

POLITICS, IDEOLOGY AND THE NEW
SOUTH WALES LEGISLATIVE COUNCIL,
1856-72

by

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This thesis is my own work.

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ABBREVIATIONS

<u>A.D.B.</u>	<u>Australian Dictionary of Biography</u> , D. Pike (Gen. ed.), Melbourne, vol.1, 1966, vol.2, 1967, vol.3, 1969, vol.4, 1972, vol.5, 1974.
A.N.L.	Australian National Library
A.O.N.S.W.	Archives Office of New South Wales
<u>J.L.C.</u>	<u>New South Wales. Journals of the Legislative Council</u>
<u>J.R.A.H.S.</u>	Royal Australian Historical Society, <u>Journal</u> .
M.L.	Mitchell Library
P.C.	Parkes Correspondence
P.R.O./C.O.	Public Record Office/Colonial Office
<u>S.M.H.</u>	<u>Sydney Morning Herald</u>
<u>V. & P. (L.A., N.S.W.)</u>	<u>New South Wales. Votes and Proceedings of the Legislative Assembly</u>
<u>V. & P. (L.C., N.S.W.)</u>	<u>New South Wales. Votes and Proceedings of the Legislative Council.</u>

ABSTRACT

The nominated Legislative Council in New South Wales was never intended as a bastion of squatter supremacy but was preferred to an elective upper house partly because it seemed likely to give representation to urban conservatives and partly because it could be 'swamped' in constitutional deadlocks with the Assembly. In the first years of responsible government the Council became, as expected, the organ of urban conservatism, but those years also saw the growth of a radical liberal movement drawing most of its support from small traders, minor professional men and artisans. The wealthy businessmen, lawyers, landowners and squatters whose interests the Council was designed to protect were unable to prevent the enactment of 'class legislation' in favour of the 'little man'; they heard liberal politicians attack the supremacy of statute law and deny the necessity for a conservative upper house; and they saw state aid withdrawn at a time when the influence of conventional religion seemed necessary to prevent the 'disintegration' of society. Above all, the Governor was forced to swamp the Council when no strictly constitutional deadlock existed, destroying conservative faith in the nominated upper house. After the swamping, however, Cowper, the liberal Premier, conciliated the conservatives and during the 1860s they regained some of their influence. Liberal eagerness for 'popular' reforms diminished and, as the conservatives' fears subsided, they began once more to favour the nominated Council. By the early 1870s, many liberals also agreed that the principle of nomination had worked well. The old political divisions were by then almost irrelevant and conservatives of the 1850s contributed significantly to the 'liberal' ethos of the 1870s and early 1880s.

INTRODUCTION

This thesis does not pretend to give a comprehensive account of the New South Wales Legislative Council from 1856 to 1872. The reader will not find a detailed record of the Council's business or its contribution to the legislation of the period. Even such matters as the Council's relationship with governors, governments and the Assembly are not treated as subjects significant in their own right, although they are often referred to. Instead, the Council, its critics and the issues which they debated are made the vehicles for a discussion of liberalism, conservatism and changes in the pattern of political conflict in New South Wales in the third quarter of the nineteenth century. Even here, the treatment has been selective. It would be a strange thesis which chose a predominantly conservative upper house as the most suitable medium for an examination of liberalism, and the discussion has naturally been directed primarily towards an explanation of conservative attitudes and actions. The analysis of liberalism is, however, by no means perfunctory, and in some ways represents a radical departure from previous interpretations.

Implicit in the analysis of political beliefs in this thesis is the rejection of two crude theories of political motivation. The first is that men's political positions can be explained simply in terms of the arguments which were used to justify them. This type of explanation is usually deficient in one of two ways. In the first place, such arguments are frequently based upon appeals to beliefs sacred to both sides, such as justice, laissez-faire, or admiration for things British. In such cases, the arguments do not reveal the divergent attitudes which cause men to disagree: they are simply appeals to bi-partisan principles invoked to rationalize and justify positions adopted for other reasons.

In the second place, even where the contending parties justify their stand in terms of theories rejected by the other side, these doctrines are not a sufficient explanation of their position. For example, to explain the opposition of

liberals and conservatives in terms of their adherence to liberal and conservative beliefs simply begs the question of why liberal principles appealed to some men and conservative principles to others.

The explanation of the role of liberal and conservative ideologies in this thesis is based upon the view that men favoured those doctrines which satisfied their needs, whether those needs were the product of economic interest, social pressures, political ambition or genetic predisposition. Men were conservatives in the 1850s when they had a psychological stake, whatever its origins, in the social and political order which existed before responsible government. They found the doctrines of British conservatives appealing because they provided arguments against change and rationalized attachment to the existing social and political order. The theories of British radicals and liberals were distasteful because they did not meet the conservatives' need for a justification of the status quo. By the same token, radicals in New South Wales were men who had a psychological interest in change and who for that reason rejected conservative doctrines and clung to radical ones.

This is not to say that political beliefs were unimportant, for the second crude theory of political motivation which must be rejected is that political theories have no influence. It would be misleading to say that in New South Wales in the 1850s liberals and conservatives were simply trying to defend their interests - particularly if those interests are seen as purely economic ones. In the first place, men sometimes defined their interests in terms of ideologies. It will be argued, for instance, that the conservatives preferred a nominated Legislative Council partly because their conception of their interests was moulded by British constitutional doctrines. In such cases, interest and ideology are complementary. In the second place, political beliefs often outlive the needs which created them and are preserved in situations to which they are inappropriate. The Reverend J.D. Lang, for instance, still preferred an elective Council to a nominated one even when he came to believe that the most democratic elective upper house would, in practice,

be worse than the existing nominated chamber.¹ His continued adherence to the elective principle was, of course, a manifestation of the psychological need to appear consistent, but this does not reduce the importance of the political beliefs to which he felt compelled to remain faithful. Ideas and the need to adhere to them are both integral parts of any explanation of his behaviour.

In all political conflicts there are interests at stake, whether political, social, emotional or economic. There are also ideologies which correspond to those interests. The task of this thesis is to identify the interests which lay behind the political conflicts of the 1850s and early 1860s and to isolate the ideologies which helped to mould men's actions. The interests which conservatives and liberals were fighting for were not always those which historians have thought important; still less were the ideologies influential in the way some have supposed.

¹J.L.C., 1873-4, pt.1, pp.381-6, passim. See below, pp.307-8.

CHAPTER I

INTERESTS, IDEOLOGY AND THE UPPER HOUSE IN 1853

In December 1852, Sir John Pakington, the British Secretary of State for Colonies, instructed the governors of all the Australian colonies except Western Australia to invite their Legislative Councils to draft new constitutions. When the invitation was conveyed to the New South Wales Legislative Council in May 1853, it immediately appointed a select committee chaired by W.C. Wentworth to consider the form of constitution which the colony should adopt. By the end of July, the committee had produced a report whose recommendations remained the subject of controversy until a bill embodying the new constitution was passed in December and forwarded to the British government for approval.

Most of the argument centred around the form of the upper house. The select committee had suggested the gradual creation of an aristocracy which would in the distant future supply the elements for an upper house. At first, the upper chamber was to consist of nominees, some with titles and some without them. It was to continue in that form until the number of peers reached fifty, when it was to lose its wholly nominated character and become the exclusive preserve of titled aristocrats. The peers were then to elect twenty of their number to the upper house, where they would hold their seats for life. They were not to sit there alone, however, but were to share power with nominated peers whose right to a seat in the upper house had been explicitly stated by a special provision in the letters patent conferring their titles.¹ As it was expected that the right of creating such peers would be delegated by the Crown to the Governor,² and as no limit was

¹Clause VI of the select committee's 'Bill to Confer a Constitution on New South Wales...', reproduced in E.K. Silvester (ed.), The Speeches on the Second Reading of the Bill for Framing a New Constitution for the Colony, Sydney, 1853, pp.5-19.

²Wentworth in *ibid.*, pp.181.

set to the number which he would be entitled to appoint, it is clear that the proposed aristocratic chamber could have been swamped. In that respect, it had all the vulnerability of a wholly nominated upper house whose members did not have titles.

A few conservatives like James Macarthur had long considered the possibility of a colonial aristocracy,¹ but it was not an important feature of conservative thought. The principal members of the select committee of 1853 had sat on a similar committee in 1852, and, although it had been unable to agree on the form of the upper house, none of its members had suggested the creation of an aristocracy.² When the proposal was made by the 1853 select committee, it came as a surprise. Moreover the recommendation had been opposed by at least three members of the Committee and others, notably Wentworth, Macarthur, Deas Thomson and Plunkett, explicitly stated that the hereditary clauses were dispensable.³ When those clauses were condemned, not only by the liberals, but by leading conservatives like Manning, Douglass, and the editors of the Sydney Morning Herald,⁴ Wentworth withdrew them in committee and proposed a wholly nominated upper house whose members were not to possess titles.

Wentworth did not expect full responsible government to follow immediately on the introduction of the constitution, so, in order to ensure that all life appointments were made on the advice of a fully responsible ministry, he provided that all members appointed during the first five years were to resign at the end of that period.⁵ The number of members was to be at

¹Article on James Macarthur in A.D.B., vol.II; C.J. Borthwick, 'The Bunyip Aristocracy', B.A. Hons. thesis, A.N.U., 1969; and J.N. Dickinson, A letter to...the Speaker on the Formation of a Second Chamber..., Sydney, 1853.

²Cf. report of the select committee in V. & P. (L.C., N.S.W.), 1852, pt.1, p.417; and Wentworth in S.M.H., 13 December 1852.

³Silvester, op.cit., pp.105, 143, 158, 181. The hereditary aristocracy was opposed by the liberals Cowper and Turlow and the conservative Douglass.

⁴Ibid., pp.158, 181; S.M.H., 3, 17 August 1853, editorials.

⁵S.M.H., 9 December 1853. See clause 3 of the final constitution, which is appended as Schedule 1 to the Imperial Act 18 and 19 Vict., C.54.

least twenty-one, but, as before, there was to be no upper limit.¹ What the wholly nominated chamber and the aristocratic chamber had in common was that they could both be swamped.

An examination of the debate over the two proposals for an upper house reveals much about the division between liberals and conservatives in the 1850s and about the relationship between interests, ideology and political action. The following discussion will focus on two questions. The first concerns the relationship of conservatism to economic interests. Does the choice of a nominated upper house confirm Manning Clark's view that Australian conservatives 'restricted their conservatism to a defence of their economic interests'?² More specifically, does the choice of a nominated chamber support the allegation that 'the conservative constitution bills were characterized correctly as ways of assuring the future of squatting'?³

The second question, which is related to the first, is whether conservatives in New South Wales were aware that a nominated upper house could be swamped. Working from the assumption that the conservatives were bent on making democratic reform as difficult as possible, historians have agreed that those who framed the constitution cannot have realized that swamping could render a nominated house weaker than an elected one. Conservatives in New South Wales have therefore been dismissed as less perceptive than their counterparts in Victoria. Serle, for instance, says that the Victorians were

¹Clause 2 of the final constitution.

²C.M.H. Clark (ed.), Select Documents in Australian History, 1851-1900, Sydney, 1855, p.318.

³T.H. Irving, 'The Development of Liberal Politics in New South Wales, 1854-1855', Ph.D. thesis, Sydney University, 1967, p.12; cf. A.C.V. Melbourne's Early Constitutional Development in Australia, Brisbane, 1963, pp.422f, which states that the constitution was 'designed particularly to protect the landed interests of the colony, and to protect their influence in the future'.

clear-sighted where Wentworth was hazy: compelled to drop his plan for a hereditary aristocracy, Wentworth was not sufficiently astute to see that the popular outcry for an elective Council would work out to his advantage, and he persisted with his plan for nominees. W.F. Stawell and J.V.F. Foster...who were the chief architects of the [Victorian] constitution...clearly realized that 'a nominee Upper House is a much more democratic one than an elective one', mainly because of the ease with which the ministry of the day could swamp a dissident Council.¹

Similar views have been expressed by historians such as Main, Nadel, McNaughton and Turner.²

The interpretation of the constitution as primarily a defence of conservative economic interests stems partly from the belief that because Australians made no important contribution to conservative political theory, they were uninfluenced by theory, an obvious non sequitur. It also stems partly from uncritical acceptance of the propaganda of nineteenth century liberals, who tried to identify their opponents with the squatters, a group notorious for its devotion to sectional economic interest. The propaganda was plausible enough, for, as can be seen from Table I, the squatters were, in a numerical sense, the backbone of conservatism in the Council.

¹Geoffrey Serle, 'The Victorian Legislative Council, 1856-1950', in J.J. Eastwood and F.B. Smith (eds), Historical Studies, Selected Articles, first series, Melbourne, 1964, p.128f.

²J.M. Main, 'Making Constitutions in New South Wales and Victoria, 1853-1854', in Margot Beever and F.B. Smith (eds), Historical Studies, Selected Articles, second series, Melbourne, 1967, pp.61f, 63, 65; Ken Turner, House of Review, Sydney, 1969, p.7; George Nadel, Australia's Colonial Culture, Melbourne, 1957, p.18; I.D. McNaughton, 'Colonial Liberalism', in Gordon Greenwood (ed.), Australia, a Social and Political History, Sydney, 1955, p.104.

TABLE I¹

OCCUPATIONS OF LIBERALS AND CONSERVATIVES
IN THE LEGISLATIVE COUNCIL, DECEMBER 1853

<u>Occupations</u>	<u>Liberals</u>	<u>Conservatives</u>
Landholders <u>with</u> squatting interests in the unsettled districts	3	22
Landholders <u>without</u> squatting interests in the unsettled districts	1	2
Government officials	0	9
Lawyers in private practice	3	6
Medical practitioners	0	2
Businessmen	3	2
Unknown	0	1
TOTAL	10	44

Two liberal merchants and two conservative professional men were also squatters,² so that half the liberals and just over half the conservatives had squatting interests. In all, twenty-nine of the fifty-four members of the Council were connected with squatting. However, the squatters were unable to make the Council the pliant instrument of their wishes. They were more irregular in their attendance than other members, especially the conservative nominees, who nearly all lived in Sydney and who in most cases had no squatting interests.³ Moreover, squatter arrogance repelled not only liberals but also many urban conservatives. Few but squatters could enjoy Wentworth's sneers at other classes and many resented the

¹The classification of members as liberal or conservative is based on their voting record in Appendix I; the occupational details are taken from Appendix II.

²Robert Campbell and James Richardson were the liberals; and Edward Broadhurst and W.M. Manning were the conservatives. See Appendix II.

³See Appendix II. Cf. Windeyer, S.M.H., 13 June 1846; and Lowe, S.M.H., 4 May 1848.

extent to which the squatters identified their own interests with the interests of the colony as a whole. Even many squatters must have been dismayed when one of their number, George Leslie, a member of the Council, told a select committee that, because 'the rest of the Colony is principally dependent upon the squatters', the community as a whole would benefit if land were taken from other classes and given to the squatters.¹

The result was that, even on the land question, the squatters were unable to establish any clear ascendancy. Although they succeeded in defeating anti-squatting resolutions in 1847 and 1848,² they were defeated on other occasions by a combination of liberals, government members and conservatives with large interest as landowners. In 1846, for instance, Thomson and Plunkett, resentful of squatter attacks on the government's land policy, helped to pass Lowe's anti-squatter resolutions,³ and in 1847 and 1849, the squatters were unable to control the nominations to select committees whose reports, written by Robert Lowe, attacked the high price of Crown land because it made freehold ownership uneconomic and enabled the squatters to 'lock up' the land.⁴

On constitutional questions, most squatters were numbered amongst the 'backwoodsmen' and they had less influence than usual. Lacking any firm grounding in law and constitutional theory, they deferred to those whose education and experience fitted them for the task. Responsibility for shaping the constitution devolved mainly upon a clearly defined group of seven, of whom only Wentworth was principally a squatter,

¹Leslie in evidence before the select committee on the price of land, V. & P. (L.C., N.S.W.), 1847, pt.2, p.539. Leslie was trapped into his rash assertions of squatter superiority during shrewd cross-examination by Cowper and Lowe.

²V. & P. (L.C., N.S.W.), 12 May 1848; Ruth Knight, Illiberal Liberal, Melbourne, 1966, pp.180-1.

³V. & P. (L.C., N.S.W.), 1846, 2nd session, pp.40-41. The squatters were defeated in the main divisions by votes of twelve to ten, twelve to seven and eleven to ten. See also Irving, op.cit., p.141.

⁴See the reports of the select committee on the minimum price of land in V. & P. (L.C., N.S.W.), 1847, pt.11, pp.513-20, and the select committee on land and immigration, V. & P. (L.C., N.S.W.), 1849, pt.11, pp.543-60. Cf. Knight, op.cit., pp.182, 232-3.

although two others also had squatting interests in the unsettled districts. They were James Macarthur, a landowner who held only one run in the unsettled districts and who opposed the concessions given to the squatters by the 1847 Order-in-Council; and W.M. Manning, the Solicitor-General, who strenuously denied the squatters' claim to superiority over other classes.¹ The other leaders on the constitutional issue were Dr H.G. Douglass, a medical practitioner and landowner; James Martin, a solicitor; Deas Thomson, the Colonial Secretary; and John Hubert Plunkett, the Attorney-General. The reasons for regarding these men as the principal framers of the constitution are cogent. All except Manning were on the select committee which drafted the Constitution bill and, with the liberal Cowper, they were the only members to attend a majority of the committee's meetings.² Moreover, their speeches on the second reading all occupy at least ten pages in the printed report of the debates, although no other conservative spoke for more than seven pages. In all, this small knot of conservative

¹Details of members' squatting interests are based on the squatting lists appended to the report on Crown lands in V. & P. (L.C., N.S.W.), 1854, pt.II. Main, loc.cit., pp.59, 63, states incorrectly that H.G. Douglass and James Martin, members of the committee, had squatting interests. Douglass held land as a tenant of the Crown only in the settled districts, where he had none of the advantages of long leases and security of tenure enjoyed by lessees in the unsettled districts to whom the term 'squatter' is normally applied. The squatting lists mention a J. Martin, but he was probably not James Martin, M.L.C., whose biographer makes no mention of squatting interests. (Cf. Elena Grainger, Martin of Martin Place, Sydney, 1970.) Manning's name does not appear in the squatting lists, apparently because he held his land as a partner in pastoral companies. (See the forthcoming article on Manning by Martha Rutledge in A.D.B., vol.5.) For Manning's denial of squatter superiority, see Silvester, op.cit., p.177. For James Macarthur's hostility to the claims of the squatters, see Michael Roe, Quest for Authority in Eastern Australia, Melbourne, 1965, pp.51, 74, 107.

²Attendance at the select committee's thirteen meetings was as follows:

W.C. Wentworth	13	J. Martin	7
E.D. Thomson	12	C. Cowper	7
H.G. Douglass	12	G. Macleay	6
J.H. Plunkett	9	T.A. Murray	3
J. Macarthur	9	W. Thurlow	3

Source: J.M. Ward, Earl Grey and the Australian Colonies, Melbourne, 1958, p.327.

leaders made some 80 per cent, by volume, of their side's contribution to the debate. They were also disproportionately influential in committee. Wentworth was the only leader who can be identified with the squatters, who, for all their numerical predominance, had little influence in constitutional matters and at no stage acted as a separate group. Their acquiescent role can be fairly judged by the fact that they did not even divide the Council on an amendment by Manning which removed a constitutional guarantee that they would be compensated for any loss of their privileges under the existing land regulations.¹

The conservative leaders represented no particular occupational group, but what they had in common was membership of the traditional élites of colonial society. Thomson, Plunkett, Manning, Macarthur and Douglass belonged to the Colony's self-defined 'upper class', a group descended from the old 'Exclusivist' faction and those whom it accepted as social equals. This class had at its apex the Governor, the leading government officials, the judges, and colonists who were their close associates - men like Henry Watson Parker, Dr Charles Nicholson, the Macarthurs and the Macleays. Its membership coincided to some extent, but by no means entirely, with that of the Australian Club, whose founder, the merchant S.A. Donaldson, made the exaggerated boast that it contained 'all the aristocracy of the country'.²

Members of this class dominated educational, cultural and charitable bodies like the University Senate, the Philosophical Society and the Benevolent Asylum.³ and they were the leading force in the colony's political life. They included a liberal minority, consisting mainly of some leading merchants and professional men,⁴ but most of them were conservatives. In 1853, they included most of the leading conservatives in the Council.

¹S.M.H., 15 December 1853, amendment to clause LXVIII.

²Quoted Roe, *op.cit.*, p.38.

³See Tables IV-VII in Chapter II, which show the influence of conservative members of the Council in 1858. These men were mostly members of the 'upper class'.

⁴This is discussed in greater detail later in the chapter.

Wentworth and Martin were by 1853 political allies of conservatives like Thomson and Macarthur, but they were not socially accepted by the 'upper class'. There were complaints when Wentworth's wife was received at Government House in 1847,¹ and T.S. Mort said in 1863:

I have never met him [Wentworth] in society as he did not move in the same spheres as myself. Had he visited with the principal families in the colony at the time I must have met him, as I have exchanged visits with nearly the whole of them.²

Wentworth was closely associated with a few members of the 'upper class' like Dr Douglass, but for the most part his associates seemed to be "raffish 'landlords' and the 'Australians'".³ The latter, successors of the old 'Emancipist' party, were often men of wealth and ability who, because of a criminal record, convict parentage or their habits of life, were not fully accepted by the 'upper class'. They included William Bland, esteemed for his philanthropy, but a former convict; Robert Fitzgerald, one of the wealthiest men in the colony but the son of a convict; George Nichols, successful as a lawyer, newspaper proprietor and politician, but also of convict parentage; George Hill, a wealthy pastoralist, butcher and city politician of emancipist descent; and the brilliant young lawyer-politician, James Martin, who was the son of poor Catholic parents and had recently been blackballed by the Australian Club.⁴

What Wentworth and his friends had in common with the 'upper class' was that they, too, were leaders of colonial society - an aristocracy of merit and affluence amongst those who were denied conventional respectability. Like the 'upper class', they included a number of liberals - of whom Bland and

¹Barrie Dyster, 'The Fate of Colonial Conservatism on the Eve of the Gold-Rush', J.R.A.H.S., vol.54, pt.4, December 1868, pp.348f. 19

²Quoted Alan Barnard, Visions and Profits: Studies in the Business Career of T.S. Mort, Sydney, 1961, p.20.

³Dyster, 'The Fate of Colonial Conservatism...', p.348.

⁴Melbourne Morning Herald, 6 August 1853. I owe this reference to Ged Martin.

Hill were the most notable - but most of them were by 1853 conservatives. In the past, they had captured much support from the underprivileged by stressing resistance to arbitrary government, by pandering to 'populist' sentiment amongst aggrieved minorities, and by appealing as 'sons of the soil' to 'Australian' mistrust of fly-by-night immigrants.¹ At the elections of 1851, however, the electoral appeal of the old formulas showed signs of waning as attitudes towards democratic reform became the touchstone of political worth.² Wentworth was almost defeated in Sydney and it was clear that the 'Australian' party was losing the under-privileged vote to the democrats and becoming dependent upon the same constituency as the conservative wing of the 'upper class'. The two groups therefore consolidated a political alliance against the liberals which had long been germinating and combined to produce a constitution which was avowedly designed to check the development of democracy.³ The debates over the constitution saw the sinking of traditional antipathies as Wentworth, for the first time in his career, conceded the right of the nominees to vote on a matter affecting the representation of the people.⁴ Conservatives of all varieties came together to defend their interests against the spectre of democracy.

As well as having a common interest in preserving their political position, the leading conservatives shared a cultural

¹Cf. Barrie Dyster, 'The Role of Sydney and the Roles of its Citizens in New South Wales, 1841-1851', M.A. Thesis, Sydney University, 1965, p.242, et passim; Roe, op.cit., pp.85-88; Knight, op.cit., pp.217, 240-1, et passim.

²Cf. S.M.H., 2 October 1851, quoted Irving, op.cit., p.393.

³Cf. the report of the select committee which prepared the Constitution Bill, reproduced in Silvester, op.cit., pp.1-4. The debates over the bill were concerned with the distribution of power within the colony rather than with the transfer of power from the imperial authorities to the colonial parliament. All the conservatives admitted openly that their intentions were anti-democratic.

⁴See his defence of his attitude to the nominees in Silvester, op.cit., p.225. Even in 1852, Wentworth had tried to exclude nominees from the select committee on the constitution. (S.M.H., 17 June 1852.)

heritage which furnished the necessary intellectual justification for a constitution weighted in their favour. Except for Martin, they had grown up in circles where the notion of the hierarchic society was taken for granted. Wentworth, a Cambridge graduate, had been acknowledged as a kinsman by Lord Fitzwilliam and had dreamed of founding a pastoral aristocracy by marrying James Macarthur's sister until he was rebuffed because of his convict mother and his father's doubtful reputation;¹ Macarthur, the fourth son of the colony's leading Exclusivist family, had been educated by Huon de Kerilleau, a French émigré claiming noble blood, and had later become acquainted with the conservative French political theorist, Sismondi, and seen his brothers form close ties with the Colonial Office and the British aristocracy;² Deas Thomson was the son of Sir John Deas Thomson, sometime Accountant-General of the Royal Navy, and was the son-in-law of Governor Bourke; Plunkett was descended from the Irish Catholic aristocracy and had been a successful barrister in Ireland until, to escape a blighted love, he had secured the position of Solicitor-General in New South Wales through the good services of his relative, Lord Fingall;³ Manning, a product of University College, London, came from a family patronized by Lord Brougham and had published four volumes of law reports before migrating to New South Wales in 1837;⁴ and Dr Douglass, a member of the Royal Irish Academy by the age of thirty, had not only filled official positions in New South Wales, but had been surgeon extraordinary to the household of William IV and had won commendation and a medal from Louis Philippe of France

¹Wentworth's father had been tried four times for highway robbery and there is some evidence that he avoided a conviction by agreeing to leave Britain. Cf. articles on Darcy Wentworth and W.C. Wentworth in A.D.B., vol.2; and A.C.V. Melbourne, William Charles Wentworth, Brisbane, 1934.

²Article on Huon de Kerilleau in A.D.B., vol.1; Article on James Macarthur in A.D.B., vol.2; Macarthur in Silvester, op. cit., p.138ff; M.H. Ellis, John Macarthur, Sydney, 1955, pp.481, 496, 518.

³John Molony, An Architect of Freedom, Canberra, 1973, pp.4-9.

⁴Article on J.E. Manning in A.D.B., vol.1; forthcoming article on W.M. Manning in A.D.B., vol.5.

for his services in a cholera epidemic.¹ Only Martin was of humble birth, and he had not experienced the frustrations which might have turned him to radicalism, for his abilities had been recognized by the leaders of the 'Australian' faction and he had advanced rapidly under the patronage of Nichols, Wentworth and Fitzgerald, absorbing the values of the élite he was so anxious to join.²

All the leading conservatives were educated men who served on the Senate of Sydney University, and they were acquainted with the rich tradition of political theory produced by British conservatives, Whig and Tory, to rationalize their hegemony. Burke, Hallam, Macaulay, De Lolme, and a succession of British politicians were all quoted in debate to strengthen the case for a conservative constitution, as were De Tocqueville and the American conservatives Story and Calhoun. The conservatives also found intellectual justification for their political position from less obvious sources. Plunkett, Manning, Wentworth and Martin were all lawyers who had learned from Blackstone³ the necessity for a 'balanced constitution' in which the influence of mere numbers was limited by a judicious admixture of monarchy, aristocracy and democracy; and conservative political and social assumptions coloured much of the literature which formed part of a gentleman's education. Wentworth quoted Pope's eulogy of the 'balanced constitution'⁴ and Judge Dickinson, who discussed the constitution with Thomson and other 'upper class' conservatives, quoted Milton's view that

...orders and degree
Jar not with liberty but well consist.⁵

¹Article on Douglass in A.D.B., vol.1.

²Roe, op.cit., pp.86-7; Bede Nairn, forthcoming article on Martin in A.D.B., vol.5.

³Sir William Blackstone, whose Commentaries on the Laws of England formed the general introduction to legal studies in Britain, the United States, and, of course, New South Wales. Cf. article on Blackstone in D.N.B., vol.V, London, 1886; and J.F. Hargrave's Introductory Lecture on General Jurisprudence Delivered at the University of Sydney, March 5, 1860, Sydney, 1860.

⁴Silvester, op.cit., p.224.

⁵Quoted J.N. Dickinson, A Letter to...the Speaker on the Formation of a Second Chamber..., Sydney, 1853, p.14.

He also reproduced from Troilus and Cressida the classic justification of the hierarchic society:

How could communities...
 But by degree stand in authentic place?
 Take but degree away, untune that string,
 And hark, what discord follows!¹

Like all conservatives, Dickinson regarded 'degree' as congenial to human nature and a feature of all stable societies. He shared with Macarthur an admiration for the French political theorist, Sismondi, and adopted his view that everywhere there were four aristocracies, those of 'wealth, talent, manners and birth', each with its special virtues and defects. These 'natural aristocracies', he thought, 'should be blended into one constitutional aristocracy, so that each might check and influence the others'.² He therefore proposed the creation of an order of colonial baronets from whose ranks the members of an upper house could be drawn as representatives of society's second estate.³

The creation of an aristocracy as proposed by Dickinson and Wentworth was in part a way of institutionalizing the colonial élites, of giving them the formal status of an estate. With their position enshrined in law, members of the aristocracy thus created would enjoy a constitutional and social eminence capable of surviving any deterioration in personal fortunes or even a decline in the economic position of the whole class. Such privileged status was not desired on merely personal grounds, for both Wentworth and Macarthur, two of the leading proponents of an aristocratic order, later declined honours - the former a baronetcy and the latter a knighthood.⁴ Rather, it was thought desirable to strengthen the position of the colonial élite as a whole by the creation of an aristocracy which, it was hoped, would make 'ingrain in

¹Quoted *ibid.*

²*Ibid.*, pp.12-13. Macarthur had been acquainted with Sismondi and quoted him extensively in the debates on the constitution. Cf. Silvester, *op.cit.*, pp.138ff.

³Dickinson, *op.cit.*, pp.14-15, 19, 21, 27.

⁴H.W.K. Young to F. Wentworth, 5 February 1886, Wentworth Papers, M.L., A760; Denison to Macarthur, 30 May 1859, Macarthur Papers, vol.28, A2924, p.303.

the people' habits of deference which would prevent the triumph of democracy.¹

The proposals for an aristocracy also embodied in a striking form the conservative conviction that to be stable, a constitution had to strike a proper balance between the different estates and interests, ensuring that none triumphed over the others. Thus, no group was to be given dominance on account of its numerical superiority, but each was to be given that amount of influence which, from experience, was seen as most likely to promote stability. The model of such a 'balanced constitution' was, of course, the British, which had survived unscathed when less perfect forms of government had fallen amidst the revolutions of 1848.²

Under the New South Wales constitution, 'balance' on the British model was to be achieved on two levels. In the lower house, the influence of 'numbers' was to be checked by the perpetuation of the electoral system devised by Deas Thomson in 1851. Under that system, separate representation was given to the mercantile, agricultural and pastoral interests, with a special weighting in favour of the last because of its wealth and conservatism. Consequently, the lower house was given a substantial element of conservatism.³

On the second level, the lower house was held to represent 'the people' and, irrespective of the political opinions or social status of its members, it was thought to need 'checking' by an aristocratic upper chamber. The reason was, as Sismondi put it, that

¹G.W. Rusden to J. Macarthur, 4 December 1853, Macarthur Papers, vol.27, A2923, p.466.

²For a discussion of the balancing of estates and interests in the British constitution see Corinne Comstock Weston, English Constitutional Theory and the House of Lords, London, 1965; and Samuel H. Beer, Modern British Politics, London, 1965, Ch.I, passim.

³See the N.S.W. Act 14 Vic., no.47; and Thomson's explanation in E. Deas Thomson, Corrected Report of the Speeches of the Hon. E. Deas Thomson...on the First and Second Readings of the Bill for the Division of the Colony into Electoral Districts, Sydney, 1851.

both aristocracy and democracy are two necessary elements in all good government: each pernicious when it is exclusive, or even when it governs: both essential to the happiness of nations, when they are skilfully combined so as to work together.¹

Thus, conservatism and stability, which were held to be inseparable, were secured by a double system of checks and balances, one system being incorporated in the distribution of the electorates, the other in the upper house.

To secure such a balance it was not, of course, necessary to create a titled aristocracy, although it was thought, naively as it turned out, that such a step would be conducive to the creation of a proper sense of social hierarchy. Nor did the upper house have to be nominated, for Dickinson's aristocratic chamber was to be elective and Wentworth's was to be partly elective. In fact, the requisite 'balance' could be secured if there were no upper house at all, provided the single chamber was so constructed as to give 'aristocracy' its due weight. This is borne out by the fact that, although in 1853 the conservatives argued that bicameralism was an essential element of all constitutions, many of them had found it convenient to repudiate this view only a short time earlier.

Bicameralism was not a constitutional principle desired as an end in itself, and whether most conservatives accepted or rejected it depended upon whether it seemed likely to help or hinder the attainment of more important political goals. In the late 1840s and early 1850s Wentworth and most of the elected conservatives had opposed the creation of an upper house because they feared it would strengthen the hands of both the government and the liberals. From 1846, Deas Thomson had been lamenting that in the existing mixed single chamber, the nominees were swamped by the elective members and did not pose an effective barrier to hostile attacks on the executive. He therefore advocated the creation of an entirely nominated upper house which could amend or reject hostile measures and repudiate attacks made on the government by the elective chamber. He thought that such a body, standing between the people's representatives and the Crown, would halve the

¹Quoted Dickinson, op.cit., p.13.

number of collisions between the legislature and the executive.¹

The liberals advocated the creation of a nominated upper house for different reasons. On the one hand, they saw it as a means of removing a large body of conservatives from the existing mixed chamber; on the other hand, they predicted that the lower house would prove more powerful, so that the influence of the government would ultimately be weakened. Robert Lowe, for instance, thought that if the upper house supported the lower, then the voice of the legislature would be heard with all the more force; but that if it did not, then 'the opinions of such a house would not carry much weight; not half so much as that of the representatives of the people'.²

Conservatives hostile to the government naturally saw little to recommend an upper house which was, as Captain M.C. O'Connell observed, advocated by the Colonial Secretary 'to strengthen the executive' and welcomed by Robert Lowe 'because it would increase the popular power'.³ Consequently, they joined Wentworth in condemning bicameralism because it would prevent 'wholesome collisions' between the people and the executive, and because it would be many years before the colony possessed 'any class of sufficient fortune and stability to be raised to the situation of hereditary legislators, or even to be created legislators for life'.⁴ For the moment, Wentworth wanted the nominees to sit in a single blended chamber, where they could strengthen his hand against the liberals and where, at the same time, they could be outvoted by a combination of liberals and elected conservatives.

¹ Thomson in S.M.H., 13 June 1846; cf. Thomson, S.M.H., 4 May 1848; and Darvall, then a government nominee, S.M.H., 5 May 1848.

² Lowe, S.M.H., 4 May 1848; cf. Windeyer, S.M.H., 13 June 1846; the favourable references to bicameralism by Cowper and Lamb, S.M.H., 5 May 1848; and Irving, *op.cit.*, pp.48-9.

³ O'Connell, S.M.H., 5 May 1848.

⁴ Resolution by Wentworth, S.M.H., 28 April 1848; cf. Wentworth, S.M.H., 13 June 1846; Dangar and Bland, S.M.H., 5 May 1848; S.M.H. editorial, 28 April 1848; Irving, *op.cit.*, pp.49-50, 362-3.

By 1853, all shades of opinion in the Council had swung solidly to bicameralism, for the government had solved its differences with Wentworth and the elective conservatives, making their fears that an upper house would side with the government irrelevant. The main source of opposition to the government was now the small group of liberals,¹ and any constitutional change which strengthened the government against liberal demands was, in the eyes of elected conservatives, a good one.

The alliance between the conservatives and the government was finally sealed by the arrival of Pakington's despatch in May 1853, which met the grievances which had caused the clashes between the government and the elected members. Moreover, the despatch settled the issues in dispute on terms which guaranteed conservative support for an upper house. As late as June 1852, when Wentworth proposed the appointment of a select committee to draft a constitution, he had dismissed as 'preposterous' any suggestion that there should be two houses while the imperial government retained control of the Crown lands and 'so long as the full control of all the revenues of the country was withheld from the representatives of the people'.² When the committee met, there was still some conservative opposition to bicameralism,³ but since the proposed constitution transferred control of the Crown lands and the revenue to the colony, Wentworth was able to agree

¹In the session of 1853, which was dominated by the constitution bill, the government and the elected conservatives acted together against the liberals; and in September 1854, a vote of no-confidence in the ministry produced a split approximately on liberal-conservative lines, with the liberals against the government. Cf. P. Loveday, 'The Development of Parliamentary Government in New South Wales, 1856-1870', Ph.D. thesis, Sydney University, 1962, pp.456-7. See also Jan Forrest, 'Political Divisions in the New South Wales Legislative Council, 1847-53', J.R.A.H.S., vol.50, pt.6, December 1964, pp.466, 476, 487-8, et passim.

²Wentworth, S.M.H., 17 June 1852.

³Wentworth said that some members of the committee favoured a single chamber, and the two liberals on the committee, Cowper and Lamb, were long-standing supporters of bicameralism. (Wentworth, S.M.H., 13 December 1852; Cowper and Lamb, S.M.H., 5 May 1848.)

that it should also provide for an upper house.¹ Pakington's despatch clinched Wentworth's conversion to bicameralism, for it dwelt on the advantages of a house of review, and said that 'Her Majesty's Government believe it to be desirable for the interests of the Colony' that the creation of a second house 'should precede those important concessions' which it was prepared to make. The despatch then stated that 'it is the wish of Her Majesty's Government that the Council should establish the new legislature on the bases of an Elective Assembly and a Legislative Council to be nominated by the Crown' and said that 'On the receipt...of such a Constitutional enactment' the colony would be granted control of the Crown lands and the revenue.² Pakington had expressed his willingness to remedy those grievances which had been the principal cause of Wentworth's opposition to the government, but he had made that concession conditional upon the division of the legislature into an elective Assembly and a nominated Council. Consequently, the desire for colonial control of lands and revenue, which had previously led Wentworth to oppose a nominated upper house because he feared it would support the government, now made him an ardent supporter of bicameralism.

The reasons for the conversion of the conservatives to bicameralism are clear, but it is less obvious why they preferred a nominated upper house to an elective one. Pakington's despatch bound them to a nominated upper house, but he lost office less than a week after it was sent and was replaced by the Duke of Newcastle, whose preference for the elective principle was made known in the colony before the select committee had completed its deliberations. Moreover, it is clear that most conservatives favoured the principle of nomination long before Pakington's despatch was received.³

¹Cf. Wentworth, S.M.H., 13 December 1852.

²Pakington to Fitzroy, 15 December 1852, V. & P. (L.C., N.S.W.), 1853, pt.1.

³Discussions of bicameralism in the 1840s had always assumed that the upper house would consist of the nominee element in the existing Legislative Council. For a frank assessment by Wentworth of opinion on the desired form of upper house, see S.M.H., 13 December 1852.

The conservatives advanced many arguments in support of the nominee principle which bore little relationship to their motives for supporting it. For instance, when the Duke of Newcastle released the colonists from Pakington's decision that they should have a nominated chamber, Wentworth resorted to the argument that they were still bound by the terms of their previous petitions and remonstrances, which had asked for a form of government 'similar in its outline to that of Canada'. He contended that they were therefore in honour bound to form an upper house based on the principle of nomination which prevailed in Canada, and that no Secretary of State for Colonies had the power to release them from such a 'compact'.¹ However, this argument was plainly the invention of a mind adept at inventing post factum justifications for whatever course of action he preferred, for his reasoning was as much a condemnation of his own proposals for an upper house as it was of the elective principle. As late as June 1852, he had advocated unicameralism; he had subsequently advocated a nominated upper house in which the Governor's choice of members was to be restricted by a provision that two-thirds of them should previously have sat as elected members of the legislature;² and in the very speech in which he claimed they were bound to form an upper house like Canada's, he advocated the creation of an aristocratic chamber whose members were to be partly elected and partly nominated. All these proposals were in fact clear breaches of the 'compact' by which he professed to be bound.

There were other arguments which were at least as much rationalizations of the conservatives' preference for a nominated upper house as explanations of it. One such argument, employed by most conservatives, was that an elective chamber was 'anti-monarchical', that it smacked of a 'disloyal' preference for American institutions, and that it would lead to a republic. Two significant attempts were made to give substance to these accusations. The first was advanced by Sir Alfred Stephen, the Chief Justice, who argued that the Crown's

¹Silvester, *op.cit.*, p.32.

²Wentworth, *S.M.H.*, 13 December 1852.

power of nomination was 'an ancient and valuable prerogative, conducing largely to its just and proper influence'.¹ In his eyes, therefore, even the most conservative and aristocratic elective upper house had one grave defect: it deprived the Crown of the 'high and important privilege, of conferring upon eminent services and merit one of the greatest distinctions,... the honor...of [becoming] a member of [the] Legislative Senate'.²

Stephen was a self-proclaimed Tory³ and his concern for the preservation of the Crown's influence was undoubtedly sincere. However, such men were rare in colonial life, and the elected conservatives, in particular, had spent much of their political careers condemning the nominated members of the Council as mere 'puppets' of the Governor and declaiming against the 'unconstitutional' influence exercised by the Crown in New South Wales.⁴ Even James Macarthur had used the language of Whiggism in opposing the imperial authorities, and on other counts, as in his support of national education and his opposition to an established church, he gave evidence that he was not a traditional Tory.⁵ It is not surprising, then, that no conservative in the Council condemned an elective upper house as 'anti-monarchical' on the same grounds as Stephen, for that would have given the liberals additional grounds for accusing them of inconsistency.

Wentworth made the only other significant attempt to justify the charge that an elective upper house would lead to a republic when he argued that if it were elected from large constituencies amalgamating both rural and urban areas it would

¹Sir Alfred Stephen, Thoughts on the Constitution of a Second Legislative Chamber for New South Wales..., Sydney, 1853, p.12.

²Ibid., p.10.

³Martha Rutledge, 'Sir Alfred Stephen and Divorce Law Reform in New South Wales, 1886-1892', M.A. thesis, A.N.U., 1968, p.17, n.2.

⁴See, for example, S.M.H., 6 September 1853, speech by Parkes quoting letter by Wentworth to Free Press, 6 January 1842.

⁵Roe, op.cit., p.44; Dyster, 'The Role of Sydney...', p.252.

be more radical than the lower house, as the votes of urban liberals would swamp those of rural conservatives. Such a second chamber would be unable to interpose as an aristocratic buffer between the lower house and the Crown, so that clashes between the monarchic and democratic elements would occur, leading to a rupture.¹ However, his concern for protecting the Crown from attacks by the people's representatives was lightly worn, for he had hitherto praised such 'wholesome constitutional collisions' with the executive as the 'main source and preservation of constitutional freedom'.² His tenderness for royal prerogatives waxed and waned according to his political interests and cannot be viewed as a genuine ground of his espousal of the principle of nomination. Moreover, the image of an upper house more radical than the lower house was unreal, for there was no reason why large electorates could not give separate representation to urban and rural interests on the same principle as in the electoral distribution for the lower house; and there was no reason why the franchise could not be made more restrictive for the upper house in order to guarantee its conservatism, as many liberals advised. In alleging that an elective upper house would be more radical than the lower house, Wentworth had manufactured a completely artificial situation; he was obviously just searching for arguments to support a case he had already decided on.

Other conservatives made vague accusations that the desire for an elective upper house displayed a disloyal preference for American institutions over British ones and constituted an implied attack on all non-elective components of the constitution, including the Crown. They cheered loudly when old Alexander Berry accused those who wanted an elective chamber of being 'vehement clamourers for republicanism',³ and prolonged applause greeted Wentworth's mildly xenophobic demand for 'a British, not a Yankee constitution'.⁴ It is difficult

¹Silvester, op.cit., pp.245-6.

²Resolution number seven by Wentworth, S.M.H., 28 April 1848; cf. Wentworth in S.M.H., 17 June 1852.

³Silvester, op.cit., p.209.

⁴Ibid., p.34.

to avoid the conclusion that these accusations were more in the nature of cynical propaganda than the true foundation of the conservative preference for the principle of nomination. They had no fixed aversion to American ideas as such and quoted with admiration the works of American conservatives;¹ and they had great difficulty in explaining why four of the last five Secretaries of State for Colonies favoured the elective principle and why a committee of the Privy Council had just recommended an elective upper house for the Cape of Good Hope.² Moreover, they totally (and in part wilfully) misrepresented the intentions of their opponents, for the Reverend J.D. Lang was out of the country until after the debate on the second reading and the voice of radical republicanism was not heard.³ Instead, the agitation against the constitution was dominated by patrician liberals from the colonial 'upper class' like Cowper, Darvall and Holden, who were loud in their declamations of loyalty.⁴ The conservatives were, however, desperately anxious to smear all their opponents by identifying them with Lang's republicanism, and they persisted with their wild accusations. If they believed their own propaganda, this was probably largely because it was in their interests to do so.

What, then, were the real bases of conservative support for the principle of nomination? Part of the explanation lies in simple intellectual inertia. Opinion in Britain had only recently begun to harden in favour of the elective principle, and news of the changes reached the colony too late to shake the traditional conservative presumption, based upon precedent, that any upper house would be at least partly nominated. However, the explanation goes deeper than this, for important groups in the community had a vested interest in the preservation of the nominee system.

¹For example, Wentworth's quotation of Calhoun, *ibid.*, pp.27, 49-50.

²Cf. Wentworth, *ibid.*, pp.32-4. Gladstone, Grey, Newcastle and Stanley favoured an elective upper house. Pakington preferred nomination.

³See the discussion of liberal and radical attitudes towards the upper house later in this chapter.

⁴For example, Cowper, *ibid.*, p.127.

A clue to the nature of the conservatives' support for that system is provided by their description of the class which the upper house was supposed to represent. Most conservatives thought the creation of a titled aristocracy unnecessary, but all agreed that the upper house was to represent the colony's leading citizens, its natural aristocracy. As the cultured W.A. Duncan (a one-time radical) put it, the upper house was to represent

a superior class of citizens, to which, whether the distinction may have arisen from great talents, eminent public services, or from whatever other cause, the general designation of Aristocracy is applied.¹

The role of the upper house as the representative of the 'Aristocracy' was thus distinguished clearly from that of the lower house, which, whatever its actual composition, constitutionally represented 'the people' and 'balanced' the claims of the three great vertically defined interests of the country - those associated with agriculture, commerce and the pastoral industry.² According to the theory propounded by most conservatives, the colony's 'aristocracy' was identified with no one of these interests, but consisted of the leading members of them all. Even Wentworth, who arrogantly saw in the colony's 'Shepherd Kings' the greatest potential for an aristocracy,³ fell into the customary way of speaking and described the proposed upper house as

a powerful body...formed of men of wealth, property and education - men not raised from any particular section of the community, but from every class that has the energy to aspire to rank and honour.⁴

This doctrine was seriously challenged by only one conservative, James Martin, a man of imposing intellectual powers whose fear of the lower orders led him to favour 'class

¹W.A. Duncan, A Plea for the New South Wales Constitution, Sydney, 1856, p.9.

²See the 1851 Electoral Act, 14 Vic. no.47; and E. Deas Thomson, Corrected Report of the Speeches of the Hon. E. Deas Thomson... on the First and Second Readings of the Bill for the Division of the Colony into Electoral Districts, Sydney, 1851.

³Silvester, op.cit., p.223.

⁴Ibid., p.36.

representation' as the price of conservatism. In a powerful speech on the second reading of the Constitution Bill, Martin claimed that the conservatives were naïve in putting their faith in an upper house which could be swamped by additional nominees, and argued for one elected exclusively by the large landholders.¹ But his eloquence was unavailing, for the plan was unanimously rejected by other conservatives. Deas Thomson complained that merchants, bankers and professional men were as deserving of representation as landholders,² and W.M. Manning thought

it would have the effect of setting class against class; and it would create for one class of the community a superiority over the others. That class would have, besides the common right of electing the Lower House, the exclusive right of electing the Upper House, which I need scarcely point out would be apt to lead to the most serious jealousies and most deplorable antagonisms.³

Similar objections were voiced by Douglass, Macleay and W. Bowman, conservatives who had landed interests but who identified themselves with the interests of the 'aristocracy' as a whole, rather than with the viewpoint of one of its constituent classes.⁴ In conservative eyes, the proposal for a nominated upper house was free from the objectionable features of Martin's proposals. Appointed by the Crown on the advice of responsible ministers, it would represent no faction but the whole community, for it was the role of the Crown and its advisors to represent the common good. As the Sydney Morning Herald put it:

Let it [the upper house] be elected as MR. MARTIN proposes, and it would represent a class. Let it be appointed by the Crown and it would represent the Commonwealth.⁵

¹Ibid., pp.76, 97ff.

²Ibid., p.172.

³Ibid., p.181f.

⁴Douglass (ibid., p.158); Macleay (ibid., p.161); W. Bowman in Legislative Council, quoted Empire, 3 September 1853; S.M.H., 29 August 1853, editorial.

⁵S.M.H., 29 August 1853, editorial.

The Herald's argument was perhaps too sophisticated for many conservatives to appreciate, but that paper spoke for the large number of conservatives like Manning and Thomson who belonged to the colony's 'urban aristocracy' and who regarded the squatters' claim to superiority as an insult to their own status.

At the root of the urban conservatives' conviction that a nominated Council was more representative than an elective one, there was a strong element of self-interest. Not only was a chamber elected by large freeholders an implicit denial of the equality of urban wealth, but it was also likely to ensure that urban conservatives were poorly represented in Parliament. Experience had shown that it was very difficult for an urban conservative to gain election to the existing Council. Urban electorates usually returned liberal candidates,¹ and conservatives from Sydney had difficulty in competing successfully against well known local squatters in the pastoral electorates. Moreover, by the electoral redistribution of 1851, Deas Thomson had 'balanced' the electorates in a way which favoured the pastoral districts, and while this reduced the strength of the liberals, it also reduced the number of seats in which urban conservatives could conveniently stand. As a result, in 1853, there were only five conservatives following urban occupations out of the twenty-six elected conservatives in the Council.² The 'urban aristocracy', gained adequate representation only through the presence in the Council of the eighteen conservative nominees, thirteen of whom lived in Sydney or its environs and derived their principal income from commercial and professional pursuits.³

The fact that the 'urban aristocracy' depended largely upon the nominee system for its parliamentary representation was certainly not lost upon men like Thomson, Plunkett and Manning, who had framed the electoral laws and who had heard frequent complaints that the nominees had disproportionate

¹Cf. Irving, *op.cit.*, pp.383-91.

²See Appendix 11.

³See Appendix 11.

influence in the existing Council because most of them lived in Sydney and could attend more easily than the elected conservatives, most of whom lived in the country.¹

Consequently, when Manning and Thomson objected that Martin's elective upper house would discriminate against merchants, bankers and professional men and would give 'one class of the community a superiority over the others', they were not speaking of some abstract injustice but were expressing a genuine fear that an elective chamber would leave their own class virtually unrepresented.

Some of the nominees, respectable members of the 'upper class', evinced a distaste for electoral contests which does much to explain their inability to match the liberals and the 'Australians' in the rough and tumble of urban politics. Many conservatives resented the accompaniments of electoral politics - the treating of voters, the occasional violence - and their poor opinion of the electors led them to assume that the candidate who solicited votes by the basest means had the best chance of success. Thomas Barker, a wealthy manufacturer, feared that an elective chamber might be dominated by the most unscrupulous spenders, who would then enrich themselves at the colony's expense;² and Plunkett, the Attorney-General, asserted that

If the Upper House be elected by the large farmers...there must consequently be district elections. Where there were those elections there would be a canvass for votes, and where there was such a canvass, there would, as in all other popular elections, be corruption. The man who spent the most money and made the most promises would be the most likely to succeed, without reference to his qualifications (Cheers); and it was the most crafty and unprincipled knave who would promise most largely....But some of the best men were those who would not be induced to go through a contested election and run the risk of being disgraced by some contemptible candidate, who would canvass better achieving victory over him. (Hear, hear.)³

¹See, for example, Windeyer, S.M.H., 13 June 1846; Lowe, S.M.H., 4 May 1848.

²Silvester, op.cit., pp.186-7.

³Ibid., p.108.

In particular, Plunkett thought that a nominated upper house would attract the cream of retired members of the lower house and gentlemen like Sir William Burton, Puisne Judge at Madras and a former judge of the New South Wales Supreme Court, who intended to return to the colony and would not wish to campaign on the hustings.¹ He might also have mentioned Deas Thomson, the Colonial Secretary, who had never contested an election and whose desire to stand aloof from 'party politics' after responsible government led him to avoid electoral contests and retire to the upper house.² Even conservatives active in electoral politics considered that the best election was an uncontested one,³ and conservatives in general had no desire to make election the sole means of political advancement. Had they done so, they would have excluded from political life some of the 'finest gentlemen' in the colony.

The final major argument which conservatives used against Martin's proposal for an elective chamber was that it made no provision for the resolution of conflicts between the two branches of the legislature. The dilemma of those who favoured an elective upper house was explained by H.M. Marsh:

If we make it [the Upper House] elective by the class of people who elect the Lower House, there will be no distinction between it and a democracyIf we make it elective by another and a higher class, we shall make it an oligarchy.⁴

The solution which was provided by both the plan for an aristocratic chamber and by that for a non-aristocratic nominated house was to give the Governor power to appoint

¹Ibid.

²Cf. Cowper to Parkes, 27 August 1856, P.C., vol.6, A876. Thomson turned down the chance of becoming the first President of the new Legislative Council in 1856 because he thought the office 'a political one'. (Denison to Labouchere, 24 August 1856, P.R.O./C.O., 201/494.) Thomson, however, later became involved in a type of 'party politics' in the Council. (See below, *passim*, but esp. Ch.II.)

³Cf. J.M. Antill to James Macarthur, 9 January 1857, Macarthur Papers, vol.28, A2924, pp.5-7.

⁴Silvester, *op.cit.*, pp.215-6.

sufficient new members to break any deadlock between the houses. Martin and a few conservatives outside the Council, like Sir Alfred Stephen and Robert Johnson, made this the core of their objection to both proposals,¹ but most conservatives agreed with Marsh's view that the 'expansive principle' was an advantage. Swamping was explicitly and favourably referred to by Wentworth, Manning, Macarthur and Douglass,² while many other conservatives referred implicitly and with equanimity to what everyone knew: that a nominated house with unlimited membership could be coerced. Wentworth explicitly mentioned the possibility of swamping at least five times and he elaborated at length on its advantages:

...it is in this expansive character of this upper house that the real safety-valve is to be found (cheers.) Sir, it is this expansive character of the House of Lords which has saved England from more than one revolution. It is to this expansive character that I look forward as a port of refuge for the constitution at all times. Sir, any one can perceive, if the time should arrive - and most assuredly it will arrive - that there is an obstructive body in the Upper House impeding the legislation of the Lower House unnecessarily - impeding it, not for purposes of revision or consideration, but for purposes of faction, or even from an erroneous conviction or opinion of their own - I say, if a dead lock of this kind should ever arise, there is a remedy. The constitutional minister of the day has only to advise a further creation to the extent necessary to get rid of the obstruction, and then the obstruction, as a matter of course, will cease.³

The widely held opinion that Wentworth and the other conservatives did not foresee the possibility of a swamping is clearly incorrect. This view has been based less upon examination of the evidence than upon inferences from the presumed nature of conservative intentions in New South Wales in the 1850s. Such a procedure was natural enough in view of the fact that most historians have made only passing comments

¹Martin, *ibid.*, pp.98-9; Stephen, *op.cit.*, pp.11ff, 15; Johnson, *S.M.H.*, 6 September 1853.

²Wentworth, *S.M.H.*, 9 December 1853, and in Silvester, *op.cit.*, pp.35, 215-6, 221, 224; Manning, *ibid.*, p.180ff; Macarthur, *ibid.*, p.143; Douglass, *ibid.*, p.158.

³*Ibid.*, pp.215-6.

on the choice of a nominated upper house in New South Wales. However, their erroneous conclusion that the conservatives did not appreciate the potential weakness of a nominated chamber throws into doubt the validity of the premise about conservative intentions on which it was based. It will therefore be necessary to indicate some alternative conclusions on the nature of conservatism in New South Wales in the early 1850s.

To begin with, the facile identification of conservatism with the defence of squatter interests must be abandoned. Wentworth was the only conservative leader in the Council who derived his principal income from squatting and whole-heartedly endorsed the squatters' cause. Moreover, the squatters in general had little influence on the framing of the constitution, and the nominated upper house was certainly not intended to be a stronghold of the 'Shepherd Kings'. The leading conservatives saw the upper house as a chamber which would represent an 'aristocracy' drawn from both urban and rural interests, and they preferred the principle of nomination to that of election partly because they did not want rural interests to predominate. In that respect, the nominated chamber was intended to be the successor to the nominated element in the old Council, which had ensured that urban conservatives were amply represented.

It should also be noted that the only economic reason which the urban conservatives had for wanting strong political representation in the upper house instead of abandoning it to rural conservatives was a desire to ensure that the squatters did not legislate too blatantly in their own interests. A more important reason was that, for urban conservatives, political power had its own rewards - prestige, patronage, the gratification of narcissistic idealism and the satisfaction of personally influencing the course of events.

It must also be stressed that although what passed for 'constitutional principle' was often simply a convenient rationalization for expediency or self-interest, political theory was sometimes important in guiding politician's actions. It was not that they followed political theory to the detriment of their interests, but rather that their conception of their interests was moulded by political theory. It is impossible to dismiss the praise lavished upon the 'expansive character' of

the nominated upper house as just another argument in favour of a chamber desired for other reasons. It would have been a simple matter to fix the membership of the upper house at a specific number, making it impervious to swamping. Such a chamber would have been just as effective in representing urban conservatives and those who shrank from soliciting votes, and it had a precedent in the fixed number of nominees in the existing Legislative Council. We must conclude, then, that the conservatives genuinely regarded the 'expansive principle' as an advantage. They did so, not because they ignored their interests, but because they defined their interests in terms of Whig constitutional theory. All the conservatives knew that the House of Lords had passed the 1832 Reform Act under the threat of swamping and, with Wentworth, most regarded its submission in that crisis as 'one of the purest efforts of the patriotism of its members' and a model for all second chambers.¹ They thereby endorsed the conventional Whig doctrine that the conservative branch of the legislature could not indefinitely resist strong and repeated demands for change without damaging the structure of the body politic and exposing itself to the danger of being swept away by an enraged populace. Such turmoil was seen as a threat to conservative political interests and, ultimately, as a threat to conservative property. The possibility of swamping was therefore seen as a necessary safeguard to ensure that the upper house did not oppose reform until too late. Consequently, although the conservatives lauded the nominated chamber as a strong barrier to rash change, they also praised it for its weakness. They had no desire to impose on the colony an unyielding oligarchy, but only to create a colonial equivalent of that imperfect defence of vested interests, the British House of Lords.

The liberal movement in New South Wales in 1853 drew its strength from two sources. Some of its members, such as Edward Flood, Henry Parkes, J.R. Wilshire and W.R. Piddington, came from the middle ranks of colonial society. They had often

¹Silvester, op.cit., pp.215-6.

been prominent in municipal politics in the 1840s and, in some cases, were of working class origin. However, although such men were playing an increasingly important role in the movement, they did not dominate it. The greatest influence was wielded by merchants and professional men, many of them leaders of colonial society. Men like J.B. Darvall, T.S. Mort, G.K. Holden, Richard Jones, Charles Cowper, John Lamb, James Norton, Robert Campbell and Alexander Park could meet the leading conservatives on terms of social equality, although political antagonisms sometimes caused a degree of personal estrangement. John Lamb, for instance, a prince of the colony's commercial world who as a young man had married the daughter of a deputy-chairman of Lloyds, was so incensed by the results of the 1851 elections that he proposed the formation of a Reform Club to counter the influence of the predominantly conservative Australian Club.¹ Yet other liberals, like Darvall and Jones, were long-standing members of the Australian Club,² and Darvall, in particular, was a notorious snob whose social sympathies made him an easy target for satirists. W.B. Dalley, for instance, dramatized the dichotomy between his 'popular' politics and his aristocratic pretensions in an article in Sydney Punch:

Having no particle of sympathy with the motives, the objects, the hopes or the fears of those by whom he was surrounded, he lent his name, his powers, the prestige of his position to gentlemen whose existence, except from a public platform, he would hardly care to acknowledge. With a persuasive eloquence as sweet as the honey of the Sicilian mountain, he could second a resolution for the five points of the charter, and with the same delightful imperturbability cut the mover dead in the street in the next half-hour - and both operations would be marked by a grace and an appropriateness which none could hope to emulate.³

¹Irving, op.cit., p.392.

²See 'Original Founders and Old Members of the Australian Club in 1844', manuscript, King Papers, vol.2, M.L., A1977, pp.224-33.

³Quoted W.J.V. Windeyer, 'Responsible Government-Highlights, Sidelights and Reflections', J.R.A.H.S., vol.42, pt.6, 1956, p.297.

With another patrician liberal, Charles Cowper, Darvall led the liberal attack on the Constitution Bill in the Council. Their objections focussed on the electoral distribution and on the proposed upper house. J.M. Main has argued that they did not foresee that a nominated house would be weaker than an elective one and that they 'protested against a nominated chamber simply because it would perpetuate privilege, and on the ground that it would be "irresponsible"'.¹ It is true that they repeatedly asserted that the conservatives were merely trying to perpetuate their privileges through a nominated upper house; it is also true that they condemned such a house as 'irresponsible', as indeed it was in the technical sense of the word; but it remains equally true that they saw clearly that a nominated upper house could be coerced with the threat of swamping by a responsible executive. Cowper quoted extensively from speeches by the Duke of Newcastle and Gladstone to show that nominated chambers had frequently been swamped, so that many conservatives had come to favour elective ones. He himself thought the elective principle more conservative, and favoured it partly for this reason.²

The same argument was repeated by other liberals, and Darvall, in particular, dwelt upon the dismal prospect of an upper house made gross and despised by repeated swampings:

They [the ministers] could declare [that] it should consist of more members; and degraded indeed the members of such a body must feel, speaking and voting for nobody, and feeling that they were liable at any moment thus to be set aside by the vote of the popular body. But if this body might at the outset be somewhat respectable, it would become feeble in its manhood, and helpless and decrepit in its old age. The larger it became in numbers, the more abject and contemptible would the position of its members become.³

¹Main, loc.cit., p.51.

²Silvester, op.cit., pp.119-121. See also Cowper in S.M.H., 6 September 1853.

³S.M.H., 16 August 1853. See also Piddington, S.M.H., 6 September 1853; Empire, 3 September 1853, editorial; Campbell in Silvester, op.cit., p.149; and Bligh's oblique reference in *ibid.*, p.175.

