British government of the day. Grey’s native policy and constitutionalism referred to one another, for the ultimate destiny for indigenes to him was their absorption in the settler polity, eventually as full citizens. Grey however increasingly sought revolutionary means to break indigenous polities and economies so as to “helotize” indigenes in the first instance, - means that became too exorbitant and catastrophic for imperial authorities to countenance between 1857-1867, and were replaced by the institutions of “indirect rule”, as the next imperial paradigm of native administration.

Grey was the creature of a “Moment” in British imperial policy and the proverbial “lion of a season” or two, as far as British authorities were concerned. That moment arose from devastating critique of the Buxton Report in 1837 and from critical and constructive engagement with the Durham Report of 1839. It was evident that these two documents were in contradiction with one another over the status and civic capacity of non-British minorities, whether the “static” (though civilized) French peasantry of Canada, or indigenous peoples. From out of Western Australia, from the

circle of officials and humanitarian settlers about Governor Hutt, and from out of Mauritius, Grey composed the opportune document and provided the policy that addressed the processes whereby capacitarian liberalism was introduced into the settler colonies. Throughout and 1840s and into the 1850s, Radical Whigs and Peelite Tories considered by reference to political principles, what they thought they knew of local conditions and of colonial life, how they might devolve parliamentary government to the colonies, replacing the executive government of colonial governors under the monarchical constitution of the empire with responsible ministries. What Franco Venturi argued for the imperial 1770s applied just as much to the second quarter of the 19<sup>th</sup> century that provided Grey with his “moment”:-

“ the problem of the organization of liberty itself was one of the bonds keeping together lands that were so distant and diverse”<sup>2</sup>.

That organization of liberty in Grey’s policy sought to impose the same “liberty” upon indigenes that settlers were to enjoy in the same colony, by means of a capacitarian process that converted protected indigenes to British subjects, and then from subjects to citizens. Indigenes bore the exorbitant social and economic costs of their “civilization” into the colonial civic and economic systems, as their social structures and institutions came under stress and were compromised, and as they were inducted into the colonial workforce as cheap labour. Grey’s alternative to the segregationalism of the Buxton Report failed, and was replaced by “Indirect Rule” as the imperial paradigm. Nonetheless amalgamation survived in local variations, such as in New Zealand’s institutions, and as the alternative of a liberal white opposition to

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<sup>2</sup> Venturi, Franco., “The 18<sup>th</sup> Century of Reform” in *The End of the Old Regime* Princeton, 1989 trans. L Burr Litchfield, p. 377.

segregation in South Africa. It remained part of the policy repertoire in Australia and Canada as well.

It was in the colony of New Zealand between 1845 and 1853, barely founded yet already ravaged by rebellions, that Grey first demonstrated his native policy in “temporising” mode, and became the “authority” on the spot for constitutional conversation and for management of a constitutional process. Although the catastrophe in South Africa was greater, and the check to Grey’s constitutional policy there compromised his career, it was in New Zealand that Grey’s policy and reputation shifted from potentiality into action and definitive constitutional articulation. It was also only in New Zealand that he presided over the completion of the dual native policy and constitutional processes, ensuring during his second New Zealand governorship ensuring that his ministry accept responsibility for native affairs, and that war become the environment in which institutions of direct native administration were imposed upon the resistant *Kingitanga* and Taranaki tribes. The New Zealand experience before 1854 then apparently proved Grey’s policy and his constitutional reputation, to the extent that they became a myth which Grey himself was anxious to believe in, - a myth, and resulting anti-myth about which historical controversial has raged, to the detriment until now of the actual political ideas and intellectual culture that he applied to New Zealand in the first place.

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