Darvall put the argument in a different and perhaps more common form when he noted that if able and respected men became 'branded with those fatal letters contained in the word nominee, then the respect which attached to them, the influence they exercised, were gone...destroyed by the unfortunate caress which made them nominees'.¹ He therefore deemed it inevitable that a nominee upper house would lack the popular support necessary for it to stand up to the lower house and fulfill its conservative functions. This argument was basic to most liberal opposition to the nominated upper house.

In insisting upon these points, Darvall was not simply inventing reasons for condemning a nominated upper house, but was giving a genuine reason for his opposition to it. When radical liberals who repudiated the idea that there should be a conservative 'check' on the Assembly gained the ascendancy in the later 1850s, Darvall became a conservative, for with many other liberal men of substance he was an advocate of hierarchy in the social and political order.² In 1853, such opinions were dominant in liberal circles and even Parkes' Empire, which spoke for more radical liberals, noted with apparent satisfaction that in English societies there was a disposition amongst voters to defer to the claims of character, condition and wealth.³ What distinguished the liberals from the conservatives was that they were more inclined to trust 'the people', who, they believed, could be given more power as they could be trusted to vote for their betters. Yet, like moderate British reformers, they were prepared to grant the people power only within the framework of a 'balanced constitution' in which the colony's leading citizens had special representation. Robert Campbell, M.L.C., a member of the colony's oldest merchant family and a self-confessed 'democrat', expressed this view in its most extreme form:

¹S.M.H., 16 August 1853.

²For the conversion of Darvall and many other patrician liberals to conservatism in the late 1850s and early 1860s, see Chapter III, above.

³Empire, 5 October 1853, editorial.

While I contend for universal suffrage as the birthright of every Englishman, I would equally contend that the nomination of an Upper House should be left in the hands of those to whom it properly belongs. It belongs to the aristocracy, whether the aristocracy be one of birth, of talent, or of wealth. The members of this upper house should represent their order, as the tribunes of the people represented theirs. (Hear, hear.) History showed that this independence of the House of Lords, so far from having any oppressive tendency, has been the means, on many occasions, of preventing the people from being tyrannized over. (Hear, hear.) This Upper House should, I think, be elected independently of the Crown and the people. If the members are mere nominees, it is impossible that they can be independent; but all difficulty may be got over by introducing the elective principle and allowing the members of the aristocracy to elect their representatives.¹

While most liberals preferred to avoid using the term 'aristocracy' in the Australian context, they retained Campbell's basic assumption that the upper house would represent the better class of colonist. This was shown by the attitude of the Constitution Committee, which led the opposition to the constitution. Its members included a few conservatives like Robert Johnson and H.S. Russell, but for the most part it consisted of patrician liberals like Darvall, Cowper, T.S. Mort, T.W. Smart and G.K. Holden, and of some men of inferior status like Parkes, Wilshire and E.J. Hawksley who had at least vague connections with the radical movement.² The committee's composition was so varied that it found agreement difficult,³ but, when a compromise was eventually effected, it revealed essentially conservative assumptions. It was resolved that

The Upper House...must be essentially conservative in its character, that is, constituted as far as possible...by any justifiable conditions of the franchise, of those members of society who are most identified with the interests of the country by long experience of its various interests, who are best known for their intelligence and general

¹Silvester, op.cit., p.148.

²The list of members is in S.M.H., 6 September 1853.

³See, for instance, letter signed 'SQUIB', S.M.H., 29 November 1853.

independence, and who have most merited the confidence of their fellows by the exercise of a matured judgement and the performance of public services.¹

There was little agreement, however, as to how the return of such men was to be assured. The resolution implied that special restrictions on the franchise would be most effectual, but at the same meeting it was decided that no special property qualification should be imposed. It was resolved instead that the candidates should be confined to a list of at least a hundred men certified by the Governor or the lower house as 'qualified by moral endowments and social position for the higher duties of legislation'.² They were to be elected from large constituencies, a move probably designed to keep them remote from purely local interests and to ensure that they were men of considerable reputation who were wealthy enough to campaign over a wide area.³ The members were also to be elected for nine years with one third retiring every three years, for long tenure and gradual retirements were seen as a guarantee that the upper house would be immune from passing gusts of popular fancy while ultimately being amenable to the will of the people.

The committee's plan probably satisfied very few. It was adopted by only four votes to three at a meeting attended by a mere seven of the ninety-six members⁴ and received little praise. The radicals thought it conservative, and many liberals disliked the vestiges of nomineeism which it proposed to substitute for property qualifications. In fact, most liberals probably thought the imposition of a property qualification on either the electors or the candidates the best solution. G.K. Holden, who had put forward the committee's

¹S.M.H., 23 November 1853.

²Ibid.

³The rationale behind large constituencies was not explained by members of the Constitution Committee in 1853, but debates in the later 1850s and early 1860s revealed how such constituencies seemed likely to favour conservative interests. See the section on the debate over reform of the Council in Chapter III, below.

⁴S.M.H., 23 November 1853.

plan as a compromise after the committee had met for weeks without reaching agreement, had previously moved at a public meeting that members of the upper house should be subject to qualifications of 'age, property and residence'.¹ This proposal was endorsed by the meeting and embodied in a petition.

The imposition of a property qualification was also the device most frequently suggested in petitions from the country districts. Eleven anti-constitution petitions to the Legislative Council made specific recommendations for the form of the upper house and five of them, signed by 1,532 people, suggested a special property qualification for the electors or for the members or for both.² Most of the other petitions made suggestions which would certainly have resulted in a conservative upper house. One petition, signed by 444 people, wanted it elected from a body of crown nominees;³ two petitions, signed by a total of 455 people, wanted one third of the members nominated by the Crown, one third by the lower house, and one third nominated by those already appointed by the Crown and the lower house;⁴ and two petitions, whose combined signatories totalled 330, thought larger electorates, long periods of office and a minimum age qualification a sufficient guarantee that the upper house would be conservative.⁵ Only one petition, coming from sixty-five residents of Scone, the stamping ground of the radical John Robertson, questioned the belief that a conservative upper house was necessary.⁶

It is clear, then, that most of those actively opposed to the nominated upper house still accepted the idea that it should be conservative. This reflected the quiescence of the radical movement, whose outstanding figure, the Reverend J.D. Lang, was overseas until the agitation against the constitution

¹Empire, 7 September 1853.

²Petitions from Parramatta, Yass, Maitland, Morpeth and twenty-four 'Landed Proprietors and Colonists of New South Wales', V. & P. (L.C., N.S.W.), 1854, pt.24, n.p.

³Petition from Goulburn, *ibid.*

⁴Petitions from Campbelltown and from Windsor, Richmond and districts, *ibid.*

⁵Petitions from Wagga and from Scone and Murrurundi, *ibid.*

⁶*Ibid.*

was almost at an end. Sydney's radical newspaper, the Chartist-oriented People's Advocate, was at first content merely to support the liberal-dominated Constitution Committee. It avoided raising questions such as manhood suffrage which would have embarrassed many of the Liberals,¹ and its editor, E.J. Hawksley, joined the Constitution Committee. Only in Lang's stronghold, the Illawarra, did a separate radical organization emerge in the form of the Shoalhaven League,² and this had no influence in the colony at large. Hawksley spoke at one meeting organized by the Constitution Committee, and Daniel Deniehy and Parkes, who still retained some radical ties, spoke at several; but for the most part the speakers' platforms were occupied by 'landholders, merchants, clergymen, barristers, solicitors and other professional gentlemen',³ the élite of orthodox liberalism. The artisans and small traders who formed the backbone of radicalism merely helped to swell the numbers in the audience.⁴

The radicals and patrician liberals were united only in opposition to Wentworth's proposals for a colonial aristocracy and a nominated upper house, and the alliance was ruptured when the Constitution Committee produced its own plan. John Robertson thought the Committee had merely 'nibbled and jibbed, and allowed the seven words, "the Glorious Constitution of the Father land" to be an answer for everything'; he termed its agitation 'puny, sickly, if not contemptible'.⁵ Not to be outdone, the People's Advocate contemptuously described the committee's proposals as 'neither fish, flesh nor fowl' and

¹Cf. People's Advocate, 10 September 1853, editorial.

²S.M.H., 6 September 1853.

³People's Advocate, 10 September 1853; cf. S.M.H., 16 August 1853.

⁴See the description of the crowd in People's Advocate, 10 September 1853. For the composition of the radical movement, see P. Loveday, 'The Development of Parliamentary Government in New South Wales, 1856-1870', Ph.D. thesis, Sydney University, 1962, p.38. For the contrasting composition of the liberal movement, see *ibid.*, p.29.

⁵Robertson to J.D. Lang, 26 November 1852, Lang Papers, vol.6, A2226, p.649.

hoped it would never meet again.¹ The fundamental difference between the radicals and most liberals was that the radicals rejected the idea of the hierarchic society and its political corollary that the upper house should represent the more aristocratic and conservative elements in the community. Consequently, they found it difficult to assign to the upper house any function beyond that of correcting technical defects in legislation, a task which could be performed satisfactorily by a committee of revision within a single chamber. Robertson, for example, thought it would be better to have only one house but, because he saw 'no principle involved', he deferred to public opinion and proposed that the upper house should be elected by the lower;² and Lang thought one house sufficient, although he proposed a second one as a concession to British and American precedent.³ Unlike the leading liberals, the radicals had no adequate rationale for the existence of an upper house and within a few years were to advocate its abolition.⁴

How are we to explain the paradox that the liberals advocated a form of upper house which, in other colonies, proved to be a more rigid obstacle to their cause than the nominated house favoured by the conservatives? Part of the answer is that the upper houses which they proposed were often designed to be only moderately conservative. Cowper, for instance, wanted a chamber which would not be subject to dissolution and whose members would be elected for ten years with half retiring every five years.⁵ He expressed no preference on the qualification for voters, and probably intended it to be the same as for the lower house. Even with a liberal franchise such a house would have reflected changing electoral opinion only slowly and would have been a strong

¹People's Advocate, 5 December 1853.

²Empire, 5 December 1853.

³J.D. Lang, An Anatomical Lecture on the New Constitution..., Sydney, 1854, p.12.

⁴See Chapter III, below.

⁵S.M.H., 6 September 1853.

conservative influence in periods of very rapid political change. However, it would probably have been no more obstructive than the nominated Legislative Council proved to be. Similarly, the Constitution Committee's proposal and many of the plans advocated in the petitions would not have resulted in a chamber as hostile to liberal reforms as the Victorian Legislative Council showed itself to be after responsible government. The liberals had no desire to create an impregnable stronghold of conservative oligarchy. For them, it was not as important to have an 'expansive principle' to remedy a deadlock between the houses as it was for the conservatives, for the type of elective chamber which they wanted was less likely to indulge in protracted warfare with the Assembly than the type advocated by Martin.

However, this explanation is not sufficient for it is clear that most liberals wanted an upper house very like that proposed by the conservatives: they wanted one which would be conservative, but which would not have the power to ignore strongly expressed public opinion for too long. The British solution to the problem was to have a conservative upper house which could, if necessary, be swamped by appointing an unlimited number of nominated members. It was this solution which the conservatives adopted. To have favoured nomineeism would, however, have been political suicide for a liberal in 1853. It is true that in the 1840s the liberals had advocated a nominated upper house,¹ but in context this had not been an avowal of nomineeism. Without responsible government, the liberals were faced with the inevitability of having government nominees in the legislature and they advocated their separation into a second chamber because they believed it would weaken both the government and the conservatives. Consequently, when liberal advocacy of a nominated upper house is viewed in the context of the politics of the 1840s, it is apparent that it was motivated by hostility to the nominees - that it was designed to limit their influence and strike at the conservatism and government influence with which they were associated.

¹Cf. Lowe, S.M.H., 4 May 1848; Windeyer, S.M.H., 13 June 1846.

In 1852 and 1853, when the debate centred around constitutions which were avowedly designed to introduce some form of responsible government, it was unthinkable that a liberal should advocate a nominated upper house, for by then it was possible to consider the alternative of an elective one. Consequently, the liberal Robert Lowe, who in 1848 had repudiated Wentworth's suggestion that the colony lacked the materials for a nominated upper house,¹ now wrote from London inviting Parkes to publish his view that as far as appointments for life were concerned,

Your present public men are not as a body worthy of so marked a distinction, or rather so close a monopoly; and I am quite sure that, if they are appointed for life, in a few years you will be heartily ashamed of them, and find that you have anticipated your resources by putting worse men in a place which might have been occupied by better.²

In 1853, to advocate a nominated upper house was to advocate nomineeism, whereas in 1848 it had been to attack it. It would therefore have been inconsistent for a liberal to continue to advocate a nominated chamber in 1853; it would also have ended the political career of any politician dependent upon the 'popular' vote.

Even 'upper class' liberals like Darvall were better situated than the conservatives to appreciate the depth of anti-nominee sentiment in the community, for their political associations brought them into contact with other sections of society, including the most radical. They thought anti-nominee prejudice so strong that a nominated house would be unable to secure the public support which it needed in order to stand up to the lower house. Consequently, even had they favoured nomineeism in principle, they would have been forced to abandon it in practice because of their desire to make the upper house conservative. They had to devise other methods of creating

¹Lowe, S.M.H., 4 May 1848.

²Lowe to Parkes, 6 April 1853, reproduced in Sir Henry Parkes, Fifty Years in the Making of Australian History, 2 vols, vol.1, London, 1892, pp.44-5. Parkes published the letter in the Empire.

an upper house which would have been conservative, but not dangerously obstructive.

By choosing a nominated upper house, conservatives in New South Wales marked themselves off as men shaped by different ideals and circumstances than their Victorian counterparts, who deliberately chose an oligarchic elective chamber. Some clues as to the reasons for this difference may, perhaps, be afforded by a comparison of the different standards of debate in the two colonies, for such a test makes it clear that Victoria lacked the educated, conservative *élite* which dominated the proceedings in New South Wales.¹ In the late 1830s, when Macarthur was already theorizing about the benefits of a colonial aristocracy² and Wentworth was long established as a political leader adept at the manipulation of constitutional principles, Victoria was still an extended sheep run in the south of New South Wales. Consequently, in the early 1850s, Victoria had no long-established gentry to produce a Macarthur; and Melbourne, which had been turned by the gold rushes into 'a cross between a military staging-camp and a wild-west frontier town',³ was not old enough to have produced an 'urban aristocracy' capable of nourishing the attainments of men comparable to Sydney's Stephens, Mannings, Plunketts and Thomsons. Moreover, the squatters, preoccupied with establishing themselves, were even more inarticulate than their counterparts in New South Wales, for they had no Wentworth to speak for them.⁴ In general terms, Victoria lacked any significant body of legislators who were sufficiently acquainted with Whig constitutional theory to define their interests in terms of it. It is perhaps partly because of this that conservatives in the southern colony had less appreciation of

¹The Victorian debates are printed in G.H.F. Webb (ed.), Debate in the Legislative Council of Victoria on the New Constitution Bill, Melbourne, 1854.

²Article on Macarthur in A.D.B., vol.2.

³Geoffrey Serle, The Golden Age, Melbourne, 1963, p.67.

⁴Cf. ibid., p.138, et passim.

the virtues of the 'expansive principle' and were more inclined to the 'pursé test of political worth'. Certainly, not even James Martin could have matched Annand's unblushing claim that if 'any one had made £18,000 by sly-grog-selling... he would be anxious to keep it, and would therefore be a proper person to be a member of the Upper House'.¹

Yet, it must be doubted whether a lower level of political sophistication was the major reason for the Victorian rejection of the principle of nomination, or even an important one. The major reason, surely, was that the Victorians were threatened far more directly by what Wentworth called the 'Americans, Chartists, Socialists, and all manner of undesirable people' brought by the gold rush.² Between 1851 and 1853, the population of Victoria increased by 129 per cent while that of New South Wales increased by only 15 per cent.³ The result was that Victorian conservatives feared that radical political change was likely to follow the revolution in the social and economic life of the colony. They therefore took steps to build the most rigid possible barriers to thwart it. They had not wanted any change in their constitution for fear that such a move would be the prelude to democracy⁴ and, when Pakington's despatch forced their hand, they sought in an oligarchical upper house a substitute for imperial protection.

In New South Wales the onset of the gold rushes in 1851 had caused panic in some circles. Wentworth had urged the despatch of troops to the fields to keep order;⁵ and Macarthur had urged the temporary prohibition of mining to halt 'the deranging and upsetting of our social system to its very foundation' and to stop the 'spoliation' of the country's resources.⁶ However, mining was not prohibited; troops were not

¹Argus, 11 February 1854.

²Silvester, *op.cit.*, p.51.

³Based on the table in Clark, *op.cit.*, p.664.

⁴Serle, The Golden Age, p.146.

⁵Molony, *op.cit.*, p.83, n.46.

⁶Macarthur to Thomson, 29 May 1851, Macarthur Papers, vol.24, A2920.

sent; and, although Deas Thomson was initially concerned at the possibility of disruption as a result of the rushes, he was satisfied by the end of 1851 that many of the expected troubles had not eventuated.¹ In 1853, Wentworth, perhaps resentful of the fact that exports of gold had been nearly four times as valuable as exports of wool the previous year,² still continued to deprecate the mining industry as a 'branch of anarchy and discord' and to wish for its decline,³ but he was exceptional. The government had offered a reward for new gold discoveries; and in September 1852, Plunkett noted that gold had not disrupted other industries and that, thanks to the police and to 'the orderly character of the diggers as a body, the law has never been more powerful than at present'.⁴ Summarizing the general mood a week after the debate on the constitution had ended, the Sydney Morning Herald announced that gold had 'settled down as one of the permanent and ordinary interests of the colony...pursued without order, without excitement'.⁵

In 1853, conservatives in New South Wales expected democratic influence to increase to some extent, but they were not confronted with the threat of a radical disorientation of the established political, social and economic order. Consequently, they could still theorize calmly about the advantages of the 'expansive principle' in the upper house, confident that democratic pressures would be sufficiently mild for the Governor to use his discretionary power to refuse nominations if the classic conditions for a swamping were not

¹Geoffrey Blainey, The Rush that Never Ended, Melbourne, 1963, p.27.

²See the figures in New South Wales Statistical Register 1861, Sydney, 1862. Gold production varied enormously from year to year, and from 1854 to 1859, wool regained its supremacy, only to lose it again in 1860-61.

³Silvester, op.cit., p.29.

⁴Quoted Molony, op.cit., p.84.

⁵S.M.H., 1 January 1854, quoted Molony, op.cit., p.84.

present. Within a few years, however, the threat from aggressive democracy, culminating in a swamping which ignored the conditions which were supposed to govern such an action, convinced many conservatives, at least temporarily, that in 1853 they had been mistaken.¹

¹See Chapter IV, parts 2 and 4, the beginning of Chapter V, Chapter VI, part 4, et passim, below. Despite the swamping of 1861, conservative expectations that the Governor would use his discretionary powers were largely justified. The nominated Council was only subjected to an actual swamping once, and even in the 1920s Governors Sir Dudley de Chair and Sir Philip Game frustrated J.T. Lang's attempts to secure a reliable majority in the Council when they refused to make the necessary appointments. In Queensland, the Governor refused to swamp the Council to facilitate its abolition, and the necessary appointments were not made until his departure, when the Labor Speaker of the Legislative Assembly stepped down to become Lieutenant-Governor. See Turner, House of Review?, pp.6-7, 12-19.

CHAPTER II

PARTY, PATRONAGE AND THE LEGISLATIVE COUNCIL,
1856-61

Even in 1853, some conservatives foresaw that their dominance would soon be challenged. 'Wentworth's retirement from the Council and Thomson's relinquishment of office', wrote Sir Charles Nicholson, 'will leave voids on both sides, which I see no chance of being filled up except by an addition to the democratic element.'¹ On the eve of responsible government some three years later, conservative concern was far more general. 'The tide of democracy is flowing fast', said Judge Roger Therry, and he seemed to assume that conservatives could only ensure 'that it does not set in with a too sudden and formidable force.'² Similarly, the Governor, Sir William Denison, who himself looked upon change as 'an evil of great magnitude',³ observed that

those who cried out most for responsible Government are now by no means satisfied with the prospect of the article they have got. They begin to see that the elements they thought could easily be found in this colony, are not in such quantities as will give me much choice in my men. They see also lots of hungry adventurers striving to push themselves forward into importance, and they begin to think that 'let well alone' is a good and useful proverb.⁴

However, the elections held early in 1856 appeared to give the conservatives a majority and, on the advice of James Macarthur and others, Denison commissioned Stuart Alexander Donaldson to form the first responsible ministry. Donaldson

¹Nicholson to James Macarthur, 21 April 1853, Macarthur Papers, vol.27, A2923, pp.151-2.

²Therry to James Macarthur, 1 March 1856, Macarthur Papers, vol.34, A2930, pp.41-2.

³Denison to Lady Hornby, 8 December 1855, quoted W.T. Denison, Varieties of Vice-Regal Life, 2 vols, London, 1870, vol.I, p.304.

⁴Denison to Mrs Stanley, 16 September 1855, quoted *ibid.*, p.315.

had generally voted with the conservatives in the old Legislative Council, but he favoured an elective upper house, and not one justified in terms as patently oligarchic as those used by James Martin.¹ Consequently, his bona fides as a conservative were suspect, and Macarthur seems to have supported him partly in the hope that he could unite the different elements of the upper class in a 'ministry of all the talents'. On Macarthur's advice, Donaldson invited Cowper to become Colonial Secretary, an offer which Cowper only hesitantly refused.² However, J.B. Darvall, the other liberal leader in the old Council, accepted the post of Solicitor-General. Donaldson and Darvall both met Macarthur's spirit of compromise by promising not to press for alterations in the constitution beyond the repeal of the two-thirds clauses,³ and the other members of the ministry all had sound conservative credentials. They were drawn from both the old 'upper class' and from Wentworth's 'Australian' faction. From the former, there were Thomas Holt, W.M. Manning and W.C. Mayne, and from the latter there was G.R. Nichols, the son of a convict. Thus, while essentially conservative, the ministry drew strength from all the elements which had hitherto dominated colonial life. Macarthur, who had helped to form the ministry and briefly joined it in the transition period before responsible government, was praised for 'evincing a spirit of compromise' calculated to 'meet effectually the exigencies of the times'.⁴ Indeed, the formation of such a ministry was the first step towards a coalition of all the traditional élites in opposition to the radical liberalism of the late 1850s and

¹W.M. Manning to James Macarthur, 12 June 1856, Macarthur Papers, vol.27, A2923, pp.542-8; Donaldson in S.M.H., 13 December 1852.

²John M. Ward, article on Cowper in A.D.B., vol.3.

³W.M. Manning to James Macarthur, 12 June 1856, Macarthur Papers, vol.27, A2923, pp.542-8.

⁴H.G. Douglass to James Macarthur, 28 April 1856, Macarthur Papers, vol.27, A2923.

early 1860s.¹ But while Donaldson's ministry proved to be the portent of radical political change, it also gave hope of security, for nearly all members of the old élites were united in their desire for a conservative upper house. The ministry could therefore be safely entrusted with the task of making the first appointments to the new Legislative Council.

Responsibility for the first appointments was not confined to the Governor and the Premier. Denison was comparatively new to the colony and often drew upon the advice, not only of his constitutional advisers, but of colonial notables like the Macarthurs and the Macleays;² and although Donaldson was in the key position as the ministry's official channel of communication with the Governor, he actively involved his fellow ministers in the appointments and they in turn solicited outside advice.³ The list of proposed appointees was even leaked to the press and revised in the light of criticism.⁴

The constitution prescribed that the minimum number of councillors should be twenty-one, but set no upper limit. Many had assumed that the number would, under normal circumstances, be kept close to twenty-one, but invitations were issued to thirty-six men - precisely two-thirds the membership of the Assembly. The number seems to have been chosen by design, for when thirteen of those initially invited declined, further invitations were issued until the number of members again reached thirty-six. The Governor then sent the

¹This process, which resulted in the formation of a conservative movement of 'big men' to meet the threat of a radical liberal movement dominated by small traders and men of humble origin, is discussed in Chapter III.

²See, for example, Denison to Manning, 19 December 1855, M.L., MSS 1107; Denison, Varieties..., vol.I, p.332; article on Cowper by John M. Ward in A.D.B., vol.3; and John N. Molony, An Architect of Freedom, Canberra, 1973, pp.221-2.

³Manning to Donaldson, 19 June [April?] 1856, Letters, Donaldson Ministry, A731, pp.106-10; Manning to Plunkett, 5 May 1856, Manning Papers, M.L., MSS 246/3.

⁴Members included after their omission had been criticized by the Sydney Morning Herald were Dr James Mitchell and George Allen. Cf. S.M.H., 3, 8 May 1856.

Colonial Office a list of the members with an explanation of the principles upon which they had been selected.¹

The appointment of so many members was criticized by the liberals. Darvall was questioned about it on the hustings² and Parkes' Empire saw in it a plot to make the Council so bloated with conservatives that subsequent liberal appointments would be impossible.³ The accusation was exaggerated, but it may have had some point, for it was everywhere believed that the Council should be kept considerably smaller than the Assembly. However, there is no positive evidence that the allegation was true, and the appointment of a large number of members can be explained adequately on other grounds. By fixing the number of members at thirty-six, rather than at, say twenty-one, the government ensured that it would be able to appoint representatives of a wide range of interests, and its members seem to have been anxious to make the Council appear as 'representative' as possible. Justifying the nominations to his electors, Darvall stressed that they had been made without reference to party considerations and that an attempt had been made to nominate 'such men as would have been elected had the elective principle prevailed';⁴ and Denison was equally anxious that the appointments should not be thought partisan. He told the Colonial Office that:

The view taken by my advisers, and in which I fully concurred, was that as the benefit to be derived from the existence of a second Chamber must depend upon the amount of confidence bestowed upon it by the country at large; and as this confidence would hardly exist were the primary appointments evidently dictated by political or party considerations, the greatest care should be taken to make the upper house as much as possible the representative of all the varying parties, classes and interests in the community.⁵

¹Denison to Labouchere, 22 August 1856, with enclosure. P.R.O./C.O. 201/494.

²S.M.H., 17 June 1856.

³Empire, 30 May 1856.

⁴S.M.H., 17 June 1856.

⁵Denison to Labouchere, 22 August 1856, P.R.O./C.O. 201/494.

Denison spoke in the context of conservative assumptions about the role of the Council and he clearly meant that it would be a stronger defence against 'rash' legislation if it was not seen to be dominated by a narrow, conservative clique. There were, however, inherent difficulties in trying to make the Council both 'representative' and conservative. For those, like Denison, who thought that the only relevant divisions in society were those between such vertically defined groups as the pastoral and mercantile interests, the problem could be solved simply by appointing the most 'aristocratic' and conservative members of such interests; but not all were prepared to accept that the Council could be 'representative' if it represented only vertically defined interests, ignoring the existence of horizontally defined ones like small traders and artisans; and, the occupational composition of the Council aside, some were prepared to deny the representative character of any body composed largely of men with conservative views. Nominations in accordance with the conservative conception of the Council were therefore bound to be criticized, and Denison's assertion that they were representative, as far as possible, of 'all the varying parties, classes and interests in the community' missed the point of the attack. His definitions of 'class' and 'interest' did not allow that the lower orders formed a separate category and when he said that representation had been given to all parties, he meant symbolic representation, not equal representation or representation in proportion to the support they drew from the community.

Denison claimed only that his concern had been to ensure that the nominations were not 'evidently' dictated by political considerations, and when he went on to state that an attempt had been made to represent all parties, he implied that the appearance belied the reality. At other times he maintained that the political views of the candidates were not considered at all, and that the appointments had been made 'entirely on the ground of character and respectability'.¹ He was probably unconscious that he had

¹Ibid. See also Denison to Cowper, 26 February 1858 (copy), enclosed with Denison to Stanley, 17 July 1858, P.R.O./C.O. 201/503.

offered two conflicting explanations, and they served equally well his purpose - to deny that the appointments had favoured the conservatives at the expense of the liberals. He thereby implied that the Council did not conform to the conservative ideal - that it was not, in fact, the conservative branch of the legislature. This assertion, as everyone knew, was nonsense and Denison was not as devoted to the ideal of a non-party Council as he pretended. When Alexander Warren, one of the first men appointed to the Council, was unable to join Donaldson's ministry as Treasurer, Denison wrote him a cordial letter, regretting the loss of his services and expressing the hope that he would support the government notwithstanding.¹

Nevertheless, it is probable that the political views of candidates for appointment were seldom directly considered, for when men were chosen on the basis of 'character and respectability', as conservatives defined those terms, their political opinions could almost be taken for granted. High position and a record of service to the community through charitable, religious and learned institutions were important qualifications, and the men with the best record in these respects were usually conservatives.² Moreover, conservative views were themselves almost a test of the balanced judgment to be expected from men of character and respectability. As the Chief Justice, Sir Alfred Stephen, who was close to the Governor and his advisers,³ put it: 'radicalism...always implies some mental obliquity'.⁴

¹The letter is referred to in Denison to Donaldson, [4?] June 1856, Letters, Donaldson Ministry, A731, pp.5-8. Cf. the very cordial letter from Warren to Donaldson, 26 October 1856, *ibid.*, pp.286-7.

²See Tables IV, V, VI and VII, below.

³Cf. Stephen to 'My dear Donaldson', [?] July 1856, Letters, Donaldson Ministry, A731, pp.428-9. Social connection as well as official position brought Stephen and his family into contact with the Denisons, for Stephen's mother-in-law was the widow of Denison's chaplain at Hobart. Cf. Denison, *Varieties...*, vol.I, p.302. Journal entry, 24 January 1855.

⁴Quoted in Cowper to Stephen, 11 April 1859, (copy), Macarthur Papers, vol.28, A2924, p.293.

Despite the disadvantage at which they stood, some men who had been identified with the liberal movement were invited to become members of the Council. A.J.P. Lutwyche, the very individual against whom Stephen's slur was directed, was offered a seat, but refused it because he objected to the principle of nomination;¹ and William Bland, an associate of Wentworth's but a life long liberal, declined, possibly on the same grounds.² James Bligh, a liberal solicitor, was amongst the first appointed, and David Jones and George Hill, both identified with the liberal cause, took their seats soon after. Others who may have been appointed in the belief that they were liberals, were Wentworth's old associate, Robert Fitzgerald, who publicly supported Cowper in 1856;³ G.K. Holden, who had been the dominant force on the Constitution Committee which led the agitation against the constitution in 1853; and Robert Johnson, Thomas Hood, John Alexander and Dr Arthur A'Beckett, less significant figures in the same movement.⁴ Johnson, however, had always claimed to be a conservative, although he had argued against the constitution in the same terms as the liberals.⁵

None of the appointees had been a radical liberal and of the nine who had been in some measure associated with the liberal cause, only Bligh proved a consistent liberal in the Council. Jones voted with the liberals more frequently than he voted with the conservatives, but was closely identified with neither party;⁶ and while Hill always sat on the liberal

¹So I interpret Lutwyche's letter, S.M.H., 13 May 1856.

²Cf. Cowper to Denison, 26 February 1858, enclosed with Denison to Stanley, 17 July 1858, P.R.O./C.O. 201/503.

³Empire, 30 September 1856.

⁴Holden had been the author of the plan for an Upper House eventually adopted by the Committee. (S.M.H., 9, 17, 23 November 1853). Members of the Committee are listed in ibid., 6 September 1853.

⁵S.M.H., 4, 16 August 1853; People's Advocate, 20 August 1853.

⁶See below, p.83. Jones' voting pattern matched his claim that 'He never had, and never wished to have, a desire to attach himself to any party....' (S.M.H., 6 October 1858.)

side of the house, he sided with the conservatives on most issues in 1860 and 1861.¹ Johnson, Fitzgerald, Hood, Holden and A'Beckett spoke and voted as conservatives on every major issue. As a result, the Council probably proved to be more conservative than Denison and his advisers realized when they appointed it. Between 1856 and the emergence of conflict between liberals and conservatives in the Council in 1858, the liberal movement had become more radical. This process, which will be examined in detail in the next chapter, made conservatives out of many Whiggish liberals who had been associated with the Wentworth faction and the old 'upper class'. In 1853, many liberals had not argued for manhood suffrage² and their views on the land question had been equally moderate. Even in 1855, liberals in the old Legislative Council had pressed only for the survey of more land in the intermediate districts³ a far cry from the principle of free selection before survey which became a touchstone of liberal principle after 1858. The pace of change left many in its wake and, in addition to those initial appointees mentioned above, at least three members who took their seats between 1858 and 1861 were former liberals who had become conservatives by loving too well the progressive ideas of an era which had passed.⁴

The most striking evidence of official determination to make the Council appear representative was the attempt

¹S.M.H., 21 February 1861. Hill's voting record is in Appendix III.

²Liberal members of the old Council had tried only to have £5 householders admitted to the franchise by the constitution, although some favoured manhood suffrage.

³S.M.H., 12 September 1855.

⁴The three members were Alexander Park, a liberal member of the old Legislative Council and a member of the Constitution Committee; Edward Hunt, a member of the Constitution Committee who did not swing over to the conservatives until 1861; and James Norton, who had been associated with liberal politics in Sydney in the early 1850s. See S.M.H., 6 September 1853 (Park, Hunt); P. Loveday, 'The Development of Parliamentary Government in New South Wales, 1856-1870, Ph.D., University of Sydney 1962, p.457 (Park); and manuscript note in Lang Papers, vol.6, A2226, p.582 (Norton). Voting behaviour of all members in the Council from 1858 is summarized in Appendix III.

to afford representation to all the major religious denominations. Invitations were extended to Bishops Barker and Polding, the respective heads of the Anglican and Roman Catholic denominations; to the Reverend W.B. Boyce, President of the Methodist conference; and to the Reverend W. Purves, until recently Moderator of the main body of Presbyterians. The clerical invitations mimicked the clerical component of the House of Lords, but they belonged more properly to the colonial tradition in which the State supported all major religions but established none. They symbolized the State's even handed commitment to the well-being of all Christian denominations and stood squarely in the tradition of Bourke's Church Act of 1836.¹ At the same time, the invitations were consistent with the ideal of the Council as a body representing the colonial aristocracy, for Barker and Polding followed the Chief Justice in the colony's official order of precedence² and Boyce and Purves, apart from their purely religious eminence, were prominent members of the community who sat on the University Senate.³

The appointment of leading members of the clergy had been suggested less than three years previously by Sir Alfred Stephen,⁴ but the invitations were probably the result of pressure from the Governor himself, for he had long favoured such a scheme.⁵ His attempt to put it into practice aroused widespread protest, not least from the conservative Sydney Morning Herald, which was owned by John Fairfax, a prominent

¹The Church Act is discussed by Naomi Turner, Sinews of Sectarian Warfare, Canberra, 1972; and John N. Molony, An Architect of Freedom, Canberra, 1973.

²Waugh's Australian Almanac, Sydney, 1858, p.105.

³Waugh & Cox's Australian Almanac..., Sydney, 1856, p.145.

⁴Sir Alfred Stephen, Thoughts on the Constitution of a Second Legislative Chamber for New South Wales..., Sydney, 1853, p.7.

⁵The Sydney Morning Herald, 12 May 1856, commented drily that 'The clerical element in the late nominations...is notoriously an ancient prejudice of his Excellency'. Cf. S.M.H., 6 May 1856. The Herald's editor, the Reverend John West, had known Denison in Hobart, where both had lived until some two years previously.

Congregationalist, and edited by the Reverend John West, a minister of the same faith. The Herald argued that if Purves deserved a seat, then so did the Congregationalists' Dr Ross and the Scottish Free Church's Mr Salmon,¹ but on more general grounds it objected to clerical nominations altogether. It argued from traditional Nonconformist premises that the nominations implied a connection between Church and State, said that it was unwise to expose clerics to political criticisms, and noted that the nomination of leaders of minor denominations afforded no protection against a Council whose members were still nearly all Anglicans. It would have been far better, said the Herald, to abandon the assumption that members of the Council would divide on religious lines, and to trust the Anglican majority to act according to 'fixed principles of moral right', not 'the self-interest of a communion'.² Here the Herald misrepresented the ministry's assumptions, for the clerical invitations had symbolic value only; but it expressed accurately the conservative view of the Council when it went on to argue that if Anglicans alone were suitable for appointment on non-religious grounds, then they alone should be appointed. It thought the ministry's difficulties in this respect, however, stemmed from its lack of acquaintance with the community.³

The ministry was saved from its critics by the refusal of the clergy to accept office, but it still managed to give representation to the main religious minorities. At the same time as it issued invitations to the clergy, it had offered seats to J.L. Montefiore, a Jewish merchant, and to at least two Presbyterians, Alexander Warren and Alexander Berry. All three accepted. It had also tried to find lay Catholics with suitable qualifications. W.M. Manning, the Attorney-General

¹S.M.H., 3 May 1856.

²S.M.H., 6 May 1856. See also S.M.H., 2 May 1856. The invitations to the clergy were also criticized by the Empire, 3 May 1856.

³S.M.H., 6 May 1856.

elect,¹ had solicited advice on the matter from several people, including two prominent Irish Catholics, Judge Therry and Michael Fitzpatrick, the Clerk of the old Legislative Council. Neither man could suggest anyone suitable and Therry noted 'the remarkable fact that very few gentlemen of education [had] ever been attracted from his country [Ireland] to this colony'.² When Polding refused the nomination, Therry suggested a Mr Loughnan, whom Manning rejected as unsuitable because 'nobody knows that he is qualified'. Therry then proposed that a seat be offered to Dr James Murray,³ a prominent Queanbeyan medical practitioner and landholder and the elder brother of T.A. Murray, a future President of the Council. Manning immediately recommended Dr Murray to Donaldson and he was sent an invitation which he at first refused because of the 'precarious state' of his health,⁴ but accepted when pressed a second time. Murray died a few weeks later, before the ministry had filled the Council up to its arbitrary limit of thirty-six, but the Catholics were not deprived of all representation. In a further effort to find members of that persuasion, Manning had consulted John Hubert Plunkett,⁵ a prominent Catholic member of the Assembly and, perhaps as a result of his advice, the ministry appointed Therry himself.⁶ It also appointed George Allen, a prominent

¹At the time the appointments were made, the ministers had not yet assumed responsibility for their departments and were all, in a sense, ministers without portfolio. The best exposition of their status is given by C.H. Currey's article on Denison in A.D.B., vol.4, p.50.

²Manning to Plunkett, 5 May 1856, Manning Papers, M.L., MSS 246/3.

³Ibid.

⁴Murray to Denison, 17 May 1856, M.L., MSS AM 63.

⁵Manning to Plunkett, 5 May 1856, Manning Papers, M.L., MSS 246/3.

⁶Therry had been the only one of the three Supreme Court Judges omitted from the original invitations. This was probably because there was some feeling in the Ministry that not all the judges should be appointed, and Therry was the most junior judge. Cf. Darvall's speech in S.M.H., 17 June 1856.

Methodist whose omission from the original list had been criticized by the Herald;¹ John Alexander, a Presbyterian merchant; and David Jones, founder of the merchant house of the same name and a prominent Congregationalist. Thus, the completed Council contained one Jew, one Catholic, one known Congregationalist, one known Methodist and three known Presbyterians. Their presence was a purely symbolic tribute to the ideal of a representative Council, for the remaining twenty-nine members were all, or nearly all, Anglicans. It was assumed that the Anglican majority would act impartially towards all denominations in accordance with the ideals of parliamentarism and justice.

The preponderance of Anglicans amongst the initial nominees reflected the social and political structure of the colony, for Catholics were disproportionately represented amongst the working classes, while Nonconformists were probably over-represented in liberal circles.² Representation in proportion to population was therefore impossible without violating the interconnected principles that the Council should be conservative and should represent the colony's 'aristocracy'.

It should, however, have been possible to strike a better balance between vertically defined economic interests. To help assess whether such a balance was achieved, information on the occupational structure of the Council is provided in Table II.

¹S.M.H., 3 May 1856, editorial.

²The religion of thirteen liberal members of the Council between 1858 and 1861 is known. Seven were Nonconformists and six were Anglicans. Jones, the Council's 'independent liberal' was also a Nonconformist. There was overwhelming Nonconformist support for radical and liberal candidates against conservatives in Britain. See J.R. Vincent, Pollbooks: How Victorians Voted, Cambridge, 1967, pp.67-70.

TABLE II¹

COMPOSITION OF THE LEGISLATIVE COUNCIL,
JULY 1856

<u>Category</u>	<u>Occupation</u>	<u>Number</u>	<u>Percentage</u>
Pastoral/agricultural	(Pastoralists	11)	33%
	() 12	
	(Agriculturalists	1)	
Commercial/ manufacturing	(Merchants	6)	28%
	() 10	
	(Other commercial)	
	(and manufacturing	4)	
Professional	(Judges	3)	39%
	(Barristers	1)	
	(Solicitors	5)	
	(Medical)	
	(Practitioners	1) 14	
	(Retired government)	
	(officials	3)	
(Military officers	1)		

How far we can regard the Council as representative of the various vertically defined interests depends, of course, on how we classify those interests. If we adopt the division used in the table, then it can be seen that the pastoral/agricultural, commercial/manufacturing, and professional interests were approximately balanced. However, these classifications are arbitrary and to some extent anachronistic, for contemporaries rarely spoke of a separate 'professional interest'. Professional men were sometimes included in the 'urban interest', and at other times they were regarded as members of no interest but as the servants of them all.²

¹Based on biographical details in Appendix IV.

²See, for example, the Empire's editorial, 20 May 1856, which assumes a distinction between judges, clergymen and professional men, on the one hand, and 'the great colonial interests' on the other.

If we adopt different classifications, then the appearance of a balance of interests is destroyed. Contemporaries frequently separated the pastoral from the agricultural interest, and if we do the same, then it is apparent that the latter was grossly under-represented. However, no one complained about this state of affairs, for the agricultural interest was dominated by small farmers, most of them tenants who leased their land from a great landholder. Such men were not, in conservative eyes, fit to hold seats in the Council - they had what representation they needed through large landholders like Alexander Berry and Joseph Docker, from whom they leased their farms. Moreover, potential liberal resentment at the farmers' lack of representation was subsumed into a more general grievance that the Council was the almost exclusive preserve of conservative men of property.

If we arbitrarily divide the colony into urban and rural interests, as many contemporaries did, the appearance of balance in the Council disappears once more, for two-thirds of the members were engaged mainly in urban occupations. Moreover, if we classify the members as urban and rural according to their place of residence, the imbalance worsens, for thirty of the thirty-six members lived in Sydney and its environs.¹ The Council therefore represented the class which had made up the nominee element in the old Council - the colony's urban respectability.² The liberals, of course did not complain at the over-representation of urban interests, for that would have cast doubt on a myth which they were assiduously fostering - that the Council was a tool of the squatters. Conservatives, too, ignored the imbalance, for it enabled them to bring into parliament able men who found it difficult to compete with the liberals in urban electorates or with well known local squatters in country electorates. Moreover, they could have argued truthfully enough that most of the professional men had not been appointed as the representatives of any economic interest, but had been given

¹The members' addresses are listed in Executive Council Minutes for 9, 13, 26, 27 May, 7 June, 8, 14, 28 July 1856. Archives Office of N.S.W., 4/1533.

²See Chapter I, above.

seats because they had special skills to assist the Council in its functions as a house of review. The large number of lawyers brought skills appropriate to the task of technical revision, but those whose abilities were most needed were the former government officials - Deas Thomson, Riddell and Merewether. They were appointed, said Governor Denison,

partly from an idea that their former position entitled them to this consideration, and partly from a feeling that their knowledge of administrative arrangements [and the] mode in which the government had hitherto been conducted would render their services valuable.¹

The judges of the Supreme Court were also appointed to fulfill a public purpose rather than to represent any specific interest. No spokesman for the ministry explained in detail the rationale behind their appointment, but the Empire and the Sydney Morning Herald agreed that they were intended to bring their legal skills to the revision of legislation and, in particular, to ensure that nothing passed into law which was unconstitutional, contrary to the laws of England, or an infringement of the rights of any interest.² This seems to have meant that the judges, as guardians of the law, would preserve the independence of the judiciary and ensure that no act contravened the rights of groups like state pensioners and the squatters to which the public faith was legally pledged. Liberal resentment at the privileges of some of these groups seemed to justify the precaution, but in the event, legislation affecting them in the following years involved no breach of faith.³

The Sydney Morning Herald was prepared to regard the judicial appointments as 'an experiment',⁴ but the Colonial

¹Denison to Labouchère, 22 August 1856, P.R.O./C.O. 201/494.

²Empire, 20 May 1856; S.M.H., 15 May 1856. Editorials.

³Robertson's land acts forbade free selection during the currency of existing squatting leases or licences, and the bill 'abolishing' state aid to religion simply phased it out gradually as clergymen receiving state funds died.

⁴S.M.H., 15 May 1902, editorial.

Office thought them unwise¹ and the liberals almost unanimously condemned them.² The appointments probably stemmed partly from the desire to duplicate the judicial elements in the House of Lords and were based on the premise that the judges would not necessarily become involved in politics by accepting seats in the Council. Even Darvall, perhaps the minister least bemused by the conservative mythology of the Council, said that he thought some judges should have seats 'so long as [they] did not become involved in political matters, and so long as their attendance in the Council did not interfere with their duties on the bench'.³ The liberals took a more cynical view, for they regarded any council nominated by their opponents as necessarily 'political', and feared that by participating in its debates the judges would lose their reputation for impartiality. The Empire warned that they would carry their political prejudices onto the bench and pointed out that since they were already complaining of too much work, it was foolish to add legislative duties to their burden.⁴ But all three judges were frustrated legislators, anxious to take on parliamentary

¹Minutes and reply to Denison to Labourchère, 22, 24 August 1856, P.R.O./C.O. 201/494.

²See, for example, Empire, 30 May 1856. Liberals criticized the presence of the judges in the Council until they retired, either for personal reasons or through ministerial pressure. Even while Donaldson was Premier, the liberals succeeded in having the Assembly pass, on the casting vote of the speaker, a resolution censuring the judges for accepting seats in the Council. Donaldson later managed to have the motion rescinded by twenty-three votes to twenty-two. Despite liberal pressure, Therry remained in the Council until he left for England in 1859, and although Dickinson resigned in April 1858, it was through pressure of work (Dickinson to Colonial Secretary, 29 March 1858, J.L.C., 1858, p.150). However, the Herald attributed Stephen's resignation seven months later to 'a pressure which no Ministry ought to have exercised, and to arguments which no legislator...should regard'. (S.M.H., 23 November 1858.) Stephen's health was poor at the time, and this may also have influenced his decision.

³S.M.H., 17 June 1856.

⁴Empire, 30 May 1856.

functions.¹ Undeterred by the public outcry, they took their seats, and when Deas Thompson refused the Presidency of the Council, the post was offered to the Chief Justice, Sir Alfred Stephen.² Stephen must have been pleased at the appointment, for it was one which he himself had recommended in 1853.³

In his opening address as the first President of the Council, Stephen said that it was 'assuredly not necessary to the duties of a legislator, nor naturally incident to the full and efficient discharge of them, to share in any degree in the disputes of partisanship, or descend to the contests of political warfare'.⁴ For two years the course of events in the Council seemed to vindicate his judgment. For one thing, the composition of the Council did not provide the basis for acrimonious divisions. Most of the members had been chosen by the Donaldson ministry and most had approximately the same political views. Of the Donaldson appointees, only Bligh was an outright liberal, although Jones and Hill shared some of his beliefs; and members appointed during the remainder of 1856 and 1857 did little to alter the balance. The Parker ministry

¹After Stephen retired as Chief Justice in 1873, he entered the Council and, despite his advanced years, became its most prolific legislator. He bitterly regretted even the short absences required by his occasional duties as Lieutenant-Governor. (See, for example, Stephen to Parkes, 18 March 1879, P.C., vol.34, A904, p.341; Stephen to Parkes, undated, P.C., vol.58, A928, p.181; Stephen to Parkes, 2 August [1879], P.C., vol.58, A928, p.144.) Therry had been a member of the old Council in the 1840s and corresponded freely with James Macarthur on political matters (see for example, Therry to Macarthur, 1 November 1855, 1, 31 March 1856, 24 May 1861, Macarthur Papers, vol.34, A2930, pp.27, 41-2, 43-50, 97). Dickinson had shown his interest in the colony's political life by publishing his A Letter to...the Speaker on the Formation of a Second Chamber..., Sydney, 1953.

²The circumstances are described in Denison to Labouchère, 24 August 1856, P.R.O./C.O. 201/494.

³Stephen, A Letter to...the Speaker..., p.17.

⁴Empire, 23 May 1856.

nominated six conservative professional men and one conservative merchant, and the first Cowper ministry appointed three liberals and one conservative, the latter being James Norton, head of the colony's oldest legal firm. He may have been appointed under the misapprehension that he would prove to be a liberal, for he had been involved in liberal politics in the early 1850s.¹ When Cowper regained power in 1857, his government made no appointments until March 1858, although before that it issued one invitation - to Sir William Macarthur, a member of the great conservative family.²

The emergence of 'parties' in the Council was also delayed by the lack of issues likely to bring the Council's few liberals into conflict with the conservatives. The Donaldson and Parker ministries could not persuade the Assembly to pass legislation embodying such issues, and it was not until 1858 that the Cowper ministry was strong enough to push its reforms through the lower house so that they could be considered by the Council. Until then, that body did comparatively little business and few votes came to a division. Only on one occasion was an 'ideological' issue prominent in its debates. This was in February 1857, when a resolution was carried asserting the right of the Council to amend money bills. Even this did not produce a true division between liberals and conservatives, for only one liberal was present; rather, the lines were drawn between the moderate conservatives, led by Thomson and Douglass, two of the architects of the constitution, and the extremists, led by Robert Johnson, who had opposed the constitution in 1853. Johnson and his supporters claimed for the Council powers over money bills never envisaged by those who had framed the constitution, but their view was confirmed by eleven votes to eight.³

It was not until the middle of 1858 that the clashes between liberals and conservatives began, despite the

¹See p.52, n.4, above.

²Executive Council, Minutes, 19 November 1857, Archives Office of N.S.W., 4/1536.

³Empire, 5 February 1857.

allegations of A.J.P. Lutwyche, who had refused the Donaldson ministry's offer of a seat in the Council. When invited by Cowper four months later, he had changed his mind and entered the Council as Solicitor-General in Cowper's first administration. When Cowper formed his second ministry in September 1857, Lutwyche once more took office as Solicitor-General, and fourteen months later became Attorney-General. In March 1858, he wrote to Cowper complaining that

There is not a single member on whom I can rely to second a motion, to speak to a point of order, or to support the measures which I may have to introduce on the part of the Ministry. It is all chance whether one is to be found when wanted for any such purpose; and I feel that this is not a position in which a Government ought to be placed. I heard, indeed, last session many assurances, both public and private, that there was no wish on the part of members of the Council to oppose the present administration; but though the voice was Jacob's voice, the hands proved to be the hands of Esau. The majority in the Upper House repeated the objections and re-echoed the arguments of the minority in the Lower House; and I have no reason to doubt that they would do the same again. What Mr. Donaldson and his friends contended for in the Assembly was carried by Mr. Deas Thomson and his friends in the Council. And if Mr. Donaldson adheres - as he has declared he will adhere - to the Parker scheme of Electoral reform, which is as different from ours as dark is from light; is it likely that Mr. Deas Thomson, who had a principal hand in framing the Parker Bill, will assent to such a distribution of the representation as we mean to propose.¹

Lutwyche's accusations were more accurate as a prediction of the future attitude of the conservatives than as a record of their behaviour in the past. His letter had probably been composed at Cowper's request, and it certainly reflected the political needs of the moment. After the radicals had combined with the conservatives to defeat his land bill, Cowper had discarded T.A. Murray, Minister for Lands and Works and replaced him with John Robertson, the

¹Lutwyche to Cowper, [2?] March 1858, enclosed with Denison to Stanley, P.R.O./C.O. 201/503.

leading radical. Cowper and Robertson strengthened their position at an election immediately afterwards and faced the new parliament determined to liberalize the electoral law and, after a subsequent election, push through a radical land reform.¹

Realizing that he could expect opposition from the Council, Cowper had written to Denison on 26 February, asking him to appoint fifteen new members, so that he could 'calculate with some degree of certainty upon a favourable reception of the measures which the Government may desire to carry'.² He had also argued that the new appointments were necessary for the maintenance of a quorum during the coming session, but he had shown his hand and Denison, after claiming that the initial appointments had 'no reference to the political views or opinions of the members', had categorically denied that a ministry was entitled to enlarge the Council at will simply to ensure a favourable reception for its measures.³ He had therefore asked Cowper to limit his appointments to vacancies caused by death or retirement and not to press the matter further.

Cowper had then approached the Governor personally, taking Lutwyche for support.⁴ Their joint approach proved fruitless and its only result was that Lutwyche decided to compose the formal letter of complaint about the Council quoted above, in order to strengthen Cowper's hand. It was a political document whose account of the Council's record bore little relationship to fact. Contrary to its allegations, the

¹Cf. P. Loveday and A.W. Martin, Parliament, Factions and Parties, Melbourne, 1966, p.29.

²Cowper to Denison, 26 February 1858, enclosed with Denison to Stanley, 17 July 1858, P.R.O./C.O. 201/503. Cowper's request for appointments to the Council has been treated in a different context by P. Loveday, 'The Legislative Council in New South Wales, 1856-70', *Historical Studies*, vol.11, no.44, April 1965, p.487.

³Denison to Cowper, 26 February 1858, enclosed with Denison to Stanley, 17 July 1858, P.R.O./C.O. 201/503.

⁴Lutwyche to Cowper, [2?] March 1858, enclosed with Denison to Stanley, 17 July 1858, P.R.O./C.O. 201/503.

government's legislation had always been given a fair and cordial response; motions proposed by Lutwyche had never failed to find a seconder; and legislation which he had introduced was well received. He had brought in eleven bills passed by the Assembly, of which four had passed without amendment and one with an amendment acceptable to the Assembly; the remainder had lapsed when parliament was prorogued before the Council could deal with them. Lutwyche had originated two bills in the Council, one of which lapsed because of prorogation before it could be considered, while the other, the District Courts Bill, was freely amended before it was sent to the Assembly where it was still being debated when the Parliament ended. It was to be expected that the Council would amend the District Courts Bill, a complex and far reaching piece of legislation with which it was admirably qualified to deal, the more so because appointments by the first Cowper ministry and the Parker ministry had made the legal profession easily the biggest occupational group by the Council. This can be seen from Table III.

TABLE III

COMPOSITION OF THE LEGISLATIVE COUNCIL,
NOVEMBER-DECEMBER 1857

<u>Category</u>	<u>Occupation</u>	<u>Number</u>	<u>Percentage</u>
Pastoral/agricultural	(Pastoralists	10)	24%
	() 11	
	(Agriculturalists	1)	
Commercial/ manufacturing	(Merchants	7)	22%
	() 10	
	(Other commercial and manufacturing	3)	
Legal	(Judges	4)	38%
	() 6	
	(Barristers	6) 17	
	(Solicitors	7)	
Other Professional	(Medical	2)	16%
	(practitioners)	
	()	
	(Government	1)	
	(officials)	
	(Retired government	3) 7	
	(officials	3)	
	()	
	(Military officers	1)	

Where the old Legislative Council had been termed the 'Squatter's Council' because it went into recess during the shearing season,¹ the new Council might now have been called the 'Lawyer's Council', for the timing of the country circuit exercised a far greater influence on the attendance at debates. A clear majority of the Council's members were now professional men, most of them lawyers or judges. There were seventeen members of the legal profession in the Council, making up thirty-eight per cent of its membership - a far higher figure than for any other group. The dominance of the legal profession was in fact greater than the figures indicate, for they were more consistent in their attendance than most other members, particularly the pastoralists. During the session of 1857, they cast 47 per cent of the total number of votes, and in the case of the District Courts Bill they dominated the debate and were responsible for 48 per cent of the votes.

The District Courts Bill was, as its name implies, intended to set up a system of district courts. It involved so many questions of legal principle that if the lawyers in the Council had not proposed amendments to it, it would have constituted prima facie evidence that the Council was useless as a house of technical revision. Moreover, in considering the amendments, Lutwyche did not stand alone against a hostile legal majority, for he was in a minority in only six of the seventeen divisions on the bill. 'Party' was not a factor in these divisions, and conservatives were as likely to vote with him as liberals. In these respects, voting on the bill followed the normal pattern. There were seven divisions on other government bills and Lutwyche was in the majority in four. The lines of division show no hint of 'party' and on only three occasions did Lutwyche gain the support of a majority of the liberals. In three divisions, most liberals voted against him, and in one they were evenly divided.² The only validity which his complaints against the Council possessed derived from an

¹Russel Ward, Australia, Sydney, 1969, p.49.

²This analysis of voting behaviour is based upon the division lists in J.L.C., vol.2, 1857.

assumption which he could hardly state - that the independence displayed by members of all political opinions was an evil, and that government measures should be supported as government measures, regardless of their individual merits.

On March 10, Cowper again wrote to the Governor, enclosing Lutwyche's letter and pressing for the additional appointments. This time Denison conceded a fraction. After protesting against 'the establishment of the principle that a Government is authorized to override any opposition it may encounter in the Upper House', he observed that there were now six vacancies owing to deaths or resignations and said he was 'quite prepared to fill up these...with such gentlemen as you may choose to recommend'. Further, he said that if there were any other men whose 'talents and standing in the colony' entitled them to the distinction, he would 'not object to increase the number of members by adding one or two to the original 45'.¹ In fact, Cowper gained three additional appointees, for on 22 March the Executive Council resolved to offer seats to nine men, all of them liberals.² They had been sounded out beforehand,³ and all accepted the nomination. By 17 August they had been joined by four more liberals, three of them appointed to fill up vacancies caused by further resignations. Thus, more slowly than he had hoped, Cowper gained thirteen of the fifteen nominations which he had requested; and, as nine of the appointments simply filled up existing vacancies, there were no grounds for accusations that the Council had been 'swamped'.

Greater damage had been done to the ideal of the Council as a deliberative body above the strife of party. The primary qualification possessed by Cowper's appointees was their political standpoint, although an attempt had been made to

¹Denison to Cowper, 16 March 1858, enclosed with Denison to Stanley, 17 July 1858, P.R.O./C.O. 201/503.

²Executive Council, Minutes, 22 March 1858. Archives Office of N.S.W., 4/1536.

³Cf. Cowper to Denison, 26 February 1858, enclosed with Denison to Stanley, 17 July 1858, P.R.O./C.O. 201/503: 'I have ascertained that [Bland] is prepared to undertake the duty [of a Legislative Councillor]...and I have reason to believe [the others] will act if appointed.'

appoint liberals of the more respectable sort. A few were worth their place even by conservative standards. The most notable of these was William Bland, a former convict, but one transported for the honourable crime of killing a man in a duel while a surgeon in the Royal Navy. He had been pardoned less than two years after his arrival in the colony, and although he had been imprisoned again several years later, it was a punishment suffered in a cause popular in respectable circles - libelling Governor Macquarie. Bland's reputation had grown through his association with Wentworth in the 'fight for colonial freedom', through his sympathy with the oppressed, and through his selfless devotion of time and money to philanthropic causes. The son of a prominent London physician, he was described by a fellow medical practitioner as 'an elegant scholar, a man of science, and a gentleman of that antique school of urbanity and refinement, which modern barbarism and ruffianism have almost trampled into oblivion'.¹ The Donaldson ministry had offered him a seat in the Council, but he had declined the honour. Cowper, however, induced him to reconsider, and his years in the Council were marked by devotion to the democratic cause and the improvement of the conditions in which prisoners, the inmates of charitable institutions and the poor were obliged to live.²

The best qualified of the other new appointees, at least in conservative terms, was John McFarlane, M.D., a member of the Medical Board of New South Wales and Grand Secretary and Grand Treasurer of the Provincial Grand Lodge of Scotland.³ With Bland, he was one of the few liberals prominent in charitable institutions and he served as a medical officer for the Sydney Infirmary and Dispensary and as a Gratuitous Medical Attendant for the Benevolent Asylum.⁴ The other

¹Dr Evans in Empire, 21 January 1862, quoted in John Cobley's article on Bland in A.D.B., vol.1.

²See, for example, motion by Bland on space and ventilation in gaols and charitable institutions, S.M.H., 13 November 1858; and his argument that the railways should be owned by the government and run on a non-profit basis. (S.M.H., 15 September 1859.)

³Sand's Sydney Directory, 1858-9, Sydney, 1959.

⁴Waugh's Australian Almanac, Sydney, 1858, p.172.

appointees had no record of public service, although they were sometimes respectable men in a private capacity. Alexander Park and Andrew Lang, in particular, were Hunter Valley landowners as well qualified as some of Donaldson's pastoral and agricultural appointees, although Lang's 'respectability' was probably diminished by the fact that he was a brother of the Reverend J.D. Lang, in the eyes of at least one conservative Councillor 'a disgowned and degraded clergyman'.¹ Park was, at his death in 1873, the biggest landowner in the Hunter Valley, and had joined with other large landowners in petitioning for the importation of coolie labour in the 1840s.² He had, however, been involved in politics as a liberal in the early 1850s,³ and this probably induced Cowper to appoint him to the Council. Cowper's expectations must have been disappointed, for Park, like many other respectable liberals of his generation, was by the late 1850s a conservative.

The credentials of Cowper's other nominees were more open to dispute. When life appointments fell due in 1861, he drew up a list of proposed members, including four liberals whom he had appointed in 1858. The Governor discussed the list with a number of conservatives, including Deas Thomson, the leader of the conservatives in the Council. Thomson accepted the reappointment of Dr Macfarlane, but criticized the inclusion of the three others - Ralph Robey, William Byrnes and Bourn Russell - not because of their 'moral worth' but because of their 'social standing'.⁴ All three may have agreed with Thomson's estimate of their social position, while not regarding it as grounds for excluding them from the Council. Certainly, Russell, who had made his fortune as the owner of a

¹The view of Alexander Berry, M.L.C., in 'Questions for Dr. Lang: A. Berry Vs. Lang', manuscript, M.L., A1 4/1.

²S.M.H., 25 July 1873; petition for Indian Labour, 1842. M.L., MSS A2029.

³See footnote ⁴, p.52 ~~30~~, above.

⁴Young to Cowper, 4 June 1861, Cowper Correspondence, Vol.1, A676, n.p. Thomson also objected to the reappointment of Francis Oakes, whom Cowper had elevated to the Council in 1860.

boiling down works near Maitland,¹ did not pretend to belong to the exclusive circles in which Thomson moved. He was, he said, 'not a polished man'; he 'could not pay compliments'; and he had only 'observed Sir William [Denison] from afar' because he 'had not been admitted to the private circles of Government House'.² Even in old age, he retained a deferential attitude towards Thomson.³

If Cowper had tried to reappoint others who had taken their seats 'in the liberal interest' in 1858, Thomson's sensibilities would have been further offended. One of the appointees, W.G. Pennington, had arrived in the colony in 1849 but had experienced difficulty in building up a practice. Henry Parkes had come to his assistance by employing him as a law reporter on the Empire, and by 1853, he had graduated to writing three leading articles a week. By 1856 Pennington was dealing with Parkes as a solicitor and in 1857 he was sufficiently prosperous to be able to guarantee the salaries of the staff of the struggling Empire for a month. He was also a Vice-President of the Sydney Mechanics' School of Arts.⁴

Pennington's success was both minor and recent, and it was probably not known in conservative circles that he belonged to a very respectable British family. Far from flaunting his parentage in order to gain admission to colonial 'society', he consciously repudiated any concern with social standing and

¹Empire, 10 April 1856.

²S.M.H., 12 January 1861.

³Cf. report of L.C. debates, S.M.H., 20 March 1874: 'Mr. Russell felt a delicacy at rising to address the House at that early stage of the debate....He knew that there were others who should have spoken before him, and whom he should be glad to hear. But he thought he had seen some slight hesitation to speak on the part of the Hon. E. Deas Thomson and other members; and, therefore, he had felt himself bound to rise. It was from no presumption that he had been moved to do so, but merely to prevent any pause in the debate.'

⁴Biographical details based on Pennington to Parkes, 17 May 1856, 4 April 1857, 21 July 1873, 26 February 1879, P.C., vol.30, A900, pp.397, 164, 288-91, 295-6, respectively; Pennington to Parkes, 20 May 1853, P.C., vol.31, A901, pp.91-2; and Waugh's Australian Almanac, Sydney, 1858, p.182.

expressed scorn for those who thought it important. He described Sir James Martin, a notorious social climber, as 'the quintessence of a snob';¹ and when Parkes gained power in 1872, he rejoiced that the new ministry would 'put down the reign of snobbery which has prevailed in this community and which Cowper even had not the courage to extinguish'.² It was in Parkes, a man of lowly birth and poor financial reputation, that he perceived 'the true instinct of a gentleman'.³ In conservative eyes, Pennington's opinions would have been the more inexcusable in the light of his origins; and conservatives would have had little sympathy with the circumstances which had made him a rebel - his personal association with the academic maverick, Goldwin Smith, and the frustrations which he had experienced as a young lawyer unable to break into a conservative and highly competitive profession.⁴

Another Cowper appointee who had been associated with Parkes was J.R. Wilshire, a hide and tallow merchant. He had been Sydney's second Mayor in 1842-3 and had been prominent on the Corporation in subsequent years. However, distinction in that city's politics won no favour in conservative eyes, for the abilities it indicated were those of a demagogue. At first, as James Martin explained in 1853, 'persons of known standing, education and respectability' had come forward as candidates for the council, but 'they were rejected, and men were elected who did not represent the intelligence or respectability of the city'. Since then, he said, 'persons of education and station had stood aloof' and the Corporation had fallen into 'utter contempt'.⁵ As a result, it had been

¹Pennington to Parkes, 21 July 1873, P.C., vol.30, A900, pp.288-91.

²Pennington to Parkes, 23 May 1872, P.C., vol.31, A901, pp.91-2.

³Ibid.

⁴A cogent analysis of the way such frustrations can lead to radicalism is given by R.S. Neale, Class and Ideology in the Nineteenth Century, London, 1972. See also Janet McCalman, 'Respectability and the Working Class in Victorian London', Ph.D. thesis, A.N.U., 1974.

⁵S.M.H., 3 August 1853.

suspended late in 1853 and commissioners had been appointed in its place. Some liberals had been incensed, but even the Empire, for long the champion of elective municipal bodies, had confessed that 'the ordinary proceedings of the Corporation have but ill seconded our endeavours to keep the [elective principle] above contempt'.¹

Wilshire had one other claim to eminence, in that he had been elected to the Assembly in 1856. However, this also diminished him in conservative eyes, for with three other liberals, he had stood for the four member seat of Sydney against the conservative candidate, Plunkett. They had stood as a 'Bunch', and the liberals had disciplined their vote so effectively that Plunkett had not won a place. The superior electoral management which had helped Wilshire's election was, in conservative eyes, unfair, and they alleged that corruption was also involved.² They can hardly have been surprised when, within months of Wilshire's appointment to the Council, he was twice prosecuted for possessing fraudulent weights, although each time he escaped on a technicality.³

'Corruption' weighed against other Cowper appointees. One was Edward Hunt, a businessman of lowly origins, but a member of the committee of the New South Wales Auxiliary to the London Mission Society.⁴ As a member of the Council, he claimed to be 'guided by his conscience and the light of Scripture' in deciding how to vote,⁵ but some saw reason to doubt this when it was revealed in 1860 that houses which he owned in Goulburn Street were brothels. His agent was sentenced to twelve months' imprisonment for allowing the houses to be used for immoral purposes but not until Hunt had

¹Empire, 7 November 1853.

²S.M.H., 20 May 1856; Moloney, op.cit., pp.233-4.

³S.M.H., 14, 17 September 1858.

⁴Biographical details based on Ford's Australian Almanac..., Sydney, 1853, pp.108-9; Waugh's Australian Almanac, Sydney, 1858, pp.188-9; V. & P. (L.A., N.S.W.), 1862, vol.5, pp.1108-13; Empire, 26 October 1860.

⁵S.M.H., 24 April 1861.

testified to his good character and told the court that he had been forced to complain to the police about the harrassment to which they were subjecting his tenants. The jury drew its conclusions, and in returning its verdict, expressed 'regret that the law could not meet Mr. Hunt, as he could not but be aware in having received the rent of the houses for five years, that they were occupied by persons of bad character'.¹

Another Cowper appointee involved in an unpleasant court case was John Dickson, who resigned from the Council when his schedule was filed for bankruptcy in 1859 and was not reappointed in 1861 because of objections by the Governor.² Dickson had been elevated to the Council in 1856 and had seemed, on the surface, one of the better liberal appointees. He was a Doctor of Medicine of Edinburgh University, but was not practising his profession at the time of his appointment. He described himself as a 'gentleman' and although he held a squatting run for a time, seems to have lived principally by his investments. He had also been an elected member of the old Legislative Council.³ However, the circumstances under which his schedule was filed ruined his reputation for probity. His liabilities were £2,190.13.0, while his assets were valued at only £10, and for reasons made public when he admitted that in December 1858 he had made a deed of settlement on his wife and daughter, and that he had subsequently made withdrawals from the bank to buy land at Coogee which he had also settled on his wife. At this point in the proceedings, Dickson seems to have decided that an arrangement with his family was preferable to further publicity, for his creditors agreed to settle out of court and the proceedings were terminated.⁴

¹Empire, 26 October 1860. Hunt's testimony may, of course, betray the naïvete of a religious man, rather than guilt.

²Young to Cowper, 4 June 1861, Cowper Correspondence, vol.I, A676, n.p.

³Biographical details taken from Ford's Sydney Directory, Sydney, 1854, p.144; Waugh's Australian Almanac, Sydney, 1858, p.172; New South Wales Government Gazette, 1868, vol.I, p.593; V. & P. (L.A., N.S.W.), 1857, vol.I, p.561; S.M.H., 9 September 1858 (speech by Lutwyche), and 3 December 1859.

⁴Based on reports of court proceedings in S.M.H., 3, 10 December 1859, 25 February, 19 April, 5 May 1860.

Scandal also besmirched the name of the liberal Attorney-General, Lutwyche, whose reputation in conservative circles had declined soon after his refusal of the Donaldson ministry's offer of a seat in the Council. He had earned the enmity of the Sydney Morning Herald by suing its proprietor, John Fairfax, for libel;¹ and after his elevation to the Council by Cowper, he had offended conservative notions of parliamentary propriety by becoming a Vice-President of the Electoral Reform League and leading an agitation designed to pressure parliament into extending the franchise.² His acceptance of office as Solicitor-General and then Attorney-General was regarded cynically by the profession for it was alleged that he was rendering political service as the price of judicial place. The accusation probably had substance, for he told the Council that he had no desire to remain for long one of its members, as 'his views were bent in a very different direction'.³ His words were explained only four months later, when the Cowper ministry made him Supreme Court Judge at Moreton Bay.

Conservative indignation at the appointment was great, not only because it involved 'political jobbery', but also because of rumours implicating Lutwyche and his wife in sexual immorality. Sir Alfred Stephen, for instance, admitted Lutwyche's ability but thought him disqualified for office as a man 'vehemently suspected of recent and open immoralities - and those of a low character - and whose wife's position therefore was such as to unfit her for the circle into which her husband's rank must place her'.⁴ Her position must have been equally tenuous in circles to which she ought to have been admitted by her husband's position as a member of the Legislative Council. News of the scandal even reached the

¹S.M.H., 13 May 1856, editorial, and 9 June 1856, report of court case.

²Cf. article on Lutwyche by P.A. Howell in A.D.B., vol.5.

³S.M.H., 16 September 1858.

⁴Stephen to James Macarthur, 7 May 1859, Macarthur Papers, vol.28, A2924, p.283. See also Sir Charles Nicholson to James Macarthur, 12 September 1861, Macarthur Papers, vol.28, A2924, p.2935; Nicholson to W.M. Manning, 29 May 1860, Manning Papers, M.L., MSS 246; and S.M.H., 6 May 1859.

Colonial Office, where one official commented that from what he had heard of Lutwyche's 'personal character', he was afraid it was 'not a very good appointment'.¹

Rumours of liberal immorality consolidated conservative prejudices, but they were more a symptom of conservative hostility than its cause. Men of conservative principles were not blameless. Wentworth had his marital infidelities;² Dr Douglass had taken advantage of a bureaucratic oversight to avoid paying for seventeen years a debt to the government of £700;³ and conservative chagrin at the abuse of patronage merely signified that the power to dispense it had passed to other men. Indeed, liberals could have retorted that Deas Thomson had been appointed Colonial Secretary in place of Alexander Macleay in 1837 only because he was the Governor's son-in-law, although such an accusation gives too little credit to Thomson's superior abilities; the Macarthur Papers contain the leavings of patronage;⁴ and Sir Alfred Stephen, who had a finely developed sense of responsibility to his enormous family, became one of the most importunate and successful clients at the Colonial Secretary's office when it was occupied by Henry Parkes.⁵

Venality was common to both liberals and conservatives, but on social grounds, the conservatives were far better

¹Minute addressed to Merivale on Denison to Bulwer Lytton, 26 February 1859, P.R.O./C.O. 201/508. It should be noted that as a judge in Queensland, Lutwyche became a lay reader in the Church of England and a noted Synodsmen. He was thought by at least one clergyman to have influenced a moral revival in Brisbane. (J.M. Bennett, 'Sir James Cockle, First Chief Justice of Queensland', Queensland Heritage, vol.2, no.6, May 1972, p.10, n.13.)

²Michael Persse, article on Wentworth in A.D.B., vol.2. Wentworth had a child by the wife of Edward Eagar, a fellow leader of the Emancipists. Eagar himself had at least ten children outside his marriage. See N.D. McLachlan, article on Eagar in A.D.B., vol.1.

³K.B. Noad, article on Douglass in A.D.B., vol.1.

⁴See, for example, J.M. Antill to James Macarthur, 31 January 1858, Macarthur Papers, vol.28, A2924, pp.14-22.

⁵Stephen's mutually rewarding relationship with Parkes is discussed in Chapter VII.

qualified as members of the Council. Of the twenty-four conservatives who were active in the session of 1858, eight had been members of the Australian Club as long before as 1844.¹ Deas Thomson was the club's president and Dr James Mitchell, another conservative member of the Council, was vice-president. Of the remainder, ten were members of the Union Club,² which had been founded out of a split in the Australian Club in 1856. None of the fifteen liberals is known to have been a member of either club, and of the six conservatives who are not known to have been members, four had previously been associated with the liberal movement.³ The liberals probably belonged to Cowper and Robertson's Sydney Club (from 1858 the Victoria Club), whose members were said to possess a 'general aversion to everything aristocratic'.⁴ In 1858, Pennington was one of the club's trustees and in 1861 Henry Prince, also a Cowper appointee, but one who voted independently in 1858 and as a conservative thereafter, was its vice-president.⁵ Only one member who voted as a conservative in 1858 is known to have been associated with the club. He was

¹Berry, Broadhurst, Douglass, Holden, Merewether, Mitchell, Park, Thomson. ('Original Founders and Old Members of the Australian Club in 1844', manuscript, King Papers, vol.2, A1977, pp.224-33.)

²Allen, Burton, Comrie, Docker, Douglass, Fitzgerald, Isaacs, Lord, Macnamara, Wise. Douglass had been the driving force behind the club's formation. See Arthur Dowling, Notes on the Genesis and Progress of the Union Club, Sydney, [Sydney?], 1924, pp.4-6; and Union Club, Fees and Subscriptions, 1861-79, M.L., Uncat. MSS A4125.

³A'Beckett, Alexander, Lamb and Norton. The first three had belonged to the Constitution Committee in 1853 (S.M.H., 5 September 1853). Norton had been otherwise involved in liberal politics. (See p.52, n.4.) The two conservatives not known to belong to any club were Judges Stephen and Therry, The Union Club's records list a John Macfarlane as a member, but Dr Macfarlane, M.L.C., was normally referred to with some reference to his title. There are two other 'John Macfarlanes' listed in contemporary directories.

⁴S.M.H., 23 September 1858. Letter from 'A Member of the Victoria Club'.

⁵Waugh's Australian Almanac, Sydney, 1858, p.185; Sands and Kenny's Commercial and General Sydney Directory for 1861, Sydney, 1861.

Wentworth's old associate, Robert Fitzgerald, who, probably on personal grounds, had supported Cowper publicly in 1856.¹

The social gulf between liberals and conservatives is dramatically illustrated by their relative prominence as office holders in educational, cultural and learned bodies.

TABLE IV²

NUMBERS OF LIBERAL AND CONSERVATIVE OFFICE HOLDERS IN
EDUCATIONAL, CULTURAL AND LEARNED BODIES, 1858

<u>Organization</u>	<u>Offices held by</u> <u>Conservatives</u>	<u>Offices held</u> <u>by Liberals</u>
St Paul's College	2	0
University Senate	4	0
National Board of Education	2	0
Sydney Grammar School	1	0
Australian Museum	3	0
Philharmonic Society	2	0
Philosophical Society	3	0
Australian Library	1	0
Horticultural and Agricultural Society	2	0
Cumberland Agricultural Society	3	0
Sydney Mechanics' School of Arts	3	1
TOTAL	26	1

In all, the twenty-four conservatives held twenty-six offices, while the fifteen liberals held only one. Some of the conservatives held more than one office, so that the positions were shared between only ten men, yet even on this basis, 41.6 per cent of the conservatives held office as against

¹Empire, 30 September 1856. Fitzgerald wrote to Cowper as a personal friend on 15 June 1861. (Cowper Correspondence, vol.2, CY A677, pp.465-7.) Fitzgerald, one of the richest men in the colony, was also a member of the Union Club.

²Based on Waugh's Australian Almanac, Sydney, 1858, pp.181-5.

only 6.6 per cent of the liberals. The only liberal who was represented was W.G. Pennington, a vice-president of the Sydney Mechanics' School of Arts. The disparity between liberals and conservatives was almost as great with regard to charitable institutions.

TABLE V¹

NUMBERS OF LIBERAL AND CONSERVATIVE OFFICE
HOLDERS IN CHARITABLE INSTITUTIONS, 1858.

<u>Organization</u>	<u>Offices held by</u> <u>Conservatives</u>	<u>Offices held</u> <u>by Liberals</u>
Society for the Relief of Destitute Children	6	0
Sydney Female Refuge	5	0
Sydney Infirmary and Dispensary	4	1
Sydney Ophthalmic Institution	3	1
Benevolent Asylum	4	2
Roman Catholic Orphan School	1	0
TOTAL	23	4

It can be seen that the twenty-four conservatives held twenty-three offices, while the fifteen liberals held only four. The positions held by conservatives were distributed amongst eight men, or thirty-three per cent of their total number, while those held by liberals were shared by two men, Drs Bland and Macfarlane, who made up only 13 per cent of their party. A similar pattern prevailed in religious institutions.

¹Based on Waugh's..., 1858, pp.163, 170-3.

TABLE VI¹

NUMBER OF LIBERAL AND CONSERVATIVE OFFICE HOLDERS
IN RELIGIOUS INSTITUTIONS, 1858

<u>Organization</u>	<u>Offices held by Conservatives</u>	<u>Offices held by Liberals</u>
Church Society for the Diocese of Sydney	4	1
Newcastle Church Society	1	0
N.S.W. Auxilliary Bible Society	3	0
Religious Tract and Book Society	3	0
Sydney Bethel Union	2	0
N.S.W. Auxilliary to the London Missionary Society	0	1
TOTAL	13	2

Here, the conservatives held thirteen offices, while the liberals could manage only two. The offices held by conservatives were divided amongst eight men, or 33 per cent of their number, while the positions held by the liberals were shared by two men, a mere 13 per cent of their number. The two liberals were Robey and Hunt. As we have seen, the former was a man whom Thomson regarded on other grounds as of no 'social standing', and the position of the latter was jeopardized when a jury suggested that he had known that some of his houses were being used for prostitution.

Not surprisingly, the social differences between liberals and conservatives were also revealed in the relative prominence of their wives.

¹Based on Waugh's..., 1858, pp.164-9.

TABLE VII¹

NUMBERS OF WIVES OF LIBERALS AND CONSERVATIVES
HOLDING OFFICE IN RELIGIOUS AND CHARITABLE INSTITUTIONS

<u>Organization</u>	<u>Offices held by wives of Conservatives</u>	<u>Offices held by wives of Liberals</u>
Sydney Dorcas Society	1	0
Society for the Relief of Destitute Children	6	0
Female School of Industry	2	0
Sydney Infirmary and Dispensary	3	0
Sydney Female Refuge	2	1 (?)
TOTAL	14	1 (?)

In all, the wives of six conservatives held fourteen offices, while, at the most, only one office was held by the wife of a liberal. The woman concerned was a Mrs Dickson, who may have been the wife of either James Dickson, M.L.A., or John Dickson, M.L.C. If she was the wife of the latter, her reputation would have been ruined soon after by her involvement in her husband's unsavoury financial dealings before his schedule was filed for bankruptcy.

Finally, the liberals have been ranked far ^{below} ~~above~~ the conservatives by posterity. When Burke's Colonial Gentry was published in the 1890s it included five of the twenty-four conservatives who had been active members of the Council in 1858, but not one of the fifteen liberals;² and although eighteen conservatives have been included in the Australian

¹Ibid., Waugh's..., 1858, pp.169-72.

²The conservatives were A'Beckett, Docker, Norton, Stephen and Wise. See Burke's Colonial Gentry, vol.I, London, 1891, and vol.II, London, 1895.

Dictionary of Biography, this distinction has been achieved by only five liberals.¹

Although the liberals were manifestly inferior, when judged by the conventional criteria, so great was conservative contempt for the Cowper government that some found its appointments better than they had feared. When a list of Cowper's intended appointees was leaked to the press, the Sydney Morning Herald said that the names on it were 'not so bad', and that some of them were in fact 'respectable and highly honourable'. Indeed, it doubted, or affected to doubt, the list's authenticity, for it could not believe that the men chosen would prove 'the miserable tools required to do the ministerial work'.² In the event, two men on the list were not formally invited to take seats in the Council, and the behaviour of the rest did not meet the Herald's professed expectations, for within six months of their appointment, the paper was lamenting that 'Few men could be considered unfit after the selections made already'.³

The principal reason for this dismay was that in the eyes of the conservatives, most of Cowper's appointees had indeed proved themselves his 'tools'. The day on which they took their seats marked the coming of 'party' to the Council. They sat with the government's representative, while the conservatives ranged themselves on the other side of the house. For the first time, the term 'honourable members opposite' crept into the debates. The liberals were soon referred to as 'supporters of the Government', while the conservatives were described as the 'Opposition'.⁴ The use of the terms was

¹The fifteen conservatives are Allen, Berry, Broadhurst, Burton, Docker, Douglass, Faithfull, Fitzgerald, Holden, Isaacs, Lamb, Merewether, Mitchell, Norton, Stephen, Therry, Thomson, Wise. The liberals are Bland, Hill, Lutwyche, Robey, Wilshire.

²S.M.H., 27 February 1858.

³S.M.H., 23 September 1858.

⁴The frequency with which the terms were used makes references superfluous, but see, for example, the report of debates in S.M.H., 6 October 1858, where the terms are used by Lutwyche and Hunt (liberal), Wise (conservative) and the Herald's reporter.

never questioned either by the press or by the councillors themselves. Deas Thomson was even accorded unofficial recognition as the 'leader of the Opposition'.¹ He was sometimes referred to by that title, or, alternatively, he was described as 'the hon. member who sits at the head of the Opposition benches'. He was normally the first to speak in reply when government business was introduced in the Council. His position arose naturally from his ability and the respect in which he was held, and it was accepted by both liberals and conservatives.

From the time the liberals took their seats, voting in the Council revealed a strong pattern based on 'party' lines. Of the sixty-three divisions in the session of 1858, the strongest 'party' response was revealed by eighteen divisions selected by the POLIT programme described in Appendix III. In these divisions, there was a high degree of polarization between two groups, one consisting of liberals supporting the government, the other made up of conservatives who opposed it. The clarity with which these divisions distinguished the two groups is revealed by Table VIII. The figures express the number of times each member voted with the government as a proportion of the total number of votes which he cast. For example, Lutwyche, the government's representative, is given a score of 18/18, while Deas Thomson, the 'leader of the Opposition', who voted against the government in the seventeen divisions for which he was present, is given a score of 0/17.

¹See, for example, S.M.H., 7 October 1858 (Dickson and Lutwyche), 16 December 1859 (Eagar, Minister for Works), and 2 March 1860 (Thomson, speaking 'for himself and for those... who usually voted with him...').

TABLE VIII¹

LEVEL OF AGREEMENT WITH THE REPRESENTATIVE OF THE GOVERNMENT:
VOTES IN EIGHTEEN DIVISIONS WITH STRONGEST PARTY RESPONSE IN
SESSION OF 1858

<u>Liberals</u>	<u>Independents</u>	<u>Conservatives</u>
Blake 7/8	Jones 10/15	A'Beckett 0/13
Bland 14/14	Prince 4/8	Alexander 0/17
Bligh 10/11		Allen 0/5
Byrnes 16/16		Berry 0/12
Dickson 14/14		Broadhurst 0/12
Forbes 13/13		Burton 1/9
Hill 12/12		Comrie 1/9
Hunt 15/15		Docker 0/18
Lang 11/12		Douglass 0/7
Lutwyche (Govt rep.) 18/18		Faithfull 0/3
Macfarlane 11/11		Fitzgerald 0/2
Pennington 18/18		Holden 0/18
Robey 11/13		Isaacs 0/16
Russell 12/13		Lamb 1/11
Wilshire 11/11		Lord 1/13
		Macnamara 0/1
		Merewether 0/17
		Mitchell 0/18
		Norton 0/17
		Park 0/9
		Stephen 1/9
		Therry 0/12
		Thomson 0/17
		Wise 0/14

The rigidity of the voting pattern makes it possible to classify members fairly confidently, and there is good reason to believe that Macnamara, Fitzgerald and Faithfull, who cast

¹The divisions from which the table has been compiled are listed in Appendix III.

only one, two and three votes respectively, have been correctly included with the conservatives. The votes cast by Fitzgerald and Faithfull were against the liberals' electoral bill and against a bill to increase pastoral rents, both excellent tests of conservatism, for no liberal opposed them. Moreover, Fitzgerald voted as a conservative when the Council clashed with the Assembly over the question of the relative financial powers of the two houses in 1860;¹ Macnamara had already given his opinion on such questions when, in 1857, he had voted with the extreme conservatives against the moderates to assert that the Council had the power to amend money bills;² and Faithfull joined in that final gesture of conservative defiance, the walk-out which frustrated the swamping of the Council in 1861.³

Only twenty-two of the 525 votes crossed 'party' lines. Nine of these 'cross-party' votes were cast by Jones and Prince, who have been classed as 'independents'. Jones cast two-thirds of his votes with the liberals, and could well have been included with them, but the criterion adopted on this occasion, as on all others, is that to be grouped with a 'party', a member had to agree with it in more than two-thirds of his votes. Jones could be described with equal accuracy as an unusually independent liberal or as an 'independent' with liberal inclinations.

The eighteen divisions on which Table VIII is based are those which showed the strongest 'party' response, but other divisions revealed a less rigid version of the same pattern. In another seven divisions, for instance, more than two-thirds of the liberals voted against more than two-thirds of the conservatives,⁴ and by this criterion, twenty-five of the

¹S.M.H., 30 June 1860.

²Empire, 5 February 1857.

³S.M.H., 11 May 1861.

⁴Divisions on Municipal Council of Sydney Powers Extension Bill (9 April 1858); Fraudulent Trustees' and Bankers' Better Punishment Bill (17, 24 June - three divisions); Electoral Law Amendment Bill (division with majority 16-15 on 7 October 1858 and division with majority 20-13 on 13 October 1858); and Pastoral Lands Assessment and Rent Bill (17 September 1858).

sixty-three divisions in the session were 'party' ones. Moreover, 'party' was a factor, at least on a minor scale, in nearly all the other divisions. In fact, in fifty-three of the fifty-six divisions in which government's representative voted, a greater proportion of liberals than conservatives voted with him.¹

This pattern was duplicated in later sessions of parliament. Even in the session of 1858-9, during which few ideological issues were raised, more than two-thirds of the liberals voted against more than two-thirds of the conservatives in seven of the twenty-one divisions,² while in only three of the remainder did a greater proportion of conservatives than liberals side with the government's representative.³ Again, during the Robertson and Cowper ministries of 1860 and 1861, when the re-emergence of strong ideological issues brought party solidarity to a peak, more than two-thirds of the liberals voted against more than two-thirds of the conservatives in twenty-two of the thirty-nine divisions in Council,⁴ while many of the remaining seventeen divisions revealed clear differences between the parties.

¹The exceptions were divisions on the Law of Evidence Amendment Bill (16 July 1858); Articles of Food Inspection Bill (2 July 1858); and Judge's Removal under the Constitution Act (16 June 1858).

²The seven were divisions on the District Courts Act Amendment Bill (19 January 1859); adjournment of debate on motion of Dr Douglass (3 February 1859); unparliamentary words by the Attorney-General (3 February 1859); adjournment of the House (2 March 1859); Prosecutions for Libel Amendment Bill (23 February 1859); adjournment (7 September 1859); Representation of the Government (5 October 1859).

³The three divisions were on the Law of Evidence in Prosecutions for Bigamy Bill (6, 27 January 1859); and the Letters of Registration Act Amendment Bill (24 March 1859).

⁴The twenty-two divisions were on adjournment (8 March 1860); Proceedings in Lunacy Bill and Lien on Wool Act Continuation Bill (17 May 1860); Shoalhaven Municipality Petition (20 June 1860); Appropriation Bill for 1859-60 (29 June 1860); Address-in-Reply and adjournment (4 divs on 11 January 1861); Customs Duties Bill and tabling of estimates (3 divs on 13, 20 February 1861); Legislative Council Bill of 1861 (6 divs on 11, 19, 24, 25 April 1861); Crown Lands Alienation Bill (12 April, 6 May 1861); adjournment (24 April 1861); and additional days, for despatch of business (26 April 1861).

For example, in three divisions on the Appropriation Bill of 1859-60, the liberals voted as a solid block, while the conservatives split, with nearly half their number crossing the floor to save the bill and prevent a violent clash with the Assembly.¹ In other divisions, it was the conservatives who voted as a block while at least one third of the liberals crossed the floor.² In six divisions, however, the conservatives showed themselves more in sympathy with the representatives of the government than the liberals, but four of those divisions were on Church of England Synods bills, where Cowper, Robertson and Hargrave sided with the Anglican conservative majority against a predominantly Nonconformist minority of liberals and former liberals.³

A majority of the strong 'party' divisions were related, directly or indirectly, to matters of liberal and conservative principle, but a sizeable minority were not. Some of the divisions reflected the attitude towards the government, rather than any ideological position. When the house was asked to decide whether Lutwyche, the Solicitor-General, had used unparliamentary language, the vote was on almost straight party lines;⁴ and when the conservatives accused the government of conspiring with the Reverend J.D. Lang to persecute the conservative Alexander Berry, M.L.C., the vote was a party one in which no one crossed the floor.⁵ In such cases, the votes were not a direct test of liberalism or conservatism but a measure of confidence in the probity of

¹Divisions on 27, 29 June 1860, J.L.C. 1859-60, pp.113-4, 116 (div. passed 13-10).

²Divisions on Appropriation Bill of 1859-60 (14 June 1860); Chinese Immigration Regulation Bill (2 May 1861); Additional Judge's Appointment Bill (6 May 1861).

³The six divisions were on the Tolls Amendment Act Repeal Bill (25 May 1860); Legislative Council Bill of 1860 (6 November 1860); and Church of England Synods Bill (11 October, 1 November 1860, 14 March 1861). The minority in the divisions on the Synods bills consisted of Macfarlane and Alexander (Presbyterians), Hunt (Congregationalist), Eagar (Anglican) and Russell (unknown).

⁴J.L.C., 1858-9, p.14.

⁵Ibid., 1859-60, p.112.

liberals who held high office. Liberal members of the Council trusted and supported them while the conservatives did not.

Personal association and trust are important explanations of the tendency of liberals to vote with the representative of the government even where neither ideology nor confidence in the administration were directly at issue. Conservative leaders like Deas Thomson, Stephen, Douglass, Burton, Johnson, Therry and Mitchell belonged to the same section of the old 'upper class'¹ and esteemed themselves, rightly, as an élite. Together with other conservatives they completely dominated the leading clubs and the most important charitable, religious, cultural and learned institutions. With the liberals they had comparatively little contact. The latter belonged to different clubs and took small part in organizations devoted to the 'improvement' of the colony. Even when their accession to political power necessitated their admission to Government House, they were apparently not invited to the same functions as the conservatives where that could be avoided.²

¹The main evidence for this lies in the Macarthur Papers, where Stephen, Thomson, Burton, Mitchell, Douglass and Therry are all revealed in varying degrees as members of the same circle as the Macarthurs and the Macleays. See, for example, Mrs Stephen to Sir William Macarthur, n.d. [1861?], Macarthur Papers, vol.41, A2937, p.259; Mitchell to Sir William Macarthur, 7 November 1860, Macarthur Papers, vol.41, A2937, pp.119-21; Burton to James Macarthur, 11 January 1854, Macarthur Papers, vol.27, A2923, pp.206-7; Stephen to Sir William Macarthur, n.d. [1866?], Macarthur Papers, vol.43, A3939, p.365; Douglass to James Macarthur, 14 April 1860, Macarthur Papers, vol.28, A2924, p.372; Therry to James Macarthur, 17 September [1860?], 11 January 1861, Macarthur Papers, vol.34, A2930, pp.82, 89, respectively, with many other letters in the same volume; and Lady Deas Thomson to Sir W. Macarthur, 6 August [1870?], Macarthur Papers, vol.43, A2939, pp.358-60. In 1857, Deas Thomson's second daughter, Susan, married W.J. Macleay. Johnson was a friend of Stephen's. (Article on Johnson in A.D.B., vol.IV.)

²Cf. Sir William Macarthur to James Macarthur, 10 February 1861, Macarthur Papers, vol.38, A2934, p.418: 'I have been to Sydney - dined with the administrator of the Government - a large party of gentlemen 24 in all - not one of the Ministry or anyone connected with them present - a few of the military the rest civilians of the old respectable stamp. Nicholson Manning, Thomson, Burton, the Judges....The ministry and their friends had their "fad" two days before.'

The breach between the two camps was not, of course, complete. The conservative Dr A'Beckett was a friend of the liberal Dr Dickson,¹ and Alexander, Norton and Lamb, who were, like A'Beckett, conservatives with a liberal past, may have maintained their traditional social contacts. It has been noted already that they were not old members of the Australian Club and that they did not join the Union Club. Similarly, Robert Isaacs was on terms of personal friendship with Lutwyche, at least until their bitter clashes in the Council in 1858.² Isaacs was also friendly with William Forster, the friend of dissident liberals like Deniehy, who had supported Cowper in 1856 then opposed him on personal grounds.³ However, links between conservatives and liberals were comparatively rare and even Cowper, the social equal of the conservatives and a masterful practitioner of compromise, did not lead the life of a political liberal and a social conservative. Personal associations therefore reinforced political prejudices, so that liberals tended to be sympathetic to the views of the government even on matters essentially unrelated to ideological principle, while conservatives almost automatically suspected opinions emanating from this source. Instead, they hearkened to the views of men whose reputation for balanced judgment had been confirmed by their conservatism and whose social standing and education entitled them to respect. Consequently, in all but a handful of divisions, the liberals gave more support to the government's representative than the conservatives, and strong party votes were produced by issues as diverse as a Fraudulent Trustees and Bankers' Better Punishment Bill, a Customs Duties Bill, a District Courts Act Amendment Bill, a Prosecutions for Libel Bill, and procedural questions apparently unrelated to

¹A'Beckett in S.M.H., 20 October 1858.

²Cf. S.M.H., 7 October 1858.

³Cf. Frances Devlin Glass, 'Daniel Henry Deniehy, 1828-1865: a Study of an Australian Man of Letters', unexamined Ph.D. thesis, A.N.U., 1973, ch.7; S.M.H., 12 April 1861; Forster to Parkes, 5 May 1859, P.C., vol.52, A922, pp.20-3.

the fate of measures relevant to liberalism and conservatism.¹

Concerted action by the two parties became a feature of the Council's politics and, when important matters arose, meetings were held 'out of doors' to discuss tactics. The most dramatic instance of this occurred during the battle over the Electoral Bill in September and October 1858. On 15 September, the bill was read a second time without opposition from the conservatives, and Lutwyche, the Solicitor-General, moved that it be committed the following day. But although it was customary to allow the government time for the consideration of its measures, the motion was met by a conservative amendment that further consideration of the bill be delayed until 5 October. The amendment was carried on a straight party vote by twenty-one to sixteen. Lutwyche angrily described the amendment as 'an attempt to usurp the functions of Government' and thought it 'unmistakeable evidence that the question was treated as one of party'.² His accusations had substance. Even the conservatives admitted that it was normal to allow the government to arrange the timing of its measures,³ but they had forced the amendment through because two conservative judges and five conservative lawyers were about to go on circuit in the country and would be unable to attend debates until 5 October. They included some of the most able members of the Council, consistent attenders who seldom missed a division, and their absence would have endangered the conservative majority.⁴

When consideration of the bill had been delayed, four conservative country members took advantage of the deferment to return to their properties,⁵ eliminating any chance the

¹See footnotes 26, 28, 30 above, and Appendix III.

²S.M.H., 16 September 1858.

³Cf. Therry, S.M.H., 7 October 1858.

⁴They were Chief Justice Stephen, Judge Therry, and Messrs Broadhurst, Wise, Isaacs, Want and Johnson. (Lutwyche in S.M.H., 6 October 1858.)

⁵Allen in S.M.H., 7 October 1858; cf. Thomson, S.M.H., 6 October 1858.

conservatives still had of maintaining a majority in a party vote. This was demonstrated on Friday 17 September, when the Pastoral Lands Assessment and Rent Bill, which most conservatives thought unconstitutional, passed its second reading by fifteen votes to nine although only two conservatives crossed the floor.¹

Encouraged by this test of their strength, the liberals assembled at Lutwyche's chambers on the following Monday and decided to move for the rescission of the amendment which had postponed the committal of the Electoral Bill.² The decision was approved by the liberal cabinet and Lutwyche again discussed the matter with his supporters in the Council, who declared themselves 'decidedly in favour' of the motion recommitting the bill.³ He therefore gave notice in the Council that he would move that the Electoral Bill should be committed.⁴

Knowing that in any vote they would be beaten, the conservatives decided to frustrate the liberal move by boycotting the Council's proceedings until their allies had returned from the country. When the liberals arrived at the Council Chamber on the day when the bill was to be brought on, not a single conservative was present, except for the President and the Chairman of Committees, who were required to attend by their office. The twelve liberals and two conservatives present did not form a quorum, which was fixed at one third of the Council's membership of forty-eight, and the day's business was abandoned. With complete solidarity, those conservatives not officially bound to be present boycotted every sitting day until 5 October, while the liberals were never present in sufficient numbers to enable the Council's proceedings to start.⁵ Had all the liberals been present at

¹S.M.H., 18 September 1858. The conservatives who crossed were Lamb and Alexander, both former liberals.

²Dickson in S.M.H., 7 October 1858.

³S.M.H., 7 October 1858.

⁴S.M.H., 23 September 1858.

⁵S.M.H., 24, 29, 30 September, 1, 2 October 1858.

once, they would have formed a quorum with the assistance of the President and the Chairman of Committees, but lack of discipline was their downfall. Although only one of them objected to the attempt to take advantage of the conservatives' weakness,¹ the others, part-time politicians even in a crisis, could not arrange their affairs so that they were all present at once.

There were less dramatic examples of the operation of 'party' in the Council, and when contentious issues arose, members often met out of doors to discuss the course they would adopt. Such meetings were particularly common amongst the conservatives, who frequently had to consider how far they were prepared to compromise. The liberals, backed by the Assembly, seldom considered compromise as a group, and with their course thus simplified, appear to have met less frequently.

Conservative meetings were particularly common during the tumultuous events of 1860 and 1861. For example, in June 1860 a meeting of conservatives approved resolutions protesting against illegal expenditure, which, on the motion of Deas Thomson, were appended to the third reading of the Appropriation Bill;² and when John Robertson took his seat in the Council in 1861, he professed to be shocked at the influence of 'party', for

There were party meetings of members of that House whereat only a certain section of the honourable members were present, and where it was arranged what course to take upon public questions about to come before the House. He owed it to himself to say that it would have been, at all times, more satisfactory if such hon. members had refrained from this, and had allowed everything to go by fair and open discussion in the House, rather than in private rooms.³

Professions of dismay at the workings of 'party' fell strangely from Robertson's lips, for he had only recently accused one of his government's appointees, Geoffrey Eagar, of 'turning round'

¹George Forbes. (S.M.H., 7 October 1858.)

²The meeting is referred to by Holden, S.M.H., 29 June 1860.

³S.M.H., 17 April 1861.

on his patrons by joining the Forster ministry.¹ However, Robertson's allegation that the conservatives held meetings confined to their own number was undoubtedly correct. When he repeated the charge the next day, Deas Thomson admitted that it was true and 'protested against denying hon. members the right to meet together upon questions that were to be brought before the House'.²

However, 'party' in the Council must be treated on its own terms and not confused with party as it exists today or 'party' as it existed in the Assembly. It did not stem from the quest for office; it was not bolstered by the dispensation of electoral patronage; and it was not simply an extension of the politics of the Assembly. It was based mainly upon differences of ideological principle, which were in turn rooted in the prejudices and traditions of different sections of society. The allegiances created by personal associations and, more particularly, by bitter clashes on questions touching liberalism and conservatism, meant that even issues with no ideological implications often provoked a 'party' response. Lutwyche, who did not try to deny the existence of 'party' in the Council, described his supporters as men 'who were generally favourable to electoral reform and who on that account gave general support to the government';³ and while the conservatives acknowledged that they formed an 'Opposition', they never tried to frustrate the government's legislative programme as a whole. Dr Dickson admitted that until the conservatives tried to delay the Electoral Bill, they had displayed 'the enviable and dignified aspect of a perfectly constitutional opposition', and another liberal, Ralph Robey, also saw their treatment of the Electoral Bill as their only offence when he defended them against charges of obstruction in 1861.⁴ These defences had some point, for Deas Thomson was

¹S.M.H., 10 February 1860.

²S.M.H., 18 April 1861.

³S.M.H., 6 October 1858.

⁴Dickson and Robey, S.M.H., 7 October 1858, 26 April 1861, respectively.

at pains to prevent extremists like Isaacs from disrupting the business of the Council.¹

Between 1856 and 1861, eleven members of the Council held ministerial office, and they included Cowper and Robertson, faction leaders in the Assembly, who sat in the Council in 1860 and 1861 respectively. These men, even when they did not hold seats in the cabinet, entered into a de facto political alliance with members of the Assembly, but there are very few other instances of direct cooperation between members of the two houses. Amongst liberal members of the Council, Russell and Wilshire had been elected to the Assembly as liberals in 1856, and in 1860, Blake resigned from the Council to stand for the Assembly, but there is no evidence that while in the Council they involved themselves in electoral matters or tried to influence the fate of governments. Two liberals, Wilshire and Pennington, had been political associates of Parkes, but they had been appointed to the Council by Cowper and they gave his government staunch support although Parkes, hurt by his omission from the Ministry,² had joined its opponents in the Assembly.

On the conservative side of the house, Dr Douglass and Judge Therry were political associates of James Macarthur and Douglass, at any rate, continued to correspond with him on electoral matters after entering the Council.³ Randolph John Want, Robert Isaacs, James Norton, Robert Johnson and Joseph Docker, the leaders of the conservatives' extremist wing, were on the general committee of the Constitutional Association, a largely conservative body designed to promote the return of

¹See, for example, Thomson's intervention to prevent Isaacs from opposing the Electoral Bill 'in every further step' after the manhood suffrage clause had been passed. (S.M.H., 13 November 1858.) The clause had been passed after Thomson and the other moderates absented themselves.

²Cf. Parkes to Plunkett, 17 September 1856, Autographs, M.L., A63, pp.163-4; Parkes to Cowper, 18 December 1857 (copy), and reply of same date, P.C., vol.6, A876, pp.502-7.

³Therry to James Macarthur, 1 November 1855, 31[?] March 1856, Macarthur Papers, vol.34, pp.27, 43-50; Douglass to Macarthur, 28 April 1856, Macarthur Papers, vol.27, A2923, pp.530-1; Douglass to Macarthur, 26 December 1857, and reply [27 December 1857?], Macarthur Papers, vol.28, A2924, pp.125-6.

members opposed to Cowper and Robertson at the elections of 1860.¹ The significance of these ties should not be exaggerated. From 1857, the 'conservative party' in the Assembly progressively disintegrated as Parker, Donaldson and Macarthur withdrew from politics, disrupting the traditional links between conservative leaders in the two houses; and although Johnson, Isaacs and other extremists allied themselves with conservative elements in the lower house, they gave support on their own terms and remained pre-eminently members of the Council.

In joining the Constitutional Association, the extremists were motivated by the anxiety of all conservatives at the outcome of the 1860 elections. The dissolution had been granted on the free selection issue, which the liberals had been able to exploit at the 1859 elections,² and in 1860 that issue proved even more effective, for opponents of the ministry were reduced to less than a third of their former strength.³ How deeply conservative members of the Council felt the loss was revealed when the new parliament met in January 1861 and Deas Thomson moved an amendment to the Address-in-Reply regretting the manner in which the Governor had prorogued parliament without explanation. The amendment was carried on a straight party vote by fifteen to five.⁴ It was the first time that members of the Council had attempted to amend the Address-in-Reply, and for the next hundred years it remained the only attempt.⁵ The meaning of the amendment was made quite clear in the debates. As Johnson explained with characteristic bluntness, Governor Denison should not have granted a dissolution

¹Macarthur Papers, vol.39, A2935, p.93. The Constitutional Association is discussed in Chapter III.

²Cf. Loveday and Martin, *op.cit.*, p.31.

³*Ibid.*, p.32.

⁴J.L.C., 1861, p.9.

⁵Ken Turner, House of Review?, Sydney, 1969, p.115.

upon a cry which he must have known would not raise a true issue, but would result in excluding from the Legislature of the country the greater part of those who were most competent to exercise Legislative functions.¹

In other words, Denison had erred in granting a dissolution upon an issue favourable to the liberals. Denison was about to leave the colony and the savage attacks on him in the Council shocked even the conservative Sir Charles Nicholson, who had

never seen any governor relinquish office with such manifestations of ill will...[Several] personal attacks have been made upon him in the Council, and language exchanged between him and that body, certainly not within the bounds of ordinary courtesy. Without absolving him from all blame I think he has not been fairly dealt with. The so-called Conservative party have blundered and damaged their cause most signally, and I think are upon the whole too much disposed to avenge their discomfiture upon the Governor.²

While the conservatives spoke and acted as men opposed to the Cowper and Robertson governments, their expressions of positive commitment to other ministries were rare. Like other conservatives, they cautiously approved of the Donaldson and Parker ministries,³ but the circumstances were never such as to elicit avowals of partisan support. Moreover, the decline of conservative fortunes in the Assembly meant that no subsequent ministry was able to make strong claims on their loyalty. They welcomed the Forster ministry, which had a brief term of office from October 1859 to March 1860, as preferable to the Cowper-Robertson administration, but continued in opposition. The government's representatives sat on the liberal side of the house, and only two conservatives appear to have crossed the floor to signify their support for the new administration -

¹S.M.H., 12 January 1861.

²Nicholson to James Macarthur, 10 January 1860 [1861?], Macarthur Papers, vol.28, A2924, pp.529-32.

³These ministries were a 'compromise' from the conservative point of view, as Donaldson and Darvall, members of both ministries, favoured an elective upper house. Cf. H.G. Douglass to James Macarthur, 28 April 1856, Macarthur Papers, vol.27, A2923, pp.530-1; W.M. Manning to James Macarthur, 12 June 1856, Macarthur Papers, vol.27, A2923, pp.542-8; and Loveday and Martin, op.cit., p.171, n.40.

one of them Edward Wise, who took office as Attorney-General without a seat in the Cabinet on the understanding that the law officers should maintain their independence.¹ The other was Forster's friend Robert Isaacs, who 'rejoiced that a change in the ministry had taken place'.² But even Isaacs gave only qualified support. When the government foreshadowed a bill to make the Council elective, he announced that

he had taken his place on that (the Government) side of the house with the intention of giving the ministry his support, but that he really could not continue to occupy that place if he was given to understand that it was the intention of the Government to introduce a measure by the operation of which the Council was to be made elective upon the same basis of representation as the Lower House. If he was given to understand that...[then] he was sorry to say that he should feel compelled to go over to the other side.³

Forster was unable to devise a bill satisfactory to the Assembly, so that Isaacs was not called upon to cross the floor, but from his place on the government benches, he was a source of constant irritation to the ministry and was in fact cast in the role of an unwilling opponent of many of its actions. Individuality verging upon a chronic propensity to obstruct was fundamental to Isaacs' political character, and he gave the government far more trouble than Deas Thomson, who still retained his position as 'the hon. and learned member who sat at the head of the opposition benches'⁴ and who frankly confessed that 'on many political questions he entirely differed from...the Ministry'.⁵

Conservative members of the Council mistrusted the Forster government partly because, although it had the support of conservatives in the Assembly, it also depended upon the support of liberals, who had to be placated by the compromise

¹S.M.H., 27 October 1859, and Wise in S.M.H., 2 December 1859.

²S.M.H., 27 October 1859.

³S.M.H., 1 December 1859.

⁴Eagar, Forster's Secretary for Works, S.M.H., 16 December 1859.

⁵S.M.H., 2 March 1860.

of conservative principles.¹ The very composition of the ministry threatened the betrayal of conservatism, for the Minister for Lands was John Black, President of the Land League and an advocate of free selection. Consequently, when the government introduced a land bill to provide that eight year leases in the intermediate districts should be renewed for only one year pending land reform the conservatives feared that it was the prelude to free selection and repeatedly demanded that the ministry explain its intentions. Four of them, including Isaacs, voted against the bill; seven tried to have it emasculated; and the remainder supported it only with misgivings.²

Other issues compounded conservative mistrust of the ministry. Not only did it introduce bills to make the Council elective, but it introduced them in the Assembly. Conservative members of the Council viewed this as a breach of privilege and announced that they would refuse to consider any reform which did not originate in the Council.³ They were also angered by the ministry's failure, when the estimates were not passed, to authorize its expenditure by a vote of credit from the Council as well as the Assembly, and the ministry fell just in time to avoid censure on the matter.⁴ Finally, some of them resented the ministry's acquiescence in the separation of Queensland. When the government took office, it asked the Council to adjourn for ministerial elections, but five conservatives⁵ including Isaacs, opposed the request mainly because they would be unable to debate motions condemning the dismemberment of the colony until after the separation had

¹Cf. Loveday and Martin, op.cit., p.30.

²S.M.H., 15, 16, 21 December 1859. The bill was also opposed by George Hill, who had previously voted as a liberal and still sat on the liberal benches.

³S.M.H., 1, 2, 8 December 1859.

⁴Johnson had given notice of a motion condemning expenditure by votes of credit from the Assembly. (S.M.H., 8, 23 February 1860.)

⁵Including Edward Hunt, hitherto a liberal, but who from this time usually voted with the conservatives.

been accomplished.¹ Most members agreed with the President's ruling that failure to adjourn would be contrary to parliamentary practice and ministers were saved the embarrassment of having to explain their policies to the Council while campaigning in their electorates. However, when the Council resumed, the issue of Queensland still clouded its affairs. Johnson and Isaacs, leaders of the conservatives' extremist wing, immediately expressed concern that the government seemed to have accepted the separation. They disrupted the proceedings of the Council by trying to have their motion of protest given precedence over all other business, although it was a day on which government matters were customarily given priority; they insisted that documents on the separation should be read aloud by the Clerk of the House, a task which occupied some forty minutes; and when Geoffrey Eagar, the Minister for Works and the government's principal representative, moved that the documents be printed, they objected on the grounds that this might imply that the Council countenanced the separation.² They were impartial in their obstruction, and even a ministry to which they were favourably disposed was made to suffer inconvenience.

The second reason why conservatives were cast in the role of an opposition, even when the government was as congenial to their viewpoint as circumstances allowed, was that they were not simply conservatives, but men conscious of their rights and dignity as members of the Legislative Council. All governments had to heed majority opinion in the Assembly and none could repudiate that body's estimate of its own superiority. Ministers had to reject, in accordance with the view which prevailed in the Assembly, the Council's claim that it could amend money bills; they had to maintain that a vote of credit from the Assembly, if not strictly legal, was a sufficient authorization for expenditure; and when the Council claimed the sole right to originate legislation concerning itself, they could not agree without seeming to denigrate the powers of the Assembly.

¹S.M.H., 27 October 1859.

²S.M.H., 1 December 1859.

Moreover, it had been the conventional wisdom of the constitution's framers that in any protracted difference of opinion between the two houses, the Council should ultimately be prepared to give way.¹ It was partly for this reason that they had chosen a nominated Council, and in subsequent years moderate conservatives like Thomson acted upon the same principle by urging that the Council should submit, rather than engage imprudently in a contest of wills with the Assembly.² But liberals, and governments speaking for the 'popular' branch of the legislature, pressed this argument to its limits. Whenever the Council showed a disposition to reject the views of the Assembly, they claimed that the Council should defer to the representatives of the people. In debate, liberal members of the Council and the representatives of governments responsible to the Assembly were inevitably cast in the role of men who denied the Council's right to act without regard for the views of the Assembly. They adopted this position not only because it harmonized with liberal assumptions, but also because it strengthened their position in debate. Conservative members of the Council, on the other hand, perceiving the triumph of democracy in the Assembly, tried to redress the balance by claiming more powers for their own branch of the legislature. They rapidly developed a view of their own rights and importance which was repudiated even by conservative members of the other house.³ This conception

¹See Chapter I, above.

²Thomson, for instance, led the conservative climb-downs over the Electoral Bill in 1858, the Appropriation Bill in 1860 and the land bills in 1861.

³Conservatives in the Assembly, with the exception of Martin, thought the Council should not amend money bills (cf. Martin, Faucett, Alexander Campbell, Kemp, Plunkett, Hay and Darvall in S.M.H., 20, 21, 22 June 1860); as members of the Parker and Forster ministries, they spent money on the authority of the Assembly alone (Executive Council, Minutes, 29 December 1856, 6 February 1857, Archives Office of N.S.W., 4/1534; V. & P. (L.A., N.S.W.), 1859-60, vol.I, p.399); and they did not object when Forster introduced in the Assembly bills affecting the Council. (S.M.H., 7 December 1859, 9, 15, 25 February 1860.)

of their power and dignity made them independent of all ministries. They were Legislative Councillors first and last.

By the same token, the liberals filled impartially the role of supporters of the government. When Forster took office, they still sat on the government benches; J.F. Hargrave, who had succeeded Lutwyche and W.B. Dalley as Cowper's Solicitor-General, accepted the same post in the new government; Geoffrey Eagar, who had recently been appointed by Cowper, became the Minister for Works; and most liberals gave the ministry fairly consistent support in divisions and in debate.¹ They thereby proved their independence of those liberals in the Assembly who worked for Forster's downfall.

It was partly consciousness of their independence of all governments which led members of the Council to deny that they belonged to any 'party'; and such denials were also a recognition that men voted 'independently', rather than as delegates of an outside body or as men bound by a pledge.² But the denials went further than this and expressed the Councillors' determination to maintain that they personally, if not their opponents, had remained true to the ideal of the Council as a non-party house. To deny that they belonged to any type of party was important for those who had defended the Council as a body which was 'above party'; and such denials were vital for the judges, whose presence had been justified by the pretence that they would not become involved in politics. They could not even apply to themselves Burke's favourable definition of party as 'a body of men united, for promoting by their joint endeavours the national interest, upon some

¹In particular they provided the only support for the Cattle Driving Act Amendment Bill and the Land Titles Declaration Bill, and they gave better support than the conservatives to the Crown Lands Temporary Regulation Bill and the government's request that the Council adjourn for ministerial elections. (S.M.H., 27 October, 21 December 1859, 2, 9 February 1860.)

²Thomson, while admitting that the conservatives met outside the House to discuss legislation, was at pains to deny that they were pledged to follow the course decided upon. (S.M.H., 18 April 1861.)

principle in which they are all agreed',¹ although this description fitted their own case tolerably well. Consequently, although parties as operational entities undoubtedly existed, although members on both sides of the house used the terms 'supporters of the Government' and 'Opposition', and although they sat with 'those with whom they usually acted', they felt constrained to deny that they belonged to any 'party', just as members of the Assembly vehemently repudiated charges of 'faction'.

The tactic most commonly used by those wishing to dissociate themselves from 'party' was to define the term in such a way that it was irrelevant to the particular version of party which existed in the Council. They often defined party as members of the Assembly defined 'faction' - a group of men joined together for no higher principle but simply to further their own base interests. Thus, Deas Thomson was able to claim, less than three weeks after the conservatives had with complete solidarity boycotted the Council, that 'He was himself of no party', for he had come to the discussion of the electoral bill 'not in any party spirit, but with a wish for the public good'.² He adopted the same line of defence when justifying meetings which the conservatives held to determine their attitude to the land bills. The meetings had been called, he said, 'merely to consider the bills, in their effect upon the public interests', not 'to subserve any private purpose'.³ Similarly, Judge Therry thought that 'he was of no party, of no faction' because he had acted only for the good of the country and he 'defied anyone to attribute anything like personal motives to himself'.⁴ At other times, party was identified with rancour and prejudice. By thus narrowing the definition, Sir Alfred Stephen was able to defend himself against charges that he was involving himself and his office in party politics.

¹Edmund Burke, The Works..., London, 1887, 12 vols, Vol.I, p.530.

²S.M.H., 20 October 1858.

³S.M.H., 18 April 1861.

⁴S.M.H., 7 October 1858.

He was no party man, he said, because he was actuated solely by a desire 'calmly to consider, deliberately to investigate, and impartially and without prejudice or favour of any man or set of men, to decide'.¹ He also argued that, as votes in the Council could not affect the fate of any ministry (a claim which, as Lutwyche pointed out, was only technically true), such votes were not to be regarded as party ones.²

The claims that members belonged to no party were accurate enough, given the definitions used, but the definitions were carefully chosen to avoid the issue. Robertson, Lutwyche and Dickson, liberals with little regard for the conservative myth of a non-partizan Council, used different criteria to assert that it was very much a 'party' chamber,³ and members and newspapers alike found it impossible to describe the proceedings of the Council without using terms which implied the existence of party. Even conservative members perceived clearly enough partisan behaviour on the other side of the house - indeed, they usually exaggerated it⁴ - and the existence of parties was finally accorded recognition from the impartial vantage of the chair. When, in the debate over the land bills, Dr Douglass complained that Robertson had accused him of being actuated by 'party feelings', the President, Sir William Burton, ruled that the expression was perfectly in order, for he 'thought that the action of the parliamentary system was carried on by party'.⁵

¹S.M.H., 13 September 1858.

²S.M.H., 13, 16 September 1858.

³S.M.H., 20 October 1858, 17, 18 April 1860.

⁴The conservatives, believing that their arguments had gone unanswered in debate, accused the liberals of voting on party lines against the dictates of reason. Cf. Docker: '...the hon. member [Lutwyche] had relied on the power of his phalanx, not of arguments, but of voters'; and Isaacs: 'the macedonian phalanx opposite'. (S.M.H., 6, 7 October 1858.)

⁵S.M.H., 17 April 1861.

CHAPTER III

THE COUNCIL AND THE PATTERN OF POLITICAL CONFLICT,
1853-1861

The emphasis upon the importance of urban conservatism in the first two chapters of this thesis is at variance with the verdict of most historians who have studied New South Wales politics in the 1850s. In nearly all cases, they have identified conservatism with the country districts and liberalism with the towns, although the landowners have sometimes been seen as an addendum to a basically urban liberal movement. Hawker, for instance, speaks of 'the liberalism of the agriculturalists and the mercantile and professional men of urban areas' and in more general terms argues that the lines of political conflict were drawn between 'the representatives of primary industries in rural areas and secondary industries in urban areas';¹ and Baker, while stating that the liberal land reform movement was led by wealthy landowners, describes the 'class war' as primarily one between 'pastoral wealth and bourgeois wealth'.² A few historians have referred to the existence of urban conservatism in the period,³ but they have not challenged the assumption

¹G.N. Hawker, The Parliament of New South Wales, 1856-1965, Sydney, 1971, pp.6, 14.

²D.W.A. Baker, 'The Origins of Robertson's Land Acts', in J.J. Eastwood and F.B. Smith (eds), Historical Studies, Selected Articles, first series, Melbourne, 1964, p.101. For similar interpretations see, for example, I.D. McNaughtan, 'Colonial Liberalism, 1851-92', in Gordon Greenwood (ed.), Australia, a Social and Political History, Sydney, 1955, pp.108, 110-11; T.H. Irving, 'Some Aspects of Radical Politics in New South Wales before 1856', Labour History, vol.5, November 1963, pp.18, 21, 25; Robin Gollan, Radical and Working Class Politics, Melbourne, 1967, pp.38, 42; Russel Ward, Australia, Sydney, 1969, pp.82-7; and K. Buckley, Gipps and the Graziers of New South Wales, 1841-1846', Historical Studies, Selected Articles, first series, p.101.

³See especially P. Loveday and A.W. Martin, Parliament Factions and Parties, Melbourne, 1966, pp.12-13; and Barrie Dyster, 'The Fate of Colonial Conservatism on the Eve of the Gold-Rush', J.R.A.H.S., vol.54, pt.4, December 1968.

that most merchants and professional men were liberals and that the conservatives were mostly pastoralists. Political conflict has therefore been analysed in terms of a clash between vertically defined economic interests; no historian has suggested that the conflict was, to a large extent, between horizontally defined social strata.

This version of the pattern of political conflict in New South Wales in the 1850s cuts diametrically across much of the argument of the first two chapters of this thesis. In Chapter I, it was argued that although the liberal movement in the early 1850s was dominated by prominent Sydney merchants and professional men, most of the leading conservatives also came from Sydney. It was also argued that the nominated Council was preferred to an elective one partly because it seemed likely to help urban conservatives gain additional political representation. The argument of Chapter II diverged even more sharply from the traditional interpretation. It was shown that in 1856, most of the Council's members came from Sydney, making it what it was intended to be - a body composed primarily of urban conservatives. In fact, it would be impossible to explain the Council's clashes with the Assembly in terms of a conflict between urban liberals and rural conservatives, for pastoralists were far better represented in the Assembly. Table IX makes the point:

TABLE IX¹

PASTORALISTS IN THE LEGISLATIVE COUNCIL AND
LEGISLATIVE ASSEMBLY, 1856-61,
AS A PERCENTAGE OF ALL MEMBERS WHOSE OCCUPATION IS KNOWN

<u>Year</u>	<u>Council</u>	<u>Assembly</u>
1856	30.5%	46%
1858	17.5%	45%
1861	25.5%	33.5%

¹Based on biographical details in Appendix IV; and on A.W. Martin, 'The Legislative Assembly of New South Wales, 1856-1900', Australian Journal of Politics and History, vol.2, 1956-7, p.52. The figures for the Council in 1861 are for the quinquennial appointees whose terms expired on 13 May 1861. When the Council was reconstituted in June 1861, only four of the members were pastoralists.

Moreover, although historians like Irving have claimed that during the 1850s 'merchants and lawyers supplanted shopkeepers and artisans in the leadership of the popular, radical movement',¹ the analysis of the composition of the Council showed that the patrician liberals of 1853 were virtually unrepresented on the liberal side of the house although some of them sat with the conservatives. What most distinguished the conservatives from the liberals was their relative prominence in Sydney's religious, charitable, educational and learned institutions, their membership of the 'best' clubs, and their general 'respectability'. By these criteria, the conservatives were Sydney's social and cultural élite, while most of the liberals were men of little significance. The liberals included none of the great merchants and, in fact, occupational differences between the two parties were trifling. In 1861, for instance, eight out of ten pastoralists were conservatives, but so were ten out of twelve lawyers and seven out of ten businessmen.²

The argument of this thesis clearly raises the question of whether previous interpretations of the liberal-conservative conflict are erroneous, or whether the Council can be dismissed as a political freak, unrepresentative of New South Wales conservatism as a whole. This question must be answered if we are to see the Council in perspective and if we are to understand the social and economic basis of the ideological differences between liberals and conservatives which will be discussed extensively in later chapters. This chapter will therefore analyse at some depth the political structure of New South Wales Society.

The most obvious question is whether Cowper's failure to appoint liberal merchants and professional men of equivalent standing to the conservatives meant that most of the leading merchants and lawyers with an interest in politics were conservatives. By the late 1850s, it certainly did. Not one member of the Committee of the Sydney Chamber of Commerce

¹Irving, 'Some aspects of Radical Politics...', p.18.

²Based on the political classification of members in the session of 1861 in Appendix III and on the occupational classifications in Appendix IV.

during the 1850s is known to have been a liberal by 1860, although a fair number of members were publicly identified with the conservatives. Robert Towns and John Lamb, both chairmen of the Chamber of Commerce, were conservative members of the Legislative Council, and others like John Alexander, Thomas Holt, Alexander Campbell, Thomas Whistler Smith, M.E. Murnin, J.B. Watt and G.R. Hirst were also active conservatives.¹ A survey of the directors and trustees of companies listed in Sands and Kenny's Sydney Directory for 1861 points to the same conclusion in an even more striking manner. In all, thirty of the directors and trustees were publicly identified with the conservatives, but only two are known to have been liberals.² The conservatives held a total of sixty directorships and ten trusteeships, the liberals four directorships and no trusteeships. It is clear why Cowper had such difficulty in finding businessmen suitable for appointment to the Council.

An analysis of the occupations and background of liberal members of the Assembly confirms the view that by 1861 the 'merchant princes' had deserted the liberal movement.³ Not one of the eleven liberal businessmen who voted for free selection before survey in February 1861 was listed as a company director in Sands and Kenny's Sydney Directory and only one was normally dignified with the title of 'merchant'. He was

¹Membership of the Committee of the Sydney Chamber of Commerce has been taken from contemporary directories and almanacs. Towns, Lamb and Alexander were conservative members of the Legislative Council from 1856 to 1861; J.B. Watt voted as a conservative when appointed to the Council in 1861; Campbell and Smith were conservatives in the Assembly before 1861; Murnin was a member of the conservative Constitutional Association in 1860; Holt was Treasurer in the Donaldson ministry in 1856; and Hirst was a public opponent of the Cowper ministry from 1856. (Empire, 30 September 1856, report of political meeting.)

²The liberals were R.M. Robey and George Thornton. For the identity of the conservatives, see Appendix V.

³Biographical information has been taken from A.W. Martin and P. Wardle, Members of the New South Wales Legislative Assembly, 1856-1901, Canberra, 1959; the Australian Dictionary of Biography and its associated files at the Australian National University; contemporary directories and almanacs; the Bulletin, 30 September 1882, for an obituary of Redman; and Mark Lyons, 'Aspects of Sectarianism in New South Wales Circa 1865 to 1880', Ph.D. thesis, A.N.U., 1972, p.228, for additional information on Sutherland.

James Dickson, the son of poor bounty immigrants, who had become a Sydney merchant only four years previously after making a fortune as a pastoralist and a country storekeeper. Two other liberals, E.C. Weekes and James Atkinson, were also businessmen of the middle rank. Atkinson was a wool stapler and auctioneer who had long been active in the colony's commercial life, and Weekes, Cowper's Treasurer, was listed in contemporary directories as an ironmonger. In later years, he became a company director, but in 1861 neither politics nor success in business had given him the prestige to attain such positions.

The remaining liberal businessmen seem to have been men of humble origin who, at this stage in their career, had done little more than attain economic independence. John Lucas, a builder, was a former carpenter; John Caldwell, a grocer, had been a shop assistant in Ireland and had worked for a Sydney draper; John Sutherland, a builder and contractor, was a former mechanic; James Hannell, a Newcastle publican, was the son of convict parents and had once been a policeman; Joseph Eckford, a man of little education, was a West Maitland publican; and Thomas Garrett, the proprietor of small country newspapers, had begun his varied career by running away to sea in a vain attempt to escape apprenticeship to a printer. The previous careers of the two other liberals, John Peisley and Robert Stewart, are not known, but their occupations carried little status: Peisley was a storekeeper at Orange and Stewart was an undertaker.

In later years, a few of the liberal businessmen who voted for free selection before survey in February 1861 prospered, but in 1861 not one was a leading figure in the colony's commercial life. Most of them were small traders and contractors of the type which had played an important part in the radical movement of the late 1840s and early 1850s.¹ The evidence suggests that the liberal movement had not so much absorbed the radicals as been taken over by them.

The view that by 1861 the liberal movement was dominated by men of low status is confirmed by the social basis of the

¹Cf. Loveday and Martin, *op.cit.*, pp.20, 172, n.56.

division within the legal profession.¹ Most of the lawyers known to have been liberals in 1861 were young men comparatively junior in their profession. There were, of course, a few exceptions. William Redman, an 'aristocratic' liberal disliked by the radicals, had been in practice as a solicitor since 1846 and his social connections were good: he had married the daughter of Melbourne's Crown Prosecutor and was a member of the Union Club. Similarly, James William Bligh, who had been registered as a solicitor in 1841, was a lawyer with considerable seniority. However, the only other liberal who had been admitted to practice before 1850 was W.G. Pennington, M.L.C., whose inability to support himself by his professional earnings until the middle 1850s was noted in Chapter II. The twelve other lawyers known to have been liberals had all started practice in the colony in 1850 or later.² On the average, the fifteen liberals had been in practice for just under eight years and not one was sufficiently well established to be listed as a solicitor to the public companies in Sands and Kenny's Sydney Directory for 1861.

The profile of the conservative lawyers is far different. They were older, better established, and they included the leaders of the bar and the most prominent solicitors. Amongst the barristers were John Hubert Plunkett, called to the Irish bar in 1826 and to the New South Wales bar as Solicitor-General in 1832, the most senior barrister in the colony; Sir William Manning, a barrister since 1832, Solicitor-General from 1844 to 1856, and second to Plunkett in seniority; and J.B. Darvall and Edward Broadhurst, barristers since the 1830s and both Queen's Counsel ranking high at the bar. The solicitors included George Allen, the first solicitor trained in the colony and in 1822 founder of the oldest legal firm in Australia; James Norton, 'the father of the profession', a solicitor before he arrived

¹Biographical information has been taken from the sources listed on p.106, n.3. The dates at which the lawyers were admitted to practice in New South Wales have been taken from Moore's Handbook and Almanac for New South Wales..., Sydney, 1856, and from details copied from the New South Wales bar roll in the files of the A.D.B.

²The twelve are listed in Appendix VI.

in the colony in 1818; and G.K. Holden, admitted to practice before his arrival in the colony in 1831 and solicitor to leading companies and James Macarthur.

In all, thirty lawyers apart from the judges have been identified as conservatives in 1861 and twenty of them had been in practice in the colony before 1850.¹ The thirty conservatives had practised for an average of just under sixteen and a half years, making them more than twice as experienced as the liberals. Moreover, the solicitors to public companies in Sands and Kenny's Sydney Directory were nearly all from firms in which the leading partners were well known conservatives: Holden and McCarthy; Norton, Son and Barker; Allen and Bowden; and Spain and Roxburgh. The conservative business élite did business with the conservative legal élite.

The nature of the support for conservatism in the early 1860s can also be examined through a study of the New South Wales Constitutional Association, a body which supported anti-Cowper candidates in the 'free selection' elections of December 1860. The Association was formed in the wake of liberal attacks on the Legislative Council and, while it made the conventional claim that it prescribed no particular views, it in fact demanded that candidates whom it supported be favourable to the existence of two houses.² One of its members, Daniel Deniehy, was a liberal opponent of the Cowper government, but the opinions of the others seem to have been almost uniformly conservative. The members included Johnson, Isaacs, Docker, Norton and Want, the leaders of the 'extremist' wing of the conservative party in the Council; and those whom the Association tried to persuade to stand for the Assembly were gentlemen of 'standing and education' like Sir William Macarthur.³ There can be no doubt that the Association was justly characterized by the Empire as an essentially conservative organization.⁴

¹See Appendix VI.

²Morris to Parkes, 23 November 1860, P.C., vol.25, A895, p.259; Circular of the Constitutional Association in Macarthur Papers, vol.39, A2935, p.91.

³Ibid.

⁴Empire, 29 November 1860.

The most striking feature of the Association is that it was primarily the organ of urban conservatism. It had a general committee of seventy-six members, of whom sixty-one have been identified. Twenty-one were lawyers, twenty-seven were merchants or other businessmen, eleven were pastoralists with squatting interests and two were landowners.¹ Most of the members came from a higher social stratum than the liberals in the Assembly, although there were a few exceptions, such as Edward McEncroe, a grocer, and Joseph Taylor, the proprietor of a boarding house. There were also a few young lawyers, but apart from Deniehy they seem to have been well connected socially or partners in well established legal firms. For example, W.V. Wild, M.L.A., a young barrister, was closely associated with the Macarthurs in the electorate of Camden;² F.J. Garrick, a solicitor with only a few years' experience in the colony, had entered into partnership with George Rowley and Richard Holdsworth, two conservative solicitors with a well established practice; and William Barker, admitted to practice in 1851 at the same time as Deniehy, was a junior partner in the firm headed by James Norton, one of the conservative extremists in the Council.

The membership lists of the Constitutional Association and the conservative benches in the Legislative Assembly and the Council were packed with former liberals. Of the thirty-four members of the managing committee of the Anti-Transportation Association, a predominantly liberal organization of the late 1840s and early 1850s, sixteen were later aligned publicly with the conservatives and most of the others had died or dropped out of politics. Only eight members, including Cowper, Weekes, Parkes and Lang, seem to have been active liberals by 1861.³

¹See Appendix VII .

²Cf. W.V. Wilde to Sir W. Macarthur [10 September 1860?], Macarthur Papers, vol.41, A2937.

³The members of the managing committee are given in S.M.H., 26 September 1850. Those afterwards aligned with the conservatives were G. Bowman, W. Bowman and W.H. Suttor, conservative members of the Council in 1853 (see Appendix II); John Fairfax, proprietor of the Sydney Morning Herald; G.K. Holden, John Lamb and James Norton, conservative members

Footnote continued on following page....

Similarly, eleven of the ninety-five members of the liberal Constitution Committee of 1853 were members of the conservative Constitutional Association in 1860¹ and another ten had in other ways publicly identified themselves with conservatism by 1861.² Most of the other members were politically inactive, although Cowper, Weekes, Parkes, Byrnes, Pennington, Smart and perhaps a few others formed a tenuous link between the liberal movement of 1853 and that of 1860-61. It is clear that although the liberal movement of the early 1850s had some connection with the liberal movement of the early 1860s, it had a much stronger connection with the conservative movement of that period.

Men associated with the liberal movement of the early 1850s who had joined the conservatives by 1861 included leaders of the business world like John Alexander, John Lamb, Henry Prince, J.B. Rundle, G.R. Hirst, J.B. Watt, T.W. Smith, T.S. Mort, M.E. Murnin, George Rattray and Thomas Holt; a few businessmen of the smaller type, like Edward Hunt and W.R. Piddington; leader^{ing} lawyers like J.B. Darvall, G.K. Holden, James Norton and George Rowley; and men associated with pastoral or agricultural pursuits like Alexander Park. Even Sir Daniel Cooper, a wealthy merchant who was the liberal speaker of the Assembly from 1856 to 1860, deserted to the

Footnote continued from previous page:

of the Council in the years 1856-61; Thomas Broughton, W.R. Piddington, John Campbell and Daniel Cooper, who, as members of the Assembly, opposed free selection before survey in 1860; T.W. Smith, a conservative in the Assembly from 1857 to 1859; Thomas Holt Donaldson's Treasurer in 1856; G.R. Hirst and T.S. Mort, active opponents of the liberal ministry in 1856 (Empire, 30 September 1856, report of meeting against Cowper ministry); and Robert Tooth, a member of the Constitutional Association in 1860.

¹J.N. Beit, J.B. Darvall, Robert Johnson, Richard Johnson, John Morris, M.E. Murnin, W.R. Piddington, George Rattray, George Rowley, John Watt and Daniel Deniehy - the last a liberal on the land question but otherwise in alliance with the conservatives by 1861.

²They were Arthur a'Beckett, John Alexander, G.K. Holden, T.H. Hood, Edward Hunt and Alexander Park, conservative members of the Legislative Council in 1860-61; S.D. Gordon, who voted against free selection before survey in the Assembly in 1860; T.W. Smith, a conservative in the Assembly from 1857 to 1859; T.S. Mort, an opponent of the liberal ministry in 1856 (Empire, 30 September 1856); and H.S. Russell, who voted as a conservative in the Council even in 1853.

conservatives when the free selection issue came before parliament in 1860.¹

These changes in political allegiance corresponded with a massive change in the composition of the Assembly as most of the patrician liberals of 1853 were denounced as conservatives and driven from political life. Of the thirty-six members who voted for free selection before survey on squatters' runs on 7 February 1861, only five had been in parliament before the elections of 1859 and only four - Cowper, Robertson, Arnold and Parkes - had been in parliament in 1856. Twenty-two had entered parliament only at the 'free selection' elections held less than two months previously, which had seen the defeat or retirement of men like Sir Daniel Cooper, S.D. Gordon and John Campbell, patrician liberals of the early 1850s who opposed free selection before survey. They were replaced mainly by minor professional men, small traders and contractors, and at least three artisans. In a general sense, A.W. Martin's figures tell the story. By his count, there were in 1856 eight wholesale and import merchants in the Assembly, most of them liberals, but by 1861 there were only two² - one of whom was probably Alexander Campbell, a conservative on most issues. Similarly, the proportion of members whose occupations Martin was unable to ascertain rose as the 'quality' of the Assembly declined: in 1856, he was able to list occupations for all but 7.3 per cent of members, but the percentage rose to 15 per cent in 1859 and to 20.6 per cent in 1860.³ When Sir Charles Nicholson lamented after the 1860 election that 'There is scarcely a man of mark in [the Assembly] of those who formerly played the most conspicuous part in public life', he stated a fact; and his description of 'a not inconsiderable proportion' of the members as 'Publicans - expiree convicts - journeyman

¹ V. & P. (L.A., N.S.W.), 1860, pt.1, p.139. Cf. George Allen's Journal, 21 February 1865, Uncat. MSS, Set 477.

² Martin, 'The Legislative Assembly...', p.52.

³ Ibid.

mechanics - Wesleyan lay preachers'¹ came closer to the truth, at least in spirit and direction, than the interpretations of later historians.

The changes in the composition of the liberal movement reflected changes in the issues by which men were judged to be liberals or conservatives. Advocacy of a 'liberal' franchise and of a conservative but elective upper house qualified a man as a liberal in 1853, but such views were the stock-in-trade of many conservatives at the end of the decade. By the same token, the liberalism of the late 1850s and early 1860s was, in most of its essentials, the radicalism of the early 1850s. The principal features of the radical creed were:²

1. Manhood suffrage, vote by ballot, equal electoral districts and annual or triennial parliaments.
2. An upper house which, if it existed at all, would be no less 'democratic' than the Assembly.
3. A land reform which would encourage small scale settlement.
4. The abolition of assisted immigration.
5. Unemployment relief works.

By 1861, every item on this agenda of reform had been incorporated, wholly or partly, into the settled policy of liberal governments. Cowper and Robertson advocated triennial parliaments,³ although the occurrence of four general elections

¹Nicholson to James Macarthur, 18 January 1860 [?1861], Macarthur Papers, vol.28, A2924, pp.529-32. Cf. S.M.H. editorial, 30 January 1861, and James Chisholm to James Macarthur, 20 March 1861, Macarthur Papers, vol.28, A2924, pp.551-62: 'Universal suffrage and vote by ballot have deposited the governing power in the hands of the ignorant and unthinking multitude....The recent election for this country illustrated in a remarkable degree, the pernicious operation of the ballot, the effect of which was to transfer the labouring classes from all respectable and property influence....There can be no doubt that the real question at issue during the late elections was that of democracy which could only account for the rejection of nearly all those candidates who had the reputation of being gentlemen, and which in the opinion of many of the constituencies was a sufficient reason for their exclusion from the assembly.' It would be possible to give many more examples of such complaints.

²Based on People's Advocate, 12 January 1850; J.D. Lang, Freedom and Independence for the Golden Lands of Australia, London, 1852, pp.239-41; and Irving, 'Some Aspects of Radical Politics...', p.21, et passim.

³S.M.H., 10 September 1858.

in the first five years of responsible government robbed the issue of its urgency; most liberals in the Assembly repudiated the notion of the 'balanced constitution' and were determined that the Council should not delay democratic reform;¹ land acts were passed which, contrary to recent interpretations, were designed to favour the small man and help him onto the land;² the government was forced to provide relief works for the unemployed;³ the vote for assisted immigration was reduced in the late 1850s and temporarily abolished in 1860;⁴ the bias in favour of the pastoral electorates was reduced although the Assembly in 1858 was not sufficiently radical to abolish it altogether; and vote by ballot and what was regarded as manhood suffrage were introduced. In terms of policy, as well as in terms of personnel, the radicals had largely taken over the liberal movement.

The erroneous interpretation of political conflict in the 1850s and early 1860s as primarily a struggle between 'urban men of substance' and the squatters has been based upon empirical studies showing that liberal candidates drew their strongest support from urban electorates and that liberal organizations in the early 1850s were dominated by merchants and professional men.⁵ As the factual material assembled in these studies is accurate, it will be necessary to show how it can be harmonized with the interpretation of political conflict advanced in this thesis.

The fact that urban electorates usually returned liberals and pastoral electorates conservatives is quite compatible with the view that political divisions in New South Wales were primarily between horizontally defined social strata. The principal reason is that a much higher proportion of electors

¹See Chapter IV, below.

²See Chapter IV, below.

³T.A. Coghlan, Labour and Industry in Australia, Melbourne, 1969 (first ed. 1918), pp.697-700.

⁴Ibid., pp.598, 706, 908-11; and Albert A. Hayden, 'The New South Wales Immigration Question and Responsible Government, 1856-61', J.R.A.H.S., vol.46, pt.6, December 1960, pp.349-50.

⁵The most concise summary of these studies is in Loveday and Martin, op.cit., pp.18, 20, 25, 172, n.56.

was entitled to vote in urban electorates than in rural ones. In 1856, for instance, 72 per cent of adult males in urban electorates were qualified to vote, but in agricultural electorates the figure was 48 per cent and in pastoral electorates 23 per cent.¹ Moreover, the fact that pastoral electorates had fewer voters than urban ones made them more amenable to the influence of men of substance.

Even after the introduction of 'manhood suffrage', the electoral system continued to give rural conservatives advantages over urban ones in the contest for parliamentary place. Firstly, the itinerant and semi-itinerant sections of the rural working class were largely deprived of the right to vote by the 'residential clause' of the Electoral Act, which specified that men who did not possess enough property to qualify as plural voters had to reside in the electorate for six months before the annual compilation of the electoral roll.² The residential clause was partly responsible for the fact that the number of electors was only about 85 per cent of the British adult male population.³

Secondly, many rural labourers were effectively disfranchised by the distance which separated them from the nearest polling booth. Many could vote only if the employer thought it worth his while to provide them with the transport and time off to get to a polling place. In practice this must sometimes have meant that the only employees who voted were those who seemed likely to vote the 'right' way. It is impossible to know how far such manipulation affected the vote in rural electorates, but it seems certain that working class participation in the electoral process was much lower than in urban electorates. In 1860, for instance, the turnout in most urban electorates was between 40 per cent and 60 per cent of those enrolled, but in pastoral electorates, it was usually below 25 per cent. In one electorate, the Gwydir, it even fell below 10 per cent, only sixty-four of the 688 electors casting

¹Peter Loveday, 'The Legislative Council in New South Wales 1856-1870', Historical Studies, vol.11, no.44, April 1965, p.483.

²22 Vict., No.20, clause 9.

³The figure is taken from Hawker, op.cit., p.15.

their votes.¹ In such a situation it was possible for a few well organized pastoralists with transport at their disposal to determine the result of the poll. It is perhaps for this reason that they seem to have regretted that some of their employees could not vote.²

Altogether apart from the effects of distance and the Electoral Act, the social structure of rural electorates gave the conservative pastoral élite electoral advantages over the conservative mercantile-professional élite. The artisan and small trader classes, more politically aware than the labouring classes and more radical than the merchants and lawyers, were largely absent from the pastoral electorates and not strongly represented in the agricultural ones.³ This meant that rural electorates lacked any substantial elements of the classes which did most to exclude the mercantile-professional élite from the Assembly in the elections of 1859 and 1860. The urban-rural conflict in the Assembly can therefore be explained in terms of a contest between horizontally defined social classes in the electorates. It was simply that the most radical social classes formed a greater proportion of urban electors than of rural ones.

The fact that liberal organizations in the early 1850s were supported by many prominent merchants and professional men does not prove that most 'urban men of substance' were liberals. Had the conservatives formed political organizations 'out of doors' it is quite probable that they, too, would have drawn much of their membership from the mercantile and professional classes. There is no doubt that the material from which such bodies could have been formed existed in Sydney: elections from 1851, when Wentworth won the third Sydney seat, to 1859, when four of the eight Sydney seats went to conservatives,⁴ show that there was a significant minority of urban

¹The figures are taken from the Statistical Register of New South Wales, 1861.

²Cf. Docker, S.M.H., 10 September 1858; and Bowen to Newcastle, 6 February 1860, reproduced in C.M.H. Clark (ed.), Select Documents in Australian History, 1851-1900, Sydney, 1955, pp.389-90.

³Based on Census of New South Wales, 1861.

⁴Namely, James Martin, Peter Faucett, Thomas Broughton and John Hubert Plunkett.

conservatives. That this minority consisted mainly of prominent businessmen and professional men is indicated by a study of the 1856 election, which demonstrates that Plunkett, the defeated conservative candidate, drew most of his support from the wealthier parts of the city.¹ It should be noted, too, that eight of the eleven lawyers in the Legislative Council in 1853 were conservatives.²

By 1861, the lines of political conflict were drawn more distinctly between horizontally differentiated social strata. In 1853, there had been a significant liberal faction within the 'urban aristocracy', but by the end of the decade, it had almost disappeared. The liberal movement was dominated by minor professional men and small businessmen who were sometimes closely identified with the artisans and miners. In 1861, there were even at least three working class members of parliament.³ The conservative movement, on the other hand, was dominated by 'big men' - merchants, bankers, prominent lawyers, great landowners and squatters. There were, of course, exceptions to this pattern. The servants of 'good masters' often gave a deferential vote in favour of their employers;⁴ young members of old law firms were often conservative;⁵ and there was probably a strong conservative vote from white collar workers who aspired to promotion within well established business houses.⁶ Similarly, there were still a few 'big men'

¹Cf. P. Loveday, 'The Development of Parliamentary Government in New South Wales, 1856-1870', Ph.D. thesis, University of Sydney, 1962, pp.463-5.

²See Appendix II.

³D.C. Dalgleish, an engineer; David Buchanan, a blacksmith; and James Hoskins, a miner.

⁴Cf. Bligh, S.M.H., 11 September 1858; Russell, S.M.H., 11 November 1858; and Bowen to Newcastle, 6 February 1860, reprinted in C.M.H. Clark (ed.), Select Documents in Australian History, 1851-1900, Sydney, 1955, p.390.

⁵The Constitutional Association included young lawyers like Wild, Garrick and Barker who fell into this category. See above, this chapter.

⁶Thus, in 1853, Wentworth extended the franchise to those earning a salary of £100 p.a. on avowedly conservative grounds. Cf. Wentworth, quoted Silvester, op.cit., pp.216f; and S.M.H., editorial, 13 December 1853.

like Cowper and Robertson who, for political or personal reasons, sided with the liberals. However, such men were exceptional. The role of the Legislative Council and the debates on the ideological issues discussed in the following chapters can be understood only when it is clearly appreciated that the political contest between conservatives and liberals was not a struggle between rural and urban interests, but between the 'wealth, intelligence and respectability' of the colony and men of inferior status.

CHAPTER IVISSUES, INTERESTS AND IDEOLOGY, 1858-1861Part 1The Debate on Electoral Reform, 1858

The rapid growth of radical liberalism from the middle 1850s was partly the result of social and economic changes brought by the gold rush. The increased money supply encouraged a boom in wages and rents which effectively extended the franchise at the elections of 1856,¹ and radical changes in the social structure gave further assistance to the democrats. Between 1851 and 1861, the number of men engaged in pastoral pursuits declined from 15,619 to 14,607, but the numbers engaged in other occupations increased dramatically. The number of men engaged in agriculture and horticulture more than tripled from 12,828 to 39,394; the number of mechanics, artificers and men engaged in trade and commerce almost doubled from 18,280 to 34,266; and those engaged in mining, who did not form a separate category in 1851, numbered 21,382 ten years later.² These changes meant a more radical electorate, for the pastoral interest, whose potentially radical elements were either disfranchised or subject to 'influence',³ was now far less important.

The flow of immigrants meant that native born conservatives had less chance than ever of capturing a section of the popular vote by appealing to 'Australian' sentiment, as Wentworth had done, but rapid social change had more important effects. In particular, it meant that those who had no substantial stake in the existing order were more inclined to

¹See estimates of wages and rents given by T.A. Coghlan, Labour and Industry in Australia, Melbourne, 1969 (1st ed. 1918), pp.687-706, 791-4.

²Figures taken from Census of New South Wales, 1851 and 1861.

³See Chapter III, above.

dismiss as irrelevant conservative political theories based upon the relatively static class structure of British society. It also meant that the old colonial élites clung the more strongly to political theories based upon a hierarchic social order in an attempt to bolster their position.

Anxiety fostered by the rapidity of social and political change was clearly evident in conservative contributions to the debate over electoral reform. Their insecurity led them to view politics in terms of a class war. On one level, the conflict of the classes was portrayed as one between men of different status within the middle classes - as one between the old middle class élite and 'new men' on the way up. This interpretation, which described accurately the conflict at the parliamentary level, was perhaps put best by Roger Therry:

When responsible government came, there came with it the necessity of a mingling of classes. The sudden upraising of persons of subordinate rank to a level with the best society of the place created a collision that was at first a little violent and ungenial [sic] to both parties. Some thought it was not pleasant to hear a person greet you in the Assembly as 'my honourable friend' who, a short time before, took off his hat and in 'whispering humbleness' besought you as a magistrate 'to put in a good word on licensing day for the renewal of his licence'....¹

Conservative complaints about the low character of most members of the Assembly after 1859 were frequent and reflected the bitterness of men identified with the old order that political power had passed to the representatives of a new one. But, while the conservatives thought it deplorable that politics should be dominated by new men of inferior station, they recognized that most of the liberals in parliament were also, to some extent, identified with the interests of property; they saw that, in an economic sense, the two groups belonged to the same class. Isaacs, for instance, warned the liberals that if manhood suffrage were introduced, they, too, should 'tremble for their property, as it would be place in the balance'.² The conservatives were even prepared to grant

¹R. Therry, Reminiscences of Thirty Years' Residence in New South Wales and Victoria, London, 1863, pp.67-8.

²S.M.H., 7 October 1858.

that 'respectable artisans and labourers' belonged properly to the body politic¹ although as voters rather than as parliamentary representatives. Such men were regarded as quite distinct from the middle classes, but they were thought to possess sufficient property to allow them some degree of responsibility under a constitution where men of wealth and status were protected by the electoral distribution and the Legislative Council from the influence of 'mere numbers'.

It was not so much the conflict between propertied men of different status which led the conservatives to oppose the electoral bill of 1858, however, but their belief in that deeper class war between those who had property and those who did not. This struggle had little existence in reality, for men with no property took little effective part in politics, but in the minds of the conservatives it was a dreadful reality. As the conservatives pointed out, 'respectable' working men in regular employment were often entitled to vote even without manhood suffrage,² and they painted a dismal picture of those who would be enfranchised by the abolition of the property qualification. Their vision of the men whom such a measure would admit to the body politic derived in part from their perspective as lawyers, judges and magistrates - men whose acquaintance with the lower orders was wholly one-sided. Thus, Judge Therry alleged that an experienced police officer had told him that 'from his own quarter alone' the electoral bill would admit to the franchise 'no less than 500 persons who were under the surveillance of the police'.³ In a later argument against the bill, he described this class of people in greater detail:

When they considered that in large towns, where a great number of persons lived from day to day without knowing where they could provide food for the morrow - When they knew, also, that people abounded in cities of this description - when

¹Isaacs, S.M.H., 7 October 1858; A'Beckett, S.M.H., 11 September 1858.

²A'Beckett, S.M.H., 11 September 1858. Compare Loveday's figures on the percentage of adult males entitled to vote. (Loveday, 'The Legislative Council...', p.483, cited above.)

³S.M.H., 7 October 1858. Therry later repeated the argument. (S.M.H., 10 October 1858.)

they remembered the filth and feculance that always floated on the surface of society in large towns, they would see that there was no necessity, nor was it fit or wise, or even rational, to extend the representation to these persons merely because they have arrived at the age of twenty-one years.¹

Similarly, Robert Isaacs, who had no quarrel about permitting 'respectable artisans and labourers' to vote, said that the electoral bill would swamp 'the real people' by enfranchising 'men who, except at election times, would be hidden in the public houses and stores, and would only come forward like horrid creatures brought into existence by the sunshine of party'.² He thought manhood suffrage would give votes to men who, 'having drowned all conscience in gin or other such thing, would be brought to the poll to shout at the top of their voices "Cowper forever", or whoever might be the candidate'.³ It was not that he thought that liberal members of parliament were themselves bent upon destroying the rights of property, but that they were politically naïve and were unable to see the likely effects of admitting the propertyless to the franchise.⁴ Of the consequences of such a measure, the conservatives professed to have no doubt: Cowper would become the captive of political opportunists who would trade upon the ignorant and the unintelligent, men who could not understand the teaching of the economists that no intervention in the distribution of wealth was possible without injury to men of all classes. Thomson thought that manhood suffrage 'would lead to this - that all property would be taxed to an enormous amount, whilst the burdens which were now borne by the general consumer would be taken off'.⁵ Similarly, Edward Wise foresaw 'class legislation and taxation on wealth and the product of industry';⁶ and James Norton feared that 'political schemers'

¹S.M.H., 13 October 1858.

²S.M.H., 7 October 1858.

³S.M.H., 13 November 1858.

⁴S.M.H., 7 October 1858, quoted above.

⁵S.M.H., 9 September 1858.

⁶S.M.H., 10 September 1858.

would beguile the ignorant with promises of 'employment for the unemployed, and all the other etceteras of their political stock-in-trade'.¹ Consequently, a property qualification was regarded as both a guarantee that the voter had a vested interest in defending the rights of property and a practical demonstration that he had the intelligence not to be deluded by the nostrums of radicals and opportunists.²

Conservative fears as to the results of manhood suffrage were not entirely unjustified, for, from their perspective, the rights of property were attacked by the action of the liberal government in using public funds to alleviate unemployment and by land legislation which explicitly discriminated in favour of the small man. Yet, as they themselves realized in years to come, their fears that the property of the rich would be confiscated or taxed heavily were grossly exaggerated - the expected dictatorship of the poor did not materialize.

The exaggerated nature of conservative fears was partly a reflection of the bookish nature of their beliefs, for they quoted freely from authors obsessed with the alleged evils of 'democracy' as it existed in the ancient world, in revolutionary France and in the United States. But, on a deeper level, their fears reflected the state of acute anxiety which had been created amongst members of the old élites by the rapidity of social change in the middle and late 1850s, and, in particular, by the accession to political power of men who, a decade earlier, had often been artisans and shop assistants. They were therefore blinded to the truth appreciated by the liberals, that the working classes aspired to property only within the existing social order. Indeed, by 1860, many of the liberals were men who themselves had risen from humble origins to a position of modest affluence within that order, and they realized clearly enough the aspirations of the class from which they came. Their arguments in favour of the extension of democracy reflected trust of the classes whom

¹Ibid.

²Norton and Docker, S.M.H., 10 September 1858; Broadhurst, S.M.H., 15 September 1858; Stephen, S.M.H., 13 September 1858. Cf. Isaacs, S.M.H., 26 April 1858.

the conservatives feared. They were confident - and their confidence was based upon experience - that the lower orders would vote for men like themselves. Even the comparatively respectable liberals in the Council strengthened their case by pointing to the existence of the deferential voter. James Bligh, for instance, thought that manhood suffrage would only give votes to servants, but he did not think this would increase democracy. On the contrary, he believed that the servants in all cases would be found voting with, or for their masters.¹

Similarly, Bourn Russell

Denied that there was any danger in giving servants votes. The good master always found his servants acting with him and he thought if the people were left to themselves [they] would return the best men.²

John Dickson hinted at the same thing when he stated that, even without formal safeguards, property 'is always certain to be amply represented';³ and David Jones dismissed the conservatives' fears that manhood suffrage would mean a working class Assembly bent on plunder, with the observation that 'He for one did not believe, as was stated by more than one hon. member - that the democracy would all be found voting the one way'.⁴

Some conservatives went to great pains to argue against the notions of 'natural rights' upon which, according to their books, their opponents' position was founded. Isaacs, for instance, stated that 'It was contended, on the other side, that all that was wanted was to give men their natural rights'. He then argued in terms reminiscent of Locke that 'Men who entered into civil society gave up a portion of their natural rights for the protection afforded them' and denied emphatically that 'there was any natural right for men to have a vote'.⁵ But his learning was in vain, for it missed the

¹S.M.H., 11 September 1858.

²S.M.H., 13 November 1858.

³S.M.H., 9 September 1858.

⁴S.M.H., 13 October 1858.

⁵S.M.H., 13 November 1858.

point of his opponents' position. Certainly, a few liberals made statements owing something to the tradition of natural rights, but they were never systematically developed and came in the context of speeches stressing more pragmatic arguments. Bourn Russell, for instance, said that 'Every man was taxed more or less, and therefore, he thought every man had a right to a voice in the election of the person who was to tax him'.¹ But Russell believed in 'the rights of property', too, and thought that they 'might be considered in the number and distribution of members'; he also argued pragmatically that the bill 'was calculated to allay a large amount of irritation in the public mind...', and that workmen in the colony could be safely enfranchised because they were better informed than their counterparts in Britain.² William Bland, the veteran liberal who had once been Wentworth's partner in politics, also posited a connection between taxation and the right to vote, but combined this with a pragmatic evaluation of the good qualities of the lower classes.³

Traces of the doctrine of natural rights can be found in the speeches of the other liberals, but they never predominated, and were even paralleled by explicit repudiation of the doctrine. For instance, David Jones, an independent liberal, thought that

Every man had the right of being - and of exercising his opinion; every man was interested in the state in which he dwelled; every man was bound to keep the law, and he therefore ought to have some share in the making of that law to which he was bound to conform....⁴

Yet he also repudiated 'Tom Payne [sic] with his abominable, his blasphemous, principles',⁵ and 'did not advocate universal suffrage because he believed all men were equal'. Instead, he placed most weight on the argument that

¹S.M.H., 15 September 1858.

²Ibid.

³S.M.H., 10 September 1858.

⁴S.M.H., 11 September 1858.

⁵S.M.H., 13 October 1858.

neither political nor social peace would be enjoyed until every man felt that he had an interest in the welfare of his country by having a voice in the legislation through the franchise.¹

So pragmatic was Jones, and so little wedded to the theory of natural rights, that he voted for Thomson's amendment giving the franchise only to £5 householders, on the grounds that it was 'equal to manhood suffrage'.² Liberal adherence to the doctrine of 'natural rights', where it existed at all, was largely unconscious, introduced haphazardly into speeches stressing pragmatic arguments in favour of manhood suffrage.

In a Council where there were fifteen consistent liberals and twenty-four steady conservatives, it was inevitable that the latter should at first prevail. In committee, the conservatives struck out the manhood suffrage clause, substituting one proposed by Deas Thomson which confined the suffrage to those paying a rent of £5 per annum, or possessing, for a period of six months prior to the election, the sum of £100 in a bank. This amendment was a genuine attempt at a compromise - one which would have satisfied most liberals four years previously. However, the Assembly rejected the amendment by nineteen votes to seventeen and returned the bill to the Council.

Johnson, Isaacs and the conservative extremists had no doubt that the Council should persist in its opposition to manhood suffrage no matter what the cost, but other considerations weighed with the moderates. The Sydney Morning Herald had already given them a lead by stating that it would prefer to see the bill passed in the form desired by the Assembly than to see it lost, so that 'the Constitution may be allowed a little rest, and that the Parliament may find time for some practical legislation'.³ Moreover, by continued resistance the Council seemed likely to strengthen the cause of those liberals who saw in a 'swamping' the solution to any difference between the houses. Already, a petition had been

¹S.M.H., 11 September 1858.

²S.M.H., 13 October 1858.

³S.M.H., 7 September 1858, editorial. Cf. S.M.H., 23 August 1858, editorial.

circulated out of doors calling upon the executive and the Governor to force the bill through by appointing additional members to the Council.¹ Such considerations weighed with Deas Thomson and the moderate conservatives, who were not prepared to press their objections to the point where they endangered the stability of the body politic. Consequently, although the Governor would almost certainly have demanded a dissolution before consenting to swamp the Council, Thomson and the moderates abstained from voting when the Council reconsidered its amendment and it was struck out by fourteen to seven.²

The Council had already conceded the secret ballot, for many conservatives thought it a necessary safeguard against working class intimidation of those of their number who voted for conservative candidates. As Thomson put it: 'No labouring man would dare to vote against his class. If he did he would become a pariah and an outcast.'³ The Council had to be satisfied with two token concessions from the Assembly: an increase from three years to five years of the period of residence required of foreigners before they could become members of the Assembly; and the insertion of a clause giving representation to the University of Sydney when it had awarded the degrees of Master or Doctor to one hundred persons.⁴ Thus, as the framers of the constitution had foreseen, the Council was forced to allow a most distasteful 'reform', but one which it could not oppose without arousing bitter resentment and damaging its own position and the fabric of the whole society. In the long term, the 1858 Electoral Act was necessary for the preservation of conservative power, but in the short term, it was a signal defeat for the conservative cause which helped

¹S.M.H., 2 October 1858.

²S.M.H., 30 November 1858.

³S.M.H., 9 September 1858. Cf. Docker, S.M.H., 10 September 1858.

⁴Pace Manning Clark, A Short History of Australia, Sydney, 1963, p.127. The Assembly at first refused to accept the clause but later relented.

the growing radical movement outside parliament¹ to gain representation within. It also increased the conservatives' reliance on the Council as their sole remaining line of defence against the depredations of the democrats. Politics was polarizing and the conservative and liberal forces were each preparing to insist more intemperately upon the rights of their respective parliamentary strongholds.

Part 2

The Debate on Reform of the Council, 1859-1861

Between 1859 and 1861, four bills were brought forward to make the Council elective, two of them by the Forster ministry and two by the Cowper and Robertson ministries. The debate on these bills shows clearly the changes in both liberalism and conservatism which had taken place since 1853.

The debate on the bills made it clear that, outside the Legislative Council, there were by the late 1850s few conservatives who could be found to defend the system of nomination. Conservative candidates at the elections in 1856, sensing that advocacy of a nominated Council would be an electoral liability, had in some cases announced their conversion to the elective principle and in others adopted an equivocal attitude.² Their reluctance to commit themselves was further displayed in 1857, when Macarthur moved the previous question to prevent discussion of a motion by Robertson in favour of elective institutions. Macarthur and Parker, the

¹As manifested in the operations of the Land League from 1857 and in the demands of unemployed who conducted frequent demonstrations, especially after 1858. (Cf. Coghlan, *op.cit.*, pp.696-705; Baker, *loc.cit.*, pp.114-22; and R.H.W. Reece, 'Henry Parkes as 'Parliamentary Martyr for the Working Classes' in 1859', Labour History, No.13, November 1967, pp.11-18.

²Cf. speeches by Robertson, Parker, Macarthur, S.M.H., 25 February 1857.

conservatives' principal speakers, did not defend the nominated Council directly, but simply pointed out that the construction of an elective upper house would involve great difficulties and claimed that any discussion of the issue was premature.¹ Macarthur's amendment failed, and the conservatives allowed Robertson's motion to pass without a division.

By May 1858, Cowper's elevation to the Council of liberals of little social standing had combined with the threat of an Assembly elected by manhood suffrage to produce a conservative consensus in favour of elective institutions. This was revealed when Macarthur moved that the second reading of the Electoral Bill be postponed for several weeks.

in order that the Government may introduce a measure for the re-construction of the Legislative Council on such Elective Basis as may secure that body due weight in the Constitution.²

The amendment was supported by all the leading conservatives, but was defeated by thirty-six votes to fourteen.³

The trend of conservative opinion towards an elective upper house was also apparent when Forster's Legislative Council reform bills were brought forward in 1859 and 1860. Forster himself was a man with liberal convictions on most issues, but one bitterly opposed to Cowper and Robertson on personal grounds. Writing to Parkes in 1859, he fairly summarized his position:

as you know I cordially agree in the principle of our political changes...[but] these changes, as yet, have resulted in the predominance of a class of mere mountebanks and imposters, who profit by the labour of others, and in which they have but slightly assisted. I say frankly, if responsible Govt. is to mean Govt by Cowper and his lot, I have done with public life....For all his associates and supporters, except Jones, I have nothing but contempt.⁴

When Forster came to power in 1859, his main support came from the conservatives and he was forced to frame his Legislative Council reform bills accordingly. He himself

¹Macarthur and Parker, *ibid.*

²*V. & P.* (L.A., N.S.W.), 1858, pt.I, pp.159-60.

³*Ibid.*

⁴Forster to Parkes, 5 May 1859, P.C., vol.52, A922, pp.20-23.

favoured the abolition of the Council,¹ and he made no pretence that his bills, which were designed to secure a moderately conservative Council by democratic means, embodied his convictions. The main principle of the bills had originated with the Governor, Sir William Denison, an avowed conservative. Forster and his ministers gratefully accepted his suggestion because, as Denison noted, it provided 'a mode of meeting a difficult question, which would unite the suffrages of a large body of their supporters'.²

Forster's first bill, which was introduced in the Assembly on 1 December 1859, was based upon a plan which Denison had recommended to the Colonial Office as long before as 1858.³ It provided for a Council of thirty members elected on the same franchise as the Assembly. However, the members were not to represent local electorates, for the whole colony was to form a single electorate; and each elector was to have only one vote.⁴ That this would produce a Council more conservative than the Assembly few doubted, for it seemed likely that one or two 'democratic' candidates would pile up enormous and wasteful majorities, allowing conservative candidates to be returned on the votes of a small minority. It was also pointed out that only wealthy candidates could afford to canvas throughout the whole colony. Moreover, there was a disposition on the part of conservatives to imagine that few men outside their own circle enjoyed high reputations throughout the colony, and that most of the liberals, men of unknown reputation, would fail to gain more than local support. In this, the conservatives may have been correct: with the exception of Cowper, Robertson, Arnold and Parkes, very few of

¹Forster in S.M.H., 25 February 1860.

²W.T. Denison, Varieties of Vice-Regal Life, London 1870, vol.I, p.468, diary entry for 31 October 1859.

³Denison to E. Bulwer Lytton, 8 September 1858, in Varieties..., vol.I, p.446. Cf. Denison to Bulwer Lytton, 10 June 1859, ibid., p.461.

⁴Forster's bill and the bills brought forward by Cowper and Robertson are printed in A Collection of Acts, Bills and Papers relating to the Constitution of the Legislative Council of New South Wales, Sydney, 1879.

those who were by then liberals in the Assembly were men well known in public life, and prospective liberal Councillors were unlikely to be more prominent. Lack of finance would probably have prevented most of them from trying to compensate for their lack of 'reputation' by campaigning throughout the colony in order to publicize their 'popular' views.

But Forster's ministry depended not only upon conservative support, but upon the favour of a minority of liberals, including the radical Robertson, who had promised the ministry a 'fair trial'.¹ It became apparent that the proposal that the whole colony should form a single electorate would not gain their support, and Forster thereupon withdrew the bill and introduced a new one identical with the first except that it reduced the number of members to twenty-eight and increased the number of electorates to four. This proposal, however, did not mollify the liberals. The electorates were still sufficiently large to serve a conservative purpose and they were weighted heavily in favour of the country districts. One liberal, John Lucas, put the number of electors in the Sydney electorate at over 17,000 and the number in each of the three country electorates at only about 6,000.² The liberals therefore combined with several conservatives who opposed the bill because it lacked a property qualification and it was defeated by twenty-nine votes to twenty-six on the second reading.

The bills introduced by Cowper and Robertson were very different. They provided for twenty-six single-member electorates and two two-member electorates, whose members were to be returned by the same electors who voted for the Assembly, except that possession of a miner's right did not confer the vote. In the single-member electorates the possibility of members being returned on a minority vote did not arise, and it was minimized in the two-member electorates by the fact that every elector was apparently intended to have two votes, as in the two-member seats in the Assembly.³ The Council was to be

¹Loveday and Martin, *op.cit.*, p.30.

²S.M.H., 25 February 1860.

³Cf. Loveday, 'The Development of Parliamentary Government...', p.334.

subject to a dissolution in order to keep it responsive to changes in the popular mood, but if no dissolution occurred, its members would sit for a maximum of six years, with one third of them retiring every two years.

As the conservatives pointed out, such a Council would not have been appreciably more conservative than the Assembly. The liberals admitted this quite freely, for most of them had discarded the notion of the 'balanced constitution' as inapplicable to Australia and become the advocates of 'unmixed democracy'. The changed temper of liberalism was personified by Cowper who, in 1853, had opposed the nominated upper house partly on the grounds that it would be insufficiently conservative.¹ In 1861, he could still tell James Macarthur that he was not personally opposed to a Legislative Council returned on a conservative franchise,² but his public stand, reflecting the changed nature of his political following, was very different. On the second reading of the 1861 bill he explicitly repudiated the notion that the Council should be different from the Assembly:

he might repeat what he had said over and over again, that he had no wish to see any great difference between the electors of one Chamber and those of the other; because he was firmly persuaded that if from the present chamber forty gentlemen were taken and placed in one room and thirty in another, and all legislation submitted to them, the colony would derive from that division all the advantages that could spring from two Chambers....It had been objected that the members of the two houses would be chosen by the same classes of electors....He was aware that there were those who desired to see a very high qualification, but he himself had no such wish...³ he thought the principle open to strong objection.

Cowper thought, however, that some element of difference might be allowed by having the Council elected from larger electorates than the Assembly, but the size of the electorates

¹Cowper in E.K. Silvester (ed.), The Speeches in the Legislative Council of New South Wales on the Second Reading of the Bill for Framing a New Constitution for the Colony, Sydney, 1853, pp.119-21. Cf. Chapter I above.

²Cowper to James Macarthur, 22 June 1861, Macarthur Papers, vol.28, A2924, pp.601-4.

³S.M.H., 25 January 1861.

proposed was not such as to give an advantage to conservative candidates. He thought the larger electorates might, in some degree, help to ensure that the members of the Council were not the prisoners of local interests,¹ but this in no way touched the question of whether they were liberals or conservatives. He had, at least in public, entirely rejected the idea that in constitutional affairs a balance had to be struck between 'popular' elements and conservative ones, and he regarded the Council as merely a house of technical revision.

Cowper's statement that the purpose of an upper house would be served by taking thirty members of the Assembly and placing them in another room showed that his position did not differ substantially from the radical Robertson's. Robertson thought that the Council should be abolished altogether and replaced by a single house of one hundred members, twenty-five of whom would form an elected committee of revision, which would examine bills for defects after the committee stage. The committee would then suggest amendments which would be debated and voted upon by the full house of one hundred.²

In all, probably half, or nearly half, of the liberals shared Robertson's belief that the Council should be abolished. When Forster had moved the second reading of his bill in 1860, the Reverend J.D. Lang had proposed an amendment in favour of a single house.³ It had been defeated by forty-three votes to ten, but most of those in the majority were conservatives. If we define as liberals members who are known to have favoured free selection before survey - and in the context of politics in the Assembly in 1860-61 this is the best working definition - then ten of the twenty-three members in this category voted for the abolition of the Council. Those who favoured this course included Robertson and Arnold, two of the four members of the land reform cabinet of 1861. They were spared the dilemma of deciding whether to vote for a similar amendment on the second reading of their own ministry's bill

¹Ibid.

²S.M.H., 25 April 1861.

³V. & P. (L.A., N.S.W.), 1859-60, Vol.1, p.503; S.M.H., 25 February 1860.

in 1861 when the vote on the second reading came on earlier than expected.¹ While no one pretended that such an amendment had any chance of success, it would probably have had much stronger support than it had obtained in 1860, for the election of that year had produced a more radical Assembly and opinion against the Council had been strengthened by the clashes over the Indemnity Bill and the Appropriation Bill of 1859-60.²

There was, however, still a small minority of liberals whose ideas on the Council were similar to those of the liberals of 1853. Two members favourable to free selection before survey, Moriarty and Haworth, still favoured a restricted franchise for the Council,³ and William Redman, who was probably a liberal on the land issue,⁴ also wanted a property qualification imposed on the candidates.⁵ These were the only liberals who clearly avowed the Whiggish liberalism of 1853, and during Redman's speech a large number of liberals left the house in a body in protest.⁶

Several other liberals, notably Henry Parkes, adopted an equivocal position. Cowper and Robertson had gained the allegiance of nearly all the liberals with their skilful use of the land issue and had established a monopoly of most of the radical ground. In an effort to establish himself as something more than just another of their followers, Parkes found it necessary to align himself with the conservatives on some issues, although he usually found 'liberal' reasons for doing so. In 1861, Parkes assumed the role of leader of the 'conservative' opposition to the Legislative Council Bill.

¹S.M.H., 25 January 1861.

²See below, this chapter.

³On 3 April 1861, they voted for a conservative amendment to introduce a property qualification.

⁴Redman voted for free selection on squatters' runs after saying he would vote against it. (Cf. V. & P. (L.A., N.S.W.), 1861, p.433; and S.M.H., 8 January 1861.) On the second reading of the Crown Lands Alienation Bill, he had spoken in favour of its general principles and an obituary described him as a confirmed liberal. (S.M.H., 31 January 1861; Bulletin, 30 September 1882.)

⁵S.M.H., 25 January 1861.

⁶Ibid.

He openly expressed his desire to have a 'thoroughly conservative' Council, but what he meant by that he shrouded in ambiguities and platitudes. He said he would make it conservative

in the only sense in which that term ought to be understood in this colony, in a sense altogether foreign to the sense of all those persons who wished to attain that end by restrictions and [a] high property qualification....He would endeavour to make that body to consist of the highest class of capacity, of the most tried public virtue, and the most matured judgment, in the public life of the colony.¹

At times, he seemed to envisage a Council whose existence was not justified by the need to check specifically 'popular' impulses, but by the fact that any single legislative body was liable to error. He admitted that the error was as likely to lie with one house as with the other, but argued that it was better to have good laws delayed than to have bad ones enacted.² But, to satisfy those who wanted the Council to act conservatively in the commonly understood sense, and to demonstrate his 'consistency', he quoted a series of resolutions which he had drafted for the Constitution Committee in 1853, which, although ambiguous, clearly implied that the Council should be less 'democratic' than the Assembly.³

In practice, Parkes sided with those conservatives who wanted to make the Council conservative without resorting to property qualifications. He moved that the number of electorates be reduced from twenty-six to eight, a move which nearly all the conservatives supported for reasons identical to those which had led them to support Forster's proposals in 1860. However, the only liberals who followed Parkes were Windeyer and James Dickson.⁴ He also tried unsuccessfully to provide that candidates should have lived in the colony for at least three years.⁵ He succeeded, however, in removing from

¹Ibid.

²Ibid.

³S.M.H., 3 April 1861.

⁴V. & P. (L.A., N.S.W.), 1861, p.482.

⁵Ibid., p.483.

the bill the provision for dissolving the Council. Cowper had announced that he would still proceed with the bill if the Assembly decided that the provision for one third of the Council's members to retire every two years was sufficient to keep it abreast of public opinion. However, he strongly opposed Parkes' amendment only to see it passed by twenty-eight to twenty when eleven liberals sided with the conservatives.¹ It was the only 'Whiggish' amendment which gained the support of even a third of the liberals, and it was a very pale reflection of the Whiggism of 1853. By 1861, the main question being debated in liberal circles was not how best to make the Council conservative, but whether a second chamber could fulfill the role of technically revising legislation more satisfactorily than a special committee of the Assembly.

When the bill passed the Assembly it was not, however, sufficiently 'democratic' for the radicals. They had failed to have the period for which the members of the Council were to hold their seats reduced from six years to four; they had not been able to make the possession of a miner's right a sufficient qualification for the vote; they had not succeeded in reducing the age limit for candidates from thirty-five to thirty; and they had narrowly failed to have it specified that the Council could not amend money bills in any material way.² Cowper had resisted these amendments, not because they would make the upper house more 'liberal', but because they were unnecessary and would only ruin whatever chances the bill had of passing the Council.³ The division between Cowper and the radicals was one between men publicly agreed on basic principles. Both parties were agreed that the Council should be 'democratic', and the difference between them was that Cowper was an experienced politician willing to compromise on matters of style to win the day on matters of substance, whereas the radicals were men new to politics and less prepared to distinguish the reality of democracy from its symbols.

¹S.M.H., 3 April 1861.

²V. & P. (L.A., N.S.W.), 1861, pp.482-3, 491.

³See, for example, Cowper in S.M.H., 11 April 1861.

The radicals' insistence upon having all their views incorporated in the bill was also, to some extent, a reflection of the fact that the Council seemed likely to reject the bill anyway. Liberal fears in this respect proved justified and the Council agreed to the bill's first reading only after an appeal from the Governor.¹ In the debate on the second reading, a few of the conservatives argued for an elective Council, but most still wished to avoid the trials of the hustings. They therefore held out for the principle of nomination² and the Council decided by twenty-two to six that the bill should be read a second time on 14 May - the day after all members were to vacate their seats owing to the expiration of the quinquennial appointments. It was not until the Council was swamped that most of its members doubted their ability to act as a conservative check on the Assembly.

Part 3

The Debate over the Financial Powers of the Council, 1859-61

Although by 1861 most liberals had adopted views on the upper house almost identical with those of the radicals of the early 1850s, they rarely advanced a case explicitly based upon any theory of natural rights. Most seemed to assume that the existence of an aristocracy in Britain was sufficient justification for the existence of the British House of Lords; but, by the same token, they argued that because there was no aristocracy in Australia whose ancient privileges needed protection, there was no need to 'check' the democratic chamber with a conservative upper house. The liberals were therefore able to maintain their position on the Legislative Council without denying the relevance of the theory of the 'balanced

¹Young to Newcastle, 19 April 1861, P.R.O./C.O. 201/517.

²S.M.H., 20, 25, 26 April 1861.

constitution' to political life in Britain. Only a few extremists like the republican David Buchanan extended their attack on the Legislative Council to the House of Lords.¹ It took the clash with the Council over the Indemnity Bill in 1860 to elicit from most liberals statements based upon a theory of natural rights. Their statements in that controversy harked back to the English revolutionary tradition which asserted the right of revolt in the face of statutes, and made conservatives fear that the liberals were intent upon attacking the rule of law.

The origins of the clash over the Indemnity Bill lay in the constitution's failure to specify that the Council could not amend money bills. It stated that all money bills should be initiated in the Assembly by a message from the Governor, but it technically allowed the two houses equal legislative powers in all other respects.² Plunkett, Thomson, Douglass, Macarthur and Wentworth, the leading members of the select committee which drafted the constitution, had all assumed that the Council, as a nominated chamber modelled on the House of Lords, would follow the example of the Lords by refraining from substantial amendments to money bills.³ To them, the analogy with the Lords was so obvious that specific definition of the Council's powers seemed unnecessary.

However, many of the conservatives who had followed their lead in 1853 were not represented in the Council after responsible government, and the 'conservative party' there was composed mainly of men outside the tiny group who had designed the constitution. Where Thomson, Douglass, Wentworth, Plunkett

¹For Buchanan's attitude, see S.M.H., 25 January 1861. Contrast the speech of another radical working man, D.C. Dalglish. (Ibid.)

²18 & 19 Vict., c.54, clause 1.

³Thomson and Douglass in Empire, 5 February 1857; Macarthur, Empire, 25 February 1857; and Plunkett in S.M.H., 22 June 1860. In 1861, as President of the Council, Wentworth ruled that it could not amend the financial clauses of bills as it was bound by the analogy of the House of Lords. He later changed this ruling, but only after it had been pointed out to him that the Council had in 1857 passed a resolution by which he was bound, asserting the power of amending money bills. (J.L.C., 1861-2, pp.22, 127.)

and their close associates were usually men with a background in government and politics which had imbued them with the spirit of British constitutional practice, this was not true of most of the conservatives who entered the Council after 1856. Although eminently respectable, these 'new men' took a more restrictive view of constitutional matters. The most important amongst them were Johnson, Isaacs, Norton, Want and Docker, all but the last lawyers with a background in the technical interpretation of the law. This element in their background was not balanced by that deep acquaintance with the unwritten principles of 'statesmanship' which influenced Wentworth, Thomson and their associates. Consequently, they insisted upon the literal interpretation of the constitution. Their position was clearly stated by Johnson, their acknowledged leader in such matters, who 'denied that they were governed by the practice of the mother country, and whatever the Constitution Act enabled them to do, they ought to do. It was not a matter of option, but of bounden duty.'¹

That the lawyer's interpretation of the constitution was to prevail over the statesman's became apparent as early as 1857, when the Council made a purely verbal amendment to the Loan Bill for that year. Such amendments were in conformity with British practice, and the Assembly accepted it with the request that it should not 'be drawn into a precedent to authorize the Legislative Council to alter or amend in any manner whatever, any Money Bill passed by this House'.² Johnson interpreted this message as an attack upon the Council's powers, and moved that this council having taken into consideration the message from the Legislative Assembly... asserts its privilege of amending all bills sent up from the Legislative Assembly for its concurrence in such manner as this council may deem expedient for the peace, welfare and good government of the colony in all cases whatsoever.³

The motion was opposed by six of the seven members of the old Legislative Council who were present, but supported by all the other conservatives. Consequently, when Thomson moved the

¹Empire, 5 February 1857.

²J.L.C., 30 January 1857.

³Empire, 5 February 1857.

previous question, his motion was defeated by eleven votes to eight. Then after an attempt to have the matter referred to a select committee had failed, Johnson's motion was carried on the voices.¹

For over two years, the Council's powers in financial matters were discussed little, for it never attempted to make more than verbal alterations to money bills. However, after the Electoral Act of 1858 had produced a more radical Assembly and strengthened conservatives in the view that their only remaining line of defence was the Council, the two houses moved towards confrontation.

From 1857, the Assembly had been unable to pass in advance the estimates for the coming year. Under these circumstances, expenditure was made on the authority of the Governor's warrant, sometimes after a vote of credit by the Assembly and sometimes with no parliamentary approval at all. The failure to pass the estimates on time was regretted by all members of the Assembly, but while some criticized expenditure without any parliamentary sanction, it was not until 1860 that expenditure after votes of credit was seriously questioned. The only member of the Assembly who seems to have questioned their validity before 1860 was James Martin, and he did so in order to justify the Cowper government's occasional practice of spending money with no parliamentary approval at all.²

The implications of votes of credit for the powers of the Council were perhaps first made clear in August 1858 by the Sydney Morning Herald. It pointed out that appropriation was not the function of the government or the Assembly alone, but of the whole parliament, so that expenditure upon votes of credit '[trenched] deeply upon the rights of the other branch of the legislature'.³ Since the Herald was also of the opinion that the Council should not attempt to amend money bills,⁴ its point was that expenditure on the authority of the Assembly's

¹J.L.C., 4 February 1857; Empire, 5 February 1857.

²S.M.H., 7 August 1858. Contrast the views of Donaldson, Hay and Forster in the same debate.

³S.M.H., 9 August 1858.

⁴S.M.H., 9, 23 June 1860.

votes of credit was both technically illegal and an act of discourtesy towards the Council.

To men like Johnson, the question was more than a matter of technicalities and courtesy. The practice of seeking votes of credit from the Assembly alone cut directly across their contention that the two houses had equal powers in financial matters except that all money bills had to originate in the Assembly. Consequently, when the Cowper government spent money on the authority of votes of credit during the first three months of 1859, the practice was questioned in the Council.¹ However, the passage of the Appropriation Act a short time later removed the possibility of a clash for another year.

A collision between the two houses was foreshadowed in December 1859, when Johnson moved that the Council refuse to consider any bill not laid upon the table by 28 December, saying that 'he had in view the appropriation bill' for the following year.² The fall of the Cowper ministry two months previously had caused delays which made it certain that the Appropriation Bill would not be passed on time, but Johnson, impatient of the inefficiencies of responsible government, would accept no excuses. He maintained that 'in point of law, that bill must be passed into an Act before the expiration of the present year; and unless it was on the table of this house by the 28th, at the latest, there could be no time for its consideration'.³ That the Council should have time to consider the bill Johnson thought important, for any attempt to rush it through the Council after it had been debated for months in the Assembly seemed to imply that the Council had no right to consider the details of the bill in committee. Geoffrey Eagar, the Forster government's representative, replied that there was not 'the slightest chance' that the Appropriation Bill would reach the Council before the end of the year. He appealed to the good sense of the house and, in particular, felt sure that 'the hon. and learned member who sat at the head of the

¹S.M.H., 9 April 1859.

²S.M.H., 16 December 1859.

³Ibid.

opposition benches, with his experience of parliamentary proceedings, with his knowledge of parliamentary law, would not support the motion'.¹ Johnson thereupon withdrew his motion, but

He could not, however, understand why the government should take it for granted that they should not be able to pass an Appropriation Bill in time; or that they should necessarily get a vote of credit; and he was sorry to hear from the exponent of a ministry claiming common sense and common honesty, that a vote of credit of one house would be deemed sufficient by them to justify expenditure of the public money.²

When the Appropriation Bill was not passed and the Forster government authorized its expenditure for February 1860 by a vote of credit, Johnson immediately gave notice of a motion protesting

That the practice which has prevailed of spending the public monies upon votes of the Legislative Assembly only, is illegal, and subversive of the rights and privileges of this House, and ought not to be continued.³

The Forster government fell on the day the motion was due to be debated, so that Johnson had it postponed, expressing the hope that 'whoever assumed the reins of government, their first measure would be one for the legalization of public expenditure'.⁴ However, the new ministers, headed by Robertson, were bound to resign their seats upon taking office and seek endorsement from the electors, and they did so without gaining supply for the coming month. Johnson thereupon asked the Council to refuse the ministry's request for an adjournment until it obtained votes of credit from both houses. The adjournment was refused by ten votes to seven, but when the Council met the next day, the President ruled that to continue sitting in such circumstances was contrary to the practice of parliament. The conservatives thereupon deferred to his judgment.⁵

¹Ibid. The reference was, of course, to Deas Thomson.

²Ibid.

³S.M.H., 9, 23 February 1860.

⁴S.M.H., 2 March 1860.

⁵S.M.H., 9, 10 March 1860.

Matters came to a head when parliament resumed on 3 April 1860. The Council immediately passed on the voices Johnson's resolution condemning expenditure authorized by one house alone, with the extremist party using the occasion as a platform to assert that except for the right of initiating money bills, the two houses had 'co-ordinate' powers, and that the Council had 'as much right to interfere in money concerns as the Assembly itself'.¹ Thomson, for the moderates, denied that the Council had the 'right to deal with all the details of money bills',² but substantially agreed with Johnson's motion. Thomson's case against the expenditure complained of rested upon the argument that expenditure without the consent of the whole parliament was illegal, and that those who maintained that the Assembly's votes of credit were a sufficient authorization for expenditure were denying the Council its undoubted right to assent to money bills.

The conservatives had prepared their case much better than the liberals and in some respects their position was easier to defend. In this debate and subsequent ones, they were able to show that when the British Government spent sums comprised in the estimates before the passing of the Appropriation Act, the expenditure was met by exchequer bills authorized by act of parliament, or by a partial appropriation act.³ The colonial habit of using votes of credit in these circumstances was undoubtedly contrary to British practice and the liberals were unable to produce a single precedent in its favour. In Britain,

¹S.M.H., 4 April 1860.

²Ibid.

³The British practice was described thus by May: 'In order to make the grants of the Commons available, and to anticipate the legal sanction of an Appropriation Act, clauses are inserted in the Acts passed at an earlier period of the session, for the application of money out of the Consolidated Fund, and for raising money by exchequer bills for the current year; which authorize the Treasury "to issue and apply, from time to time, all such sums of money as shall be raised by exchequer bills, to such services as shall have been voted by the Commons in this present session of Parliament". By these enactments, immediate effect is given to the votes of the Commons....' (May, 3rd ed., 1855, p.424). In practice, this meant that a partial appropriation act was passed every year to cover expenditure until the estimates were passed. (See, for example, 17 & 18 Vict. cap.2 and cap.3. See also Commons Papers, 1857, Session II, vol.9, pp.520-1.)

the use of votes of credit was confined to emergency expenditure outside the estimates, and Thomson was able to quote Erskine May to the effect that

Where a vote of credit on account of war expenditure or other special grant not comprised in the Estimates is desired, a message is generally sent by the Crown, under the sign manual to both Houses.¹

In fact, votes of credit were sometimes given by the Commons alone,² but this was not made clear in works on parliamentary practice. The liberals' failure to research their case adequately by going beyond the standard authorities cost them dearly, for it enabled the conservatives to argue against the propriety of all votes of credit from a single house and not simply against the propriety of spending by this means money comprised in the estimates. Had the liberals been able to show that the vote of the Commons was in principle a sufficient authorization for expenditure, their position would have been stronger. As it was, Cowper was forced to admit that the expenditure of public money without the express sanction of both houses was 'irregular', or even 'illegal';³ and Hargrave, the Attorney-General, admitted that 'the public expenditure complained of was certainly illegal, and most decidedly unconstitutional'.⁴

The liberals' most telling rejoinder was that the Parker ministry, to which Thomson had belonged, and the Forster ministry, in which Geoffrey Eagar had been Minister for Works, had spent money on the authority of the Assembly's votes of credit. Cowper was also able to show clearly that all governments sometimes spent money without even a vote of credit

¹S.M.H., 9 June 1860. (Emphasis added.)

²For example, in 1851, the House of Commons passed a vote of credit of £300,000 for unusual expenses incurred by the Kaffir War. (Hansard's Parliamentary Debates, vol.CXVII, 3rd Series, pp.738, 1102.)

³S.M.H., 4 April, 28 June 1860.

⁴S.M.H., 4 April 1860; Cf. Hargrave's statement in S.M.H., 30 June 1860: 'It appeared to him that money should, for the future, be expended not even on additional votes of credit, but should first be appropriated by the Legislature.'

and to produce from the files of the Colonial Secretary's office a list in Thomson's handwriting giving precedents for such expenditure.¹ But, while this argument shifted the focus from his own ministry's failures - where the conservatives tried to direct it - it could not be pressed too far without implying that financial irregularities were of no consequence and that one regrettable illegality justified another. To the conservative claim that expenditure in anticipation of the estimates required the consent of both houses Cowper had no effective reply and his government admitted as much in 1861 by following the British practice of incorporating the lower house's vote of credit in a partial appropriation bill, which was then passed by both houses.² The government's capitulation was a result of its belated recognition that all ministries had departed from British practice. As Elias Weekes, the Treasurer, said when he announced the government's new policy:

It had hitherto been the practice, made necessary by the late periods of the year when the estimates [were] passed, that they should have votes of credit, sometimes for three months supply, and sometimes for one month; but he thought the impropriety of that course had generally been recognized, and this was a step which would take them back to the proper course.³

Six months previously, however, many liberals had repudiated this moderate attitude, repudiating the claims of law and precedent and arguing that the vote of the Assembly was a sufficient authority for expenditure. The circumstances which provoked these outbursts had been provided by the government's decision to introduce an indemnity bill to protect

¹S.M.H., 9, 30 June 1860.

²24 Vict. No.4. This act, which became law on 31 January 1861, authorized the expenditure of £253,087 to cover the government's expenses during the first three months of 1861 and included the supplementary estimates for 1860. Cf. Kempt to Newcastle, 4 February 1861, P.R.O./C.O., 201/517.

³S.M.H., 25 January 1861. Governor Denison may have influenced the Ministry's decision not to resort to the vote of credit system of former years. R.J. Want and William Forster both claimed that Denison had told the ministry he would refuse to sign warrants for expenditure without parliamentary sanction after the current year. (S.M.H., 22, 28 June 1860.) Denison's term of office expired two days before the partial appropriation bill was introduced.

its members from prosecution for spending money illegally in the month of March when they had resigned their seats for the ministerial elections without obtaining supply. The bill covered only the illegal expenditure for which the new ministry was responsible, and this expenditure had been authorized by neither house. The bill could therefore be taken to imply that there was no need to indemnify governments for expenditure authorized by the Assembly alone, and the ministry itself seemed to make this point when, on the day before the indemnity bill was introduced, it obtained a vote of credit for the following month and proceeded to spend the money without further authorization.¹ If the government was not then aware of the implications of its actions, it was soon enlightened, for six days later the Governor told Cowper that his

Bill of indemnity doesn't go far enough it ought to cover all the payments which have been made since the commencement of the year - unless it does this there is the certainty that it will be amended by the Council and there will be a chance of a collision between the two Houses.²

However, the ministry ignored the Governor's advice and refused to extend the bill.

Their decision to persevere in a course of action certain to provoke a clash with the Council makes it necessary to enquire whether the government had introduced the bill in order to provoke such a conflict. That such could have been its intention is suggested by the fact that in 1858 the Cowper government had for three months spent money without the authority of even a vote of credit and had dismissed suggestions that an indemnity bill was necessary.³ Its attitude had been accepted by a majority of members in the Assembly, and in 1860, there seems to have been little or no pressure from the Assembly for an indemnity bill. In fact, several members said

¹S.M.H., 5 April 1860.

²Denison to Cowper, 11 April 1860, Cowper Correspondence, vol.1, A676, n.p. Punctuation as in original.

³Cowper in S.M.H., 19 June 1858. Six weeks later, Cowper said that the government would accept an indemnity bill if the house passed one, but made no effort to have one introduced. (S.M.H., 7 August 1858.)

later that they had not wanted such a bill.¹ The ministers also had an obvious motive for provoking such a conflict with the Council, for they did not have sufficient supporters in the Council to safeguard the land bills which they intended to introduce some six months later. One solution to the problem was to goad the Council into rejecting the Appropriation Bill so that even a conservative governor like Denison would be forced to sanction a swamping. A cabinet in which two of the four members advocated the abolition of the Council may not have been averse to such stratagems.

However, such an interpretation is implausible. It assumes that the ministry foresaw that many conservatives in the Council would favour the suicidal step of rejecting the Appropriation Bill in retaliation for the government's implied attack on its powers. Even allowing for the fact that the extreme conservatives had already shown remarkable inflexibility and lack of political judgment, such a degree of prescience on the part of the government seems improbable. Moreover, the fact that the ministers departed from the precedent which they had set in 1858 and introduced an indemnity bill not demanded by the Assembly can be explained satisfactorily as an attempt to appease the Council and avoid endangering the passage of the land bills by constitutional brawling. The issue over which the Council had refused to adjourn when the ministers took office was their failure to obtain supply before resigning to contest the ministerial elections. Thomson himself suggested that they protect themselves with an indemnity bill, although the suggestion came after they had already decided to do so.² Thomson's bill would presumably have covered all expenditure not authorized by an act of parliament, even that incurred by previous governments. However, he did not specify what expenditure should be included in the bill and it is not surprising that the government did not anticipate his desires, for the Council's refusal to adjourn centred around its own misdemeanours.

¹Gordon, Hoskins and John Campbell in S.M.H., 21, 22 June 1860.

²Thomson in S.M.H., 4 April 1860.

Once it had introduced the Indemnity Bill, the government could not follow Denison's advice and extend it to meet the Council's objections without incurring the wrath of the radicals in the Assembly. The government was by no means secure, and the power which the more radical members wielded over it was shown when they forced Cowper to retreat from another attempt to conciliate the Council. On 25 April, Cowper announced that future expenditure in anticipation of the Appropriation Act would be sanctioned by both houses.¹ In fulfilment of this undertaking, he gave notice eight days later of a motion

That this Council concurs in the expenditure of a sum not exceeding £78,000 to defray the expenses of the various government departments and services of the colony for the month of May 1860, at the rates sanctioned for the past year, and a sum not exceeding £1400 for the construction of roads and bridges and buildings during the same month.²

Cowper thereby conceded the Council's demand that it should be asked for votes of credit, and Geoffrey Eagar noted with satisfaction that his motion 'distinctly recognized the right of the Council to deal with money questions'.³ But liberals in the Assembly objected that to ask the Council for a vote of credit would be 'a practical recognition' of its co-ordinate powers in granting supply.⁴ They forced Cowper to ask leave to amend his motion to read

That this Council is willing to concur in any measure for legalizing the expenditure necessary to meet the exigencies of the public service for the month of May 1860.⁵

Had the Council carried such a motion it would have constituted a clear recognition that it had no business with matters of supply. It therefore refused Cowper permission to make the amendment, and he withdrew the motion altogether.⁶

¹S.M.H., 26 April 1860.

²S.M.H., 4 May 1860.

³S.M.H., 28 June 1860.

⁴Windeyer in S.M.H., 22 June 1860.

⁵Eagar in S.M.H., 28 June 1860. Cf. S.M.H., 10 May 1860.

⁶S.M.H., 10 May 1860.

The Indemnity Bill had already been sent up from the Assembly, but the second reading was delayed for some six weeks while the Council waited for the government to table papers detailing all illegal expenditure since the last Appropriation Act had been passed.¹ When debate on the bill eventually began early in June, the rationale behind the conservatives' hostile response to it became increasingly clear. It was not simply that to pass the bill without amendments would imply the validity of the Assembly's votes of credit; it was also that the conservatives interpreted the bill in the light of the growing radicalism of the Assembly and the known hostility of at least two ministers to the Council. As Docker put it:

It was well known that the opinion of the honourable gentleman who held the post of Premier in the present administration was against the Council, that honourable gentleman holding the opinion that it would be for the good of the country if there were no second chamber.... Knowing this he (Mr D.) looked upon this attempt of the honourable secretary [Cowper] to force on his bill as one of a series of attempts to destroy the standing of this Council, by gradually bringing about its degradation.²

Other conservatives agreed with this pessimistic version of the intentions with which the bill had been introduced. Thomas Hood described it as 'an insult to the House';³ Robert Johnson thought that it 'affected the stability of their political institutions by threatening the permanence of this branch of the Legislature';⁴ and, when the controversy reached its peak several weeks later, Thomson warned the conservatives that 'there was a hope that the Council would be induced into playing the game of the Ministry, so that there might be a pretext for sweeping them away'.⁵ Consequently, it was with every manifestation of ill feeling that the conservatives

¹S.M.H., 26 April 1860.

²S.M.H., 9 June 1860.

³Ibid.

⁴Ibid.

⁵S.M.H., 28 June 1860.

amended the bill to cover all money spent after the passing of the Appropriation Act of 1859, including money spent on the authority of the Assembly's votes of credit.

When the bill was returned to the Assembly, it became apparent that most liberals were equally mistrustful of the motives of the Council. It was quite clear that Johnson and his supporters were bent upon effectively expanding the Council's financial powers at the Assembly's expense. One of their number, the renegade Cowper appointee, Geoffrey Eagar, had even attacked the basis of responsible government by arguing that ministries should have to answer to both the Council and the Assembly for their expenditure and take care 'how they undertook the formation of governments without a majority of either House of Legislature to back them'.¹ Moreover, to liberal fears of conservative intentions was added a widespread, if mistaken, belief in the validity of the Assembly's votes of credit. Members of the lower house had hitherto accepted almost without question that it was in order for governments to make payments on the authority of that house alone. They did not yet appreciate the strength of the Council's objections to such practices, and this is not surprising, for most of the conservatives had confused the issue by introducing extraneous polemics into the debate.

By the time the amended Indemnity Bill was returned to the Assembly, the liberals had become locked in an escalating pattern of conflict. They did not seek merely to maintain the validity of votes of credit, but carried the war to the Council by declaring that the Indemnity Bill was a money bill which the upper house could not amend. This constituted a massive expansion of the definition of a money bill and, had it become established, it would have prevented the Council from altering many bills which it had previously been entitled to amend. There was not the least justification in law or precedent for regarding the Indemnity Bill as a money bill. It was simply a measure to protect the members of the government from the consequences of their illegal actions. It did not meet the constitution's definition of a money bill as one for 'appropriating any part of the public revenue, [or] for

¹S.M.H., 9 June 1860.

imposing any new rate, tax, or impost';¹ it had not been introduced into the Assembly by a message from the Governor, the only way in which a money bill could be brought in; and when the bill was returned from the Council, the Speaker, following the practice of the Speaker of the House of Commons, certified that it was not a money bill, so that the amendments could be considered without breach of privilege.² Nevertheless, the Assembly resolved by thirty-one votes to sixteen not to consider the bill on the grounds that it was a money bill or tantamount to a money bill. The vote was followed by loud cheering.³

The division in the Assembly was very much one between liberals and conservatives as defined by their position on the land issue,⁴ and it must be doubted whether many liberals genuinely believed the arguments which they advanced in favour of the view that the Indemnity Bill was a money bill. Elias Weekes, the Treasurer, for instance, certainly knew that the Council could not originate money bills, yet he stated in consecutive sentences that the Indemnity Bill was a money bill which the upper house could not amend, and that the Council should have introduced a new indemnity bill incorporating its amendments.⁵ The same view was expressed by John Campbell. How seriously Campbell took the arguments which he expressed in the debate can be guessed from the fact that he deliberately played for laughs at the expense of his own case. After calling the bill a money bill because it 'contained in it items of pounds, shillings and pence', he proceeded to parody this statement, which formed the basis of his argument, by observing that 'in the same measure a promissory note, which contained

¹18 & 19 Vict., c.54, schedule I, clause 1.

²S.M.H., 22 June 1860.

³Ibid.

⁴All of the members who voted to consider the Council's amendments opposed free selection before survey. Only five of those who voted against considering the amendments opposed free selection before survey, although two others, Egan and McArthur, cast inconsistent votes on the land issue.

⁵S.M.H., 20 June 1860.

the same figures, was a money bill'. An appreciative house roared with laughter.¹

Men solicitous of their reputations on constitutional matters could not afford to argue in public that any bill containing 'items of pounds, shillings and pence' was a money bill. Their efforts to justify their position on other grounds involved them in many difficulties. Sir Daniel Cooper, the former Speaker, still aligned with the liberals, argued that the bill was, 'to all intents and purposes, a money bill... although, perhaps, in a strictly legal point of view, it might to some hon. members appear to have another aspect'.² He later 'admitted the point that this was not originally a money bill', but claimed that the amendments in the Council (which had simply increased the amount of illegal expenditure covered by the Indemnity Bill) had made it one.³ Still later, he conceded that 'The amendment of the bill, was, it was true, of an apparently harmless Character', but justified his opposition to it by claiming that 'there was an ulterior end in view'.⁴ Similarly, Isidore Blake, a barrister, argued variously that the bill could not have been a money bill when it was introduced into the Assembly because it was not accompanied by a message from the Governor, that it was such a bill because it was 'a matter connected with supply', and that it had been made into a money bill by the amendments in the Council.⁵ He also had difficulty with Erskine May, whom he twice quoted against his arguments on the use and standing of votes of credit.⁶

Examples of the strange arguments used in favour of the view that the bill was a money bill could be multiplied, but to no purpose. Their influence was ephemeral, for they merely served the political tactics of the moment. The liberals had decided to treat the Indemnity Bill as a money bill and all

¹S.M.H., 21 June 1860.

²S.M.H., 22 June 1860.

³Ibid.

⁴Ibid.

⁵S.M.H., 20 June 1860.

⁶Ibid.

arguments which helped to obscure the transparent fact that it was not one were equally useful. They had their origin partly in a sense of outrage that the Council's amendments attacked the Assembly's vote of credit system, which members of the lower house had hitherto regarded as acceptable, and partly in the fear that all the Council's actions on financial matters had some hidden motive.¹ But, although adopted partly for defensive motives, the position taken up by liberals in the Assembly in fact constituted a very dangerous attack upon the established rights of the Council, for if the Indemnity Bill could be regarded as a money bill, there would in future be few bills outside this class.

If the attitude adopted by the Assembly towards the Indemnity Bill implied a revolution in the respective powers of the two houses, ~~but~~ the arguments used by many liberals in the debate seemed to conservatives to threaten a more basic social revolution. Many liberals were not content merely to argue that the Council should conform to British precedent by refraining from exercising the power of amending money bills which it possessed according to the letter of the constitution. Instead, they poured contumely upon the written law as embodied in the constitution and appealed to vague doctrines of 'natural rights'. W.C. Windeyer, for instance, by no means a radical, argued that

there were times and occasions when any nice adherence to law became an abrogation of moral duty, when it became the bounden duty of every citizen who valued the rights he possessed, and especially when it became the representatives of the people who were guardians of those rights not to be too nice in the literal construction of any acts of parliament. [Here there was laughter, presumably from the conservatives.] Hon. members might laugh, but he would like to know how all constitutional rights and liberties were won. Were they not won in the face of statutes, in the face of the decisions of Judges?...Those rights and liberties were obtained by the English people,

¹See the references to the Council's motives and attempts to extend its powers by Blake, Cooper, Parkes, Arnold, J. Campbell and Weekes, S.M.H., 21, 22 June 1860.

by the Commons of England in the face of the subtle distinctions of the lawyers, and the servile and contemptible constructions of the churchmen.¹

Windeyer's friend, Parkes, argued a similar case,² and although the tradition in which they stood was undeniably British, it was none the less radical for that. Theirs was the tradition of the English revolution, in which men overthrew established law and custom to obtain what they claimed as their rights. Elsewhere, Windeyer drew out the radical implications of the doctrines which lay behind the extension of the powers of the House of Commons.

As a matter of right...what was the necessity of an Appropriation Act at all? (Hear, Hear.) Would it not be competent for this House to vote in the supplies without any reference to the other branch of the Legislature? (Hear, Hear.) He was told that this was what the present proceedings meant. If so, he was not afraid of it. He did not see why this House should not have the right, if the legislature chose to assert the principle of voting the supplies, irrespectively of the other House at all? (Hear, hear.)³

Similarly, John Campbell, who 'believed lawyers could argue black and white', contended that 'money bills should not be referred to the other House';⁴ and W.M. Arnold, the Minister for Works, argued that 'The rights and powers of the other House were not to be construed by the Constitution Act alone, but connected with a consideration of those rights which, as British subjects, they had brought from the old land'.⁵ But he went beyond the rights claimed by the Commons in England and said that the Council did not even have that right of assenting to money bills which was possessed by the House of Lords. These bills were referred to the Council not as a 'right', but as a 'courtesy'.⁶ Such opinions had firm roots in doctrines of

¹S.M.H., 22 June 1860.

²Ibid.

³Ibid.

⁴S.M.H., 21 June 1860.

⁵Ibid.

⁶Ibid.

natural rights, but they were in direct opposition to the colony's constitution.

Even in the Council, liberals were driven to disparage statute law. Cowper noted legal opinion that the Constitution Act allowed the Council greater powers than the House of Lords, but instead of simply arguing like Thomson that the Council should not exercise those powers out of deference to British precedent, he dismissed legal opinion with the observation that 'He paid very little attention to the construction of the lawyers upon Acts of Parliament, and since he had been in this House he had paid less attention to their construction than before he entered it'.¹ Hargrave, the Attorney-General, would not allow the rights of the people to be overridden by legal technicalities. In his view, 'a much larger question came in here than any mere question of the construction of a sentence... the source of this Council's origin being the Crown, it had not that inherent right of dealing with all matters, particularly as regards money measures, that the other House had through its connection with and origins from the people.'² This statement brought cries of protest from the conservatives, and at the end of Hargrave's speech, Thomson said that 'he had never been more astonished in his life than at the doctrines just enunciated by the hon. and learned Attorney-General'.³ He must have been much more disturbed by the views of James Hoskins, one of the few genuine radicals in the Assembly who spoke in the debates. Hoskins said that he would refuse to consider the amendments in the Indemnity Bill because they were made by a body which was unnecessary and which did not represent the people. He then used the occasion to warn of the consequences of delaying land reform:

he had no hesitation in saying that if the legislation [sic] of this country continued to show themselves insensible to the demands and necessities of the people in regard to a Land Bill, he would not be at all surprised at an appeal by the people to physical force, and he thought the people would be justified in taking such a course ("Oh, oh")....A very high authority had stated that when oppression reached a certain

¹S.M.H., 9 June 1860.

²Ibid.

³Ibid.

point resistance became a duty (Hear, hear.) Then he would put it whether, if the people were prevented from getting possession of the public lands and acquiring homes for themselves, they would not be justified in appealing from the Legislature who had refused to concede justice to them, to the higher law of justice - right, equity, and even force. (Ironical cheers.)¹

Conservatives regarded the views of men like Hoskins as symptomatic of a general breakdown in the bonds of law and custom which had once sustained society, and their fears are more easily explicable in the context of the repudiation of statute law by even moderate liberals. Consequently, where once conservative complaints about illegal expenditure had been muted, they became strident, for such irregularities were increasingly seen as part of a wider disrespect for the law. Darvall outlined the catastrophic consequences of illegal expenditure:

If they could break the law in this respect, they could break it in any other way - they might do gross injustice, they might rob one man to benefit another - they might squander the public money without being answerable to any tribunal. In short, if they once broke over the barrier of the law, they would leave the country at the mercy of any Government who dared to violate the law. New South Wales would then be a most unhappy place and he would have to leave it....He looked with deep apprehension at any attempt to violate the law and the usurpation of all power by the Assembly.²

The revolution in the balance of political power had shaken the conservatives. Their fears arose not simply from distaste at seeing radical doctrines triumph, but from personal anguish at the loss of power and at an apparent change in the moral quality of political life. They had been deprived of the satisfaction of helping to determine the future destinies of their society; they had lost the power to dispense patronage and, not unnaturally, were indignant that the liberals

¹S.M.H., 22 June 1860.

²S.M.H., 20 June 1860.

sometimes used it for political purposes;¹ and they could not stop radical attacks, many of them successful, on the pensions of worthy conservatives,² on the salaries of officers of the Legislative Council,³ on the stipends of state-paid clergy and on the security of the Church and School lands.⁴

The attacks on these 'vested interests' were paralleled by attacks on some of the leading conservatives as individuals. The Chief Justice, Sir Alfred Stephen, a former President of the Council, was the victim of politically motivated attacks in the Assembly,⁵ and his salary was arbitrarily reduced when,

¹For conservative complaints at 'political' appointments to the magistracy, the judiciary and other public offices, see S.M.H., 22 February 1858, 2 March 1860, 18 January 1861, editorials; Want in S.M.H., 25 April 1861; Black in S.M.H., 22 June 1860; and the discussion of Lutwyche's elevation to the Supreme Court in Chapter II, above.

²Especially H.H. Browne, immigration agent for 20 years, who had been given reason to expect that he, like other public servants employed before responsible government, would be awarded a pension when the post was abolished. Cowper argued strongly that the government's commitment amounted 'in fact to a contract', but nearly all the liberals combined against him to block the pension. (S.M.H., 18 April 1861; cf. article by 'Spectator' in S.M.H., 24 April 1861.) Browne was an old member of the Australian Club and had been associated with the colony's conservative leaders in such activities as founding a Church of England College at Sydney University. (Empire, 1 November 1853; 'Original Founders and Old Members of the Australian Club in 1844', manuscript, King Papers, vol.2, A1977, pp.224-33.)

³See, for example, the reduction by £100 of the salary of the Clerk of the Council in V. & P. (L.A., N.S.W.), 1861, pt.1, p.477. The motion was carried against the government.

⁴Despite government opposition, the liberal majority in the Assembly passed a bill to declare these lands, which were vested in the defunct Church and Schools Corporation, waste lands of the Crown. It lapsed in the Council for want of a seconder. (S.M.H., 23 February, 13, 20 April 1861.) On state aid to religion, see Chapter VI, below.

⁵See, for example, the debate on the appointment of a select committee to investigate an alleged breach of privilege by Stephen. The debate was characterized by attacks on Stephen's political views and the charge against them, as the committee was forced to report, had no foundation. Cowper had refused to sit on the committee and had expressed doubts as to the propriety of appointing it. See S.M.H., 4 April 1861 (debates) and 11 April 1861 (editorial).

'broken down by overwork',¹ he took leave of absence. As a result, he was forced to take his son from university and his wife had to dispense with the services of a governess.² He tried to leave the colony and applied for the position of Chief Justice at Madras, but was rebuffed because he was too old.³ Many years later Parkes compensated him for his loss of salary, but the events of 1860 remained Stephen's most bitter memory when he made his peace as he awaited death in 1894.⁴ Similarly, old Alexander Berry was the victim of vicious attacks by the Reverend J.D. Lang, who not only libelled his character but was the inspiration behind the inclusion of some of his rural property in the Shoalhaven Municipality so that it would be subject to rates. The liberal Attorney-General, Lutwyche, insisted upon conducting Berry's prosecution of Lang himself, and in conservative eyes, he did not do his best to secure a conviction;⁵ and a conservative-dominated select committee reported that the liberal government had connived in Lang's attack on Berry's lands when it allowed the Shoalhaven Municipality to be incorporated illegally and ignored all pleas for redress.⁶ Unlike Stephen, Berry was never compensated, and seems to have gone to his death over a decade later suffering paranoiac delusions that his political enemies were still persecuting him.⁷

¹Stephen to Parkes, 25 July 1894, P.C., vol.35, A905, pp.423-8.

²Ibid. Stephen had eighteen children, but nine were by a previous marriage and most were grown up.

³Therry to James Macarthur, 11 January 1861, Macarthur Papers, vol.34, A2930, p.89. Therry called Arnold, the Minister for Works, a 'very low & vulgar bully' for supporting the attacks on Stephen.

⁴Stephen to Parkes, 25 July, 22 August 1894, P.C., vol.35, A905, pp.423-8 and 226-8, respectively.

⁵Cf. Berry to Young, 8 July 1861, enclosed with Young to Newcastle, 3 October 1861, P.R.O./C.O., 201/519.

⁶S.M.H., 20, 21 June 1860. Cf. article by 'Critic', S.M.H., 28 June 1860. The report of the select committee and the evidence presented to it are contained in J.L.C., 1859-60, vol.2, pp.699-784.

⁷Cf. Berry to Mitchell, 1 August 1868, Papers of Dr James Mitchell, A2026, p.273.

For the conservatives, the personal consequences of political change were acutely painful. Some of them left the country, many would have left if they could,¹ and others, feeling with T.A. Murray that 'The post of honor...is a private station',² withdrew from public life. In this context, their extreme and only partly rational response to the Assembly's stand on the Indemnity Bill becomes explicable. For them, that stand embodied all the evils of a society governed by men heedless of law and custom and drove them to a display of lofty defiance mingled with petulance and despair. In the Assembly, the eloquent Darvall was provoked to a characteristic exhibition of truculent self-indulgence as he contemplated the fate of a society where politicians proclaimed their lack of respect for the law:

woe to that country where the laws were broken.... They were now exhibiting the spectacle of a country governed by universal suffrage, given up to despotism. (Ironical Cheers.) This Assembly was falling lower and lower. (Hear, hear, and cheers)...though honourable gentlemen had received his opinions with ridicule, he could preserve his own self-respect.³

In the Council, the conservatives reacted with suicidal defiance and made a foredoomed attempt to force upon the Assembly the adoption of regular financial procedures and to insist upon the supremacy of the written constitution. Led by Isaacs, Johnson and Eagar, they announced that they would not pass the Appropriation Bill until an indemnity bill covering all expenditure not authorized by act of parliament had been passed. Johnson admitted that when the Appropriation Bill was passed it would, for all practical purposes, indemnify the Cowper, Forster and Robertson governments for their illegal expenditure; but it was for this very reason - that 'it would be a condonation of irregularities which had taken place' - that he opposed it.⁴ He wanted an indemnity bill which would

¹Cf. George Allen's Journal, 21 February 1865, Uncat. MSS, Set 477.

²Murray to James Macarthur, 27 April 1859, Macarthur Papers, vol.29, A2925, pp.271-9.

³S.M.H., 20 June 1860.

⁴S.M.H., 30 June 1860.

explicitly recognize that any expenditure made without sanction by act of parliament was illegal. Other conservatives, including the moderate Thomson, had made it clear that not only did they want such an indemnity bill, but they would refuse to indemnify governments for illegal expenditure after the current year.¹

In demanding such rigid financial practices, the conservatives adopted a position which could not be justified by an appeal to British practice. This, as much as the uncompromising attitude of the Assembly, made their defeat inevitable. Governor Denison warned Thomson that the threat to reject the Appropriation Bill was 'absolutely insane' and threatened to swamp the Council if it was carried out.² Thomson had already formed the same opinion and, after communicating the Governor's warning to the President, Sir William Burton,³ he told the Council that it should not give its opponents a pretext for sweeping it away.⁴ With seven other conservatives, he then crossed the floor to vote with the liberals, and the Appropriation Bill passed its third reading by thirteen votes to ten.

In order to give the conservatives a way out of the corner into which they had backed themselves, Thomson had drafted resolutions which declared that the Appropriation Act did not indemnify previous illegal expenditure and condemned such expenditure as 'derogatory to the principles of Parliament, and subversive of the Constitution'.⁵ This expenditure included not only money spent in 1860 in anticipation of the Appropriation Act, but also money spent in 1859 which had not been covered by the Appropriation Bill for that year. Such illegal expenditure occurred almost annually in both New South Wales and Britain, and it was always sanctioned

¹Want and Thomson in S.M.H., 13 June 1860.

²Denison, op.cit., vol.1, p.487, diary entry for 1 July 1860; Cowper to James Macarthur, 22 June 1861, Macarthur Papers, vol.28, A2924, pp.601-4; S.M.H., 29 June 1860.

³S.M.H., 29 June 1860.

⁴S.M.H., 28 June 1860.

⁵S.M.H., 30 June 1860.

subsequently by inclusion in supplementary estimates inserted in the Appropriation Act for the following year. Thomson's resolutions therefore condemned the traditional way in which British governments had met emergency expenditure not envisaged when the Appropriation Act was passed. Even in the debates, where numbers and learning usually told in their favour, the conservatives were forced onto the defensive by Cowper, who produced telling precedents for expenditure not authorized by act of parliament.¹ The resolutions found no favour with the Governor,² although he had supported the conservatives in their objections to the way in which the Assembly had used its votes of credit to give approval to money comprised in the estimates;³ and officials at the Colonial Office thought the Council's attitude unreasonable. Gardner observed that although there was no legal authority for spending money not voted by the legislature, the 'necessity for so doing, in anticipation of a future sanction, constantly arises in all Governments, and, if the expenditure is necessary, the sanction is not withheld except from factious motives'.⁴ Officials at the Colonial Office were also of the opinion that the Council was bound by the analogy of the House of Lords, and that it should not exercise its technical right of amending money bills. In Rogers' view, a collision between the Council and the Assembly provoked by such an amendment would 'only be capable of settlement by swamping or threatening to swamp the former'.⁵

Thus the Council, both in its attitude towards illegal expenditure and in its definition of its powers with respect to money bills, had taken a stand which could not be justified by British constitutional theory and practice. Reacting to distressing changes in their society, the conservatives had come to deny the relevance of British example to Australia.

¹Ibid.

²Denison to Newcastle, 13 July 1860, P.R.O./C.O., 201/513.

³Want and Forster in S.M.H., 22, 28 June 1860.

⁴Minute on Denison to Newcastle, 13 July 1860, P.R.O./C.O., 201/513.

⁵Ibid.

The radicalism of the electorate and the Assembly had found its reflex in the intransigence of the Council, where men who had once based their arguments on the solid grounds of precedent now adopted any position which gave hope of survival in a world where old theories did not apply.

Part 4

The Debate on Land Reform, 1861

D.W.A. Baker has argued that the liberal land legislation of 1861 was the joint creation of 'wealthy landowners who owned freehold estates' and 'the colonial middle classes'. These men, he says, had no intention of promoting small scale settlement, for 'clearly middle class business men and land-owners would not provide for the dissolution of the colonial proletariat by enabling it to become a class of independent yeomen'. On the contrary, 'land reform was an expression of the liberals' ideal of equality of opportunity... a necessary stage of capitalist development by which the middle classes established their superiority over the squatters'.¹

Most historians have discarded Baker's Marxist terminology but have accepted much of his argument, for it is one of the best expositions of the traditional view that New South Wales politics was dominated by a clash between the squatters, on the one hand, and the landowners and the urban middle classes on the other. However, it has already been shown that this model of political conflict is erroneous. By 1861, the leaders of the business world and the most prominent lawyers were allies of the squatters, and most of the urban liberals were men of inferior status.² Similarly, most big landowners were

¹D.W.A. Baker, 'The Origins of Robertson's Land Acts', in J.J. Eastwood and F.B. Smith (eds), Historical Studies, Selected Articles, first series, Melbourne, 1964, pp.111, 113, 124, 126.

²See Chapters II and III above.

conservatives who opposed the land acts. In the Council, the only big freeholder who supported them was John Robertson, their principal sponsor;¹ and in the Assembly they were again opposed by most of the big landowners, although the majority was less impressive.²

Most of the large freeholders also had squatting runs in the unsettled districts, but some, like Robertson, T.A. Murray, the Macarthurs, Joseph Docker, Arthur Hodgson, J.N. Oxley and Alexander Park, were not squatters in this sense. They leased Crown land near their properties in the settled districts (which by 1861 included the old intermediate districts),³ but these leases were subject to annual renewal and gave no security of tenure. If we confine our analysis to landowners of this type, then a similar but less definite pattern of opposition to the land bills emerges. In the Council and in the parliament as a whole, a majority of such landowners opposed the bills, but in the Assembly they favoured them by six to four.⁴ The explanation for the slight majority in

¹Those members who are known to have held large amounts of freehold land and who opposed the land bills in the Council were Docker, Douglass, Mitchell, Park, Thomson, Allen, Berry, Towns, Fitzgerald, Faithfull and Lamb.

²Big freeholders who supported land reform in the Assembly were Cowper, Arnold, Scott, Flett, Gray and T.A. Murray. Robertson sat in the Council for most of 1861 and has been listed with the landowners in that chamber. Big freeholders who opposed the land acts included Farnell, Rotton, Jamison, Hamilton, Hodgson, Jenkins, Mort, Cummings, W. Russell, Broughton, Irving and J. Campbell. Some of the other pastoralists opposed to the land acts may also have been big freeholders.

³Cf. New South Wales Act, 23 Vict. no.4, and Robertson in S.M.H., 19 April 1861.

⁴In the Council, big landowners with no squatting interests in the unsettled districts who opposed the land acts were Docker, Douglass, Mitchell, Park, Thomson and Allen. Jamison, Farnell, Rotton and Hamilton were their equivalents in the Assembly. Big landowners with no squatting interests in the unsettled districts who favoured the land acts were Robertson in the Council and Cowper, Arnold, Murray, Scott, Flett and Gray in the Assembly. Information on members' landed interests in this section of the thesis has been taken from squatting lists in V. & P. (L.A., N.S.W.), 1857, pt.1, pp.559-62; 1859-60, pt.III, pp.635-708, 891-902; the Australian Dictionary of Biography and its associated files.

favour of land reform in the Assembly was probably that by 1860 two-thirds of the agricultural electorates returned liberal members,¹ so that local landowners of conservative opinions found it much more difficult to gain election than did those who held liberal views. Moreover, it will be shown later that landowners who supported Robertson's land bills usually did so to the detriment of their own economic interests.

The conservative alliance of merchants, landowners and squatters was founded partly upon strong economic ties, for membership of the three groups overlapped to a considerable extent. There were numerous examples of big landowners with squatting interests in the unsettled districts, and men like the Macleays, the Cox family, J.M. Antill, Thomas Icely, Alexander Berry, William Russell, William Cummings, William Lee, Clark Irving and Robert Towns are only the most obvious. Irving and Towns were also leaders of the business world - Towns as a big merchant and shipowner, Irving as a merchant and director of six companies. Such diversity of interests was not unusual, for most of the colony's 'merchant princes' were also squatters. John Alexander, Henry Prince, Gordon Sandeman, Robert Tooth, T.S. Mort, Henry Mort, J.B. Rundle, David Jones, Thomas Holt, F. Ebsworth, S.K. Salting, John Gilchrist, J.B. Watt, John Campbell and John Lamb are only some of the leaders of the business community who had squatting interests.²

As Sydney-based capitalists with diversified economic interests, the merchant-squatters resented the way in which men like Wentworth and George Leslie pressed the claims of the pastoral interest to the exclusion of all others,³ and they certainly did not want the colony converted into 'one great sheep walk'. In the early 1850s, some of them had been liberals, supporting mild land reform and opposing transportation and

¹Thirty-three members who voted on the issue of free selection before survey on squatters' leases in 1861 came from electorates which, according to the census of 1861, had a substantial agricultural component. Twenty-two of these members favoured free selection before survey on squatters' leases and only eleven opposed it.

²Based on the sources listed in footnote 4, p.163, above.

³See above, Chapter I.

Wentworth's constitution. By 1861, however, they were nearly all united with the squatters in opposition to a liberal movement which had introduced constitutional changes increasing the power of the 'little man', and which was now promoting land bills designed not only to break the squatters' alleged monopoly over the public lands, but to give 'little men' advantages over all classes of 'big men'. The land bills embodied the economic ideals of the class of small capitalists and minor professional men who rose to power at the elections of 1859 and 1860, and for that reason became the classic symbol of conservative defeat in the years following responsible government.

The difference between Robertson's land acts and the type of land reform advocated by most of the patrician liberals of the early 1850s was exemplified by the change in the Cowper government's land policy after Robertson's appointment as Minister for Lands and Works in January 1858. Until then, Cowper and the most influential liberals had based their land policy on the reports of select committees of the old Legislative Council, which in 1847 and 1849 had argued that the squatters were able to 'lock up' the Crown lands because the high minimum price of £1 per acre made freehold ownership uneconomic.¹ In 1857, with T.A. Murray as Minister for Lands and Works, the Cowper government had introduced a bill whose central feature was that it reduced the minimum price of land to 5/- an acre in order to encourage freehold possession. Such a bill was congenial to landowners who wanted to round off their estates and to business and professional men who wanted to become landowners, but it was anathema to both the squatters and the radicals. The former feared that they would be forced, for the first time, to make significant use of their pre-emptive right of purchase in order to protect their runs against buyers attracted by the low price.² The latter foresaw that while the auction system remained intact, the small man would not benefit by the low minimum price for, even where the squatter did not exercise his pre-emptive right, the big man would

¹V. & P. (L.C., N.S.W.), 1847, pt.2, pp.513-20; 1849, pt.2, pp.543-60.

²Cf. S.M.H., 10 December 1857, 'Political Summary'.

always win at auction. Robertson thought that the clause in the 1857 bill reducing the price of land was 'introduced to afford facilities to the rich man to take possession of the country, to the exclusion of the poor man'; and he could not 'consent to the reduction of the price of land, seeing that there was no chance of the poorer classes being benefited by it'.¹ His own proposal was to bypass the auction system by allowing men to take up land at a fixed price before it had been surveyed.

It is obvious that Robertson's type of land reform bore little relationship to that proposed by the Cowper ministry in 1857. Robertson's scheme was designed to protect the little man from the rigours of free competition, while the latter was aimed at enabling men to purchase freehold estates at auction and at forcing the squatters to pay for their land by exercising their pre-emptive right of purchase. The gulf between the two types of land reformers was revealed when Robertson tried to amend the 1857 bill to allow free selection before survey at a fixed price near towns and cities and to allow payment on credit.² The proposal was less radical than the one which he brought forward in 1860-61, but it was thrown out by twenty-two votes to nine.³ Robertson then sided with the conservatives to defeat the bill.

The rejection of Robertson's amendment produced an angry reaction from radicals outside parliament, but Cowper initially set himself against the demand for change. 'With reference to moonlight or torchlight meetings', he said, 'he must say that he for one would never submit to the abolition of the auction system, or the introduction of a clause for credit payments.'⁴ But the failure of his own land bill showed that he could not govern without the support of the radicals, and on 13 January 1858 Robertson took office as Minister for Lands and Works on the condition that the government should introduce a land bill

¹S.M.H., 4 December 1857.

²The amendment is printed in S.M.H., 25 November 1857.

³V. & P. (L.A., N.S.W.), 1857, p.278.

⁴S.M.H., 10 December 1857.

based on the principle of free selection before survey.¹ At an election which began on the same day, the liberals made gains at the conservatives' expense and Cowper, who in 1856 had only hesitantly refused the positions of Colonial Secretary and Treasurer in Donaldson's government,² was henceforth committed to an alliance with radical liberals like Robertson.

Cowper supported Robertson's land bills in 1860-61 more because he was a politician than because he was a landowner. The same was probably true of W.M. Arnold, Minister for Works and the third landowner in the ministry responsible for the land acts. In 1857, Arnold had put forward in opposition to the land reform schemes of Cowper and Robertson a proposal that land should be sold cheaply on credit.³ He did not advocate free selection before survey and was generally thought to oppose it, but in 1860 Robertson became Premier and made Arnold Minister for Works so that he was bound to support the land bills as the ministry's principal legislation. When the bills were introduced, Arnold's political enemies gleefully awaited the recantation of his former views and prepared to charge him with inconsistency. As Forster said:

the hon. member had in his public speeches expressed opinions so totally at variance with those of the Premier with whom he presumed he should vote on this occasion, that it was very natural that they should wish to hear how he would reconcile his vote with the opinions he had expressed in public.⁴

It is not necessary to adopt Forster's censorious tones to agree with his basic point. There is no reason to reject the circumstantial evidence that Arnold's changed attitude towards free selection before survey was politically motivated.

If Cowper and Arnold should be regarded as politicians rather than as landowners, what of Robertson himself? The sincerity of his commitment to land reform is unquestionable, but it should perhaps be attributed to a radicalism born of his education and personal associations: he had been educated at the Reverend J.D. Lang's Australian College and was a lifelong

¹S.M.H., 8 January 1861.

²John M. Ward, article on Cowper in A.D.B., vol.3.

³S.M.H., 2 December 1857.

⁴S.M.H., 5 October 1860.

friend of the radical clergyman.¹ Robertson's views on the land question were certainly not the result of his economic interests as a landowner, for his Crown Lands Alienation Bill was inimical to the economic interests of that class. It was not mere conventional insincerity which led him to claim at least twice that 'There was no gentleman in that House whose estate might possibly suffer more than his by the operation of that bill'.²

According to Baker, a 'really radical land law - one which really did aim at establishing a multitude of small settlers - would have enabled land to be sold at a very low price to selectors, and it would have had stringent provisions (probably of a quite arbitrary character) to prevent squatters and capitalists from buying at the reduced rates'.³ In fact, most squatters, landowners and great capitalists thought that Robertson's land acts were radical in this sense, and a close examination of their provisions shows why.

In the first place, they made agricultural land available at a very low price. Robertson's tenant farmers paid an annual rent of between 10/- and £1 an acre⁴ and W.M. Arnold said that agricultural land near his property was often rented at from £2 to £3 an acre, yet still returned a handsome profit.⁵ In some cases, agricultural land was much more valuable. T.A. Murray claimed in 1857 that squatters at Broulee were letting land at £30 per acre - a price which they were able to command because each acre yielded ten to twelve tons of potatoes, whose value 'on the ground' was £12 per ton.⁶ Under Robertson's acts, the ostensible cost for the full freehold title was £1 an acre, but in fact it was much cheaper. Only 5/- an acre was to be paid when the land was taken up, and the rest could be paid only after three years. This was, in effect,

¹Gollan, Radical and Working Class Politics, p.42.

²S.M.H., 27 April 1861; cf. S.M.H., 5 October 1860.

³Baker, 'The Origins of Robertson's Land Acts', p.124.

⁴S.M.H., 17 April 1861.

⁵S.M.H., 11 October 1860.

⁶S.M.H., 4 December 1857.

an interest free loan of three quarters of the price for three years. Even then, payment was not compulsory, for the free selector retained possession of the land provided that he paid interest on the remainder at the low rate of 5 per cent per annum. As this was below the ruling rate of interest in the colony, the wise free selector would never repay the 'loan' but invest his money elsewhere, paying the interest with a portion of the proceeds.¹ If he adopted this course, he would not receive the freehold title to the land, but his claim to it was secure and he could leave it to an heir.

In the second place, the land acts did have a stringent provision which effectively prevented most squatters, big landowners and wealthy capitalists from becoming legal free selectors. The fact that it was sometimes circumvented by fraud and perjury is as much a tribute to its stringency as to the laxity with which it was enforced. As members of the Council frequently complained, the land acts effectively prevented men with large fortunes from becoming legal free selectors by compelling bona fide residence for three years on the land selected.² Established landowners and squatters already had homesteads which for purposes of economy and convenience they could not leave, and merchants and lawyers could not live on a free selection in the country.

Such men were sometimes driven to make illegal use of the free selection provisions of Robertson's land acts because the free selector was given privileges not possessed by those who had to buy at auction. On the one hand, the privileges were financial: those who bought land at auction were given no credit but had to pay the full price within three months of the date of purchase. If anyone bid against them at the auction, they also had to pay more than the minimum price of £1 an acre. On the other hand, the privileges meant that the claims of the free selector took precedence over the claims of the person who wanted to buy at auction. This meant that if a man requested that land should be put up at auction, a free selector could still claim it at any time until it was actually sold. As there

¹S.M.H., 18 April 1861, editorial.

²25 Vict., No.1, clause 18.

was usually a gap of six to twelve months between an application and the auction,¹ 'big men' legally disqualified as free selectors awaited the auction day with considerable anxiety.² Consequently, squatters, in particular, tried to circumvent the law by getting their employees, their children, and even the insane to select land on their behalf. The residence provisions in such cases usually remained unfulfilled, and the free selector retained the land illegally through perjury and the connivance (bought or unbought) of local land agents.³

If the land acts discriminated against big men in general because they were unable to fulfill the requirement of bona fide residence imposed on free selectors, in at least three more ways the acts hurt the interests of big landowners in particular. Firstly, the acts extended to small landowners the pre-emptive right of leasing three times the area of their freehold possessions, provided that the land leased was adjacent to their property. This right had previously been enjoyed only by those owning at least one square mile of land - double the amount of the largest possible free selection.

Secondly, landowners who held such pre-emptive leases had in the past been able to defend them against 'peacocking' by outbidding other men at auction. As Robertson's acts gave priority to the claims of free selectors who could take the land without competition, the big landowner was left defenceless. Joseph Docker, the principal spokesman for the landowners in the Council, illustrated the danger by pointing out that there were two pieces of land near Robertson's own property which contained 'all the permanent water of the district'. He argued that if those lands were thrown open to

¹G.A. Price, 'Genesis of the Robertson Land Acts of 1861: a Study of the Evidence in the Liverpool Plains', M.A. thesis, University of New England, 1963, pp.91-2.

²Cf. Dan Coward, 'Free Selecting on the Eumerella Shore', J.R.A.H.S., vol.55, pt.4, December 1969, pp.369, 371.

³Cf. ibid., passim; Sir Stephen H. Roberts, History of Australian Land Settlement, 1788-1920, Melbourne, 1968, (first edition, 1924), pp.238-42; and A. Morris and G. Rankin, in C.M.H. Clark (ed.), Select Documents in Australian History, 1851-1900, Sydney, 1955, pp.126-34.

free selection, Robertson's interests would 'materially suffer'.¹ Robertson agreed.

Thirdly, big landowners, including Robertson, often subdivided their estates and let portions to tenant farmers. They thereby gained an income from rents and saw the value of their property increased by the tenants' improvements. Robertson found that it was good propoganda to pretend, at times, that the free selectors would be the 'teeming masses of the towns', but like other landowners he knew that the most successful free selectors would probably be tenant farmers who wanted independence.² Even in the 1850s, landowners frequently lost tenants who had purchased their own land.³ Under Robertson's acts, which positively encouraged men to become small proprietors by offering them the land of their choice without competition and on generous terms of credit, landowners seemed likely to lose their tenants much faster. As Robertson pointed out, his own tenants, who had cleared the land, improved it, resided on it and paid him 10/- to £1 an acre rent, would be better off selecting land at 5/- an acre, paying no rent for three years, then either paying 15/- an acre for the freehold title or paying rent at 5 per cent or 9d an acre.⁴ They would also gain the benefit of their own improvements.

It is only when it is appreciated that the land acts discriminated against big men in general, although against squatters and landowners in particular, that the Legislative Council's stand against them can be understood. Only a minority of the conservatives had squatting interests⁵ and they did not seek merely to defend the squatters. All conceded that pastoral

¹S.M.H., 27 April 1861.

²See the evidence of Robertson and Edwin Hickey before the Select Committee on the State of Agriculture, V. & P. (L.C., N.S.W.), 1855, vol.3, pp.303, 312. See also the views of W.M. Arnold, S.M.H., 8 May 1861.

³See the evidence of Edwin Hickey, V. & P. (L.C., N.S.W.), 1855, vol.3, pp.302-4.

⁴Cf. Robertson, S.M.H., 17 April 1861.

⁵Of the twenty-eight conservatives who were active members of the Council in 1861, nine had squatting interests. (Based upon squatting lists in V. & P. (L.A., N.S.W.), 1857, pt.I, pp.559-62 and 1859-60, pt.3, pp.635-708.

occupation should give way when land was required for agricultural purposes. As G.K. Holden explained:

The unquestionable principle admitted by all parties was this - that pastoral occupation must lead to agriculture when the land was required.... That pastoral occupation must yield to agriculture appeared to him to result from the same law of society which justified us in superseding the aboriginal tribes from their hunting grounds.¹

Even Robert Johnson admitted the great truth that pastoral occupation should give way to agriculture and endorsed a proposal by Deas Thomson that a levy be raised from the squatters themselves to compensate those whose lands were resumed for agricultural purposes.²

The conservatives' opposition to the bills was three-fold. They were concerned, as Holden said, 'that as little injury was done to the pastoral interest as was compatible with the beneficial occupation of the land';³ they denounced the bills as 'class legislation in favour of what was called the "poor man" in preference to what was called the "rich man"';⁴ and they argued that 'artificial legislation' to 'encourage agriculture, against manifest and acknowledged disadvantages, must be futile and must of necessity result in disappointment'.⁵ They thereby invoked in opposition to the bills precisely the principles of justice, equality of opportunity and economic laissez faire which the liberals often adduced in their support.

The conservatives accepted the verdict of the people at the elections of December 1860 that a bill should be passed allowing free selection before survey. Thomson led the way by announcing that he would accept the principle of free selection before survey⁶ and even the extremists said that they would

¹S.M.H., 13 April 1861.

²S.M.H., 17 April 1861.

³S.M.H., 13 April 1861.

⁴Johnson in S.M.H., 17 April 1861; cf. his views and those of Isaacs, S.M.H., 24 April 1861; and the opinion of Docker, S.M.H., 13 April 1861.

⁵Holden in S.M.H., 13 April 1861. Cf. Johnson, S.M.H., 17 April 1861.

⁶S.M.H., 11 April 1861.

support the bill: Johnson said that he would submit to the will of the majority in order to allay the unhealthy suspense;¹ and Docker agreed to the principle of free selection because 'the country had spoken out in favour of it in a most unmistakeable manner'.² Consequently, the bill passed its second reading without opposition.

In committee, the conservatives showed that while they accepted the principle of free selection, they wanted to limit the extent of its application. They were all prepared to allow free selection before survey in the first class settled districts, which consisted of the comparatively well populated areas called the settled districts under the 1847 Order-in-Council. Some of the moderates were also prepared to allow free selection in the second class settled districts, which embraced the old intermediate districts described in the 1847 Order-in-Council. The view of the moderates prevailed when some of them combined with the liberals to allow free selection in both the first and second class settled districts.³ However, all the conservatives remained opposed to free selection on runs in the unsettled districts except on specially declared reserves. This proposal would still have allowed the alienation of most of the land needed for agricultural purposes, for even before 1861, such reserves allowed those who could purchase agricultural land at auction a reasonable choice;⁴ and until the first leases or licences expired on

¹S.M.H., 17 April 1861.

²S.M.H., 13 April 1861.

³J.L.C., 1861, p.210. The conservatives who crossed the floor were Hunt, Park, Prince, Holden, Lamb, G.W. Allen, and Lord. Nearly all of them were former liberals. The majority was fifteen votes to twelve.

⁴This was the claim of the conservatives. It was denied by the liberals, who argued that the land on the reserves was unsuitable for agriculture. This was no doubt true in some cases, but the only detailed study of a local area has shown that the complaints made there were generally unfounded. (Price, 'Genesis of the Robertson Land Acts...', pp.III, 27-33, 44-52, et passim.) Moreover, it seems unlikely that the numerous reserves declared by the Cowper and Robertson governments contained much infertile land, and even if they did, intending buyers had only to petition the Surveyor-General to have the reserves extended or have new ones proclaimed. Price has found no evidence that such claims were refused in the Liverpool Plains district. (Ibid., p.33.)

31 December 1865, nearly all land bought in the unsettled districts was selected on reserves because Robertson decided to 'keep faith' with squatters who had taken up land before he had won office and given notice of changes in the land law.¹ The conservatives were thus prepared to go a long way towards meeting Robertson's views - and indeed, Robertson had been prepared to accept identical limitations on free selection in the Assembly in 1860 until it became apparent that he would alienate his supporters by doing so.²

The conservatives also tried to extend the length of leases in the unsettled districts from five years to ten or fifteen years, but all the other changes which they introduced were not designed to help the squatters in particular but to give advantages to 'big men' in general and reduce the advantages which Robertson had given to the 'little man'. The changes, which were all opposed by Robertson, had the effect of:

1. Banning free selection on lands under application for purchase at auction, provided that the applicant had paid a deposit of 50 per cent. (Docker, who thought the clause necessary to defend the pre-emptive rights of landowners, wanted no deposit, or, alternatively, a deposit of 10 per cent. Some conservatives wanted a deposit of 25 per cent.)³
2. Raising the deposit required of free selectors from 25 per cent of the total price to 50 per cent. (The conservatives argued that the low deposit would encourage men with 'insufficient' capital to go onto the land.)⁴
3. Eliminating the free selector's option of paying interest at 5 per cent per annum if he did not wish to pay the whole price after three years. (This amendment, like the previous one, made it more

¹Ibid., p.31, footnote 2.

²Rotton, Robertson and Egan in S.M.H., 8 February 1861; Cowper and others, S.M.H., 8 May 1861.

³J.L.C., 1861, pp.213-4, 220-1; Docker in S.M.H., 27 April, 1 May 1861.

⁴J.L.C., 1861, pp.212-3; S.M.H., 27 April 1861.

difficult for the man with little capital to become a free selector. Debate on the amendment was very brief, but the conservative who proposed it argued that it would lead to defalcations.)¹

4. Allowing land to be sold at auction in lots of up to 640 acres instead of in lots of up to 320 acres. (Robertson defended the 320 acre maximum on the grounds that it would help the small capitalist who could afford to bid for 320 acres but not for 640 acres.)²
5. Allowing appeal in cases of dispute from arbitrators to the Supreme Court. (This amendment would have given advantages to those with the wealth and knowledge to go to law. Robertson, expressing characteristic liberal mistrust of the predominantly conservative legal profession, bitterly opposed the change because it would hand the free selector over to 'the harpies of the Supreme Court'.)³
6. Repealing only those parts of the 1847 Order-in-Council inconsistent with the land acts, instead of repealing the whole Order-in-Council and inserting in the acts clear and specific safeguards for the legal rights of squatters. (This amendment would have introduced many legal complications into the interpretation of the acts, once again helping those able to use the processes of the law. Robertson did not give his reasons for opposing the change, but Cowper's objection was that it would necessitate 'frequent applications to lawyers'.)⁴

In the debates on the bills, both liberals and conservatives protested vehemently when accused of favouring a particular class. Such denials were undoubtedly sincere, but

¹J.L.C., 1861, pp.214-5; Want in S.M.H., 1 May 1861.

²J.L.C., 1861, p.216; Robertson in S.M.H., 1 May 1861.

³J.L.C., 1861, pp.221-2; Robertson in S.M.H., 4 May 1861. Cf. Hargrave, the Attorney-General: 'it would be better to leave the settlement of the points at issue to arbitration rather than to hand them over to the tender mercies of the Supreme Court'. (Ibid.)

⁴J.L.C., 1861, p.219; Cowper in S.M.H., 8 May 1861.

all views on the land question inevitably reflected assumptions as to the extent to which men of substance should be allowed to utilize the advantages of wealth. Both liberals and conservatives simply identified the interests of their favoured class with the interests of society as a whole. The conservatives contended that the 'natural' advantages of wealth should be allowed free play, while the liberals sought to limit them and to give special privileges to those willing to fulfill the conditions of residence imposed upon free selectors - most of them men with only a little capital. Partiality was inevitable and, alongside the denials, it crept into the debates. The conservatives openly argued the case of the squatter, the landowner and the wealthy, inserting amendments which favoured them; and although Robertson repeatedly stated that the bills were intended to remove the special privileges of the squatters, he said just as often that they were intended to favour the little man and to encourage small scale settlement.¹ In the first case, he was appealing to the conventional doctrine that the state should not legislate in

¹For example, the following expressions are all taken from his speech on the second reading of the Crown Lands Alienation Bill in the Assembly in 1861, conveniently reproduced in M. Clark (ed.), Sources of Australian History, London, 1957, pp.342-51: '...desirous in every way to facilitate the permanent occupation of the country by freeholders...'; '...a moderate and practical solution of the land question as should...afford opportunities to the mass of the people to make homes for themselves and settle down on the land...'; 'The next great duty of the Government would be to facilitate the occupation of the public lands of the colony by freeholders...'; '...the best way to obtain the largest amount of production for a given amount of soil, would be to place that soil as soon as possible in the hands of freeholders'; 'He had always considered it one of the most important duties devolving upon the Government to facilitate and to encourage freehold occupation.' The speech from which these extracts are taken placed little emphasis upon the removal of the squatters' privileges, but at other times this argument was given greater prominence. However, the removal of these privileges was regarded not only as good in itself, but was justified with reference to the beneficial effects which it would have on agriculture. Robertson's most detailed enumeration of 'unjust' squatter privileges, which Baker has drawn on extensively, illustrates the point perfectly. See his evidence before the Select Committee on the State of Agriculture, V. & P. (L.C., N.S.W.), 1855, vol.3, pp.311-16. See also his speeches in S.M.H., 5 October 1860 and 17 April 1861.

favour of any class; in the second case, he was appealing to the popular ideal of a virtuous and independent yeomanry. He did not see any contradiction between the two because he believed that squatter privileges were the major impediment to the creation of a yeomanry. Neither he nor his supporters dreamed of the distinction which modern historians have made between the desire to remove squatter privileges and the desire to put the small man on the land. That small scale settlement would inevitably follow once impediments to it had been removed was the logical consequence of belief in the principles of laissez faire.

Yet, in practice, the belief in laissez faire and the desire to create a yeomanry became antagonistic, although liberals who cherished both were able to rationalize the contradiction sufficiently well to ignore it. That the desire to create a class of small scale agriculturalists was dominant had been revealed in 1857, when Robertson's original land reform proposal had specified that the free selector would lose his land if, at the end of five years, he had not brought a quarter of it under cultivation.¹ The proposal had been strongly attacked by the Sydney Morning Herald on the grounds that:

To force a man to till a certain proportion of his land under the threat of depriving him of the freehold, is an interference with the principles of free trade, and the history of commerce bears uniform testimony to the loss to the community that is occasioned by such interference....All the wisdom of all the economists put together can contrive nothing more judicious than just letting people alone.²

The criticism exposed the contradiction in Robertson's position - a contradiction which was especially dangerous in a colony where the principles of laissez faire dominated economic thought. He therefore tried to circumvent this type of attack in his later reform proposals. His land acts in 1861 merely specified that within three years the land had to be improved

¹The proposal is printed in S.M.H., 25 November 1857. The amount of land to be brought under cultivation was left open, but Robertson had in mind the figure of 25 per cent. (S.M.H., 29 November 1857.)

²S.M.H., 10 December 1857 (editorial).

to the value of £1 an acre and limited the size of a free selection to 320 acres. He repeatedly emphasized that the acts were intended to encourage the creation of a class of small scale pastoralists, as well as to boost small scale agriculture.¹ He may have convinced himself that this would be the case, but, as the conservatives pointed out, pastoral enterprises were not viable on such a small scale.² Most liberals seemed to agree, for Robertson was almost alone in asserting that the acts would form the basis of a small scale pastoral industry. Since the acts also sought to protect the little man from the rigours of economic competition, the conservatives were able to claim with some justification that the bills were a negation of the principles of laissez faire which were often adduced in their support.³

The principles of laissez faire were used to justify both support for the land acts and opposition to them, but they explain neither. They were invoked, as popular beliefs, to rationalize and vindicate positions adopted for deeper reasons. The nature of these reasons is suggested by the revelations of class bias in the debates, which reflected the different social and economic profiles of liberals and conservatives. For the conservatives, the land acts were discriminatory legislation which would drive 'men of capital' from the colony; they were the first instalment of the 'class legislation' to be expected from the men of inferior status who had risen from impotence to political dominance since responsible government; they were the first fruits of manhood suffrage. For the liberals, the acts were a rejection of established wealth and privilege; they reflected the economic interests and ideals of the small capitalists, tenant farmers and frugal artisans whose parliamentary representatives defended the legislation as 'classless'; in short, the acts expressed in economic terms the revolution in the balance of political power which followed responsible government.

¹See, for example, S.M.H., 17, 19 April 1861.

²Cf. Docker, S.M.H., 13 April 1861.

³Cf. Holden, S.M.H., 13 April 1861.

Measures which so precisely embodied the liberal-conservative conflict in New South Wales were bound to bring the Council into collision with the Assembly. The conservatives in the Council, seeing that the elections of December 1860 had ensured liberal dominance in the Assembly, had decided to concede much; the liberals, elated by their new strength, were determined to concede nothing. Consequently, when the Crown Lands Alienation Bill was returned to the Assembly, that body rejected every substantial amendment. When the bill was sent back to the Council, the conservatives seem to have believed that they could force Robertson to accept the type of compromise which he had agreed to in 1860 until confronted by the possibility of a revolt. They therefore insisted upon their amendment limiting the right of free selection in the unsettled districts to reserves proclaimed by the government. When they had also insisted upon several other amendments, Robertson, believing that they were adamant in their opposition, requested that further consideration of the bill be postponed until the next day in order to give him an opportunity to consult his colleagues.¹ Thomson thought that some clauses of the bills could be discussed further that night and suggested that the Council meet at 10 a.m. the next day or hold a conference with the Assembly.² Robertson however, brushed aside Thomson's suggestions, claiming that he had 'submitted to all kinds of defeats on the Bill; defeats almost amounting to indignity on any Government'.³ Angered by the Council's refusal to accept the land scheme on which he had set his heart, he seems to have already decided upon a swamping. Some months later, Hargrave, the Attorney-General, justified the swamping in terms which suggested that the ministers had been so incensed by the Council's conduct that they had never entertained the thought of compromise:

¹Empire, 10 May 1861. The Empire's account of the adjournment of the debate on the land bills has been preferred to the Herald's as it contains additional detail confirmed by other evidence.

²Empire, 10 May 1861.

³Ibid.

He remembered well his feelings during the months of opposition and obstruction they had to endure - he said obstruction, for such he conscientiously believed it; and he welcomed the approach of the day, then at hand, when those gentlemen must retire from their places. And did [those] gentlemen, almost within a few hours of retiring from their seats - did they imagine that the Government meant to treat them to a conference with the Assembly? If they did, the Government, at all events, never entertained such an idea.¹

When Robertson adjourned the debate to consult his colleagues, he had to assume that there was only one sitting day left before the quinquennial appointments to the Council expired. Another sitting day could have been gained only if the Council consented to sit on a Saturday, something which it had refused to do only two weeks previously.² As Thomson pointed out, one day was sufficient to allow a conference between the houses, but before accepting his suggestion, the ministers had to be sure that it would result in rapid agreement or they would lose the chance of passing the bills by a swamping. Ten days earlier, the Council's President, Sir William Burton, had told the Governor that the bills would 'certainly' pass,³ and other conservatives claimed later that if a conference had been held, they would have been prepared to concede all, or nearly all, of the Assembly's demands.⁴ This was no doubt true. Such

¹Hargrave, S.M.H., 13 December 1861.

²J.L.C., 1861, p.147. (26 April.)

³Young to Newcastle, 19 July 1861. P.R.O./C.O., 201/518.

⁴Cf. Thomson to Young, 7 June 1861, Deas Thomson Papers, vol.2, pp.499-506: 'Those of us who were members of the late Council were prepared to yield...if a conference had been demanded'; Sir W. Macarthur to James Macarthur, 15 May 1861, Macarthur Papers, vol.38, A2934, p.508: 'the Ministry prevailed on the Governor...to swamp the majority - and this without any attempt at a conference, or to ascertain how far the Council would concede (and they were prepared to concede much)'; Augustus Morris, S.M.H., 11 May 1861: 'they would have been prepared if there had been a conference to have yielded every point but one, and that one not of a very material nature'; S.M.H., editorial, 13 May 1861: 'a majority of the Council would have finally yielded to all the demands of the Assembly'; and T.H. Mate said that the only point on which the Council would not have given way was the clause allowing free selection on land under application for purchase at auction. (S.M.H., 12 September 1861.)

a course would have been consistent with their behaviour in every previous clash with the Assembly; it was widely appreciated that the government was contemplating a swamping; and the Sydney Morning Herald, a reliable guide to moderate conservative opinion, had advised the Council to register its opposition, then to 'permit the fools who had surrendered their understanding to the Dictator...to enjoy the benefit of their political slavery, and to have the bill, the whole bill, and nothing but the bill'.¹ But whatever the private intentions of the conservatives, the decisive manner in which they had until then insisted upon their amendments convinced Robertson that they would remain obdurate. The ministers had to carry the bills because 'their honor was at stake'² and, faced with the choice of a conference or a swamping, they chose the latter as the more certain means of having the bills passed intact. They therefore told the Governor, Sir John Young, that if he did not swamp the Council, they would tender their resignations.³

Young had little alternative but to accept their advice. No other ministry would have been acceptable to the Assembly, and he could not hope to solve the problem by dissolving parliament because it was a dissolution on the land issue less than six months previously which had given the government its enormous majority. As Young realized, either course 'would only have involved the Crown in a contest, certain to end in defeat, with the Legislative Assembly and the constituencies'.⁴ Moreover, as Loveday has pointed out,⁵ Young appreciated that from a conservative point of view it was better to swamp a Council due to expire in three days than to have the nominations for life made with the advice of a ministry anxious to placate the Assembly by appointing supporters of the land

¹S.M.H., 24 April 1861, editorial. The 'Dictator' was, of course, Robertson.

²Young to Newcastle, 19 July 1861, P.R.O./C.O., 201/518.

³Ibid.

⁴Ibid.

⁵Peter Loveday, 'The Legislative Council in New South Wales, 1856-1870', Historical Studies, vol.11, no.44, April 1965, pp.489-92.

bills. He therefore agreed to summon twenty-one new members to the Council, on the condition that this would give them no claims to reappointment for life.

Less than a year previously, Sir William Burton had publicly stated that if the Council were swamped, he would continue as its President, 'even if the Gaul was at the gate, and the Gaul's sword pointed at his throat'.¹ When that day arrived, he waited upon the Governor only forty minutes before the Council was due to meet, but was told nothing of the new appointments. He then went to the Council chamber, where he heard rumours of a swamping. He refused to believe them. Then Robertson entered his room and asked 'Have the Commissions come?'² Offended at the Governor's failure to give him the customary notification of new appointments, and shocked that the constitutional alternatives to swamping had not been exhausted, Burton immediately wrote to the Governor resigning both his position as President and his seat as a member of the Council.³ He then entered the Council chamber to make his action public and, with nineteen other conservatives who had already decided to resign,⁴ walked out. Thus an excellent and impartial President who had compromised with the liberals whenever possible, was brought to the fold of the Johnsons, the

¹S.M.H., 8 June 1860.

²Burton to Newcastle, 1 July 1861, enclosed with Young to Newcastle, 19 July 1861, P.R.O./C.O., 201/518.

³Burton to the Administrator of the Government, 10 May 1861, copied in Burton to the Secretary of State, 1 July 1861, which is enclosed with Young to Newcastle, 19 July 1861, P.R.O./C.O., 201/518. Young had arrived in the colony only a short time previously and was not aware that it was customary to notify the President of nominations. See Turville to Burton, 11, 14 May 1861, Governor's Letters, Archives Office of N.S.W., 4/1666. At the time of the swamping, Young was technically Administrator of the Government, as he was not sworn in as Governor until 15 May 1861. To avoid confusion, I have referred to him as the Governor throughout.

⁴An article in S.M.H., 10 May 1861, was able to predict that if a swamping took place it would be in vain. The fact that they had already decided to frustrate the swamping does not, of course, mean that the conservatives would have refused to agree voluntarily to the Assembly's stand on the land bills at a conference.

Isaacs and the Dockers. Forgetful of his promise to carry on with the Gaul's sword at his throat, he joined the other conservatives in one last gesture of defiance, frustrating the purpose of the swamping by depriving the Council of a quorum. It was only a gesture. The 'upper or richer classes', as Young called the conservatives,¹ had been vanquished. Burton, who had hoped to end his days serving the people of New South Wales, now saw no future in that place. He advertised his house and property for sale and hastily left the colony.²

¹Young to Newcastle, 19 July 1861, P.R.O./C.O., 201/518.

²Ibid. Burton had been a Supreme Court Judge in New South Wales from 1832 to 1844, and from then until 1857, Puisne Judge at Madras. He then retired to New South Wales, where he wanted to devote himself 'to the good of the community in a conservative, and Christian spirit'. His preferred mode of service was as President of the Legislative Council, an office which he solicited. (Burton to James Macarthur, 11 January 1854, Macarthur Papers, vol.27, A2923, p.206.) See also article on Burton in A.D.B., vol.1, and Burton's farewell address to the St Leonard's School of Arts, S.M.H., 24 June 1861.

CHAPTER V

COWPER AND THE COUNCIL, 1861-1862

Sir John Young's decision to swamp the Council was technically a breach of constitutional convention. The classic precedent was William IV's agreement to swamp the House of Lords if such a step proved necessary to pass the 1832 Reform Bill. On that occasion, the bill had been the subject of a dissolution which had returned the reform ministry with an increased majority; the Lords had already rejected it once; and the swamping was threatened only when a second rejection seemed imminent. That an upper house was to be allowed one rejection of a matter upon which the popular will had been tested was deemed essential to its conservative function as a 'delayer' of the 'rash' measures expected of the democratic chamber.¹

What so angered the conservatives in New South Wales was that the Council was not even allowed to exercise its right of rejecting the land bills once. The Governor's complicity in the swamping seemed worse, in their view, because the Council had been prepared to pass the bills the first time, but had been prevented from doing so by the government's failure to arrange a conference of the houses. It was for this reason that, when Wentworth was invited to become President of the reconstructed Council in 1861, he accepted only on the condition that

the Council is not to be swamped...until the rejection by it of some vital question upon which the opinion of the country has been previously taken, after a dissolution of the Assembly for that express purpose.²

Young's answer to the charge that he had violated constitutional precedent was that the position in which he was placed, with the Council about to expire, was without precedent and could never recur. He therefore felt able to depart from

¹Cf. Merewether, S.M.H., 6 December 1861; Wentworth, S.M.H., 11 September 1862.

²Wentworth to Young, 14 June 1861, Wentworth Papers, A756, pp.221-4.

established practice as 'No precedent could be founded on the proceedings'.¹ His positive incentive to make such a departure was pragmatic: he wanted the land bills out of the way so that he would not be pressed to appoint to the reconstructed Council a large number of liberal nominees whose task it would be to ensure the safe passage of the land bills.²

Young's defence has won the approval of later historians,³ but most contemporaries either did not understand it or thought it irrelevant. He was reproved by Newcastle, Secretary of State for Colonies, for having sanctioned 'a proceeding which is not creditable to the cause of Constitutional Government in Australia'.⁴ Most conservatives in Australia were more bitter in their reproaches. Wentworth, dismayed that the government had departed from 'the principle which guided the proceedings in reference to the House of Lords', pronounced his constitution 'a failure';⁵ Merewether described the swamping as 'a violent outrage...on British constitutional practice';⁶ and Sir William Burton condemned Young as a party to an act which had the effect of 'insulting and degrading' the Council.⁷ The conservatives did not accuse Young of acting from malice, but agreed with the Sydney Morning Herald that he had become the tool of his ministers. The Herald was at times inclined to regard this as an evil inherent in responsible government as it

¹Young to Newcastle, 21 May 1861, P.R.O./C.O., 201/518.

²Ibid.; cf. Young to Newcastle, 19 July 1861, P.R.O./C.O., 201/518.

³Cf. C.H. Currey, 'The First Proposed Swamping of the Legislative Council of New South Wales', J.R.A.H.S., vol.15, pt.5, 1929, pp.282-91; Peter Loveday, 'The Legislative Council in New South Wales, 1856-1870, Historical Studies, vol.11, no.44, April 1965, pp.481-98; Neil I. Graham, 'The Role of the Governor of New South Wales under Responsible Government, 1861-1890', Ph.D., Macquarie University, 1973, pp.59-73, 77.

⁴Newcastle to Young, 26 July 1861, Government House Papers, Despatches from the Secretary of State, 1861. Cf. Newcastle to Young, 25 July 1861 (private), Newcastle Papers, vol.B-2, microfilm A-308, Public Archives of Canada. (Originals in Nottingham University Library.)

⁵S.M.H., 11 September 1862.

⁶S.M.H., 18 October 1862.

⁷Burton to Newcastle, 1 July 1861, enclosed with Young to Newcastle, 19 July 1861, P.R.O./C.O., 201/518.

existed in the colony,¹ at other times as the product of the Governor's personal deficiencies.² Other conservatives had no such doubts: Sir Charles Nicholson thought Young had displayed a 'lamentable want of firmness';³ and Sir William Macarthur said that he was 'evidently a weak man' and probably 'an insincere one'.⁴ Burton, who had led the walkout which frustrated the swamping, was lionised as a hero by the conservatives and some, led by Isaacs and James Martin, immediately tried to hold a dinner in his honour. However, more prudent conservatives like Sir William Macarthur declined the invitations because they 'thought the excitement of a public dinner just now...might have a most injurious tendency...[and] could only excite the democratic influence'. They thought it 'better to let sleeping dogs lie'.⁵

Few liberals understood that Young had consented to swamp the Council from conservative motives: for them the enactment of the land bills was an end in itself, not the means to a conservative set of life appointments. The Empire congratulated Young on an auspicious beginning to his administration and claimed that 'In every family which our issue of today reaches, a jubilate will be sung over the death of the sworn aristocracy of Australia'.⁶ But while it did not divine Young's conservative intentions in aiding the liberal cause, it confirmed his shrewd assessment of the colony's politics by rejoicing as much that the swamping had failed as that it had been attempted. It argued that by their mass resignation, the conservatives had

¹Cf. S.M.H., editorials, 11, 15 May 1861.

²S.M.H. editorial, 21 June 1861.

³Nicholson to James Macarthur, 12 September 1861, Macarthur Papers, vol.38, A2934.

⁴Sir W. Macarthur to James Macarthur, 15 September 1861, Macarthur Papers, vol.38, A2934, p.500.

⁵Sir W. Macarthur to James Macarthur, 15 May 1861, Macarthur Papers, vol.38, A2934, p.510. Cf. the praise of Burton in S.M.H. editorials, 11 May, 21 June 1861. Sir William Macarthur's letter implies that Isaacs' and Martin's attempt to organize a dinner failed, but shortly before his departure, the St Leonard's School of Arts, with which he was connected, held a dinner in his honour. (S.M.H., 24 June 1861.)

⁶Empire, 11 May 1861.

relieved the present administration from a difficulty which, it was feared, might have tramelled them in the appointment of an Upper House....[The Governor] might have thought - without some such convincing proof of their unfitness...that Sir William Burton and others of the obstructive faction had certain claims to reappointment. [Burton, in fact, was one of the most moderate conservatives, and his only obstructive act was his resignation.] The principal difficulty of Mr. Cowper and his colleagues, in the opinion of those who had well considered the matter, lay precisely in this direction. If the Council had passed the Land Bills and the other measures sent up by the Assembly, we should, inevitably, have been saddled by many of them in the life appointments. By their late conduct, however, they have made this impossible.¹

It concluded that by frustrating the swamping the conservatives had blundered.

Although the swamping had failed to secure the passage of the land bills, it still enhanced Young's chances of securing conservative appointments to the reconstructed Council. He calculated correctly that the government's success in persuading him to make the emergency appointments had enormously increased its prestige within the liberal movement.² In the Empire's words, Cowper had, by the time the appointments were made, been 'elevated to a position rarely occupied by a statesman in any country',³ giving him great power with his followers. He was therefore in a position to keep, at least in part, an earlier promise to Young that he would 'keep himself free and not entangle himself with his colleagues or his party'.⁴

Cowper had positive incentives to make concessions to Young on the subject of the new appointments. In the first place, the Council had occasionally proved useful in defeating legislation passed by the Assembly against the government's

¹Empire, 13 May 1861, editorial.

²Cf. Young to Newcastle, 21 May, 19 July 1861, P.R.O./C.O., 201/518.

³Empire, 6 June 1861, editorial; cf. Empire, 21 June 1861, summary of news for England.

⁴Young to Newcastle, 19 April 1861, P.R.O./C.O., 201/517.

wishes, and it would do so again. In particular, before the swamping the government had encouraged the Council to defeat a bill to declare the Church and School lands waste lands of the Crown, although it had passed the Assembly by a large majority. Cowper opposed the bill on principle and Robertson opposed it mainly because he feared that, if the Church and School lands were declared waste lands and therefore potentially open to free selection, it would complicate the passage of his land bills.¹ When the Assembly passed the bill a second time in the session of 1861-2, the government again abetted its rejection by the Council;² it adopted the same course when the radicals succeeded in passing through the Assembly a bill to reduce the salary of future Governors;³ and, like subsequent ministries, it was suspected of welcoming the destruction of bills reducing taxation. It could thereby pose as the champion of retrenchment while satisfying demands for a high level of expenditure on public works. When the Council rejected a customs duties bill early in 1861, for instance, Sir William Burton said that there was a 'general impression' that the government did not want the bill to pass.⁴ The impression may have been correct, for the government was already in financial difficulties and, although the bill increased the duty on rum, it was not certain that this would compensate for the revenue lost from tea.⁵ Opposition to the tea duty had long been a liberal cry, for the tax consumed a far greater proportion of the income of the poor. The conservatives, of course, favoured the duty because it pressed so lightly on the wealthy, and argued that men should as far as possible pay the same amount

¹Empire, 2 February, 13 April, 1861. Cf. Naomi Turner, Sinews of Sectarian Warfare? Canberra, 1972, pp.232-3; and R.B. Walker, 'The Later History of the Church and School Lands', J.R.A.H.S., vol.47, pt.4, pp.237-40.

²S.M.H., 21 November 1861.

³S.M.H., 11 October 1861.

⁴Burton to Newcastle, 1 July 1861, enclosed with Young to Newcastle, 19 July 1861, P.R.O./C.O., 201/518.

⁵Cf. allegations in the Legislative Council, S.M.H., 21 February 1861.

of tax, irrespective of their incomes.¹ The government was therefore able to satisfy the radicals by introducing a bill to reduce the duty, confident and perhaps hopeful that it would be rejected by the Council. If, indeed, it was insincere in its professions of support for the bill, its attitude merely foreshadowed that of some later ministries on the gold duty, a tax opposed by the radicals because it was a 'class' tax upon their favourite economic interest. The Council rendered successive ministries sterling service by rejecting bills to reduce or abolish the gold duty. Ministers spoke only feebly in support of the bills and the Council customarily accepted the implied invitation to reject them until declining gold production robbed the tax of its usefulness.²

Other factors, however, were probably more important in persuading Cowper to make concessions to Young in advising the life appointments than the occasional usefulness of a conservative Council - a usefulness which had little to do with the desire for a Council as a check on democracy but much to do with the political convenience of governments. Cowper was indifferent to the intrinsic merits of most matters of liberal and conservative principle. The central tenet of his political philosophy was the preservation of a coherent social and political order and it was a matter of indifference to him whether that order was aristocratic or democratic. He never fully articulated this philosophy, but it was implicit in his frequent justification of liberal measures on the grounds that they were expedient or necessary to allay discontent; in his habit of avoiding, as far as possible, reference to 'abstract' principles; in his faintly cynical attitude to the 'popular

¹Cf. S.M.H., 14 September 1855 (L.C. debates); 5 January 1860 (report of meeting); and 21 February 1861 (L.C. debates).

²The Council rejected bills to abolish or reduce the gold duty in 1866, 1875, 1876 and 1877. For an example of half-hearted support by the government's representative see the speech by Samuel, S.M.H., 7 June 1877. In 1862, however, the Council consented to a reduction in the gold duty as part of its general policy of conceding most liberal demands. The government was under heavy pressure to abolish the duty altogether, but it refused to do so although most of its members had previously advocated such a step. (See S.M.H., 4 September 1862, and the act reducing the duty, 26 Vic. no.5.)

cries' which he used so successfully during his period of office;¹ and in his admission to James Macarthur that he cared little, in principle, whether the Council was elected on a liberal franchise or a conservative one.² This 'pragmatic' attitude to politics was portrayed as an indifference to principle by those who defined principle in terms of a self-righteous devotion to their own ideological position, but Cowper could easily have defended his position in terms as moralistic as those in which it was attacked had it been in his nature to do so. Men of all political persuasions admitted the desirability of the stable government which their adherence to 'ideological' principle often endangered; and, as even hostile observers admitted, Cowper offered the best hope of such stability.³ On that level, Cowper's political interests coincided with what most contemporaries defined as the colony's interests, and his flexible political philosophy enabled him to rationalize with less inconsistency than most the compromises which were the price of stability.

Cowper's approach to politics was not, however, simply a result of adaptation to the necessities of political success. It reflected his temperamental preference for conciliation to confrontation, and it was admirably displayed in his attitude towards the reconstruction of the Council. He was anxious to heal the wounds of the conservative social groups to which his family belonged, but from which he was now largely estranged because of his politics. Above all, he faced the necessity of preserving a sound working relationship with the Governor. Cowper owed Young a heavy political debt for his consent to the swamping; he also sympathized with his predicament. He knew that the Duke of Newcastle had instructed Young to endeavour to secure the reappointment of the former members of the Council

¹Cf. Cowper to Parkes, 22 January 1862: 'The session has just closed....We shall meet again about 31 May - & then Education - State aid - & [illegible] & Expenditure will be the cries.' P.C., vol.6, A876, pp.394-401.

²Cowper to Macarthur, 22 June 1861, Macarthur Papers, vol.28, A2924, pp.601-4.

³Cf. the implicit recognition in Sir W. Macarthur to J. Macarthur, 15 September 1861, Macarthur Papers, vol.38, A2934, p.515.

and that he had to succeed in this to vindicate his consent to the swamping;¹ he also knew that Young had to restore his standing with the conservatives, amongst whom he was cast for most of his social intercourse. To ease the Governor's position, Cowper made implicit appeals on his behalf to the conservatives. He told Burton that Young 'felt the state of things very much',² and explained to James Macarthur that the Governor was 'very intensely anxious to come well out of the affair' and that he did not wonder at 'a total stranger' feeling somewhat nervous.³ Most important, Cowper consented to the nomination of a conservative majority to the new Council.

The mechanics of the reconstruction of the Council have been the subject of different interpretations. The most recent account, by Neil I. Graham, has argued that although conservatives feared that Young would merely follow ministerial advice, he

did nothing of the kind. He in fact set up an advisory committee of men of various political opinions, under the auspices of Wentworth who had recently returned to the colony. Working with them and consulting other 'gentlemen of social standing and leading political position' he drew up a list of twenty-seven names, presented the list to the ministry in executive council, and asked for their comments. The ministry, as expected, stood out for a fair working majority in order to pass the land bills and accepted Young's nominees, with Wentworth as the new council president, only on condition that they passed the bills without delay.⁴

In other words, the list was drawn up by Young without ministerial advice and accepted in toto by the ministers when it was presented to them in executive council. They also agreed

¹Newcastle to Young, 4 February 1861, Government House Papers, Despatches from the Secretary of State, 1861. The importance of the despatch in governing the appointments was a matter of public knowledge. Empire, 5, 21 June 1861.

²Reported in Sir William Macarthur to James Macarthur, 15 May 1861, Macarthur Papers, vol.38, A2934, p.509.

³Cowper to Macarthur, 22 June 1861, Macarthur Papers, vol.28, A2924, pp.601-4.

⁴Neil I. Graham, 'The Role of the Governor of New South Wales under Responsible Government, 1861-1890', Ph.D., Macquarie University, 1973, pp.69-70.

to accept Wentworth as President. In return, they stipulated that the land bills should be passed quickly by Young's nominees. This account supports Graham's thesis that 'Whiggish' historians have underestimated the importance of colonial governors, but it is much less accurate than an earlier analysis by Loveday.¹ It is worth while touching upon the main objections to it only because there are other signs of an excessive reaction against the orthodox interpretation of the role of the governor.²

The first objection is that Cowper shares with Young at least joint responsibility for persuading Wentworth to accept appointment as President - perhaps the sole responsibility. Cowper told James Macarthur that Burton's decision to leave the country made it impossible to reappoint him, and 'opened the way for my negotiations with Wentworth, whose arrival amongst us was very opportune'.³ It is unlikely that Cowper claimed for himself credit which belonged to Young. Only five days after the swamping, Sir William Macarthur reported that

Wentworth...has had repeated interviews with Cowper...Cowper pays him great court and he has been sweetened by a very liberal payment for the land...for the military station in Parramatta - £3500 besides imparting gt value to the rest of the property - £10000 so W. himself assured me.... Like a wise man he receives the advantage with acknowledgement and is about to sell the rest of the property.⁴

Radicals like David Buchanan may have thought Wentworth's land dealings with Cowper reminiscent of his attempt to 'purchase half of New Zealand for some blankets',⁵ but such concrete

¹Loveday, 'The Legislative Council...', pp.492-4.

²See, for example, J.A. Ryan, 'Faction Politics: a Problem in Historical Interpretation', Australian Economic History Review, vol.8, 1968, p.43.

³Cowper to J. Macarthur, 22 June 1861, Macarthur Papers, vol.28, A2924, pp.601-4.

⁴Sir W. Macarthur to J. Macarthur, 15 May 1861, Macarthur Papers, vol.38, A2934, p.515.

⁵Empire, 4 September 1861.

marks of esteem were probably necessary to dispell the 'strong prejudices' with which Wentworth was imbued.

The remainder of Graham's interpretation of the appointments is no better founded in the sources. It is true that Young told Cardwell that when the Council was reconstructed he took advice from 'gentlemen of social standing and leading political position', and that at least some of these were 'called into counsel under the auspices of Mr. Wentworth'.¹ However, this description falls short of the 'committee' which allegedly advised the Governor on the appointments; and Young also stated that he 'consulted the liberal party...that is, the Ministers then in office', and that it was 'with their cognizance' that he asked Wentworth and others for their views.²

The surviving correspondence indicates that there were extensive negotiations between Young and Cowper in the week before the Executive Council formally approved the list of proposed nominees on 11 June. On 4 June, for instance, Young told Cowper 'I am sorry to find the list you handed me...so materially altered'.³ Cowper had omitted six names from it and added four new ones. Four of the six omitted were, in Young's view, opponents of the ministry. He managed to have two of them, Allen and Merewether, restored to the list. Cowper probably did not object because they were the sort of moderate conservatives whose claims to reappointment even the Empire recognized.⁴ Young also succeeded in having Dr Dickson, one of the additions to the list, omitted. He had, as we have noted, been involved in unsavoury bankruptcy proceedings and Young thought his name would 'justly excite animadversion'.⁵

¹Young to Cardwell, 16 February 1865, P.R.O./C.O., 201/533.

²Ibid.

³Young to Cowper, 4 June 1861, Cowper Correspondence, vol.1, A676, n.p. This paragraph and the following one are heavily indebted to Loveday, 'The Legislative Council...', pp.292-4.

⁴Cf. Empire, 11 June 1861, editorial.

⁵Young to Cowper, 4 June 1861, Cowper Correspondence, vol.1, A676, n.p. Cf. Chapter II, above.

The correspondence also indicates that subsequent requests by Wentworth and Deas Thomson for alterations in the list were unsuccessful. Their representations were made directly to Cowper, or to Young who then approached Cowper with them. They both tried to no avail to have certain names removed from the list;¹ they failed to secure the appointment of a number of conservatives including Sir William Macarthur and Sir Charles Nicholson, although Young tried to reinforce the claims of the latter by telling Cowper that he was 'Lady Young's friend';² and they were not able to have the number of appointments increased from a maximum of twenty-seven to thirty or more, despite the fact that Young, too, expressed some exasperation at Cowper's determination to keep the Council so small.³

Cowper's role in reconstructing the Council was obviously crucial. He spoke personally with some candidates to ascertain their course of action if appointed and communicated through intermediaries with others;⁴ he consulted his fellow ministers who seem to have been prepared to accept the line which he pursued;⁵ and the extant correspondence indicates that in the final stages of the negotiations, Cowper's was the decisive voice. However, none of this correspondence is dated before 4 June, by which time the names of those to be invited to the Council had in most cases been determined. It is likely that in negotiations before that date, Cowper had made many concessions. An authoritative list of proposed nominees, which

¹Wentworth to Young, 14 June 1861, Wentworth Papers, A756, pp.221-4; Young to Cowper, 7 June 1861, Cowper Correspondence, A676, n.p.

²Wentworth to Cowper, 12 June 1861, Cowper Correspondence, vol.2, A677, pp.461-3; Thomson to Young, 7 June 1861, Deas Thomson Papers, vol.2, pp.499-506; Young to Cowper, 7 June 1861, Cowper Correspondence, vol.1, A676, n.p.

³Young to Cowper, 10 June 1861, Cowper Correspondence, vol.1, A676, n.p.; Thomson to Young, 7 June 1861, Deas Thomson Papers, vol.2, pp.499-506; Wentworth to Cowper, 12 June 1861, Cowper Correspondence, A677, pp.461-3.

⁴Executive Council, Minutes, 20 June 1861, A.O.N.S.W., 4/1540; Cowper to Polding, 28 May 1861, Cowper Correspondence, vol.1, n.p.

⁵Cf. Cowper to Young, 8 June 1861, Cowper Correspondence, vol.1, A676, n.p.; Empire, 5, 21 June 1861.

substantially resembled that finally decided upon, appeared in the Empire on 5 June. Only ten of the twenty-five names were those of unequivocal liberals. The list was published to correct 'imperfect and partly erroneous statements' and, probably, to test public opinion. The answer from the liberals was unambiguous. The proposed nominations created consternation, and the Empire cautioned Cowper that if he betrayed the trust he had won he courted destruction.¹ This strengthened his hand with Young, whom he told:

I have pouring in upon me from various quarters friendly warnings of my fate - inevitable as it is said - from yielding too much to yr. Exy and the suggestions made by those who tender irresponsible advice.²

From the time the list was published Cowper conceded little, but this was because he had previously conceded so much.

Most of the pressure upon Cowper had obviously come from Young, who was bound to implement Newcastle's instruction that he try to have the former members of the Council reappointed. The articles in the Empire emphasized the importance of Newcastle's despatch in guiding the appointments.³ However, the article which contained the list of proposed nominees also intimated that pressure from Wentworth, whom Cowper was trying to persuade to accept the post of President, played some part. Wentworth apparently 'indicated a very strong opinion in favour of certain of those appointments as a condition of his assent'. The article also stated that Thomson had made stipulations before the list was finally agreed to.⁴ The Governor's unconstitutional advisers seem, therefore, to have had some influence on the appointments, but it was probably small. It was clearly subordinate to Young's general desire to carry out Newcastle's instructions to secure the return of as many of the

¹Empire, 6 June 1861.

²Cowper to Young, 8 June 1861, Cowper Correspondence, vol.1, A676, n.p.

³Empire, 5, 21 June 1861.

⁴Empire, 5 June 1861.

former members of the Council as possible;¹ and it in no way rivalled the influence possessed by Cowper, the only man who could carry on the government.

Having consented to advise the appointment of a conservative Council, Cowper and his ministers tried to assure themselves a 'fair working majority' by other means. To each of the letters of invitation sent to potential councillors was appended a copy of the minute of the Executive Council dealing with the offers of seats. It listed the principles underlying the choice of members as:

1. The speedy reconstruction of the Council on an elective basis.
2. Acceptance of the land bills as agreed to by the Legislative Assembly.
3. Provision of a 'fair working majority' in the Council for the government.

The minute then said that the Executive Council was prepared to advise that seats be offered to those on the list 'in the expectation that the gentlemen named in it will adopt these principles in deference to public opinion and in a generous spirit'.² This was not a direct demand for a pledge, but the implication was clear that any appointee who acted contrary to the three principles of the minute had violated the understanding upon which his seat had been offered.

The conditions posed no problems for the liberals and only one conservative repudiated their substance. He was John Lamb, a liberal of the early 1850s and a moderate conservative in the Council before 1861, who proclaimed his intention of 'opposing the land bills and generally the policy of the ministry'.³ His reply was deemed unsatisfactory and he was not appointed.⁴ Two conservatives were amongst the five men who declined the

¹For Young's determination to try to carry out Newcastle's instructions, which harmonized with his own convictions, see Young to Newcastle, 19 April 1861, P.R.O./C.O., 201/517.

²Executive Council, Minutes, 11 June 1861, A.O.N.S.W., 4/1540.

³Young to Newcastle, 20 July 1861, P.R.O./C.O., 201/518.

⁴Executive Council, Minutes, 20 June 1861, A.O.N.S.W., 4/1540.

nomination 'on grounds of a personal and private nature',¹ but the rest saw their way clear to 'accept seats in the spirit in which they were offered'² without making an actual pledge. They sometimes stated explicitly that their appointment was to be unconditional, but they all gave at least a vague indication that they had 'independently' arrived at opinions coinciding with the principles laid down in the minute. Wentworth, for instance, did not object to the conditions 'solely on the grounds that they are in accordance with my own views' so that he made 'no sacrifice of principle...in subscribing to them';³ Robert Fitzgerald, an old friend of Cowper's, was able to satisfy him with the less explicit assurance that 'With regard to the Land Bills - I was not much against them before as you are aware nor shall I be now';⁴ another conservative, Charles Kemp, had already told Cowper that he favoured an elective Council and quite agreed that 'the sooner the Land Bill as it left the Assembly is passed the better';⁵ and while Sir William Manning said he would accept appointment only if 'unfettered by any pledges or conditions' he referred the Governor to a letter by Deas Thomson for a fuller explanation of his position.⁶ Thomson's letter, speaking for Manning, Merewether, and Holden as well as himself, declared that they would only accept seats if no conditions were attached, but gave an assurance that they had already decided that the Council should be made elective and the land bills passed in the form desired by the Assembly.⁷

¹Young to Newcastle, 20 July 1861, P.R.O./C.O., 201/518.

²Executive Council, Minutes, 20 June 1861, A.O.N.S.W., 4/1540.

³Wentworth to Young, 14 June 1861, Wentworth Papers, A756, pp.221-4.

⁴Fitzgerald to Cowper, 15 June 1861, Cowper Correspondence, vol.2, A677.

⁵Kemp to Cowper, n.d. [probably early June], Cowper Correspondence, vol.2, A677.

⁶Manning to Turville [Young's private secretary], 14 June 1861, Manning Papers, vol.4, MSS 246/4, pp.25-6.

⁷Thomson to Young, 7 June 1861, Deas Thomson Papers, vol.2, pp.499-506.

Darvall, Mitchell and John Campbell sent replies which the ministry thought required 'special considerations'.¹ Only Mitchell's reply has survived. He made the usual declaration that he held himself 'in all respects unpledged and unfettered', but neglected to state whether his own conscientious opinions happened to coincide with those in the minute.² Cowper sought out Mitchell, Darvall and Campbell to ascertain their opinions and was able to tell his colleagues that he had 'every reason to believe' they would pass the land bills and a bill to make the Legislative Council elective. They were therefore appointed.³ This brought the total number of members to twenty-one. Four others were appointed before the Council met in September bringing the total to twenty-five. This was two short of the maximum of twenty-seven which Cowper had chosen and which he assured Young he would not under normal circumstances exceed.⁴

Reaction to the appointments was predictable. The Sydney Morning Herald, recalling the swamping, said Young's second

¹Executive Council, 20 June 1861, A.O.N.S.W., 4/1540.

²Mitchell to Turville, 14 June 1861, Papers of Dr James Mitchell, A2026, pp.256-7.

³Executive Council, Minutes, 20 June 1861, A.O.N.S.W., 4/1540.

⁴It is clear from the correspondence referred to in footnote 3, p.194, above, that it was Cowper who insisted on appointing only twenty-seven members. He told James Macarthur that there was only 'a limited amount of proper material' to choose from, and his intention seems to have been to redress the balance in favour of the liberals by excluding conservatives, rather than by including new liberals 'unfit' for the Council. (Cf. Cowper to J. Macarthur, 22 June 1861, Macarthur Papers, vol.28, A2924, pp.601-4.) Young later insisted that the number of twenty-seven chosen by Cowper be the 'usual limit' and stated that Cowper had agreed to this. This was almost certainly true, but in 1869 Cowper denied having agreed to a limit. This seems to have been a convenient equivocation whereby he referred to an absolute limit rather than the 'usual' one. Cf. Young to Newcastle, 19, 20 July, P.R.O./C.O., 201/518; Young to Cardwell, 16 February 1865, P.R.O./C.O., 201/533; Robertson to Cowper, 29 June 1869, with reply 30 June 1869, V. & P. (L.A., N.S.W.), 1872, vol.I, p.491; Young to Cowper, 3 July 1865, Cowper Papers, D60, n.p.; and Loveday, 'The Development of Parliamentary Government in New South Wales, 1856-1870', Ph.D., Sydney University, 1962, pp.364-7.

decisive step was 'entitled to more confidence than the first' and thought that if the ministry had helped to influence the appointments it was 'an indication of returning sanity';¹ James Macarthur thought the nomination of 'men of experience and respectability', together with the return of conservatives at recent by-elections, gave 'some hope that reasonable and salutary influences are again coming into play';² T.A. Murray was 'very much surprised but at the same time very much pleased' by the appointments, which he thought superior to the original nominations in 1856;³ and at the Colonial Office, Newcastle expressed much pleasure at observing amongst the appointees 'so many names of gentlemen of eminence and tried abilities'.⁴ What conservative misgivings existed were focussed mainly on the 'pledge' which those appointed so strenuously denied having given.⁵

Liberal reaction was predominantly hostile. The Empire claimed that more than two-thirds of the appointees were 'steady and consistent opponents of that policy which the existing government had hitherto been believed to represent'.⁶ It reserved particular scorn for the appointment of Wentworth, qualifying its criticism only with the hope that 'the ministry are in possession of a hidden ground of assurance that an appointment so ostensibly subversive of liberal policy was in reality and effect a move in the right direction'.⁷ The

¹S.M.H., 21 June 1861.

²J. Macarthur to Charles Campbell, 2 November 1861, Macarthur Papers, vol.24, A2920.

³Murray to Parkes, 18 September 1861, P.C., vol.55, A925, pp.276-83. Murray mistakenly dated the first nominations at 1855. The error has been corrected to avoid confusion.

⁴Draft of reply by Newcastle to Young to Newcastle, 20 July 1861, P.R.O./C.O., 201/518.

⁵See, for example Burton to James Macarthur, 25 February 1862, Macarthur Papers, vol.29, A2925, pp.25-8.

⁶Empire, 27 June 1861. Graham alleges that the Empire's response was initially favourable, but his view is based upon a reference to the issue of 14 May 1861 which praises the swamping, not the life appointments.

⁷Empire, 18 June 1861.

conservative W.R. Piddington thought, with much justification, that no other government 'could have nominated so conservative a body of Councillors' and drew additional satisfaction from the fact that 'the nominations have given great offence to some of the Cowper mob'.¹ To bear him out, the radicals, led by Buchanan, bitterly attacked the ministry as soon as parliament met, combining with the conservatives, who approved of the appointments but disliked the 'pledge' attached to them.² Cowper had warned Young that he faced such a conjunction of his enemies and erstwhile supporters,³ and at first considered resigning.⁴ However, not only did this ministry still retain some credit for having swamped the Council, but it included almost every experienced liberal politician in the Assembly. Parkes had been despatched as an immigration lecturer to Britain,⁵ Forster had destroyed his standing with the liberals by opposing free selection, and, with the land question still not settled, a conservative government would have fallen the moment it faced the parliament. The ministry survived mainly because there was no alternative Premier outside its own ranks, or, as Sir William Macarthur put it, because of 'the impossibility of their being succeeded by any but the lowest and most unscrupulous radicals'.⁶

¹Piddington to Parkes, 20 August 1861, P.C., vol.56, A926, pp.382-5. Cf. Murray to Parkes, 18 September 1861, P.C., vol.55, A925, pp.276-83.

²Empire, 4 September 1861.

³Cowper to Young, 8 June 1861, Cowper Correspondence, vol.1, A676, n.p.

⁴Cowper to Young, 14 September 1861, Cowper Correspondence, vol.1, A676, n.p.

⁵Cf. P. Loveday and A.W. Martin, Parliament, Factions and Parties, Melbourne, 1966, p.33.

⁶Sir W. Macarthur to James Macarthur, 15 September 1861, Macarthur Papers, vol.38, A2934, p.560.

When the reconstructed Council met on 3 September 1861, there was immediate proof of liberal allegations that Cowper had nominated a majority of his opponents. The members ranged themselves on government and opposition benches and, as shown by Table X, a majority sat with the opposition.

TABLE X¹

SEATING ARRANGEMENTS IN LEGISLATIVE COUNCIL,
3 SEPTEMBER 1861

<u>Government benches</u>	<u>Opposition benches</u>
Robertson (Minister for Lands)	Holden
Hargrave (Attorney-General)	Manning
Robey	Darvall
B. Russell	Thomson
Byrnes	W. Russell
Macfarlane	Allen
Butler	Ward
A. McArthur	Watt
J. Campbell	Kemp
Gordon	Mitchell
	Merewether

Ten members sat with the government and eleven with the opposition, and the conservative majority was in fact greater than the table indicates. When Wentworth was not in the chair, he sat with the opposition² and of the three members who were absent, two were conservatives.³ Moreover, one of those who sat with the government was Alexander McArthur, whose liberalism

¹Based on Empire, 4 September 1861.

²Cf. Wentworth, S.M.H., 10 October 1861: 'his hon. friend opposite (Mr Robertson) ...'.

³Plunkett and Fitzgerald. The liberal was Scott, who was incorrectly described by the Empire, 4 September 1861, as a member of the opposition. The Empire had twice previously classed him as a ministerialist (5, 21 June 1861), and when he took his seat he consistently supported the government.

was far from consistent,¹ and two others on the same side of the house were in fact conservatives on most issues. They were John Campbell and S.D. Gordon, former members of the Assembly who had been regarded as liberals until late 1860, when they opposed free selection before survey. In the Council, they also opposed other popular reforms. Gordon declared that he had always opposed manhood suffrage, advocated a conservative upper house and criticized the government's legislation on the Chinese.² Campbell stayed with the liberals on the Chinese question, but otherwise voted with the conservatives, stating that 'He felt very differently now to what he did before his experience of an Assembly elected on universal suffrage'.³ His changed views did not go unnoticed by Deas Thomson, who expressed great pleasure at his 'recantation of the radical opinions he entertained some years ago'.⁴

Both Campbell and Gordon made occasional genuflections towards their former liberalism,⁵ but the fact that they still sat with the liberals had more to do with past associations than current ideological commitment. As men until recently associated with the liberal cause, they had few friends amongst the conservatives; and Campbell probably found the prospect of sitting with the opposition particularly distasteful, for, although he was a wealthy merchant and pastoralist, some conservatives had expressed the view that he had insufficient intelligence to be a legislator.⁶

¹McArthur had given inconsistent votes on free selection before survey as a member of the Assembly in 1860; and in the Council voted with the conservatives on the Chinese issue.

²S.M.H., 13 December 1861, 4 September, 24 October 1862.

³S.M.H., 5 September 1862.

⁴Thomson in S.M.H., 11 September 1862.

⁵For example, they were the only two members who voted for a bill to reduce the salaries of future governors. The bill had no chance of being passed, for other conservatives and the government both opposed it. Campbell and Gordon may not have been serious in their support for the bill, for the latter said he moved its second reading simply 'out of courtesy to the other house'. (S.M.H., 11 October 1861.)

⁶Cf. Manning to Donaldson, 19 June [April?] 1856, Letters, Donaldson Ministry, A731, pp.106-10; 'C.C.L.' in S.M.H., quoted Molony, op.cit., p.226.

Only nine of the twenty-five members of the Council, including McArthur, were liberals, but the position of the government was stronger than it had been before the swamping. To begin with, none of the extreme conservatives had been reappointed. The Council was spared the interminable, if able, speeches of Isaacs and Johnson, and the debates lacked some of their former rancour. Moreover, 'party' meetings outside the Council seem to have ceased - or largely so. None appreciated the change better than the liberals. Three months after the Council resumed, Hargrave gloated over the good effects of the swamping, saying that the conservatives had 'never pretended to act as a party since';¹ and some months later, Bourn Russell expressed pleasure that the liberals were no longer ridiculed and insulted, remarking that the Council had been held in greater esteem 'since the obstructive element, which formerly was so strong, in that chamber, had been disposed of'.² Surveying the history of the Council thirteen years later, he saw no reason to revise that judgment. He admitted that the swamping was 'something extreme', but claimed that

it could not be denied that it did good, for the business of that House had since been carried on in a much more amicable and courteous manner than before that event....If the Opposition at that time had shown the consideration and courtesy to those who differed from them which all were wont to manifest now, there never would have been any attempt to swamp that House.³

Yet 'party' still existed in the Council along the lines set down before 1861, albeit in an attenuated form. Newspaper reports and the politicians themselves described the Council's proceedings in terms suggestive of a 'party' system arising from similarities of ideological commitment, which were in turn rooted in the clash of social classes; issues with no apparent ideological implications still sometimes provoked a 'party' response; and, although 'party' meetings out of doors were no longer reported, there were still tactical manoeuvres on party lines within the house. In September 1862, for instance, the

¹S.M.H., 13 December 1861.

²S.M.H., 5 September 1862.

³S.M.H., 20 March 1874.

liberals repeatedly tried to delay the second reading of their bill to abolish state aid to religion until some of their number had returned from their own business and their opponents had been weakened by Wentworth's return to Britain. The conservatives, however, took the matter out of the government's hands and brought on the second reading at a time to suit themselves, resisting liberal attempts to have the vote coincide with a call of the house. Their tactics failed when the bill passed its second reading by ten votes to nine after several of the absent liberals put in an appearance and one conservative crossed the floor.¹

The conservatives' inability to use their numbers effectively in the crucial votes on the state aid abolition bill reflected a growing lack of cohesion in their ranks. This was partly a result of the changed nature of conservative leadership. In the old Council, Deas Thomson had been recognized by all as unofficial 'Leader of the Opposition', although an element of bipolarity had been introduced into the leadership when Johnson, Isaacs, Docker, Norton and Want chose to act together as the principal spokesmen for the extremist wing. Cowper's refusal to reappoint the extremists did not, however, confirm Thomson's dominance. He still probably sat at the head of the opposition benches² and he still spoke first on the Address-in-Reply;³ but he was less influential than before, particularly during the session of 1861-62, when he was present for fewer than a third of the divisions. This encouraged the emergence of other sources of leadership on the conservative side of the house.

The material for multi-polar leadership from within the ranks of the moderate conservatives had been supplied by Cowper. His appointees included John Hubert Plunkett, Attorney-General before responsible government, one-time President of the

¹For the tactical manoeuvres over the bill, see J.L.C., 1862, pp.85, 94; Thomson and Scott, S.M.H., 25 September 1862; Thomson and Hargrave, S.M.H., 1 October 1862.

²Thomson, for instance, referred to Manning, perhaps the conservative who most nearly approached him in prestige, as 'behind' him. (S.M.H., 2 October 1861.)

³S.M.H., 4 September 1861.

Council, and a man whose standing and ability gave him much influence; Sir William Manning, Solicitor-General before responsible government and Attorney-General in two administrations since; and G.K. Holden, prominent before the swamping and now the Council's dominant figure in matters affecting its own constitution.

These men held no formally recognized position, but with Thomson they customarily took the lead in debates. To them also fell the responsibility of giving a lead when matters of tactics arose in the house. But they exercised their talents individually, rather than collectively, so that for want of a common approach they sometimes helped to fragment conservative opinion. Plunkett and Holden, in particular, were exceptionally 'independent' conservatives whose political idiosyncracies sometimes made them leaders of a minor exodus to the liberal side of the house.¹

The conservatives' disarray was compounded by disorientation in the wake of rapid social change and demoralization at the defeats which they had suffered since 1856. Wentworth's despondency was typical, although other conservatives did not admit so openly that they had lost touch with the times. Discussing a radical proposal to stop the issue of miners' rights to Chinese not holding one by 31 July 1862, he said that

He knew there was a great clamour against these men [the Chinese]; and if he were a member of the Government, it would be too much for him; but then he was not responsible, thank God. It might indeed be better for him to remain in retirement and not put forward his opinion; but then, when such propositions were put forward, he could not help it.²

He may not have been entirely unconscious that this confession of defeat was an implicit tribute to Cowper, who shared his

¹See their voting patterns below, Tables XI and XII.

²Empire, 18 October 1861.

horror at aspects of the anti-Chinese agitation,¹ but found ways to cope with it. Many conservatives, as well as liberals, realized that failure to legislate on the Chinese issue would be disastrous,² and the bills which Cowper ultimately got through parliament were the least restrictive which the Assembly would accept. With no viable alternatives of their own, conservative opponents of the government's Chinese legislation lacked resolution, and some of them, having signified their opposition in debate, acquiesced in the passage of the Chinese Immigration Bill by absenting themselves from the house.³

The lack of cohesion amongst the conservatives resulted not only from fragmented leadership and demoralization, but from the emergence of new ideological issues such as those involved in the debate over the Chinese. In previous sessions, the conservatives had all opposed democratic reforms and Robertson's land bills; and, although they had split on the question of whether the Council should assert its right of amending money bills, they had unanimously rejected the Assembly's view of their powers.⁴ In the sessions of 1861-62 and 1862, however, when the Chinese issue and the question of whether to abolish state aid to religion became important, there was less unanimity. Both the Chinese issue and the state aid issue involved matters of liberal and conservative principle, but they also raised specifically racial and religious questions.⁵ Consequently, although in general terms these issues produced a division between liberals and conservatives, a minority of members on both sides of the house were led to depart from their customary voting pattern.

¹See, for instance, Cowper in S.M.H., 11 September 1861.

²Cf. Holden and Manning, S.M.H., 24 October 1861; Kemp, Gordon and Manning, S.M.H., 10 October 1861.

³S.M.H., 24 October 1861. See Chapter VI, part 1, below.

⁴See Chapter IV, above.

⁵The Chinese question and the state aid issue are discussed in Chapter VI, below.

Moreover, although the conservatives remained unanimous in their detestation of the land bills, their votes on that issue were now split. Some voted with the liberals in order to settle an issue which had been a rallying point for radical political agitation and which had led to the decimation of the conservatives in the Assembly.¹ Others, although no doubt mindful of the conditions under which they had been offered seats in the Council, persisted in trying to force amendments to the bills in the hope that the Assembly would relent. Conservative fragmentation on the land bills, together with the unsteadiness of some conservatives on the Chinese and state aid issues, ensured that Cowper usually gained the 'working majority' which he desired.

The disparity between overall ideological commitment and voting behaviour in the sessions of 1861-62 and 1862 is illustrated by Tables XI and XII. Analysis by the POLIT programme showed that in the session of 1861-62, important divisions on the land bills, the Chinese question and a few minor issues provoked a single 'patterned' response.² In the session of 1862, a similar voting pattern was produced by the Grants for Public Worship Prohibition Bill, the Legislative Council Bill and several less important matters. In both sessions, the representatives of the government displayed the paradigmatic 'liberal' voting pattern, and the scores in Table XI indicate the number of times a member voted with the government's representatives as a proportion of the total number of votes which he cast in the relevant divisions. The table also compares each member's voting pattern with his general ideological orientation as determined by his professed attitudes towards democracy, land reform, state aid to religion

¹For the anger felt by conservatives in the Council at the way in which the liberals had used the land issue to defeat conservative candidates at the 1860 elections, see the discussion in Chapter II, above, of the conservatives' amendment of the Address-in-Reply in 1861.

²For an explanation of the POLIT programme and an explanation of how the voting tables were compiled, see Appendix III.

and the Chinese question - the issues by which contemporaries classed members of the Council as liberal or conservative.¹

TABLE XI²

VOTING RECORD OF LEGISLATIVE COUNCILLORS
IN SESSION OF 1861/2,
COMPARED WITH GENERAL IDEOLOGICAL ORIENTATION

<u>Liberal voters</u>	<u>Ideological Orientation</u>
Butler 10/11	lib.
Byrnes 7/7	lib.
Hargrave 9/9	lib.
Macfarlane 10/10	lib.
Robertson 11/11	lib.
B. Russell 9/9	lib.
Plunkett 10/10	cons.
W. Russell 9/10	cons.
<u>'Independent' voters</u>	<u>Ideological Orientation</u>
Robey 5/8	lib.
McArthur 6/10	lib?
Campbell 3/8	cons.
Allen 1/3	cons.
Kemp 5/10	cons.
Ward 5/8	cons?
<u>Conservative voters</u>	<u>Ideological Orientation</u>
Darvall 0/2	cons.
Fitzgerald 0/1	cons.
Gordon 1/4	cons.
Holden 1/11	cons.
Manning 0/11	cons.
Merewether 0/7	cons.
Mitchell 0/11	cons.
Thomson 0/7	cons.
Watt 2/8	cons.
Wentworth 2/9	cons.

It can be seen that although most members voted in accordance with their general ideological orientation, there were some exceptions. In particular, two conservatives,

¹The classification of members according to their opinions on these issues presents few problems, for all members had long been active in colonial politics. Documentation of the political opinions of every member would be redundant, as their opinions can easily be checked by examining parliamentary debates on dates when the relevant issues were discussed. See also the classifications of members in the Empire, 5, 21 June 1861.

²Based on divisions listed in Appendix III.

Plunkett and Russell, voted consistently with the liberals. Both were personally opposed to the land bills, but they did their best to expedite their passage in order to settle the land question once and for all. They also supported the government's Chinese immigration and goldfields bills, not because it seemed expedient to let the liberals have their way, but because they thought the bills both just and necessary.¹ In this they differed from most conservatives.

The large number of six 'independent' voters was symptomatic of the fact that the 'parties' in the Council were less cohesive than before. Two of the 'independents' were liberals who disagreed with their party's attitude to the Chinese question, and the remaining four were conservatives. Allen, Kemp and Ward waived their personal opposition to the land bills in order to have done with them as quickly as possible, but, unlike Plunkett and Russell, they opposed the liberals' attitude to the Chinese. John Campbell, on the other hand, objected to the presence of Chinese in the colony, but persisted in trying to force amendments to the land bills in the hope that the liberals would make concessions. Voting across 'party' lines by Campbell, Allen, Kemp, Ward, Plunkett and Russell, together with the occasional unsteadiness or absence of other conservatives, ensured that the vital land, Chinese immigration and goldfields bills were passed in the session of 1861-62.

Cross-voting again did much to offset the conservative majority in the session of 1862. The conservatives maintained almost complete solidarity on the Legislative Council Bill, which tested attitudes towards democracy, but some of them crossed to the liberals on the Grants for Public Worship Prohibition Bill, which dominated the session. As a result, one conservative voted consistently with the liberals and three more voted as 'independents', as shown by Table XII.

¹S.M.H., 10, 17 October 1861.

TABLE XII¹

VOTING RECORD OF LEGISLATIVE COUNCILLORS
IN SESSION OF 1862
COMPARED WITH GENERAL IDEOLOGICAL ORIENTATION

<u>Liberal voters</u>	<u>Ideological Orientation</u>
Butler 13/13	lib.
Byrnes 16/16	lib.
Hargrave 20/20	lib.
Macfarlane 12/12	lib.
B. Russell 13/13	lib.
Robey 12/12	lib.
Scott 19/19	lib.
McArthur 8/8	lib?
Murray 6/7	lib.-cons.
Ward 15/15	cons?
<u>Independent voters</u>	<u>Ideological Orientation</u>
Allen 3/8	cons.
Watt 8/12	cons.
Holden 7/12	cons.
<u>Conservative voters</u>	<u>Ideological Orientation</u>
Campbell 0/16	cons.
Kemp 0/16	cons.
Manning 0/18	cons.
Merewether 0/18	cons.
Mitchell 0/17	cons.
Plunkett 0/20	cons.
W. Russell 2/9	cons.
Thomson 0/17	cons.
Wentworth 0/3	cons.

E.W. Ward, whose appointment to the Council had been bitterly attacked by the Empire,² voted consistently with the liberals on the state aid issue, as did the President of the Council, T.A. Murray, a man whose unique combination of political views makes it impossible to classify him as either liberal or conservative.³ Watt and Holden were conservatives who voted as 'independents' because on the single issue of

¹Based on divisions listed in Appendix III.

²Empire, 13 June 1861, editorial.

³Murray was perhaps the only politician in the colony who favoured Robertson's land bills while remaining bitterly opposed to democracy. He replaced Wentworth as President in October 1862.

state aid they tended to side with the liberals; and Allen was brought into 'independence' because he voted with the liberals in two tactical divisions although he favoured state aid. His 'liberal' votes may have stemmed from a desire, as Chairman of Committees, to avoid identifying himself too strongly with the conservatives. Since three other conservatives were absent throughout the session,¹ the liberals were able to push through the abolition of state aid by a narrow majority.

Liberal fears that Cowper's nomination of a conservative majority to the Council would result in the rejection of his programme proved groundless, for the conservatives' successes were modest. They rejected bills to reduce the salary of future governors and to declare the Church and School lands waste lands of the Crown, but they did so with government support.² They also moderated government legislation affecting the Chinese, but their major amendments had strong liberal backing and were defended by the government in the Assembly.³ The conservatives' most striking victory was their frustration of a liberal attempt to establish a democratically elected upper house, but the liberals were not disposed to press their demands and the Assembly thwarted the conservatives' own plan for an upper house.⁴

The Council's refusal to make itself democratic aroused some indignation amongst the radicals but, with their other demands largely conceded, their opinions on the upper house had mellowed. Even their anger at the conservative nature of Cowper's appointments cooled, except where it was kept alive for political purposes. As early as November 1861, David Buchanan, who had led the criticism of the appointments two

¹Darvall, Fitzgerald and Gordon. It should be noted, however, that Gordon probably favoured the abolition of state aid, for he was a Presbyterian and had supported a bill to declare the Church and School lands waste lands of the Crown. (Empire, 15 November 1861.)

²Empire, 15 November 1861.

³See Chapter VI, below.

⁴See Chapter VI, below.

months previously, was moved to defend Cowper against an attack led by an opportunistic triumvirate consisting of the radical Hoskins, the conservative Faucett and the politically eccentric Forster. Buchanan pointed to the victory that had been won:

The purpose for which the gentlemen had been appointed [to the Council] was attained. The land bills, the Chinese Bills, and the Goldfields Bills had all been passed. The Ministry had moulded the members of the Council into a form; therefore, however much he might dissent from those appointments, he could not deny that they had adopted the opinions of the majority of the people's representatives. They had, therefore, reason to congratulate themselves on the power and tact of the Ministry that had brought about that result...he did not know what more was wanted.¹

¹Empire, 20 November 1861.

CHAPTER VIISSUES AND IDEOLOGY, 1861-1862Part 1The Debate on the Chinese Issue, 1861

In the sessions of 1861-62 and 1862, 'party' in the Legislative Council rested upon the same foundation as in former years. Political groupings were based mainly upon ideological differences which were themselves rooted in the interests, aspirations and anxieties of different sections of society. Some of the ideological issues were old ones raised by the land bills and proposals for reform of the Council, but other issues were new. In the session of 1861-62, the most important new issue concerned the right of the Chinese to enter the colony and enjoy there the same privileges as Europeans. In order to explain why conservatives and liberals clashed over the rights of the Chinese, it will be necessary to relate attitudes towards that race to wider political attitudes and to the anxieties of different social classes.

The debates on the Chinese question revolved around an immigration restriction bill designed to curb the entry of Chinese into the colony and prevent them from becoming citizens; and around a goldfields bill, designed to limit the issue of further miners' rights to the Chinese and allow the government to restrict them to certain parts of the goldfields while giving them the sole right to mine there. It would be difficult to explain why most liberals favoured the bills and most conservatives opposed them simply by referring to some of the main arguments in the debates. The liberals justified the bills by saying that they were necessary to prevent racial conflict on the goldfields and preserve the 'British' character of the colony, the latter objective being explained by some in terms of the need to preserve the colony from racial and social contamination by an 'inferior' race. The conservatives condemned the legislation because it was 'unjust' to an

oppressed minority and because it would hinder the economic development of the colony. These arguments, however, appealed to values common to both liberals and conservatives. The liberals were certainly no more concerned to prevent social disorder than the conservatives; both groups were committed to preserving the 'British' character of the colony;¹ the conservatives were no more concerned about justice than the liberals, who on other occasions made talk about human rights and justice their own catch-cry; and the liberals, as much as the conservatives, were anxious to promote the economic development of the colony. As with the land bills, the principles most emphasized in the debates were simply rationalizations of positions adopted on other grounds.

The most obvious way to explain the division would be to assert that the conservatives were men of property who wanted cheap labour and that the liberals were not. The argument that the Chinese promoted development could then be interpreted as an expression of class economic interest and other arguments could be dismissed as rationalizations of peripheral importance. This seems to be the view adopted by R.B. Walker, who has concluded, on the evidence of the debates, that there was little concern for the 'natural rights' of the Chinese. Instead he has emphasized that 'Conservative opinion, strongly entrenched in the Legislative Council and well expressed by the Sydney Morning Herald, was inclined to see the advantages of the Chinese presence in promoting the economy and providing a cheap labour force'.² If this were correct, then it would be a simple matter to explain the division of opinion on the Chinese issue. It is difficult, however, to accept this version of the debates.

The Herald did not argue that the Chinese were desirable as a source of cheap labour and it dwelt little upon the other economic benefits which they brought. Instead, it viewed the matter almost entirely in moral terms, often in the context of its disapproval of Western imperialist activity in China. It

¹See, for instance, Darvall, Manning, Gordon and Holden, S.M.H., 24 October 1861.

²R.B. Walker, 'Another Look at the Lambing Flat Riots, 1860-1861', J.R.A.H.S., vol.56, pt.3, September 1970, pp.199, 204, n.55.

pointed to the imperial government's hypocrisy in demanding access to China and protection for British subjects, while allowing British colonies to curtail Chinese immigration and oppress their Chinese minorities:

We have talked loftily of the right of commerce and of free intercourse, of the duty of enlightened nations to constrain the barbarians to admit all the world, and to protect from insult the often ruthless subjects of the Christian states. But the same people who claim this free ingress and egress as a natural right are the first to deny it. England allows her colonies to brand the Chinese as an inferior race, and to punish their enterprise and industry with insulting and oppressive restraints. No upright Englishman can feel that his country is entitled to the suffrages of the world in her pretentious crusade against Chinese restrictions.¹

The Herald thought the Chinese morally and culturally superior to the colonial radicals and members of the lower orders who demanded their exclusion, and it took its stand upon the maxim 'Do unto others as ye would they should do unto you'. This, it said, was 'the law of nations as well as individuals - and it will make itself heard above the sound of the cannon, not less than above the tyranny of a petty legislature like our own'.²

The Herald was unusual in its distaste for imperialist activities in China, but others echoed the moral emphasis of its arguments in favour of the Chinese in New South Wales. Its editor, the Reverend John West, joined eighty other Protestant clergymen, including the Anglican Bishop of Sydney, in signing a manifesto which appeared to accept the activities of the Western powers in China but strongly condemned colonial intolerance of the Chinese.³ This manifesto, which confirmed radical opinion that most clergymen were on the side of the

¹S.M.H., 7 August 1858. Cf. S.M.H., 13 March, 2 August, 13 September 1861.

²S.M.H., 7 August 1858.

³Printed in S.M.H., 21 September 1861.

conservatives,¹ dwelt upon the achievements of Chinese civilization and stressed the fact that the Chinese were equal, because 'God made of one blood all the nations of men'. With an eye to missionary activity, the signatories feared that oppression of the Chinese was a poor advertisement for Christianity and applied to their own race 'the awful reproof that "The name of God is blasphemed among the gentiles through you"'. The manifesto did not mention any economic advantages stemming from the extension of Christian tolerance to the Chinese.

Economic arguments were mentioned more often in the Council, but were never dominant. More common were arguments connected directly or indirectly with notions of law and justice. The conservatives defended the Chinese against the charges of lawlessness and immorality with which the miners and radicals sought to bolster demands for restrictive legislation.² In particular, the conservatives argued that the Chinese who had been attacked on the goldfields were the innocent victims of the brutality and prejudices of a section of the colonial lower orders.³ It was unjust, therefore, to penalize them for violent disturbances for which others should be made to pay. They also argued that to stop Chinese immigration completely would be hypocritical in the light of European demands for access to China, and that it would infringe Britain's treaty obligations. Deas Thomson laid particular stress on this argument, quoting at length the treaty of Peking, whose fifth clause stated that 'Chinese choosing to take service in the

¹The theme that a squatter-clergy bloc was opposed to 'the people' had been bruited by liberals and radicals during the 'free selection' elections in 1860. Cf. Naomi Turner, Sinews of Sectarian Warfare?, Canberra, 1972, pp.224-9. As far as the Anglican and Catholic clergy were concerned, the accusation probably had some substance, for their devotion to the continuance of state aid to religion made it very difficult to support liberal candidates, for nearly all of them favoured abolition.

²See, for instance, defences by Darvall, Gordon and Holden, S.M.H., 24 October 1861. The conservatives' good opinion of the Chinese was based partly on a report of a select committee in 1858. (J.L.C., 1858, pp.325-6.)

³Cf. Darvall, Holden, S.M.H., 24 October 1861; S.M.H. editorials, 11 February, 21 September 1861. Some liberals admitted that the Chinese were 'more sinned against than sinning'. (Cf. Robertson and Butler, S.M.H., 17 October 1861.)

British colonies...are at perfect liberty to enter into any engagement with British subjects for that purpose, and to ship themselves and their families on board any British vessel at any of the open ports of China'.¹ The clause was not precisely relevant to the Chinese gold-rush immigrants, for it referred to persons who wished to 'take service' in the colonies and 'enter into any engagement for that purpose'; and in any case, while the treaty was awaiting ratification, the Colonial Office had consented to an amendment to Victoria's immigration restriction act, which effectively banned the entry of Chinese by sea.² But the merits of Thomson's argument are not at issue here: its significance lies in the fact that it was an attempt to construct an argument against anti-Chinese legislation based upon morality and law, not upon economic grounds.

One reason for the lack of emphasis on the advantages of cheap Chinese labour was that few members of the Council were in a position to use it. Before the swamping, Robert Towns, merchant, agriculturalist and pastoralist, had claimed in the Council that he had 'saved' Moreton Bay by introducing the Chinese there, and he testified that they were 'excellent servants'.³ Towns had, in fact, heard many reports that the Chinese were unsatisfactory as pastoral workers, but as he employed some in other jobs and paid them approximately half

¹S.M.H., 17 October 1861.

²See the Victorian Act, 22 Vic., no.8, Clause 7 specified that if any Chinese were on board a ship, the owner, charterer, or master would be liable to a penalty of £10 for every person on board, whether passenger or crew and whether Chinese or European, in excess of one person to ten tons. As there was approximately one crew member to every twenty tons, and as the British Passenger Act allowed four passengers to every ten tons, the presence of a single Chinese on the ship would normally have resulted in very heavy fines. (Cf. the comments by Burton on a similar bill rejected by the Council before the swamping. Burton to Newcastle, 1 July 1861, enclosed with Young to Newcastle, 19 July 1861, P.R.O./C.O., 201/518.)

³S.M.H., 3 May 1861.

the European rate, his enthusiasm is understandable.¹ This emphasis on the virtues of the Chinese as labourers was unusual, and in any case Towns was not in the Council when the anti-Chinese legislation was passed in 1861. Most of those appointed after the swamping were professional men or Sydney merchants who had no need of Chinese labour, particularly since there was chronic unemployment in the metropolis.² In most cases, those few members who might have been suspected of hankering after Chinese labour clearly did not want it. John Robertson, who had pastoral and agricultural interests, guided the anti-Chinese legislation through the Council; John Campbell, merchant, pastoralist and member of a family which had used Chinese labour in the 1850s,³ was one of the strongest opponents of Chinese immigration, as was William Russell, a conservative landowner with pastoral and agricultural interests. Wentworth, who had once employed Chinese coolies, had like many other squatters changed his mind on their merits, for many Chinese were unwilling to accept low wages and absconded at the

¹See the agreements between Towns and Chan Lee, Aug Kian, Tan What and Ke Yan in R. Towns & Co., Miscellaneous Papers, 1832-1885, M.L., MSS 1279/10, pp.169, 171, 183, 185. The agreements bound the Chinese to work for Towns for five years for wages of £12 per annum plus rations. In the first year, the cost of their passage was deducted from their pay. The normal rate of pay for Europeans in comparable jobs was £18 to £24 per annum plus rations (Coghlan, op.cit., pp.687, 692). For Towns' opinion that most of those who employed the Chinese found them unsatisfactory, see his evidence before the select committee of the N.S.W. Legislative Council on Asiatic labour, V. & P. (L.C., N.S.W.), 1854, pt.II, p.12 of the minutes of evidence.

²Only four of the twenty-five members of the Council were engaged primarily in pastoral and agricultural pursuits, and two of them were liberals. Of the remainder, eleven were professional men and nine were engaged primarily in commerce or manufacturing. Three of the businessmen and one of the professional men are known to have had pastoral interests as well. (Based on Appendix IV.) On metropolitan unemployment, see T.A. Coghlan, Labour and Industry in Australia, Melbourne, 1969 (first published 1918), vol.II, pp.696-706, 1018-1031.

³See the agreements of Robert Campbell and Frederick Rosten with Chinese labourers in R. Towns & Co., Miscellaneous Papers, 1832-85, M.L., MSS 1279/10, pp.173, 175, 177.

first opportunity.¹ He told the Council that

He was not in favour of an unrestricted importation of Chinese. He was one of the first to import them, and he had had enough of them, and had long ago made up his mind to have no more of them.²

Wentworth probably thought that the Chinese brought economic advantages to the colony as producers of capital and consumers, not as suppliers of cheap labour.³ With other conservatives, he seems to have realized what most liberals were not prepared to admit until liberal-conservative conflict had died down six years later: that the Chinese benefited the colony as petty producers - goldminers, storekeepers, market gardeners and fishermen - far more than as labourers. As the Reverend J.D. Lang said when he moved for the abolition of restrictions on Chinese immigration in 1867:

Few of [the Chinese were] hired as servants either in the towns or in the country. They preferred for the most part to work for themselves, in a spirit of self-reliance and independence which he would be glad to see exemplified among our own people.⁴

Chinese immigrants in New South Wales therefore conformed to the pattern set by the overseas Chinese in other countries: they provided an energetic class of small capitalists, not a servile source of cheap labour. Moreover, they tended to take up occupations in which direct competition with Europeans was minimal, supplying needs that had previously been imperfectly fulfilled. Even on the goldfields, they often confined themselves to diggings which white miners thought uneconomic, or reworked the 'tailings' on fields which others had abandoned

¹See report of select committee on Asiatic labour in V. & P. (L.C., N.S.W.), 1854, vol.II, p.923: 'It is admitted on all hands that the experiment of Chinese [immigration] has disappointed the expectations of those who at one time strongly advocated their introduction.' Cf. Sir Stephen Roberts, 'History of the Contacts between the Orient and Australia', in I. Clunies-Ross (ed.), Australia and the Far East, Sydney, 1935, quoted A.T. Yarwood, Attitudes to Non-European Immigration, Melbourne, 1969, p.9; and Coghlan, op.cit., vol.II, pp.774.

²S.M.H., 17 October 1861.

³Cf. Wentworth in Empire, 18 October 1861.

⁴S.M.H., 21 September 1867.

in the belief that they were exhausted.¹ They then spent money in buying food and provisions, and even when they exported their gold to China, they added to the colonial revenues by paying the gold export duty. As J.B. Darvall said:

No class of men could possibly come to this colony who would so largely benefit all classes of the community without competing with any. They came here poor, and as they accumulated means they expended them freely; they were given to good living in every way; they consumed our produce, they employed our carriers; they were good customers to the merchants; in short, they benefited all.²

Neither Darvall nor any other conservative in the reconstructed Council mentioned the Chinese as a source of cheap labour. There is no reason to believe that this was mere dissimulation. Conservative councillors, unlike members of the Assembly, rarely spoke to appease wage earners outside parliament; they spoke mainly to each other, confirming their belief in political and economic doctrines which were under challenge. They proclaimed their hatred of radicals and their mistrust of the lower orders in general; they unashamedly avowed their anti-democratic prejudices; they openly argued the 'big man's' case in the debates on the land bills, identifying his interests with the 'general good'; and, on occasion, they spoke approvingly of low wages because they left more money for capital investment.³ They were not ashamed to affirm their belief in such doctrines, for they were merely the orthodoxies of British conservative thought. Conservatives in the Council did not argue in favour of the Chinese as a source of cheap labour partly because, personally, they had no use for them in that capacity; and partly because, as goldminers, the Chinese were not fulfilling the role of labourers and gave no indication that they were prepared to do so.

¹See the evidence of Assistant Gold Commissioner, P.L. Cloete, J.L.C., 1858, p.336; and D.L. Carrington, 'Riots at Lambing Flat, 1860-1861', J.R.A.H.S., pt.4, October 1960, pp.224-5.

²S.M.H., 24 October 1861.

³In 1867, Thomson repudiated the idea that immigration greatly affected wages, claiming that despite the great fall in the rate of immigration in the 1860s, it seemed quite likely that real wages had been reduced 'and thus improvements carried out with the capital taken up in wages'. (S.M.H., 17 October 1867.)

Although the Chinese miners were not regarded as a source of cheap labour, those who championed them were still, in a more general sense, influenced by their economic position in the community. Conservative unwillingness to impose restrictions on Chinese immigration must be seen in the context of the propertied classes' enthusiasm for immigration in general as a means of developing the colony. Unlike the radicals, conservatives had no need to take note of the problems which immigration sometimes caused working men searching for employment. Moreover, conservative prejudices against the Chinese had not been heightened by the importation of coolie labour in the 1840s and early 1850s, a measure which some conservatives had thought undesirable on social and racial grounds,¹ but which did not subject them to injurious competition.

It would be misleading, however, to press too far the connection between attitudes towards the importation of coolie labour and opinions on the immigration of Chinese anxious to mine gold. Coolies had been cheap if often unsatisfactory labour for white capitalists but the Chinese miners were not. Instead, they were a source of competition for the European miners, who were generally regarded as belonging to the working classes, but who were nevertheless a class of small, independent producers. Liberals and radicals concentrated upon this threat to the mining interest, not upon any danger to the majority of working men who were wage-earners. In fact, most of the radicals showed themselves oblivious to the interests of wage-earners when they tried to have the Chinese banned from mining, despite warnings that this would flood the urban labour market, forcing down wages and boosting unemployment.² The radicals refused to admit that there was any conflict of

¹It was condemned by a select committee of the Legislative Council, chaired by Bishop W.G. Broughton, in 1841. Relevant sections of the committee's report are printed in Yarwood, *op.cit.*, pp.12-15. Similarly, many urban conservatives opposed the renewal of transportation in the late 1840s. Cf. Barrie Dyster, 'The Fate of Colonial Conservatism on the Eve of the Gold-Rush', *J.R.A.H.S.*, vol.54, pt.4, December 1968, pp.331, 334f.

²See debate on motion to exclude the Chinese from the goldfields by Wilson, *S.M.H.*, 11 September 1861, and on amendment to clause 4 of the goldfields bill, *S.M.H.*, 12 September 1861.

interests between the petty producers and wage-earners within the working classes, but their policy clearly favoured the one at the expense of the other. This reflected the fact that the miners, like the squatters in 1844,¹ had forged an alliance of heterogeneous interests which served their own ends. They traded upon their presumed community of interest with the wage-earners; they took advantage of the historical association of the Chinese with coolie labour; and they appealed to the racial prejudices prevalent in most sections of society.² The solidarity of the front which supported them against the Chinese would no doubt have disintegrated had they succeeded in driving the Chinese from the goldfields into other areas of employment, just as the anti-Gipps alliance of 1844 fell to pieces when it was realized that it served squatter interests only. Unity was preserved when the miners failed to gain their objective, but this should not obscure the fact that the agitation was raised in their interests, not in the interests of the wage-earners who had been threatened by coolie labour.

Conservative attitudes towards the miners and their assessment of the nature of the anti-Chinese movement were of great importance in determining their stand on the Chinese question. To understand why this was so, it will be necessary to examine the anti-Chinese legislation in the context of the events on the goldfields and in Sydney which provoked it.

Some conservatives had always regarded the miners as a disturbing element in society,³ but it was the miners' reaction to the Chinese which gave them their greatest notoriety as symbols of social anarchy. Between 1856 and 1861, there were at least nine anti-Chinese riots on New South Wales goldfields, seven of them at Lambing Flat between November 1860 and September 1861.⁴ No Chinese seem to have been killed, but many were badly beaten, and they were reduced to penury when they

¹T.H. Irving, 'The Development of Liberal Politics in New South Wales, 1845-1855', Ph.D. thesis, Sydney University, 1967, pp.28, 100f.

²The anti-Chinese agitation is discussed in detail below.

³See Chapter I, above.

⁴Cf. Carrington, *loc.cit.*, passim.

were robbed of their valuables and had their other belongings destroyed. The riots were a clear denial of the rule of law, the more so because of the context in which they occurred. On the one hand, they took place amidst increasing crime on the goldfields,¹ the prelude to the epidemic of bushranging in the early 1860s. They were therefore seen as part of a general rise in lawlessness. On the other hand, the riots were accompanied by rhetoric and organization which implied the substitution of 'miner law' for the law of New South Wales.

The attacks on the Chinese were essentially acts of vigilantism designed to crush elements which had no place in civilized society as the miners conceived it, and whose very presence on the goldfields was a denial of the rule of 'miner law'. The riots were placed most clearly in ~~the~~^{this} context by the disturbances at Lambing Flat in December 1860, when the miners formed themselves into a vigilance committee and attacked criminal elements as well as the Chinese. The most notable such 'police action' occurred on 8 December, when the diggers marched through Lambing Flat 'burning and destroying shanties, sparring saloons and other haunts of criminals'.² The attacks on the Chinese were only part of a more general attempt to expel from the goldfields all elements antagonist to miner interests - action which the Yass Courier described as one of 'the first steps in self-government - the administration of the natural law of self-defence'.³

Vigilantism was given full institutional form with the formation of the Miners' Protection League after another

¹Cf. *ibid.*, pp.229f, 232, 235; R.B. Walker, 'Another look at the Lambing Flat Riots, 1860-1861', J.R.A.H.S., vol.56, pt.3, September 1870, p.202; P.A. Selth, 'The Burrangong (Lambing Flat) Riots, 1860-1861: A Closer Look', J.R.A.H.S., vol.60, pt.1, March 1974, pp.50-52, 64, 69, n.108.

²Carrington, *loc.cit.*, p.229; Selth, *loc.cit.*, p.50. Walker, 'Another Look...', p.203, n.8, points out that Carrington should have dated the riot on 8 December, not 12 December.

³Quoted Selth, *loc.cit.*, p.50. In 1858, the white miners at Rocky River had explicitly set their attitude towards the Chinese in the context of vigilantism by declaring in a petition to the Assembly that unless Chinese immigration were stopped they would 'arm themselves for their own defence, and establish a Committee of vigilance in aid of the civil power....' The petition is reproduced by Yarwood, *op.cit.*, pp.31-2.

disturbance on 27 January 1861, when several thousand Chinese were driven from their claims. The League purported to 'unite all the great labouring classes - the mining community - in fact every member of the great working body - in one grand harmonious federation'.¹ Its principal object was the expulsion of the Chinese and its other aims were repeal of the gold duty, protection of native industry, land reform, representation of mining interests on a population basis, increased police protection and 'Promulgation of the word of God throughout the mining districts of the colony'.² Pending the arrival of the police to enforce laws of which the miners approved, the League was prepared to assume police functions itself. This was evidenced, for instance, by its request to an allegedly pro-Chinese storekeeper to deliver up his arms, 'as the diggers do not permit firearms to be held by tradesmen and townspeople'.³

At times, the miners were brought into direct confrontation with the government by their determination to have their way; at other times, the police and other officials were powerless to prevent the enforcement of 'miner law'. Conflict with the authorities came to a head on 30 June 1861, after a mob of about three thousand drove the Chinese from their claims. The police stood by helpless, and it was not until reinforcements arrived two weeks later that they were able to make their first arrests in an effort to re-establish their authority. The diggers reacted by marching on the police camp to secure the release of the prisoners. They were prepared to do this by force, and when negotiations had failed, they closed in upon the camp. Warning shots failed to check their advance and the police were fired on. The mob was repelled only after the mounted police had charged several times with their cutlasses, supported by fire from the foot police. The battle took place in darkness, but one miner was shot dead and about twenty were

¹From the League's prospectus, quoted Selth, loc.cit., p.53.

²Carrington, loc.cit., p.231.

³Ibid.

wounded. Two policemen were shot, but not fatally, and another suffered other wounds.¹

The police had won, but they were weary, short of ammunition and hopelessly outnumbered. Consequently, they decided to abandon the field to the miners and withdrew to Yass. They had been preceded by some of the local storekeepers and they were followed by the managers of the local banks, who brought all the gold and money in their care.² Their fears of anarchy and a general confiscation of property were groundless, for, although the miners held sway until the arrival of troops two weeks later, miner law was in some respects more rigid than the law of New South Wales: Spicer, the miners' leader, decreed that anyone who tried to plunder or maltreat the local inhabitants would be executed.³

The arrival of the military brought the miners to heel, and the Chinese were reinstated on their claims. They were not evicted again, for the troops remained on the goldfields for the next twelve months. The focus of conservative anxiety now switched to Sydney, where the miners were lobbying for support. The agitation in their favour was impressive. It was supported by radical politicians of predominantly working class origins like Lucas, Allen, Dalgleish, Stewart, Harpur, Buchanan and Love,⁴ and by an Anti-Chinese Association.⁵ Over six thousand citizens petitioned the Assembly in the miners' favour and over

¹The above account is based on Carrington, loc.cit., pp.235-6, and Selth, loc.cit., pp.58-60. Selth accepts uncritically the claim advanced by some contemporaries that 'genuine miners played little part' in the riot and that it was the work of criminals. This claim is impossible to reconcile with the large number of rioters involved (about 3,000), with the implied threats of violence by the miners' leaders which preceded the riot (e.g. S.M.H., 2 April 1861), or with their retrospective failure to dissociate themselves from the rioters. Instead they blamed the government for not acceding to the miners' demands (e.g. S.M.H., 30 August 1861.)

²Selth, loc.cit., pp.59-60; Carrington, loc.cit., p.237.

³Selth, loc.cit., p.60.

⁴These were specially thanked by the miners for their advice and encouragement. (S.M.H., 30 August 1861.)

⁵Empire, 5 September 1861.

five and a half thousand signed petitions to the Council.¹ At the same time, the Empire sought to inflame anti-Chinese feeling and publicized a series of meetings, including a great torchlight assemblage organized by a tailor called West.² The government feared that the anti-Chinese movement in Sydney had the same violent potential as its goldfields counterpart. It called out the troops, issued them with fifty rounds of ball ammunition apiece, and placed heavy guards on the Treasury and the Mint.³ Its fears proved groundless, but they showed that even some liberals misconstrued the nature of the agitation and conjured up visions of wider social disorder.

For conservatives, the anti-Chinese agitation embodied the spirit of lawlessness which both radicals and moderate liberals had seemed to countenance, however briefly, in the debates on the Indemnity Bill in 1860. The handful of rioters who were brought to court were in most cases acquitted, and even the liberal Edward Butler said that anti-Chinese feeling was 'so strong that trial by jury had become an absolute farce'.⁴ The Herald saw the acquittals in a broader context, alleging that they were 'symptomatic of our political and social condition' in that the courts could no longer be regarded as a guarantee of life and property.⁵ It damned 'those screaming orators who, with the cant of equality and fraternity on their lips, have been lately preaching an intolerant crusade against millions of their fellow creatures'; and it claimed that if the legislature were coerced into conceding the miners' demands, this would mean that

¹Petitions presented in the Assembly on 18, 20, 24 September 1861; and in the Council on 18 September and 3 October 1861. There may have been considerable overlap between the petitions to the Assembly and the Council. Another 1,443 signatures were obtained on petitions from the goldfields.

²Cf. Hoskins in Empire, 27 September 1861. See other reports of meetings in Empire, 1, 6 August, 9, 10 September 1861.

³See the accounts by Hoskins and Harpur, Empire, 27 September 1861. Cowper did not dispute their accuracy.

⁴S.M.H., 17 October 1861.

⁵S.M.H., 21 September 1861, editorial.

The lowest and most unworthy section of that class of the community least entitled to claim consideration as permanent colonists are to rule the roost! What they order is to be law; their rant is to be echoed as public opinion!

This is the upshot of all our democratic reforms, by which an enlightened public opinion was to lead to self-government! It is to be a reign of terror after all, and the rowdy is to be king.¹

Conservatives in the Council took up the cry, sympathizing with the Chinese as fellow victims of democratic oppression and harping upon the theme that to give in to the miners' demands for anti-Chinese legislation would be to countenance mob rule. Darvall deprecated the Chinese immigration bill because it 'had been introduced in submission to a clamour - a cry of antipathy; the clamour of those who had first resorted to violence - taking the law in their own hands, and who now wished to justify their unlawful acts'. He thought aspects of the bill motivated by 'the same spirit as that which would preach a crusade against property', the spirit exhibited in a recent coal miners' strike at Newcastle, where 'the industrious miner' was prevented from working 'because some lazy vagabond would not exert himself'.² Similarly, Wentworth condemned the goldfields bill as a 'concession to the prejudices of a population which was well-known to be of a most turbulent character, people who had of late been calling meetings, roasting oxen and so forth';³ Holden thought that the government's legislation was 'merely a concession to ignorance, made for the sake of the peace of the colony';⁴ and even Alexander McArthur, who had 'liberal' opinions on many questions, warned that 'they were now yielding to a clamour raised by turbulent men who, he was sorry to think, were not more severely punished'.⁵ The legislation was, as Charles Kemp said, the result of 'a mere labour cry',⁶ and it was condemned partly

¹S.M.H., 13 September 1861, editorial.

²S.M.H., 24 October 1861.

³Ibid.

⁴Ibid. Debate on Chinese immigration bill.

⁵Ibid. Debate on goldfields bill.

⁶Empire, 10 October 1861.

because of the low status and 'turbulence' of those who demanded it. Conservatives could not approve the bills without also seeming to countenance the unruly working class and petit-bourgeois agitation which had produced them.

The liberal government, too, condemned the agitation, for to it fell the task of preserving order. But although Cowper said the government would not submit to intimidation,¹ he had little choice but to concede much of what was demanded. He depended upon the support of the radicals, some of whom were actively involved in the agitation, and he had to achieve some accommodation with their views. The ministry consequently introduced a Chinese immigration bill and a goldfields bill soon after parliament met in September 1861. The goldfields bill was very moderate. It gave the government power to restrict the Chinese to certain areas and prevent other races from mining there. The immigration bill was more stringent. Its principal features were:

1. An effective ban on the immigration of Chinese by sea.
2. A tax of £10 per head on all Chinese entering the colony by land and on any who managed to evade the virtual prohibition on entry by sea.
3. A residence fee of £4 p.a. to be paid by every Chinese in the colony.
4. A ban on the naturalization of Chinese.

The bills were generally well received by the Assembly. The radicals' attempt to amend the goldfields bill to ban the Chinese from mining was defeated, and they only succeeded in securing an amendment to stop the issue of miners' rights to those Chinese not holding one before 31 July 1862.² The immigration bill was actually made more moderate. Some of the liberals combined with the conservatives to strike out the residence fee;³ and although the clause regulating entry by sea made it practically impossible for ships to carry Chinese without incurring penalties, those penalties were reduced.⁴

¹S.M.H., 11 September 1861.

²S.M.H., 12, 19 September 1861.

³S.M.H., 26 September 1861.

⁴Ibid., amendment by Rusden; speech by Windeyer.

The Council's response to the bills was ambiguous. Most of the liberals fully supported them, as did three conservatives - Plunkett, William Russell and John Campbell. The other conservatives condemned the legislation but most did not think that it should be rejected out of hand because it was obvious that some action had to be taken to deal with the crisis on the goldfields.¹ Wentworth's reactions exemplified the conservatives' dilemma. He denounced the legislation immoderately, but his positive contributions to finding a solution to the problem ranged from a frank admission that he did not know what to do,² to a wild suggestion that the Government should send to Britain for another regiment to keep the miners under control.³

It was the Chinese immigration bill which aroused the most bitter opposition and the conservatives tried to have it referred to a select committee on the second reading. The attempt was narrowly defeated when Wentworth gave his casting vote with the liberals, but the conservatives were able to greatly modify the bill in committee. The most drastic amendment was to the clause regulating immigration by sea. That clause, which was obscurely worded, had simply been taken over from the Victorian act and the ministers do not seem to have realized that it would in practice have imposed a complete prohibition on Chinese immigration.⁴ When its legal implications had been explained in the Council, Robertson consented to a conservative amendment altering the clause so that it merely specified that each ship should carry no more than one Chinese to every ten tons of its weight.⁵ With the £10 entry tax, this was held to be a sufficient bar to Chinese

¹Cf. speeches by Kemp, Manning, Gordon, and Thomson, S.M.H., 10, 17 October 1861.

²Empire, 18 October 1861.

³S.M.H., 20 October 1861.

⁴Cf. Cowper's incorrect interpretation of the clause in his second reading speech, S.M.H., 26 September 1861. For an explanation of the equivalent clause in the Victorian act, see footnote 2, p.216, above.

⁵S.M.H., 17 October 1861.

immigration. The conservatives failed, however, to alter the clause forbidding the naturalization of Chinese and they were not satisfied with the bill even in its amended form.

It passed its third reading after some of the conservatives absented themselves from the chamber and others who had announced their opposition to it did not call for a division.¹

Thus amended, the bill was returned to the Assembly for concurrence, together with the goldfields bill, which had been altered by the removal of the clause which forbade the issue of new miners' rights to the Chinese after 31 July 1862.² The government supported the Council's principal amendments, and they were praised by the Reverend J.D. Lang, who thought them merely technical and confessed that 'The intellect of the other House is not to be despised'.³ A hard core of nine or ten radicals held out against the changes, but with one minor exception they were accepted.⁴

Such was the passion against the Chinese out of doors, it is unlikely that legislation of a much less restrictive nature would have been accepted. If the conservatives themselves had been compelled to devise legislation, it would probably not have been much different. To judge by the recommendations of a conservative dominated select committee of the Council in 1858, it seems likely that the ban on naturalization would have been relaxed and the penalty of confiscation for ships with illegal immigrants moderated, but that the bills would otherwise have been largely unchanged.⁵ Freed of executive responsibility, however, the conservatives were permitted the luxury of violent criticism, which was expressed largely in terms of the bipartisan principles of economic progress and justice. This criticism, however, did not mean that these principles were more characteristic of conservatives than liberals. Rather, it reflected the conception of justice and progress characteristic of a class which had reaped only

¹S.M.H., 24 October 1861.

²Ibid.

³Empire, 31 October 1861.

⁴Ibid.

⁵Cf. report of select committee on Chinese immigration, J.L.C., 1858.

benefits from immigration. Above all, the conservative criticism expressed sympathy with a minority which, like themselves, had fallen victim to the 'unruly' forces in New South Wales society, and it expressed resentment that the colony's legislation was now, of necessity, dictated by the demands of the mob.

Part 2

The Debate on State Aid to Religion, 1862

Most 'party' divisions in the Council in the session of 1862 were provoked by the Grants for Public Worship Prohibition Bill which, when passed into law, provided for the phasing out of state aid to religion in New South Wales. The split on that bill between liberals and conservatives in the Council reflected a similar division of opinion amongst politicians in the colony at large. This had been demonstrated at the elections in December 1860 when sixty-seven candidates gave their views on both Robertson's land bills and the state aid question in the Herald. Of the fifty-three who favoured land bills, forty wanted the abolition of state aid, six wanted it given only to the outlying districts and seven advocated it unconditionally. Of the fourteen candidates who opposed Robertson's bills, only four favoured the abolition of state aid, one wanted it limited to the outlying districts, and the remaining nine proposed that it should be given without restrictions.¹

To some extent, the division between liberals and conservatives coincided with differences between Anglicans and Nonconformists. In England, the antagonism of devout Anglican conservatives and radical Nonconformists was an outstanding feature of politics² and it was duplicated, on a much smaller

¹Naomi Turner, Sinews of Sectarian Warfare?, Canberra, 1972, p.225.

²Cf. J.R. Vincent, Pollbooks: How Victorians Voted, Cambridge, 1967, pp.67-70.

scale, in the New South Wales Legislative Council. We know the religious affiliation of eight of the nine members who voted as conservatives in the session of 1862. Seven were Anglicans, one was a distinguished Roman Catholic layman, and none was a Nonconformist.¹ The religious affiliation of nine of the ten members who voted as liberals is known, and only three were Anglicans. One of the Anglicans was the son of a devout Wesleyan, and the other members who voted as liberals consisted of four Nonconformists, a young Roman Catholic, and an anti-clerical Christian who held aloof from all denominations.²

This makes it necessary to ask whether the liberals tended to favour the abolition of state aid and the conservatives to oppose it simply because of the relative influence of Nonconformists in their ranks. Did the liberals favour the abolition of state aid as liberals, or as Nonconformists and the friends of Nonconformists? The answer is that they did so in both capacities. There was, as is well known, a strong Nonconformist tradition of opposition to state aid on the religious grounds that a church dependent upon the state for financial support would inevitably become the servant of that state. However, the state aid issue also had links with the fears, aspirations and ideas which men held as liberals and conservatives.

On one level, the connection between state aid and political ideologies was a matter of analogy, for state aid raised the issue of democracy within the churches. If clergymen were paid by the government, they could remain

¹Kemp, Manning, J. Campbell, Merewether, Mitchell, Deas Thomson and Wentworth were Anglicans. J.H. Plunkett was the Roman Catholic.

²The Anglicans were Scott, Ward and Hargrave. Hargrave's father had been a prominent Wesleyan. Byrnes, Robey and McArthur were Wesleyans and Macfarlane was a Presbyterian. Butler was a Roman Catholic. Murray had been brought up as a Catholic but ostentatiously refused to give his allegiance to any church. He identified himself strongly with European liberalism and greatly admired Garibaldi. See Murray to Sir William Macarthur, 12 November 1860, Macarthur Papers, vol.41, A2937, p.121; Murray in *S.M.H.*, 22 November 1866; and Gwendoline Wilson, *Murray of Yarralumla*, Melbourne, 1968, pp.172-3, 287-8, 293, 299-300, et passim.

independent of their congregations. If, however, they received their stipends from voluntary contributions they were, in theory, subject to economic sanctions. The state aid issue therefore raised the question of whether authority in the churches was to filter down through a hierarchy or to reside in the congregations. This had important practical implications in conflicts between the clergy and the laity; and, on a more theoretical level, attitudes to state aid implied a stand on whether the churches should be governed on the principles of monarchy or democracy.

Protestant Dissent was in theory democratic. It was not simply an expression of opposition to state interference in religious matters, but also an expression of revolt against the structure of authority in the episcopal churches. It was natural for radical Nonconformists to incorporate this 'democratic' aspect of their religious thought into their general political outlook. The Reverend J.D. Lang, for instance, made it a proud boast that his church was in principle a republic and he found scriptural as well as political reasons for holding his democratic views.¹

The clash over democracy in the churches was exemplified not only in the conflict between Anglicanism and Dissent, but also in a split between liberals and conservatives within the Anglican communion. The conflict had been brought into the open in 1858, when liberal Anglicans had founded the Church Sentinel in order to

watch against and resist the pretensions of the hierarchy, which seeks to claim as its own exclusive and individual possession, rights and privileges which belong to the Church - thus making the Church a sort of appendage to the hierarchy, not the hierarchy to the Church.²

The Church Sentinel viewed its challenge to the Anglican hierarchy in the context of political liberalism, justifying its stand with reference to secular doctrines. It claimed that 'while the popular element is thus infusing itself everywhere',

¹R.B. Walker, 'The Abolition of State Aid to Religion in New South Wales', Historical Studies, vol.10, no.38, May 1962, p.176; cf. Robin Gollan, Radical and Working Class Politics, Melbourne, 1967, p.10.

²Quoted Turner, op.cit., p.182.

no exception should be made in church matters.¹ It therefore argued for the abolition of state aid partly on 'democratic' grounds: aid fostered an ecclesiastical despotism and patronage 'which originated in the days of nomineeism'; it was an anachronism in 'the days of responsible government and almost universal suffrage';² and it was used to build up

an overweening prelacy...to endow pet benefices for pet parsons in fashionable and would-be aristocratic localities - to raise up a priestly influence in our most populous districts and by the agency of this influence to establish and perpetuate hierarchical pretensions.³

In the Church Sentinel's view, the voluntary system would result in the election of bishops and the appointment of clergy by the people. Victory was certain, for 'Nothing can keep the people out of power; have it they will, it is the law of our race'.⁴

The question of 'popular control' of the churches was one theme in the debates on the abolition of state aid in the Council. It was emphasized most by Charles Kemp, a leading Anglican who took the conservative side in the internal disputes of his church, and John Hubert Plunkett, the Catholic Church's most prominent layman.⁵ Both quoted authorities to show 'the tyranny exercised by the laity over the clergy, and the miserable state of vassalage in which the clergy stood in respect of their people' where the voluntary system prevailed.⁶ Their examples were drawn from the United States, where civil war showed the consequences of the related evils of voluntarism and democracy. Plunkett thought that in the United States it was dangerous for the clergy to tell unpopular truths and that

¹Quoted *ibid.*, p.211.

²Quoted Robert Withycombe, 'Church of England Attitudes to Social Questions in the Diocese of Sydney, c.1856-1866', J.R.A.H.S., vol.47, pt.2, June 1961, p.98.

³Quoted Turner, *op.cit.*, p.209.

⁴Quoted Withycombe, *loc.cit.*, p.98.

⁵For Plunkett, see John Molony, An Architect of Freedom, Canberra, 1973; for Kemp, see A.D.B., vol.2, and K.J. Cable, 'Saint James' Church, King Street, Sydney, 1819-1894', part II, J.R.A.H.S., vol.50, pt.5, November 1964, pp.363, 369.

⁶Plunkett in S.M.H., 17 September 1862; Kemp in S.M.H., 25 September 1862.

'many imposters passed themselves for religious men, preaching in the style that was most palatable to their hearers'.¹ His argument simply transposed to a different context the familiar conservative complaint that political democracy enabled charlatans to ride to power by flattering the people and pandering to their prejudices.

While conservatives had few warm feelings for the United States, the best known example of the workings of the voluntary system, most liberals had little affection for the state paid clergy in Britain. The Anglican bishops in the House of Lords had been numbered among the opponents of nearly every popular reform, including the abolition of slavery and the 1832 Reform Bill,² and the Anglican clergy in general had a poor reputation with the radicals. David Buchanan, M.L.A., expressed a radical Presbyterian's distaste for their political record:

The State-paid clergy had in England always taken the side of king-craft and of aristocracy; and aided to keep down the people....In the great corn-law agitation the State-paid clergy had sided against the people, while the dissenting clergy had supported them.³

Liberals in the Council, however, were not so indelicate as to voice such criticisms, and satisfied themselves by strenuously and successfully resisting a conservative attempt to insert an amendment into the bill implying state recognition of the powers of ecclesiastical authorities.⁴

The moral effects of religion were praised by both liberals and conservatives, but it was only the latter, driven by anxiety at the triumph of radicalism, who hinted that religion was also a means of political control. The point was made in its crudest form by John Campbell, who argued that state aid

¹S.M.H., 31 October 1862.

²Donald Southgate, The Passing of the Whigs, London, 1962, pp.81, 88-9; Edith F. Hurwitz, Politics and the Public Conscience: Slave Emancipation and the Abolitionist Movement in Britain, London, 1973, pp.71-2.

³Quoted Walker, 'The Abolition of State Aid...', p.176; cf. the accusation by the liberal Anglican, Windeyer, that reform in England had been obstructed by 'the servile and contemptible constructions of the churchmen'. (S.M.H., 22 June 1860.)

⁴S.M.H., 30 October 1862.

financed the teaching of religion amongst poor people who could not afford voluntaryism, and who said:

He looked to the effects of religion in the mother country - there was no open resistance to authority, no riding down of the people by horse-guards - because the people now, instead of rebelling, suffered in patience, trusting to future reward. This was the effect of Christianity.¹

Other conservatives were less explicit, but they, too, sometimes placed the moral function of religion in a political context. When Deas Thomson was confronted with the evils of revolutionary France and republican America, he implied that religion might have saved those countries from disorder and quoted Judge Storey's doubts

whether any free government can be permanent, where the public worship of God, and the support of religion, constitute no part of the policy or duty of the State in any assignable shape.²

Anxiety at the changes in colonial society also produced a reaction in favour of state aid from conservatives who had previously opposed it, such as J.B. Darvall, F.L.S. Merewether, George Allen and Sir William Manning.³ Manning, for instance, was still inclined to oppose state aid in principle but argued for its retention because he feared that the constitution might not stand further 'organic' changes. As he put it:

It was at present the Constitution of the country that the State should give aid to religion, and he did not think they were justified in making a change in the constitution unless they saw clearly that such a change would be advantageous. He confessed that he did not like tearing our Constitution to rags. It almost seemed that of this constitution, which everyone approved some six years ago, they were soon to have not one shred remaining. The constitution of the Assembly had been totally changed; it was proposed to change the constitution of this House, and there was a proposal to make another change, of vital importance, in a matter in which a few years ago the whole community was unambiguous. He repeated, he did not like these constant changes....⁴

¹S.M.H., 31 October 1862.

²S.M.H., 25 September 1862.

³For their previous opposition to state aid, see Turner, *op.cit.*, p.146, *et passim*.

⁴S.M.H., 25 September 1862.

The conservatives also related the abolition of state aid to their general political ideology by claiming that it constituted a breach of faith with 'vested interests'. Concern for such interests was as characteristic of conservatives in Australia as in Britain, for in both countries those who benefited by them were usually conservatives. Vested interests were well represented in the Council, where Thomson, Plunkett, Manning and Merewether, government officials under the 'old régime', belonged to the 'Unpopular Class of Political Pensioners' whose privileges, despite liberal protests, been enshrined in the constitution.¹

The allegation that the Grants for Public Worship Prohibition Bill affected vested interests had no strict justification in law, for the bill merely provided for the withdrawal of state aid as the clergymen who received it died or retired. The vested interests of the clergy were therefore thoroughly protected. Conservative claims that the bill attacked vested interests rested upon the argument that the aid had not simply been given to clergymen, but to congregations who had built churches 'on the faith that stipends would be permanently paid to the Clergymen'.² The withdrawal of aid was therefore depicted as a breach of faith with the congregations. This reasoning had no legal weight and its moral force was a matter of individual perspective. The conservatives may have accepted the argument partly because liberal criticism of the financial privileges given by the constitution to displaced officials of the 'old regime' had made them hyper-sensitive about the rights of vested interests.³ However, the suspicion

¹Cf. Cowper to Young, 8 June 1861, Cowper Correspondence, vol.1, A676, n.p. Resentment at the granting of liberal pensions to displaced government officials had been one reason for popular opposition to the constitution in 1853. (See report of public meeting, S.M.H., 16 August 1853.)

²Quoted from the protest against the abolition of state aid signed by seven conservative members of the Council, J.L.C., 1862, pt.1, p.135.

³The conservatives had often demonstrated extreme sensitivity on this point. They had, for example, opposed the Pastoral Lands Assessment and Rent Bill on the grounds that it breached the government's obligation to the squatters, although many of them thought the bill otherwise a very good one. The bill was passed, and although there was a prima facie case for regarding it as illegal, it was upheld by the Supreme Court. See Douglass, Merewether, Allen, Burton, Holden, Thomson, S.M.H., 18 September 1858; Robertson, Empire, 2 October 1861.

remains that their concern for 'vested interests' was more a result of opposition to the abolition of state aid than a reason for it. Conservatives seem to have believed that the cessation of aid involved a breach of the public faith because they wanted to, while liberals rejected that argument because it suited their case to do so.

There were, of course, major themes in the debates unrelated to liberalism and conservatism as distinctive ideologies. As with the land bills and the Chinese bills, both liberals and conservatives made much of arguments appealing to assumptions common to both sides. In fact, each party used arguments based upon assumptions more characteristic of the other. For example, when the liberals claimed that the abolition of state aid was necessary to allay discontent,¹ they echoed the major reason which conservatives had given for conceding previous reforms; when the conservatives, on the basis of the large number of petitions in favour of state aid, defended it in the name of the people, they usurped the accustomed role of the liberals;² and it was equally ironic when opponents of state aid alleged that it fostered religious animosity,³ for the voluntarist churches were the backbone of Protestant sectarianism.⁴ Such arguments do not explain why liberals took one side and conservatives the other; they simply represent attempts to justify a position adopted for other reasons.

Three men who were conservatives on most issues voted with the liberals to abolish state aid,⁵ and it is not contended that the lines of division can be explained entirely in terms of

¹See, for example, Russell in S.M.H., 25 September, 31 October 1862; and Butler, S.M.H., 1 October 1862.

²Cf. protest against abolition of state aid signed by seven conservative members of the Council, J.L.C., 1862, pt.I, p.135; and Deas Thomson in S.M.H., 25 September 1862.

³See, for example, McArthur in S.M.H., 31 October 1862.

⁴Cf. Mark Lyons, 'Aspects of Sectarianism in New South Wales Circa 1865 to 1880', Ph.D. thesis, A.N.U., 1972, pp.19f, 22f, esp. n.4.

⁵G.K. Holden and E.W. Ward, Anglicans, and J.B. Watt, a Presbyterian.

liberalism and conservatism. Opposition to state aid was strengthened by the specifically religious tradition of opposition to Erastianism amongst Nonconformists and some Anglicans; and conservative support for aid was strengthened by an authentically religious tradition in its favour within the episcopal churches.

In the Catholic Church, the connection between Church and State was being reasserted with new vigour in opposition to liberal tendencies within the Church.¹ That connection was soon to receive one of its strongest affirmations in the Syllabus of Errors, which specifically rejected the doctrine of separation of Church and State, renewed the Church's claim to temporal power, denied the proposition that civil law should prevail over ecclesiastical law and condemned as erroneous the notion that 'in our age it is no longer expedient that the Catholic Religion should be regarded as the sole religion of the State, to the exclusion of all others'.² The Catholic hierarchy in New South Wales supported state aid to all denominations as second best to state aid for the Catholic Church alone, the more so because Catholics tended to be drawn disproportionately from those sections of the community which could least afford voluntaryism.³ In the Council, Plunkett gave another reason for Catholic opposition to the abolition of aid when he complained that it would leave the Church of England as 'the only church endowed by the State' because that church, unlike the others, had been given 'large and numerous grants of glebe and other lands...all of which will, at no distant day, be capable of yielding a large and increasing revenue'.⁴

¹See Austin Gough's contributions to a debate in Prospect, vol.6, nos 1, 2 and 4, 1963; and his review article of Henry Mayer (ed.), 'Catholics and the Free Society', in Historical Studies, vol.10, no.39, March 1961, pp.370-78.

²Quoted E.E.Y Hales, Pio Nono, London, 1954, p.260. See also The Catholic Encyclopedia, vol.XIV, New York, 1912, p.369.

³Cf. Walker, 'The Abolition of State Aid...', p.174.

⁴Protest by Plunkett, J.L.C., 1862, pt.I, p.135.

The Church of England, of course, rejected the Catholic Church's claim that it should be 'the sole religion of the State', but made that assertion on its own behalf. The established church in England, it had in practice been virtually the established church in Australia until the 1830s.¹ When Bourke's Church Act of 1836 had formally placed the major Christian denominations on an equal footing by giving them state aid in proportion to the numbers of their adherents, the Anglican Bishop of Sydney, W.G. Broughton, had criticized the abandonment of the Anglican establishment.² Even in 1862, Broughton's more cautious successor, Bishop Barker, spoke not of the State's obligation to support Christianity but of its obligation to support the Church of England.³

Conservative Anglicans in the Council were no doubt confirmed in their support for state aid by their church's favourable attitude towards it, but, unlike Broughton and Barker, they did not think that it should be confined to their own denomination. Indeed, their attitude towards state aid was not so much religious in origin as political. The belief that the State should support religion was part of the heritage of British conservatism, whose doctrines were reasserted with ever-increasing vehemence by colonial conservatives as they looked for support in their fight against the growing menace of liberalism. This combination of a conservative constitutional tradition and conservative anxiety in the face of the liberal challenge was far more important to conservatives in the Council than the attitude of the Church of England. The political derivation of their opinions on state aid was apparent in Thomson's speech on the second reading of the bill, which emphasized that state aid was an essential part of the British constitution - and, indeed, of all stable constitutions.⁴ The speech also stressed the complementary argument that aid had beneficial moral and social effects. In support of this

¹Cf. J.S. Gregory, 'Church and State in Victoria to 1872', in E.L. French (ed.), Melbourne Studies in Education, 1958-9, Melbourne, 1960, pp.5-11.

²Ibid., pp.16-18.

³Cited Turner, op.cit., p.241.

⁴S.M.H., 25 September 1862.

case, Thomson did not refer to the works of Anglican divines, but to the authors whom he usually cited on constitutional matters, Burke and Storey. He also quoted at length from Dr Chalmers, a Presbyterian divine who himself referred to Burke.

The political basis of conservative opposition to the Grants for Public Worship Prohibition Bill was even more apparent in the case of Manning and the other conservatives who had come to favour state aid only when the pace of political and social change had made them fear all liberal reforms. Manning clearly defended state aid from conservative motives rather than religious ones, because he admitted that he still favoured its abolition in principle. He favoured its continuation on the practical grounds that abolition would lead to the complete destruction of a constitution which had already been changed too much.¹ His opposition to the state aid abolition bill reflected the growth in conservative solidarity as colonial politics polarized between radical liberals bent on changing the political and social order which had existed before responsible government and conservatives who were driven to an increasingly indiscriminating defence of that order. The one-time opponent of state aid now became one of its strongest supporters and when the Grants for Public Worship Prohibition Bill was passed, he joined six other leading conservatives in signing a formal protest against a measure which seemed 'contrary to sound policy' and certain to prove 'deeply injurious in its effects on religion morality and social order'.²

¹Ibid. See above, p.236.

²J.L.C., 1862, pt.I, p.135.

Part 3The Debate on the Council's Financial Powers,
1861-1862

The question of the Council's financial powers was again a major issue in the sessions of 1861-62 and 1862, although the divisions which it provoked were not 'party' ones in which most liberals opposed most conservatives. Instead, most liberals sided with the conservatives and most conservatives themselves expressed opinions which differed markedly from those which they had espoused in previous years.

The question of the Council's right to amend money bills was raised early in the session of 1861-62, when Robertson decided to originate the land bills in the Council. This was a perfectly legitimate course, for it had never been suggested that the land bills, which simply regulated the disposal of Crown Lands, were money bills. They had not been introduced as money bills in the Assembly when Robertson had first brought them forward; and when they had previously been amended by the Council, not even the radicals had suggested that a breach of privilege was involved.

However, when Robertson tried to originate the bills in the Council after the swamping, Manning objected on the grounds that they were ones which 'would affect the revenue'.¹ Thomson immediately agreed, saying that he 'entertained not the slightest doubt that, to a certain extent, these were revenue bills'.² The point was raised carelessly, with no regard to the implications. Obstruction was the motive, and Thomson and Manning probably wished to repay the liberals for their behaviour over the Indemnity Bill by delaying the land bills through a similar expansion of the definition of a money bill. They realized too late that they would be the principal victims of this strategem. Their blunder was pointed out by another conservative, Charles Kemp, who saw that if the Council extended the definition of a money bill it would be unable to alter bills

¹Empire, 5 September 1861.

²Ibid.

which it had hitherto been entitled to amend. Like Thomson and Manning, Kemp believed that the Council should not exercise its technical right of amending money bills, and most other members probably shared this view. Johnson, Isaacs and the other extremists who had led the Council in asserting its right of amendment had been excluded, and at least nineteen of the twenty-five members appointed after the swamping were on record as opponents of their claims.¹ Not one of the remaining six members is known to have supported the extremists' view of the Council's powers. The conservatives therefore took to heart Kemp's warning that if the land bills were money bills they 'might find themselves in a dilemma,' for they would have to 'either take them [the land bills] or reject them'.²

Seeing his mistake, Manning now began to back down. He still thought the bills might more properly have been originated in the Assembly, but said that

He certainly had been struck with the observation of the honorable member who had just spoken [Kemp] and he was now inclined to say, that nothing in the bills could be construed into the meaning of rates, taxes or imposts.³

Robertson and Hargrave had initially dismissed the suggestion that the land bills were money bills as preposterous. Robertson pointed out that they did not impose taxes or appropriate money but simply regulated

The disposal of certain public property and the use of that property....He took it that there was a great difference between selling the property of the Crown and levying a tax upon the property of the people.⁴

¹The following conservatives and 'independents' had previously denied that the Council should amend money bills: Thomson, Plunkett, Darvall, J. Campbell, Gordon, Kemp, McArthur, Allen, Holden. (See Empire, 5 February 1857; S.M.H., 20, 21, 22 June 1860.) According to Plunkett, Wentworth had not intended that the Council should amend money bills, and Wentworth's first ruling on the matter in the Council bears this out. (Plunkett in S.M.H., 22 June 1860; J.L.C., 1861-62, p.22.) Manning's statements in the Council on 4 September 1861 are explicable only on the assumption that he thought the Council should not amend money bills. In addition to these eleven conservatives and 'independents', the eight consistent liberals thought that the Council should avoid such amendments.

²Empire, 5 September 1861.

³Ibid.

⁴Ibid.

However, further consideration brought home to him the tactical advantages of pretending that the land bills were money bills, and he withdrew them saying that 'very grave doubts might exist as to whether they ought not to be brought in in the other House of the Legislature'.¹ The bills were thereupon withdrawn and introduced in committee in the Assembly - the customary method for originating money bills.

Kemp's fears were finally brought to fruition by Wentworth, a sincere and impartial President, but one hampered by deafness² and a life-long inability to think clearly. He was asked to decide on the status of the Crown Lands Alienation Bill when it reached the committee stage in the Council and Holden proposed the conservatives' principal amendment, which was designed to prevent free selection on lands under application for purchase at auction by persons who had paid a deposit of ten shillings an acre. Robertson immediately objected that the Council could not consider the amendment because 'it involved a question of Money'.³ Manning, too, had by now accomplished a complete reversal of opinion on the bill's status, and he argued strongly against the point of order on the grounds that

they were not upon a bill either of supply or taxation. It was a matter only of dealing with the lands of the Crown, not with taxation.⁴

However, when the question was referred to Wentworth he ruled that the bill was a money bill, and that the Council was bound by its standing orders to follow the practice of the House of Lords so that it could not make the amendment.⁵ He gave a similar ruling on the Crown Lands Occupation Bill.⁶ Robertson was then able to use these decisions to block all amendments to clauses which mentioned money or which materially affected the main objects of the bills.

¹Empire, 12 September 1861.

²Murray to Parkes, 18 September 1861, P.C., vol.55, A925, pp.276-83.

³J.L.C., 1861-62, p.22.

⁴Empire, 2 October 1861.

⁵J.L.C., 1861-62, p.22.

⁶Ibid., 11 October 1861.

Wentworth's decision had wider implications. First, it seemed to reinforce the position of those radicals in the Assembly who wished to emasculate the Council by expanding the definition of a money bill. They claimed, for instance, that the Council was not entitled to amend the Chinese Immigration Bill because it imposed charges and financial penalties, but were deserted by the government and the moderate liberals, who combined with the conservatives to affirm the Council's right to amend it.¹ Whether to invoke such a broad definition of a money bill was for most liberals a matter of expedience. They were not willing to raise it to the status of a genuine constitutional principle, but simply applied it when it suited them. Since they favoured the Council's principal amendments to the Chinese Immigration Bill,² they saw no reason to pretend that they were ultra vires, although that bill had at least as strong a claim as the land bills to be considered a money bill.

Secondly, the extension of the definition of a money bill strengthened the hand of those conservatives who contended that the Council should be entitled to amend such bills. At the beginning of the session, they had been unrepresented in the Council, or almost so, but the attractions of their point of view now grew rapidly. After Wentworth's ruling that the land bills were money bills, Thomson moved that the powers of the Council in such matters be referred to the Standing Orders Committee. In so doing, he commented that

Every hon. member would admit it to be desirable after certain circumstances, that the powers of this House, with regard to money bills should be definitely settled....Until very recently the powers of this House with respect to money bills had not been so much restricted as they had been within the last few days, and much inconvenience seemed to have arisen from that restriction.³

Such re-thinking on the part of Thomson was especially significant, for he had previously led the moderate

¹Empire, 31 October 1861. Cf. Robertson's attempt to have the President rule that the goldfields bill was a money bill. (J.L.C., 1861-62, p.54.)

²Empire, 31 October 1861.

³S.M.H., 18 October 1861.

conservatives in opposing the claims of Johnson, Isaacs and others who had taken an extreme view of the Council's financial powers. It portended a mass conversion to the viewpoint of the old extremist party. Early in 1862, Wentworth reversed his ruling that the Council could not amend money bills, and immediately voted for an amendment reducing the amount of a loan bill by £500,000.¹ His change of mind was endorsed by nearly the whole Council. This was revealed when his successor, T.A. Murray, reversed the ruling yet again some nine months later, only to have the House dissent by sixteen votes to three.² The majority included Thomson, Manning, Kemp and nearly all the liberals. Only Hargrave, Bourn Russell and the conservative Plunkett stood out. Plunkett had been prominent on the select committee which drafted the constitution in 1853 and Murray had played a minor part in its deliberations. With the two liberals, Russell and Hargrave, they remained true to the select committee's intention that the Council should not amend money bills. Thomson, Manning and Wentworth, other members of the committee, had been driven by changed circumstances and their own mistakes to abandon their former position.

Part 4

The Debate on Reform of the Council, 1861-1862

The changes in conservative opinion on the financial powers of the Council were paralleled by changes in conservative attitudes towards reform of that body. It has already been shown that although conservatives in the Assembly were convinced of the desirability of an elective upper house by 1858, most of their counterparts in the Council continued to

¹J.L.C., 1861-62, pp.127, 141-2.

²J.L.C., 1862, p.125.

favour the nominee system.¹ They did not think that the Council's failure to reject the 1858 Electoral Bill constituted an argument against the principle of nomination, and even Denison's threat to swamp the Council if it rejected the Appropriation Bill for 1859-60 did not shake their faith. Consequently, less than three weeks before the swamping of 1861, they overwhelmingly rejected a bill to make the Council elective.

What enabled them to remain loyal to the principle of nomination was faith in the Governor. They believed that he would not consent to a swamping except on the conditions which had led William IV to threaten to swamp the House of Lords in 1832,² or unless the Council committed the extraordinary folly of refusing supply to a ministry which possessed the confidence of the country. Moreover, although Deas Thomson thought that he, personally, was not likely to retain his seat after the quinquennial appointments expired on 13 May 1861,³ the conservatives felt that Sir John Young could be trusted to ensure that the Council was reconstructed on a conservative basis. Wentworth, for instance, defended the nominated Council less than a week before the swamping and said that he hoped and expected that Young would not nominate unsuitable people for life.⁴

The 'unconstitutional' swamping on 10 May 1861 destroyed the conservatives' faith in the nominated Council, and their confidence was by no means fully restored when Young succeeded in having it reconstituted on conservative lines. Merewether, who before the swamping had defended the principle of nomination in one of the greatest speeches ever heard in the Council, said that 'Having been once so utterly deceived in his hopes and expectations, he would not trust again'.⁵ Consequently, although he still wanted a nominated Council, he

¹See Chapter IV, part 2, above.

²These conditions are outlined in Chapter V, above.

³S.M.H., 14 February 1861.

⁴S.M.H., 6 May 1861.

⁵S.M.H., 18 September 1862.

thought that the Governor's choice of men should be limited to 'persons who by their services in positions of high public trust had obtained the confidence of the people'. He admitted, however, that this change would not be accepted by the Assembly, and, rather than perpetuate the existing nominated Council which had so demonstrably failed, he was prepared to make the upper house partly elective.¹

Wentworth, too, thought that the Governor had betrayed his trust, so that it was no longer possible for the colonists to enjoy their right as British subjects to have an elective lower house and a nominated upper house, thereby carrying out 'the precedent of the English Constitution'.² Accordingly, he changed his mind on the vexed question of what constituted 'English precedent' and gave the following description of the type of upper house which he would have preferred had he been given sole responsibility for devising a new Council:

I should probably have insisted upon the English precedent - (Hear, hear) I should have created a high property qualification, most likely a freehold qualification alone - I should have divided the colony into four or five electorates.... I should have provided for open voting.... I would have left this machine to work in the usual way.³

Elsewhere in his speech, Wentworth pleaded for a return to the old constitution in which there had been a single, mixed chamber containing both nominees and elected members. He must have known, however, that such a proposal had no chance of acceptance. Indeed, no conservative seriously opposed the proposition that there should be two houses, with the upper house at least partly elective. Some members still had a personal preference for a nominated Council, but, perhaps mindful of conditions under which they had been offered their seats, they did not insist on their views. Dr Mitchell, for instance, wanted the Council to continue in its existing form except that its membership should be limited to not less than

¹Ibid.

²S.M.H., 11 September 1862.

³Ibid.

one half nor more than two-thirds the membership of the Assembly, but he made no attempt to have his proposal adopted;¹ and, while Sir William Manning complained that the existing Council had not yet been given a fair trial, he said that he would accept the elective principle out of deference to 'what was said to be public opinion'.²

A few members agreed with Wentworth's suggestion that the upper house should be elected by those who could meet a high freehold qualification, but this proposal had little chance of winning majority support, for the Council was now, more than ever, the representative of urban conservatism. Table XIII makes this clear:

TABLE XIII³

OCCUPATIONS OF LIBERALS AND CONSERVATIVES IN THE COUNCIL,
SESSION OF 1861-62

<u>Category</u>	<u>Occupation</u>	<u>Liberals</u>	<u>Conservatives</u>
Pastoral/ agricultural	(Pastoralists		2
	(Mixed pastoral/ agricultural	1	1
Commercial/ manufacturing	(Merchants	2	3
	(Others	3	2
Professional	(Barristers	2	3
	(Solicitors		2
	(Medical practitioners	1	
	(Retired govt. officials		2
	(Govt. officials		1
		TOTAL	9

¹S.M.H., 12 December 1861.

²Ibid.

³Based on the classifications by ideological orientation in Chapter V, above, and on the occupational details in Appendix IV.

It can be seen that all but three of the sixteen conservatives followed urban occupations, and indeed, all but one of them lived in or near Sydney.¹ Such men naturally agreed with the Sydney Morning Herald's complaint that if the Council were elected on a 'merely freehold suffrage', it would exclude

half the property of the country. It would indeed admit some very small landed interests, but it would exclude that large class - pastoral, monetary, commercial, manufacturing, and trading - which wields the chief capital of the colony.²

Most conservatives in the Council therefore took steps to ensure that the 'urban aristocracy' remained well represented when the government introduced bills to reform the upper house in the sessions of 1861-62 and 1862.

The liberal's Legislative Council reform bills were identical to the one rejected by the Council shortly before the swamping, and were referred to select committees chaired by Wentworth. On both committees, seven of the ten members were conservatives, all of whom lived in Sydney. Wentworth was the only conservative on them who was a pastoralist. The first committee did not report, and although the second committee's report was signed by Wentworth as chairman, he had little influence upon its recommendations.³ Instead of restricting the franchise to freeholders, the committee proposed a wide range of qualifications. In addition to those owning land to the value of £300, those enfranchised included short term lessees paying £50 per annum, those holding leases worth £20 per annum which had an unexpired term of twenty-one years, householders paying a rent of £50 per annum, and men with 'professional or personal' qualifications - university graduates, barristers, solicitors, medical practitioners, ministers of religion, and officers or retired officers of Her Majesty's land or naval

¹The addresses of most members are given in the Minutes of the Executive Council for the date on which they were offered seats or the day on which they were appointed. The relevant minute books are in the Archives Office of N.S.W., locations 4/1533 to 4/1541.

²S.M.H., 6 September 1862.

³Cf. Wentworth, S.M.H., 11 September 1862.

forces who were not engaged on active service.¹ These qualifications would have allowed most urban conservatives to vote, but would have disfranchised most of the artisans and labourers whose votes did much to make the liberals supreme in Sydney and the large country towns.

The prospects of urban conservatives were further enhanced by the fact that the colony was to form a single electorate, so that there would be no bias in the electoral distribution in favour of country districts. Thirty members were to be elected by the colony as a whole under Hare's system of proportional representation, with ten members retiring every three years. The conservatives' loss of electoral advantage through the removal of the weighting in favour of country districts was to be offset by a provision to facilitate plural voting. In elections for the Assembly, the effectiveness of plural voting was limited by the fact that many plural voters were unwilling to incur the trouble and expense of travelling to all the electorates in which they held sufficient property to qualify them to vote. In elections for the proposed Council, those who held plural voting rights in elections for the Assembly were to be allowed up to five votes, depending on the number of lower house electorates in which they were qualified. They were, however, to be allowed to cast all their votes in the one polling place, so that the ability of 'property' to exercise its right to additional voting power was greatly enhanced.

Urban conservatives would have had an excellent chance of being elected to the type of Council proposed by the select committee. However, a wholly elective Council would not have given representation to eminent men who were unwilling to indulge in electoral politics. To remedy this defect, the committee also proposed that the Council should contain up to ten members nominated for life. They were to be drawn exclusively from the ranks of retired Supreme Court judges, men who had been members of the Executive Council for at least two years, those who had served as elective members of the

¹Section 8 of the bill proposed by the select committee. The bill is printed in J.L.C., 1862, pp.553-70, and the report of the select committee is in ibid., pp.535-41.

legislature for at least seven years, and former Presidents of the Council, Speakers of the Assembly and Chairmen of Committees in both houses.

This clause had been introduced at the instigation of Merewether, Auditor-General before responsible government and perhaps the most able defender of the nominee principle in the old Council. He thought that while the elective members would bring sound judgment and conservative instincts to the proposed upper house, they would not be 'qualified to do justice to their opinions in debate, and to place them before the country in their true light'. The nominated members, he thought, would supply this deficiency, for they would be 'practised orators and statesmen, [who] would supply the defective organ of speech, and make the body perfect in its functions'.¹

Merewether was a polished speaker and, as a member of the Executive Council before responsible government, he was eligible to become a life nominee in the proposed Council. The liberal Edward Butler questioned his motives in proposing the nominee clause, but Merewether denied that it had been inserted 'in deference to the feelings of the old regime, for whose delicate frames the "bracing air" of an election was too rough'.² However, while he claimed that 'his eye was fixed steadily on the future, and for the future he had proposed this clause', he confirmed Butler's suspicions when he admitted that he had in mind members of the 'old regime' as suitable candidates for appointment. It was his view that

If his hon. friends by his side, who were qualified under the clause, were selected as life-members, their selection would be regarded by the whole community as an honour justly due to their long and able public services.³

Indeed, Merewether, Thomson, Manning and Plunkett, leading members of the 'old regime', would almost certainly have been

¹S.M.H., 18 September 1862.

²Ibid.

³Ibid.

made life members, for, not only were they moderate conservatives whose claims for public office were recognized even by many liberals,¹ but, as Plunkett pointed out, there were so few men in the colony qualified for appointment that there would have been considerable difficulty in filling up the ten places for nominees in the Council.²

The conservatives had been careful to ensure that the upper house would not be reduced to a stronghold of the landowners, but, more than ever, they regarded the Council as necessary to defend the 'aristocratic' interests of the community as a whole. Shaken by the changes in their society, they attempted to stem the advance of democracy by producing arguments in favour of 'property' which in 1853 they had taken for granted. The Herald asserted that preservation of the rights of property was 'by far the most elaborate task of government', for the accumulation of property was the basis of civilization. Property gave 'security in times of war, - food in times of dearth, - and employment in times of commercial distress'. It was therefore necessary to protect the 'enormous personal and exclusive interests which grow up in a highly civilized state' by 'special legislation' in the form of a conservative upper house, for it was not 'safe to trust ten poor men to vote with one rich [man] as to the disposal of his property'.³

Conservatives in the Legislative Council made a similar connection between property and civilization. Dr Mitchell thought that 'manhood suffrage and civilization could not go together' and that unless 'education, talent, [and] property were to be considered as something...we should go back to a savage state'. In his view, the government's proposals for reform of the Council took away 'the security of capital' and so struck at the very basis of society.⁴ Similarly, J.B. Darvall held that the Council should represent the propertied minority, for

¹See, for example, Empire, 10 May 1861, editorial.

²S.M.H., 18 September 1862.

³S.M.H., 6 September 1862.

⁴S.M.H., 12 December 1861.

the ignorance of majorities had disputed the movements of the heavenly bodies, and indeed, nearly all the advances of science and civilization. If the ignorant majorities had had their way, all discovery would have been at an end. And to hand over their fine country to the will of a majority would be to condemn it to too sad a lot.¹

But while the conservatives produced intellectual justifications for the Council in terms of the beneficial effects of giving representation to 'property', they were not simply trying to defend their economic interests. Rather, they were defending the total political, social and economic position of a class. In their eyes, property was linked with the intelligence, education and experience needed to govern wisely, and it formed the best practical test for distinguishing the old colonial élites which were held to possess these qualities in the highest degree. 'Property', particularly urban 'property', had been largely driven from the Assembly, and it had to find a secure home in the Council or be banished altogether from political life.

The threat to men of property had implications for conservative economic interests, but in 1861-62, these were not the interests most immediately threatened. Certainly, the land acts had discriminated against men of property, and conservatives frequently claimed that capital was being driven from the country by fear of democratic excesses. Darvall, for instance, recounted how he had 'heard an old colonist, who loved the country well, say as he left it, "Thank God I do not leave a shilling in New South Wales"'.² Yet, in context, this story was a rhetorical flourish designed to reinforce Darvall's wider objections to majority rule. For him, as for most other conservatives, the economic threat was simply one of a number of causes of conservative anxiety, and it was certainly not the most pressing. Darvall was one of the victims of the 'free selection' elections of 1860,³ and he lamented that democracy had diminished

¹S.M.H., 13 December 1861.

²Ibid.

³He had not been defeated, but had withdrawn from the contest in disgust when subjected to 'indignities' on the hustings.

that respect for character, intelligence, and education, which ought to mark the people...[it] had destroyed the intellectual status of the country, because it had caused the ostracism of those whose intelligence and independence qualified them to take part in public affairs.¹

For Darvall, the sense of personal injury at being driven from a position of power and honour was uppermost, and his speeches in this period form one long denigration of the qualities of the men who had replaced him. In his case, as in most others, the threat to conservative economic interests did not form the basis of his political position. It was simply one of many arguments embodying elements of both explanation and rationalization which he advanced to justify his opposition to men and doctrines which threatened to relegate his class to obscurity.

In opposition to the conservatives, the liberals argued that the constitution of the upper house could only be settled safely upon the basis of manhood suffrage and that any other solution would only be a 'stop-gap'. In proposing a democratic upper house, they were advocating a constitutional innovation, but this did not deter them from accusing their opponents of basing their scheme upon 'speculative' theories and ignoring traditional British constitutional doctrines. Their criticisms in this respect were directed primarily towards the conservative suggestion that the colony as a whole should form one electorate and that the Councillors should be elected by Hare's system of proportional representation. Robertson dismissed Holden, under whose influence the scheme had been introduced, as 'a well informed but particularly crotchety hon. gentleman - more theoretical than practical'.² Hargrave condemned Hare himself in much the same terms. He had known Hare many years previously, and while he allowed that he was a 'barrister of great learning, and of great seriousness of thought', he balanced this by saying that he seemed to have little 'knowledge of the working of the details of an election beyond what he had gathered from the authors he cited in his book'. This work, said Hargrave, 'might have been written by a philosopher in his study', for it was deficient both in practical details and in a

¹Ibid.

²S.M.H., 6 December 1861.

sound knowledge of British constitutional principles. In particular, he argued that Hare's system prevented the personal contacts and canvassing for votes which bound a member to his constituents under the traditional electoral procedures, and that it destroyed the principle that the member represented his electorate and all the people within it, making him instead the representative of a grouping drawn from the whole colony.¹ Thus, the liberals were able to pose as the champions of traditional constitutional principles, while the conservatives, in their anxiety to preserve the position of their class, had become the proponents of a scheme which they themselves admitted was 'new and experimental'.²

The large conservative majority in the Council easily passed the bill proposed by the select committee, and it was sent down to the Assembly, which showed little inclination to debate it and finally threw it out. Few liberals were now willing to make reform of the Council a major political issue. Unlike the liberals of 1853, they did not want a strong, conservative upper house, and their opinion of the nominated Council had been improved by the swamping and the passage of the main liberal reforms. Moreover, some advocates of a unicameral legislature like Robertson were acutely conscious that 'two elective houses would sooner or later come to a dead lock';³ and, since the status quo now favoured the liberals, they had little desire to change it. Robertson, a radical since his youth, summarized the transformation in his position which had been wrought by the political events of the past few years:

He had had a long experience of what it was like to be in a minority. For twenty years he had taken some part in the public business, not always in the position he now occupied....He, and those who thought with him, submitted to exclusion from every position of honour and emolument; they did not endeavour to rule the majority, but they did endeavour to fuse into the minds of the people those principles and ideas which they believed to be correct; and they had succeeded, and had become the majority.⁴

¹S.M.H., 13 December 1861.

²J.L.C., 1862, p.537.

³S.M.H., 6 December 1861.

⁴Ibid.

CHAPTER VII

THE DECLINE OF LIBERAL-CONSERVATIVE CONFLICT, 1863-72

It was the completeness of the liberal victory in the years 1861 and 1862 which made possible a partial revival of conservative political fortunes. After the swamping of May 1861 had demonstrated the inevitability of liberal victory, political agitation subsided and most of the more able conservatives who had been defeated at the 1860 elections were re-elected to the Assembly. Amongst those returned at by-elections before the end of 1861 were Thomas Holt, Donaldson's Treasurer in 1856; A.T. Holroyd, Chairman of Committees in 1856-7 and a future Minister for Public Works; Peter Faucett, soon to be Solicitor-General; and William Forster, Premier in 1859-60, whose desire to abolish the Legislative Council had not saved him from defeat when he sided with the conservatives on free selection before survey. The year 1862 saw the return of Saul Samuel, Treasurer in 1859-60, and of James Martin, soon to be Premier and the most gifted conservative in the parliament. In 1863, Geoffrey Eagar, the renegade liberal who had been Forster's Minister for Works, was re-elected, as was J.B. Darvall, Solicitor-General and Attorney-General in 1856-7. By 1865, the trend had gone so far that Robert Isaacs, one of the leaders of the ultra-conservative faction in the Council before 1861, was returned to the Assembly where he became Solicitor-General from 1866 to 1868, despite liberal accusations that he was so unpopular that it would be impossible to make him a judge.¹

Most of those re-elected were urban conservatives of greater ability than the pastoralists who had been almost the only survivors on the conservative benches when parliament met after the 1860 elections.² The conservatives were heartened, for it was clear that there was now a viable alternative to the

¹Empire, 2 June 1865.

²Fifteen of the twenty-one members who voted against free selection on squatters' runs in February 1861 were pastoralists.

Cowper government. When James Macarthur heard the results of the first by-elections in 1861, he described the news as 'most satisfactory' and saw in it a portent of salutary influences which would 'to some extent neutralize the ultra-democratic action of Universal Suffrage'.¹ Similarly, W.R. Piddington noticed that 'a few rich men' had been returned to the Assembly, and was so encouraged by the changed temper of the electorate that he began to hope for a dissolution and told Parkes that 'if the people who ran away were here many of them would be [returned] at the next opportunity'.²

In September 1861, Cowper had been kept in office by the fact that there was no one outside his cabinet who could have formed a government, but by 1863, the situation had changed markedly. The opposition now included a number of men of recognized ability, and the passing of the land bills, together with the abolition of state aid to religion, had cleared the way for an alliance between the conservatives and Cowper's radical critics. His government was attacked over its handling of patronage, its failure to quell an outbreak of bushranging, and the state of the colony's finances. Consequently, although Cowper had silenced his leading radical critic, James Hoskins, by making him superintendent of minor roads,³ his government was forced to resign in October 1863. The new government, formed by James Martin, contained only one minister who had been returned to parliament at the general elections of 1860. He was J.B. Wilson, a goldfields representative whose inclusion was a token of the fact that the ministry was supported by most of the radicals. The six other ministers consisted of Martin, Faucett, Holroyd and Plunkett, all conservatives, and of Forster and Eagar, equivocal liberals who had lost their seats in 1860.

¹James Macarthur to Charles Campbell, 2 November 1861, Macarthur Papers, vol.24, A2920.

²Piddington to Parkes, 21 October 1862, P.C., vol.30, A900, pp.14-21.

³P. Loveday and A.W. Martin, Parliament Factions and Parties, Melbourne, 1966, pp.33, 173, n.27. For the view that Hoskins was the leader of Cowper's radical critics, see Murray to Parkes, 18 September 1861, pp.276-83.

Some conservatives wishfully misinterpreted their recovery as a sign that the electorate was turning against democracy. However, as the Empire noted, any hopes that the new government would try to reverse the liberals' reforms were 'doomed to miserable disappointment',¹ for the return of a predominantly conservative ministry simply showed that liberalism and conservatism were becoming increasingly irrelevant to the politics of the Assembly. Nevertheless, old resentments lingered, and the conservatives welcomed Martin's ministry because it was basically conservative and provided an alternative to government by Cowper. They hoped, moreover, that Martin would be able to cure some of the maladies afflicting the colony - evils which they attributed to liberal misrule over the preceding six years. It was not until the late 1860s that most of the conservatives became sufficiently reconciled to the new order to forget entirely the ideological differences which had held them apart from the liberals.

Behind many of the conservatives' complaints was a basic dissatisfaction with the working of responsible government. They were intolerant of its 'inefficiencies' - the changes of ministry, frequent elections, the compromises and the tactical manoeuvres which were the price of power. They regretted, too, that time had been wasted in lengthy debates on 'theoretical' issues such as electoral reform. The parliament's output had been impressive from the liberals' point of view, for after immense labours most of the liberal programme had been put into effect. These achievements, of course, were lost on the conservatives, who alleged that 'practical' legislation was being neglected.² The complaints were accurate enough, if viewed from the perspective of those who made them, and they are the more understandable when it is noted that there were fewer acts passed in the first six years of responsible government than in the last three years under the old constitution.

The drop in legislative output, at least in a crude, statistical sense, was paralleled by a deterioration in the

¹Empire, 26 November 1863.

²See, for example, S.M.H., 23 August 1858, editorial.

colony's financial position as governments increased expenditure on public works.¹ The conservatives placed the blame for this squarely on the liberal government. They had long warned that one result of combining responsible government with a liberal franchise would be to expose ministries to the temptation of buying the support of the legislature by rewarding supporters with patronage and expenditure in their electorates. In 1861, for instance, R.J. Want had told the Council that, because of manhood suffrage,

political corruption had become rampant... - judgeships, prosecutorships, and other public offices of trust and emolument had been given away to individuals as the reward of political services, and whole constituencies had been so bought that they could be counted upon as pocket boroughs, which would always return the candidate who appeared on behalf of the ministerial interest.²

He also complained that universal suffrage had lifted duties from tea and sugar, removing taxation from the working classes, and that democracy had resulted in a deficit of £200,000 the previous year. Want was suffering from the sense of deprivation which had afflicted the liberals when they had 'suffered exclusion from every position of honour and emolument' during the long years of conservative rule,³ but his concern at liberal 'abuse of power' was genuinely felt. His indignation must have been even greater by the time Cowper lost power in 1863, for by then there were much stronger grounds for believing that liberal 'corruption' and mismanagement threatened the colony with financial ruin. At the end of 1861, the government had conciliated a group of members in the Assembly by finding a 'surplus' of £400,000 and introducing a Loan Bill spending an additional £500,000 on railways.⁴ The bill was criticized in the Council,⁵ but it became law in 1862. In 1863, there was a

¹See figures on revenue and expenditure in G.D. Patterson, The Tariff in the Australian Colonies, Melbourne, 1968, p.22.

²S.M.H., 25 April 1861. Cf. S.M.H. editorials, 27 February, 9 April 1858.

³Cf. Robertson in S.M.H., 6 December 1861.

⁴Cf. Loveday and Martin, *op.cit.*, p.34.

⁵S.M.H., 18 January 1862; J.L.C., 1862, pt.1, pp.141-2.

steep rise in expenditure and T.W. Smart, Cowper's Treasurer, told parliament that there was a deficit of approximately £500,000. He was, however, contradicted by Cowper, who argued that the figure was exaggerated. It was clear that, whatever the state of the Treasury was, the government could not agree upon it, and it fell when the Assembly rejected its financial proposals.

To concern over the colony's finances was added anxiety at the epidemic of bushranging which swept New South Wales in the early and middle 1860s. In the twelve months 1861 to 1862, there were fifty armed robberies in the colony, and in the next two years the number rose spectacularly. In the twelve months 1863 to 1864, there were 113 armed robberies, and the number showed no significant decrease until 1867.¹ This dramatic upsurge in lawlessness hardened conservative prejudices against the working classes - the section of society which seemed most prone to disorder and violence and least respectful of the rights of property.² In particular, bushranging revived fears that 'The old leaven of convictism [was] not yet worked out',³ a possibility which made the recent concession of manhood suffrage seem incredibly foolish.

Conservative anxieties were increased by the fact that a section of the lower orders patently sympathised with the bushrangers - something which was made clear by the rejoicing which occurred in 1864 when the notorious Frank Gardiner was found not guilty of wounding a policeman with intent to murder. The Herald supported Mr Justice Wise, a former member of the Council, in the view that 'the people of New South Wales were disgraced by the demonstrations of joy at the acquittal of Gardiner' and that there was 'deep in the heart of the community - penetrating to its lowest stratum - an antipathy to law, and especially to constables'.⁴ Robertson's description

¹R.B. Walker, 'Bushranging in Fact and Legend', Historical Studies, vol.11, no.42, April 1964, pp.206, 211, n.50.

²See the discussion of conservative attitudes towards the lower orders in Chapter IV, part 1, above.

³The Chief Justice and former President of the Council, Sir Alfred Stephen, quoted *ibid.*, p.206.

⁴S.M.H., 25 May 1864.

of Ben Hall as 'king of the bushrangers' was misread as proof that he countenanced the lawless sentiments of the 'mob' which had raised him to power. The Reverend John Morison, a conservative Presbyterian clergyman, observed that

[The] love of applause is common to young men in the bush...and it must have been highly pleasing to these desperadoes to find their names, with accounts of the robberies which they had committed, prominently mentioned in the public press, with no less a personage than the Hon. John Robertson, who had been premier, pronouncing one of them to be 'king'.¹

On a more general level, Morison attributed bushranging to the progress of liberal reforms.

Bushranging had not been heard of for about thirty years previously, and was not resumed until after the advent of manhood suffrage. It broke out when the people's passions were excited in the universal cry of 'Free selection before survey' - the right to go and settle anywhere they liked; and when the Legislature of New South Wales, pandering to the passions of the people, passed a law for them to go and settle anywhere they liked.²

Morison believed that instead of scattering the population by allowing free selection, the government should have encouraged concentrated settlement so that young men 'might be brought within the healing influences of society, and receive the benefits of education and religion'.³

Conservatives frequently accused the liberal government of encouraging a breakdown of law and order by its own corruption and, in particular, by the fact that it had appointed magistrates and justices of the peace on political grounds. The Herald alleged that some of the appointments had been 'so gross, as greatly to detract from the honour of the commission, and to destroy public confidence in those whom it includes', and it argued that the poor reputation of the justices had impaired the efficiency of the police - for 'Confidence in the magistracy means confidence in the police, and the co-operation

¹'A Clergyman thirteen years resident in the Interior of New South Wales' [Rev. John Morison], Australia as It Is..., London, 1867, p.228.

²Ibid.

³Ibid.

of both is essential to the quiet and submission of the people'.¹ That the liberals had made appointments on political grounds was generally acknowledged, and the conservatives could take little consolation from remembering the days when patronage had been theirs to distribute, or from contemplating the fact that Cowper justified his conduct in terms of English precedent:

What was the object of placing Parliamentary patronage in the hands of the Ministry if it was not that they should bestow it upon their friends. (Hear, hear.) So long as they made good appointments to the offices, the Government had a right to appoint a friend in preference to an opponent. (Hear, hear.) This was the view always taken in England....²

Conservative dislike of radical miners gave them another scapegoat for the wave of bushranging. The Herald argued, sensibly enough, that the existence of a large mining population afforded criminals cover, for the 'bushranger may assume the character of a miner, and who shall challenge him?'³ However, the argument was often put in a more extreme form. The Herald itself implied that the 'desultory' habits of mining life had turned a section of the mining population into criminals,⁴ and Deas Thomson went further, charging the liberal government with causing the bushranging epidemic by its weakness in the face of the miners' attacks on the Chinese:

Those disgraceful riots at Lambing Flat ought to have been put down in another way. If proper measures had been taken, bushranging which afterwards was so rife in this colony, would never have existed. Hall and his associates first learned to rob the Chinese, and then they practised on the English.⁵

R.B. Walker has shown the inadequacy of the conservatives' explanations of the bushranging epidemic,⁶ but their attempt to explain the outbreak in terms of their hatred of the liberals

¹S.M.H., 25 June 1863.

²Quoted Walker, loc.cit., p.211.

³S.M.H., 25 June 1863.

⁴Ibid.

⁵Empire, 17 October 1867.

⁶Walker, loc.cit., especially pp.206-9.

and their reforms was understandable enough. They saw bushranging as the first instalment of the social disorder which they had predicted would be the result of democracy, just as they viewed the state of the colony's finances and the decline in the volume of 'practical' legislation as the fulfilment of their warnings that a liberal triumph would bring financial ruin and legislative chaos. The wounds inflicted upon the conservatives by their loss of political power were deep, and healing was delayed by the satisfaction which they derived from attributing the colony's ills to the ineptitude and corruption of those who had displaced them. As late as 1865, George Allen, the Council's moderately conservative Chairman of Committees, could indulge in the sort of gloomy estimates of life in a democracy which had been a commonplace in the days immediately after the swamping:

The English mail left here yesterday Sir Daniel Cooper left by her, he only arrived about 2 mths ago - many of our old colonists have left lately and more seem inclined to go indeed I believe few who have property would stay if they could dispose of their possessions - there is certainly much... dissatisfaction at the altered state of the Colony - the democratic spirit which now prevails and which is evidently increasing has a tendency to make persons of respectability and wealth very much disgusted.¹

In the Council, most conservatives continued to make Cowper and Robertson the focus of their resentment, and this ensured that the 'party' divisions which had existed in the Council from 1858 to 1862 would not completely disappear with the settling of the major ideological issues which had provoked them. Consequently, Martin's accession to power was joyfully received in the Council, and nearly all the conservatives crossed to the government benches.²

The government's representative in the Council was Plunkett, Attorney-General before responsible government, who had decided to afford the new administration 'all the support

¹George Allen, Journal, 21 February 1865, uncat. MSS, set 477. Cooper, one time liberal speaker of the Assembly, had sided with the conservatives in 1860 and left the colony in 1861. The quotation's errors of punctuation are in the original.

²Empire, 26 November 1863, editorial.

in his power' even before he was invited to join it.¹ The main source of the feeble opposition to the ministry was Hargrave, Cowper's Attorney-General, who defended the record of the late government and told the Council that to judge by the new ministers' past conduct and announced policies, it seemed that they would make no worthwhile reforms.²

Martin enjoyed an enormous body of support in the Council. Shortly before he fell from power, Cowper had appointed four conservatives who probably opposed his government,³ and when Martin took office, he appointed four more.⁴ The new members included Robert Johnson and Joseph Docker, leaders of the extreme conservative faction in the old Council. At the same time, one liberal supporter of the Cowper government, Edward Butler, had resigned, and two more, Ralph Robey and Alexander McArthur, had gone to Britain. Consequently, conservative supporters of Martin had an overwhelming majority.

In the session of 1863-4, however, 'party' preferences had little influence on voting patterns in the Council, for Martin had his most important legislation rejected. Moreover, the government was in a minority in those divisions which exhibited most strongly the only significant 'patterned' response - one which revealed polarization for and against the position adopted by Plunkett, the government's representative. Table XIV shows the number of times members voted with Plunkett in these divisions as a proportion of the number of times they voted.

¹Empire, 3 December 1863.

²Empire, 19 October 1864.

³G.H. Cox, E.H. Lloyd, Robert Towns and William Walker.

⁴John Blaxland, Robert Johnson, E.D.S. Ogilvie and Joseph Docker.

TABLE XIV¹

LEVEL OF AGREEMENT WITH REPRESENTATIVE OF MARTIN GOVERNMENT:
VOTES IN THIRTEEN DIVISIONS WITH STRONGEST 'PATTERNED' RESPONSE,
SESSION OF 1863-4.

<u>Government Voters</u>		<u>'Independents'</u>		<u>Anti-Government Voters</u>	
Blaxland	10/10	Kemp	8/13	Allen	0/3
Byrnes	6/6	Macfarlane	6/9	G.H. Cox	0/2
J. Campbell	10/10	Walker	2/5	Docker	0/10
Hargrave	7/7			Johnson	1/13
Gordon	1/1			Lloyd	0/4
Murray	12/12			Manning	0/10
Ogilvie	5/5			Mitchell	0/11
Plunkett	13/13			B. Russell	1/8
(Govt. rep.)				Scott	1/7
Ward	6/6			Thomson	1/11
				Towns	2/10
				Watt	2/11

It can be seen that Hargrave, a declared opponent of Martin's government, voted with it consistently, and that men like Thomson, Mitchell, Johnson and Docker, who supported the government in principle, nevertheless voted against it. In fact, those who voted with the government included most of those who had voted with Cowper in the previous session, while most of those who had opposed the Cowper government now voted with Martin. Clearly, attitudes towards the government were not the main factors which shaped this pattern of response.

Most of the 'patterned' votes were on the government's Customs Duties Bill, which increased tariffs upon a wide range of goods. The government's representative in the Council,

¹The method by which the divisions have been selected is explained in Appendix III, where the divisions are listed. Some of the divisions were on a scab in sheep bill, and the question involved was the same as that raised by the Customs Duties Bill - the right of the Council to amend money bills. Three divisions were on a bill concerning insolvency which provoked a 'party' response because it had been introduced by the Cowper government and was regarded by some conservatives as a suitable issue on which to refuse to submit to the Assembly. Cf. Manning, Empire, 10 December 1863.

Plunkett, claimed that the bill was not protectionist,¹ but was simply designed to raise additional revenue to compensate for the deficit incurred by the previous government. However, Martin favoured protection and the bill was praised by the protectionists as one embodying their views and condemned by free traders for the same reason.

Protectionist doctrines had their greatest appeal amongst the small manufacturers and artisans who provided much of the backing for the liberal movement. Petitions in favour of protection were signed mainly by cabinet makers, coach makers, saddlers, harness makers, curriers, tanners, tailors and men described less precisely as 'mechanics and producers'.² Free trade petitions, on the other hand, were generally signed by merchants, bankers, and people who revealed their comfortable social and economic position by complaining that 'The Colonial rates of wages and the absence of suitable workmen' had caused a shortage of some types of shoes.³ Protectionist rallies outside parliament saw the artisans well represented and had a strong radical orientation. Martin's Treasurer, Geoffrey Eagar, was praised and Cowper, the working man's erstwhile hero, was condemned as the ally of conservative merchants. At one meeting, a Mr Vickery alleged that 'many of the merchants who had opposed Charles Cowper now banded together in one clique to replace the former ministry in power';⁴ and the radical young cabinet maker, Ninian Melville, provoked an enthusiastic response with the claim that

They, as mechanics, had a far greater stake in the country than the merchants had (Cheers)...the late Premier was in league with the merchants against the mechanics. (Cheers.) And the merchants dared to say that if the present Government sought to impose on them the tariff they would put them out. (Cheers.) Were they prepared to give up the country to the merchants? No, they must say rather 'we will fight you inch by inch'.⁵

¹S.M.H., 13 February 1864.

²V. & P. (L.A., N.S.W.), 1863-4, pt.II, pp.1009, 1011, 1013, 1015, 1017, 1019, 1021, 1023, 1029.

³Ibid., 1025, 1027, 1031, 1033, 1035.

⁴Empire, 7 December 1863.

⁵Ibid.

In the Assembly, the Customs Duties Bill was strongly supported by radicals like W.B. Allen, D.C. Dalgleish, Robert Wisdom and Robert Stewart, who had close links with the small manufacturers and artisans who were agitating for protection; it was also supported by most of the conservatives, who generally disclaimed protectionist sympathies and seem to have voted for the bill just to keep the government in office.¹ Thus, the protection issue had consolidated Martin's radical support and not alienated the conservatives, so that the bill passed its third reading by twenty-seven votes to twenty-four.

The bill was assured of a hostile reception in the Council, which supported Martin for his conservatism but does not seem to have contained a single avowed protectionist. Four of the five liberals opposed the bill on the second reading, but it was passed by twelve votes to ten with the support of most of the conservatives, who declared that they would remove all its protectionist tendencies in committee. When the bill reached the committee stage, the strong voting pattern recorded above in Table XIV emerged. This pattern was not primarily a reflection of different attitudes towards protection, for all members were more or less united in opposition to that doctrine, and most claimed that the bill had protectionist elements which they abhorred. Instead, the main question involved in the divisions was whether the Council should choose to exercise its 'right' of amending a money bill by striking out its protectionist elements, or whether it should avoid the possibility of conflict with the Assembly by rejecting the bill outright. Thus, Hargrave, a staunch free trader and an opponent of the Martin government, voted consistently with the government in order to prevent amendments in committee. In fact, of the nine members who consistently supported the government in the 'patterned' divisions on the bill, four explicitly argued that the Council should not amend it because it was a money bill,² and one more presumably took the same

¹See the divisions on the second and third readings, V. & P. (L.A., N.S.W.), 1863-4, pt.1, pp.1001, 1038; and the 'Political Summary' in S.M.H., 21 May 1864.

²Hargrave, Murray, Plunkett, Gordon. See S.M.H., 1, 13 February 1864.

view, for he opposed the bill on its second and third readings.¹ The four other members who sided with the government included Charles Campbell, who denied that the bill was protectionist,² and E.W. Ward, who may have taken the same view because he thought the Council entitled to amend the bill³ but voted for it in Committee. The opinions of the remaining two are not known.

Fifteen members chose to assert the Council's right of amending the bill in committee, and its 'protective' features were largely eliminated. However, some of those who voted for the amendments were content simply to make a symbolic assertion of the Council's financial powers, and they had no desire to bring about a clash with a conservative government on the issue. Others were dissatisfied with the amended bill because it would have made them pay more for champagne and sparkling wines - 'rich men's' drinks for which a tariff had been retained after Plunkett had argued that the lower orders would take it badly if such beverages were untaxed while the poor man's rum and gin were subject to heavy duties.⁴ Consequently, most of the conservatives joined with the liberals to oppose the bill on the third reading and it was thrown out by fifteen votes to five.

The Council's destruction of Martin's financial policy obscured the fact that all but a few of its members supported his government. When Cowper was returned to power in 1865, he told the Governor that his colleagues had complained of their weakness in the Council, but Young said that this did not constitute grounds for additional appointments, observing that 'the financial scheme of the late ministry was rejected in the Council, while yours was passed with only the amendments which you were able to adopt'.⁵ What Young said was true, but there was substance in the ministers' complaint that they lacked support in the Council. In the session of 1863-4, most members

¹Byrnes.

²S.M.H., 1 February 1864.

³S.M.H., 13 February 1864.

⁴Cf. Plunkett, S.M.H., 19 February 1864.

⁵Young to Cowper, 3 July 1865, Cowper Papers, D60, n.p.

of the conservative majority had voted against Martin on the tariff question as a matter of principle and economic self-interest, all the time expressing friendly intentions towards the government. When Cowper regained office, however, attitudes towards the government and towards controversial parts of its legislation coincided, for its bills sometimes touched upon matters of liberal and conservative principle. 'Party' in its old form became once more the basis of 'patterned' voting in the Council, the government gaining its main support from the few liberals and the conservatives generally voting against it, in some cases confessing their hostility to the government as well as to its measures.¹ The weakness of the government is revealed by Table XV, which shows the proportion of votes which members cast with the government's representative in those divisions which exhibit the most strongly 'patterned' response.

TABLE XV²

VOTING RECORD OF LEGISLATIVE COUNCILLORS IN TEN DIVISIONS
SHOWING STRONGEST 'PARTY' RESPONSE, SESSION OF 1865

<u>'Ministerialists'</u>	<u>'Independents'</u>	<u>'Opposition'</u>
Gordon 5/5	Allen 1/2	A. Campbell 2/8
Hargrave (Govt. rep.) 10/10	Blaxland 4/7	J. Campbell 2/7
Macfarlane 5/5	Byrnes 2/3	J. Chisholm 2/8
B. Russell 4/4	Murray 3/5	G.H. Cox 0/3
Scott 1/1	Plunkett 3/7	Docker 0/10
		Icely 0/9
		Johnson 0/7
		Lord 0/3
<u>Unclassified</u>		W. Macarthur 0/5
Watt 1/1		Manning 0/8
		Ogilvie 0/2
		Thomson 0/7
		Towns 0/3
		Walker 0/4

¹See below, this chapter.

²The divisions are listed and the basis of their selection discussed in Appendix III, below.

Members have generally been classified as 'ministerialists' if they cast more than two-thirds of their votes with the government's representative, and as members of the 'opposition' if they cast more than two-thirds of their votes against him. However, J.B. Watt has not been classified as he cast only a single vote, and it was not consistent with his previous political record. Moreover, in 1865 he joined other conservatives in deploring the effects of responsible government and condemning the land law.¹ In all other cases, the classification of members according to their voting record seems to be an accurate indication of their opinions. All those who voted as members of the opposition had long been identified with the conservative cause, and all the ministerialists except Gordon had been consistent liberals. Gordon had been a liberal until 1860, when his opposition to free selection before survey had made him a strong opponent of democracy. However, he seems to have remained a supporter of the Cowper government, and sometimes showed that he retained residual liberalism on issues not touching land and democracy.² Such issues were to the fore in 1865, and, as a wine and spirit merchant, he had been confirmed in his support for Cowper by Martin's attempt to impose duties on imported wines and champagne. He therefore gave Cowper consistent support in 1865.

Unlike Gordon, most members voted with those with whom they had acted in 1860-61, for the session of 1865 revived some issues which had been the source of acrimonious division in the past. One such issue was the Berry affair. It has already been noted that in 1859-60, the Reverend J.D. Lang had inspired the inclusion of part of Alexander Berry's great rural estates in the Shoalhaven municipality, so that it would be subjected to rates.³ The Conservatives believed, perhaps correctly, that the government had tacitly supported Lang's attack by allowing the municipality to be incorporated illegally and by ignoring Berry's pleas for redress. Consequently, most of them sympathized with Berry when he refused to pay his rates and

¹Empire, 1 June 1865.

²Gordon is discussed in Chapter V, above.

³See Chapter IV, part 3, above.

took the mayor and the bailiff to court for seizing some of his property in lieu of rates. Their sympathy turned to applause when, in a series of court cases, the Supreme Court ruled the collection of rates invalid on the grounds that the municipality had been incorporated illegally and issued an order restraining it from making further claims on Berry.

The court's ruling threw into doubt the legality of other municipalities and, after the Council had rejected a bill to rectify the situation,¹ the government decided that the defendants should appeal to the Privy Council. Since they were poor men, the government paid their costs, and it also met the expenses which they had incurred in the Supreme Court, stating that they had been the victims of a mistake in the municipal boundaries for which the government alone could be held responsible.² This money was spent in the anticipation of parliamentary approval and was included as part of the supplementary estimates in the Appropriation Bill for 1865.

In the opinion of most conservatives, these payments were simply part of a continuing campaign of persecution which the liberals were conducting against Berry, and there were bitter exchanges when the Appropriation Bill reached the Council. Robert Johnson, Berry's solicitor, recited the long history of 'persecution' to which his client had been subjected, and moved that the sum compensating Berry's opponents for their expenses should be struck from the bill.³ Hargrave, defending the government, accused Johnson of playing upon Berry's 'sensitive' mind for pecuniary gain. He alleged that Johnson, who had already received fees of £1,700 for his services in the case, was one of those 'who derived very great benefit from the agitation of this matter', and that there was no telling 'how much more the honorable member might draw, in his professional capacity, from other actions that Mr. Berry might be influenced to bring'.⁴ Hargrave was in his turn made the subject of a

¹S.M.H., 8 May 1861.

²Hargrave in Empire, 10, 15 June 1865.

³Empire, 15 June 1865.

⁴Ibid.

malicious attack by Joseph Docker, who surmised that 'they would have a judge on the bench that would support a case of oppression by a legal decision' - a reference to rumours that Hargrave was about to be appointed to the Supreme Court.¹

Other conservatives agreed with Johnson and Docker that the government had acted badly, but they were not prepared to provoke a conflict with the Assembly by amending the Appropriation Bill. Indeed, it must be doubted whether Johnson had ever had any intention of pressing his amendment, for, after several members had expressed their opposition to it, he withdrew it with the comment that he was 'quite satisfied with the debate that had taken place'.² What further satisfaction he required must have come little more than a week later when Hargrave received his anticipated elevation to the Supreme Court and suffered the humiliation of having his swearing in boycotted by every barrister in the colony.³

Clashes between liberals and conservatives were also provoked by another case of 'injustice'. The matter had arisen when proprietors of coal fields at Minmi in the Hunter Valley, who were absent in Britain, ordered their agent to stop all payments to men working in the mines. Payment was not even to be made for work already done. The miners had suffered heavy losses in recent floods, and the loss of pay left them in severe distress. In an effort to enforce payment, they appealed to the courts, only to discover that they could not gain justice under the Masters and Servants Act until the mine-owners had appeared in person before the bench to show cause why they should not be forced to pay. Since the mine owners were in Britain and could not be compelled to return, redress was impossible.⁴

In order to remedy the situation, a liberal member of the Assembly, A.A.P. Tighe, introduced a Coal Fields' Regulation

¹Ibid. For rumours of Hargrave's appointment, see Empire, 2 June 1865.

²Empire, 15 June 1865.

³Article on Alfred Cheeke in A.D.B., vol.3.

⁴The clearest explanation of the case is in Empire, 5 June 1865, editorial.

Act Amendment Bill to enable miners to enforce just claims on absentee proprietors by applying to the courts for an order of payment which could, if necessary, be enforced by the sale of mining machinery or any other goods which the proprietors had in the colony. Supporters of the bill argued that such special legislation was necessary in order to put the miners on the same footing as employees who could enforce payment under the Masters and Servants Act, and the bill passed the Assembly with little difficulty.

When the Bill reached the Council, Joseph Docker, a Hunter Valley landowner, took charge of its emasculation. He denounced it as 'class legislation' and, professing a desire to put the miners on the same footing as all other employees, moved that the provision for the recovery of wages should be struck out in favour of a simple statement that the provisions of the Masters and Servants Act applied. The amendment was approved by most conservatives who were present and was carried by eight votes to three.¹

In the Assembly, the amendment met a bitter reception. One member alleged that he had information that the colliery owners had lobbied the Council, and it was pointed out again that the miners, unlike most other employees, were not properly protected by the Masters and Servants Act.² The Empire, too, made an impassioned appeal on behalf of the hundreds of miners and their families who were suffering 'cruel hardships from a cause that does not affect any other class of men' and who would be made 'the victims of injustice and want during these winter months, to satisfy the imaginary requirements of a perfect theory of jurisprudence'.³ Docker, however, still 'did not see why there should be special legislation for coal miners'⁴ and the bill was discharged when it was returned to the Council.

¹S.M.H., 18 May 1865.

²S.M.H., 3 June 1865.

³Empire, 5 June 1865.

⁴Empire, 10 June 1865.

Most members of the Council thought the plight of a few hundred coal miners a minor affair in comparison with the government's financial policy. In an effort to reduce the accumulated deficit, which amounted to perhaps £800,000, and to meet payments on loans from the banks, the government introduced three measures to raise additional revenue: a Customs Duties Bill, which raised the existing tariff on all items except tea, sugar, brandy and gin by 20 per cent; a Package Bill, which imposed an additional duty of one shilling per 'package' on all imports except livestock, flour, wheat, sugar and tea; and a Stamp Duty Bill, imposing taxes on a wide range of business transactions, down to the issue of promissory notes.

The conservatives conceded, albeit grudgingly, that these bills were necessary to save the colony from ruin, and they did not oppose them in principle. However, the debates which took place crystallized conservative dissatisfaction with the conduct of public business since responsible government and led to strong outbursts of 'party' feeling. John Campbell, for instance, thought the 'deplorable condition of their finances' made the Stamp Duty Bill necessary, but he regarded it as 'a hateful inquisitive measure', and his speech on the second reading developed into a diatribe on the evils of responsible government:

He wondered what they were drifting into under responsible government, which was ruining the country. He was disappointed with the working of responsible government. In Italy [another example of liberal misrule] they were in the same way running rapidly into debt. Under responsible government there was a tendency to run into great extravagance....The country was not now what it was seven years ago. He did not object to free selection, but let it be so controlled as to let other parts of the country that would be profitably occupied be not interfered with, so that some profits might be made, for without profits there could not be a revenue....It came to this, that the Upper House had more of the confidence of the public than the Assembly.¹

In Campbell's mind, responsible government, European liberalism, Robertson's land acts and the colony's financial state were a jumble of inter-connected evils, and a debate on a financial

¹Empire, 1 June 1865.

measure like the Stamp Act was always likely to elicit a stream of complaints about the condition of the colony as a whole.¹

Other members also connected the colony's parlous state with popular government, land reform and the 'incompetence' of liberal ministries over the preceding three years. S.D. Gordon consistently supported the government in divisions, but he was still enough of a conservative to 'agree with Mr. J. Campbell in the view that those who had nothing ruled those in the country that had something', to criticize the 'extravagant system of expenditure of the past few years', and to express the view that 'had their revenue been properly administered their income would have been found amply sufficient'.² Another merchant, J.B. Watt, thought that Campbell 'had hit the nail on the right head' and said that 'their financial position was a just retribution on them for the political course they had been pursuing for the past few years'. In particular, he thought the colony's revenue would be increased by giving the squatters longer tenure or extending to them the advantages enjoyed by free selectors.³

Watt's suggestion was no doubt approved by Deas Thomson, who thought 'the present financial difficulties were due to the alteration in the land law' and to government extravagance.⁴ Thomson joined other conservatives in condemning Cowper and in frankly confessing that he was 'an admirer of the Martin Ministry more than the present Government'.⁵ Blame for the current difficulties was bandied back and forth across the house as the conservatives tried to pin it upon 'the corruption and maladministration'⁶ of the liberals while Hargrave argued that the deficit was due to the fact that he and his colleagues

¹For another example of this, see Campbell's speech on the second reading of the Customs Duties Bill, Empire, 10 June 1865.

²Empire, 1 June 1865.

³Ibid.

⁴Empire, 10 June 1865.

⁵Empire, 1 June 1865.

⁶Johnson, Empire, 10 June 1865.

had been preceded in office by a government of 'utter incapacity'.¹

The polemics shrouded the fact that members on both sides of the house were determined to remedy the colony's financial situation. It only remained to decide which classes should bear the burdens. The conservatives uniformly lamented the fact that tea and sugar, the poor man's 'luxuries', were exempted from the increased charges in deference to 'the clamour of the mob'.² However, following British precedent, they refused to amend the bills to impose duties upon those commodities, for that would have been tantamount to asserting that the Council had the right to originate a tax - a claim which no conservative had ever made. They were not so reticent when it came to reducing charges. On the motion of Joseph Docker, ever the defender of the propertied interests of the Hunter Valley, the package duty on 'ores for smelting' was struck out, and three amendments were made to the Stamp Duties Bill. The provision that existing promissory notes should be stamped was omitted after the merchant, Alexander Campbell, had pointed out that it would cost the banks between £7,000 and £8,000. The action was bitterly criticized by Hargrave, who pointed out that Campbell and two of his supporters were bank directors, and that 'they had, therefore, a pecuniary interest in the vote taken'.³ His point of order was dismissed by the Chairman of Committees, who told the house that he himself was 'a shareholder and chairman of one of the banks', so that he 'was in much the same position as those honorable members objected to'.⁴

The second amendment to the Stamp Duties Bill provided that it should expire on 31 January 1868, a move designed to ensure that it would be used only to remedy the existing difficulty and not become a permanent imposition. The third change, introduced on the motion of Sir William Manning, transferred some powers from the minister of the day to a

¹Ibid.

²Towns, *ibid.* Cf. speeches on the same day by Thomson, Plunkett, Docker, A. Campbell and Johnson.

³Empire, 7 June 1865.

⁴Ibid.

commissioner - a step in line with the conservative desire to limit the 'evils' of ministerial responsibility by delegating to boards and permanent officials powers which liberal politicians could be tempted to use for political purposes.¹ Hargrave described Manning's purpose accurately enough when he said that he 'hated responsible government, and therefore he would have those duties to be performed by a commissioner'.²

When the bills were returned to the Assembly they were, of course, immediately laid aside on the grounds that the Council had committed a 'breach of privilege' by amending them. However, the government then introduced two new bills embodying all the Council's amendments except the one which reduced ministerial powers under the Stamp Duties Bill. This course of action was condemned by some liberal politicians and by the Empire as a piece of 'undignified truckling...to the nominated chamber',³ but the bills rapidly passed both houses. Thus, while the Council and the Assembly had kept their respective privileges intact, the colony gained two measures which, with the increased tariff, helped to restore the public finances and lay the groundwork for conservative acceptance of the new order.

The session of 1865 was the last in which 'party' in the old sense formed the basis of political divisions in the Council. Martin had reduced government expenditure in 1864 and Cowper continued the process in 1865, so that the colony's finances for that year showed a surplus - the first since 1859.⁴ In the session of 1865-6 there were therefore fewer grounds for conservative complaints, the more so as Cowper was now represented in the Council by a veteran of the 'old régime', John Hubert Plunkett, whom the Governor had persuaded to accept the post of Attorney-General.⁵ Plunkett was slightly embarrassed by the appointment, and took pains to explain to his

¹See, for example, S.M.H., 13 November 1857, editorial.

²Empire, 3 June 1865.

³Empire, 13 June 1865.

⁴See the table in G.D. Patterson, The Tariff in the Australian Colonies, 1856-1900, Melbourne, 1968, p.22.

⁵Plunkett to James Macarthur, 2 September 1865, Macarthur Papers, vol.30, A2926.

friend James Macarthur that he had accepted it only 'for the honor of the Bar and the credit of the Country' for fear that the government might be forced to appoint an attorney or an 'unfledged' barrister.¹

Plunkett no doubt dreaded the prospect of being called upon to defend liberal legislation in the Council, but the situation did not arise, for the ministry was disintegrating and fell in January 186~~2~~⁶ before any controversial legislation had been debated. Cowper was succeeded by Martin, who headed a coalition much more liberal than the ministry which he had formed in 1863. His coalition partner and Colonial Secretary was Henry Parkes, and four of the seven ministers had supported most liberal reforms during the previous decade.² However, the Postmaster-General and representative of the government in the Council was Joseph Docker, and it was to that arch conservative that fell the task of securing the passage of the last major reform whose shape was inspired by the liberalism of the late 1850s and early 1860s - Parkes' Public Schools Bill of 1866.

The Public Schools Bill resurrected some of the issues which had been debated during the contest over the abolition of state aid to religion in 1862, for it placed new restrictions on the granting of aid and brought those schools which accepted public funds largely under the control of the state. The bill's main features in this respect were:

1. Replacement of the Denominational Schools Board and the Board of National Education with a single Council of Education. This body was to control all elementary schools in receipt of state aid - hiring and firing teachers, conducting inspections and framing regulations for the conduct of all secular activities.
2. The imposition of stringent restrictions on the granting of aid to denominational schools. No money was to be given to schools which had fewer than forty pupils or which could not meet regulations designed to ensure that they did not unnecessarily duplicate the functions of state schools.

¹Ibid.

²Namely, Parkes, Eagar, Wilson and Byrnes. Martin, Docker and Isaacs were conservatives.

3. There was to be no state aid to finance the building of new denominational schools.
4. All denominational schools in receipt of aid were to admit children of any faith.

The bill allowed 'non-denominational' religion to be taught as part of the public schools' secular instruction, and it also provided that clergymen were to be admitted to the schools for up to one hour a day to teach the doctrines of their separate churches. Moreover, religious instruction in denominational schools was to be left entirely under the control of the churches. Notwithstanding these provisions, some of the bill's supporters saw it as a stepping-stone to wholly secular education. Alexander Campbell, a conservative on most issues but a Presbyterian, wanted clergymen banned from the schools altogether, and rejoiced that

There was no doubt that the intention of the bill was to do away with the Denominational system altogether. There were certain vested interests that could not well be interfered with rashly or suddenly, and therefore the bill proposed to introduce the new system in a modified manner, and to allow the Denominational system gradually to die out....His own idea would be to introduce a national system at once. He had been brought up under the parochial system which existed in Scotland, and it was admitted to be the most perfect system of education in the world.¹

Similarly, T.A. Murray, who had bitterly opposed the introduction of parliamentary democracy in the late 1850s but who now largely endorsed the spirit of liberalism, rejoicing in the reforms which it had brought,² defended the bill in a speech with strong anti-clerical overtones. He had been described by Archbishop Polding as a man who belonged to the religion of 'the unattached',³ and he bitterly attacked the sectarian doctrines of the Catholic Church to which he had once

¹S.M.H., 16 November 1866.

²The evolution of Murray's views may be traced in, for example, Murray to James Macarthur, 27 April 1859, Macarthur Papers, vol.29, A2925, pp.271-9; Murray to Parkes, 27 December 1860, P.C., vol.55, A925, pp.259-65; Murray in Empire, 10 June 1865.

³Gwendoline Wilson, Murray of Yarralumla, Melbourne, 1968, p.293.

belonged, expressing pleasure that 'the object of this Bill was to put these things down, and to prevent men's minds from being imbued with such notions'.¹ He also recounted how an Anglican prelate had given him a book which distorted the findings of science to make them harmonize with scripture. He told the Council that

When he found that such a work as this could be issued and read in the present age...he had at once seen how dangerous it must be to entrust the charge of the children to men such as these, who would give their minds a wrong bias in youth, from which they would perhaps never recover.²

Murray therefore advocated the total exclusion of the clergy from the schools.

Joseph Docker, the government's representative, defended the bill in much more moderate terms, pointing out that ministers of all denominations would be given liberal access to public schools. He was therefore able to claim that these schools provided more comprehensive denominational instruction than church ones, for the latter taught the doctrines of only one church although they usually had pupils of varied religious persuasions. For him, the most pressing reason for supporting the bill was economic rationalism: there was no place for subsidizing a proliferation of denominational schools in areas where a single public school was sufficient.³

Docker's defence of the bill was calculated to appeal to fellow conservatives who thought highly of the moral influence of religion but were equally concerned that government funds should not be wasted upon unnecessary projects, whether roads, bridges or schools. The bill was, moreover, less radical than one which Cowper had proposed in 1863.⁴ Consequently, only two conservatives showed that unrelenting hostility to the bill expressed by most Catholic and Anglican clergy out of doors. They were Plunkett, the Council's only Catholic, and John Campbell, a devout Anglican. Campbell thought the bill 'a very

¹S.M.H., 22 November 1866.

²Ibid.

³S.M.H., 15 November 1866.

⁴Mark Lyons, 'Aspects of Sectarianism in New South Wales Circa 1865 to 1880', Ph.D. thesis, Australian National University, 1972, pp.34-5.

cruel one' and argued that

if you could not entrust the education of children to clergymen or to those appointed by them, he did not know who could be entrusted with it...as a member of the church of England, he thought it his duty to oppose the thin end of the wedge. He objected to all religions being taught in one school - it was repugnant to his feelings....He did not see why the Denominational system, which had done so much good, should be done away with.¹

Campbell spoke in terms which would have been appropriate to an Anglican bishop, and on most points was unable to carry any substantial body of opinion with him in the Council. He hit a more effective note, however, when he argued that by extending government control of education the bill would lead to corruption. Plunkett, realizing that this argument appealed to conservative indignation at the abuse of patronage which was supposed to characterize popular governments, took up the cry with greater force and argued that since the Council of Education was to consist of government appointees with the Colonial Secretary as its statutory president, Parkes would be able to dismiss all those who disagreed with him, while the government as a whole would face additional temptations to corruption.²

Most conservatives agreed with this argument, and the provision that the Colonial secretary should be statutory President of the Council of Education was struck out in committee. Most also supported Campbell and Plunkett by pushing through an amendment to allow the owners of denominational schools to appoint teachers subject to approval by the Council of Education; and they liberalized the clauses which restricted aid to denominational schools, although the restrictions were by no means abolished.

Most conservatives were, however, unwilling to go further, for they badly wanted the bill to pass. There were few, if any, conservatives in New South Wales who wanted to keep the poor ignorant in the hope that they would not become discontented with their station. In their view, education and conservatism went hand in hand, and they constantly described the radicals

¹S.M.H., 16 November 1866.

²S.M.H., 15 November 1866.

as men of little education. G.K. Holden, who had resigned from the Council in 1863 and become chairman of the Board of National Education, thought that education elevated the poor to the level of the rich, making them submit cheerfully to law and posing a barrier to 'the rashness of the merely speculative politician'.¹ In 1860, he joined with Sir Alfred Stephen and other conservatives in proposing that the revenue from duties on tea and sugar should be used to provide free and universal primary education. Holden justified the proposal with the argument that 'to put popular institutions into the hands of the community without taking proper measures to educate them was equivalent to putting gunpowder into the hands of children'.²

Most conservatives were prepared to grant liberal aid to denominational schools, but they were convinced that education was too important a matter to be entrusted to the voluntary efforts of the churches. In 1848, conservative laymen had been the sponsors of educational reforms which led to the establishment of an efficient system of national schools during the 1850s; and if Deas Thomson, an enthusiastic supporter of national education, had had his way, there would have been a Minister for Public Instruction from the first day of responsible government - something which was not finally achieved until 1880.³ Consequently, in 1866, the conservatives supported many aspects of a bill which seemed likely to make significant improvements in the education system. The Sydney Morning Herald, which, as the organ of conservative Congregationalist opinion, was favourable to the bill on several grounds, defended it on behalf of the conservative minority:

If by extending education we can propagate a practical conviction that we have all equal rights and that the minority ought not to be trampled on by the majority, and the majority is nevertheless entitled to protect itself from the tyranny of a minority, we shall have accomplished much.⁴

¹Quoted A. Barcan, 'Opinion, Policy, and Practice in N.S.W. Education, 1838-1880', Ph.D. thesis, Australian National University, 1962, p.XIII of the appendices.

²S.M.H., 5 January 1860.

³Cf. S.M.H., 5 January 1857. From 1873, there had been a Minister of Justice and Public Instruction.

⁴Quoted Barcan, op.cit., p.240.

Similarly, when Parkes told James Macarthur, who had recently been appointed to the Council, that he was afraid the bill would be lost in the Assembly if it was amended in the upper house, Macarthur replied that he disliked some aspects of the legislation, but would be sorry to see it defeated because its main principles were 'deserving of all support'. He thought that most of the opposition to the bill in the Assembly had been 'factious & unjustifiable', and was confident that there would be 'no serious attempt of the same character' in the Council.¹

With both liberals and conservatives agreed on the bill's basic principles, compromise between the Council and the Assembly was possible. The Assembly agreed to the Council's amendment stopping the Colonial Secretary from being, ex officio, president of the Council of Education; it also accepted an amendment reducing from forty to thirty the number of pupils which a denominational school had to have in order to qualify for state aid.² However, it successfully resisted the Council's attempts to water down more elaborate restrictions on aid and to allow the churches to appoint teachers to denominational schools.³ The bill therefore passed into law with its main features intact.

The bill's passage marked the final dissolution of the old liberal and conservative groupings in the Council. It was the product of a ministry which combined both liberal and conservative elements; it was guided through the Council by that chamber's most conservative member;⁴ it was strongly supported there by two of the three liberals of the late 1850s and early 1860s who remained active members of the Council;⁵ and those who

¹Macarthur to Parkes, 4 November 1866 and Parkes to Macarthur, 2 November 1866, in Macarthur Papers, vol.30, pp.393-408.

²J.L.C., 1866, pt.1, pp.141, 147. The Assembly also accepted an amendment placing the Council of Education under the control of the Governor and Executive Council like 'any other Department of the Public Service'.

³Ibid., pp.142, 152. The Assembly also resisted attempts to resurrect the class of non-vested schools. (Ibid., p.145.)

⁴Docker. Robert Johnson, his only serious rival, died on 6 November 1866, eight days before the debate on the second reading of the Public Schools Bill.

⁵Byrnes and Russell. The other liberal, Weekes, supported all conservative attempts to amend the bill.

opposed the bill or tried to amend it were in almost every case conservatives who favoured the government. Moreover, although the extent of the restrictions on denominational schools made the reform, in some respects, a distinctively liberal one, few conservatives were entirely unhappy with the change. The bill was an outstanding example of the 'practical' legislation which they had demanded when the parliament was preoccupied with 'theoretical' reforms, and it marked the beginning of an era when parliament devoted most of its attention to laws designed to foster economic development, administrative efficiency and moral improvement - 'progress' as conservatives understood that term.

In the following session, a large amount of uncontroversial legislation was passed and the two issues which raised in the clearest form potentially divisive issues of liberal and conservative principle were resolved without acrimony in favour of the conservatives. The first issue was that of Chinese immigration, which had caused bitter clashes between liberals and conservatives in 1861.¹ Since then, agitation had subsided on the goldfields, the mining industry had declined, and the threat of being 'swamped' by Chinese immigrants had vanished. Reacting to these developments, South Australia and Victoria had repealed their anti-Chinese laws between 1861 and 1865, so that in 1867 New South Wales was the only colony with restrictions on Chinese immigration.

The move to bring New South Wales into line with the other colonies came not from a conservative, but from the Reverend J.D. Lang, who introduced a bill to repeal the Chinese Immigration Act in September 1867. The bill was enthusiastically received in the Assembly. Nearly all members agreed with Lang that the Chinese Immigration Act had been rendered superfluous by changed circumstances - had become, in fact, 'a discreditable anomaly'.² Some members may have been inclined to doubt his assertions that the Chinese had played a useful role in the colony,³ but such doubts were submerged in the general

¹See Chapter VI, part 1, above.

²Lang in S.M.H., 21 September 1867.

³Ibid.

enthusiasm. This favourable attitude had been evident from the outset, when Lang's announcement that he intended to move for the abolition of restrictions on Chinese immigration had been greeted by 'cheers from all parts of the House'.¹ It is not surprising, then, that the bill passed easily through all its stages in the Assembly with only a few murmurs of protest.

In the Council, John Campbell complained that 'In his neighbourhood he was losing sight of Anglo-Saxon features, and saw nothing but Tartars - the produce of women who had married the Chinese',² but the response of most other members was very different. Some argued that, although the Chinese Immigration Act had once been just and necessary, it was no longer needed, but most went further, alleging that the act had always been 'a blot on the Statute book'.³ So strong was the support for its abolition that when Campbell called for a division on the second reading of Lang's bill, he was unable to find a second teller for the 'noes'.⁴ The bill was agreed to without amendment. In conservative eyes, the Chinese Immigration Act had been 'a barbarous piece of legislation'⁵ symptomatic of wider persecution of 'minorities' by the democratic 'mob'.⁶ Its repeal was therefore taken as a sign that the 'excesses' of rabid democracy were passing and that 'minorities' would be allowed to assume once more their rightful place in the community.

The second major piece of legislation which helped restore conservative confidence was the Municipalities Act of 1867 which superseded the Municipalities Act of 1858. The latter,

¹Empire, 28 August 1867.

²S.M.H., 17 October 1867.

³Ibid., Thomson and Gordon. Cf. Speeches by Hay, Chisholm and Docker. Plunkett and Murray said that in the circumstances existing in 1861, the bill had been justified. Manning said that future circumstances might require such a bill.

⁴Ibid.

⁵Ibid., Hay.

⁶See Chapter VI, part 1, above.

passed in the year which saw the adoption of manhood suffrage, gave equal voting power to all ratepayers having a freehold, leasehold or household qualification for elections for the Legislative Assembly¹ - a provision which meant virtually all rate-payers. Under the new act, however, voting power was apportioned on a sliding scale according to wealth. Ratepayers who owned or leased property worth up to £25 per annum were given one vote; men with property worth between £26 and £75 per annum were entitled to two votes; those with property worth between £76 and £150 per annum were given three votes; and those with property valued at over £150 per annum could cast four votes.² This system of 'cumulative voting' was combined with plural voting, which allowed an elector to cast votes in every ward in which he was qualified. Consequently, a merchant who owned a store in one ward and a large house in another was entitled to eight votes. Most ratepayers had only one vote and those who paid no rates at all were disfranchised.

When this undemocratic system had been first mooted in 1866, some radicals outside parliament had protested against the allocation of 'plurality of votes for the wealthy, to the exclusion of the working classes, and wholesale confiscation of the people's patrimony and inherent rights'.³ But the protests were feeble and never gained much support from the politicians. John Robertson, however, remained true to his radical principles and argued that since the municipalities gained much of their financial support from the colony's general revenue, to which men of all classes contributed, it was essential 'that every man in the constituency should have fair play with regard to voting power',⁴ and William Forster declared that

The tendency of legislation in this colony and in England had been for some time in the direction of abolishing property qualifications. We were, then, taking a retrograde step. We were going back to the principle that property, apart from

¹22 Vic., no.13, ss 10-11.

²31 Vic., no.12, s.52.

³S.M.H., 28 November 1866.

⁴S.M.H., 29 November 1867.

the citizen, had certain political rights which we were bound to recognize.¹

Such arguments, however, fell on indifferent ears, for most members agreed with Henry Parkes, the bill's sponsor, that 'It was impossible to confound the municipal franchise with the general franchise for election of members in this House', or with the Sydney Morning Herald, which argued in more frankly conservative terms that 'Where property is concerned the distribution of electoral power ought to be designed to protect it'.² To the chagrin of those few who cared about the further extension of democratic rights, the Assembly approved cumulative voting by the overwhelming majority of thirty-three to five.³

In the Council, the response to the bill was uniformly favourable. Joseph Docker, representing the government, spoke of the rights and duties of property and praised cumulative voting as the bill's most important feature.⁴ Other members praised the bill, not only because it gave special representation to property, but because by strengthening local government it seemed to promise a reduction in the duties of the colonial legislature. In conservative eyes this was important because, unlike the radicals, whose demands for retrenchment focussed upon the privileges of state pensioners and high public servants, they had long deplored 'excessive' expenditure on local public works, alleging that it was used to 'bribe' key electorates.⁵ They blamed such expenditure for the colony's budgetary deficits and argued that the remedy was to give responsibility for local development to the municipalities, which could bear the cost from local funds. In 1865, for instance, Deas Thomson had regretted the necessity for the

¹Ibid.

²S.M.H., 28 November 1867. Cf. letter by D.E.P., S.M.H., 7 December 1866.

³S.M.H., 29 November 1867.

⁴Empire, 12 December 1867.

⁵See above, this chapter.

Stamp Duties Bill on the grounds that 'a great deal of the public money had been laid out on works in the colony that ought to be raised by local taxation, and he had in mind particularly expenditure on minor roads.¹ Consequently, he was delighted with the Municipalities Bill, which settled doubts concerning the validity of municipalities raised by the Berry case² and gave to those bodies extensive powers, enabling them to build roads, infant schools, libraries, asylums for the poor, hospitals and systems of drainage, sewerage and public lighting. He told the Council that

He was glad the Government had determined to establish local institutions. He was sure that these institutions would take a great deal off the hands of the Government. He hoped to see the financial state of the colony in a wholesome condition. He hoped to see such objectionable bills as the package and ad valorem duties bills blotted out of the statute book.³

For the same reason, Sir William Manning thought the Municipalities Bill

a very valuable instalment of what he hoped would become the rule of the whole country, namely, that every district should have the power of managing its own affairs, and relieve the central Government of a great deal of expenditure.⁴

The bill buried once and for all the conservative mistrust of municipalities which had been kept alive by the Berry case, and the Council gave it enthusiastic support. Liberalism, as an agent of specifically democratic legislation, had lost its force, and both branches of the legislature cooperated in passing a bill which not only established municipal institutions on a firm basis but ensured that for the rest of the century local government was far less democratic than it had been in 1858.⁵

¹Empire, 1 June 1865.

²See above, this chapter.

³Empire, 12 December 1867.

⁴Ibid.

⁵The provisions for cumulative voting were repeated in the Municipalities Act of 1897. See Act no.23, 1897, s.55.

In the calm political climate which facilitated the passing of legislation which, in the late 1850s, would probably have been rejected as undemocratic, conservative confidence grew. Deas Thomson, who in the early 1860s had harped upon the injustices perpetrated by liberal governments, in 1867 rejected a bill to facilitate legal action against governments, justifying his vote with the argument that 'He could not conceive a Government that would act dishonestly - that would refuse any part of justice'.¹ Similarly, Sir William Manning, forgetful of the days when he had lamented that men without education and property had gained total political ascendancy, was now prepared to object to the extension of government power by posing the rhetorical question: 'How could anyone say how soon the time might arise when the whole power of the colony might be in the hands of the unpropertied classes?'² Apparently, he now thought that the lower orders had not yet triumphed. A year later, in 1868, he took office as Robertson's Attorney-General and held the same post when Cowper came to power in 1870, although in 1865 he had refused the position on the grounds that 'I should feel myself out of place as a member of your Government as at present composed'.³ Manning, although Attorney-General, was not a member of the cabinet from 1868 to 1870, but he supported the government consistently and was regarded in the 1870s as Robertson's closest supporter in the Council.⁴

Manning was not the only conservative in the Council to form an alliance with liberal leaders in the Assembly. The cabinet's representative in the Council from 1868 to 1870 was Robert Owen, a member of the Australian Club and an opponent of manhood suffrage in 1858;⁵ Robert Towns, another supporter of Cowper and Robertson in 1868-70, had been prominent in the conservative walk-out which frustrated the swamping of 1861, but

¹Empire, 13 September 1867.

²Empire, 5 September 1867.

³Manning to Cowper, 28 June 1865, Cowper Correspondence, A677, pp.691-2.

⁴S.M.H., 6 February 1875.

⁵V. & P. (L.A., N.S.W.), 1858, pt.1, 30 July, 5 November 1858; 1858-9, pt.1, pp.417-8.

had taken Cowper into business as a partner in the late 1860s;¹ and other conservative members of the Council, like Sir William Macarthur, Alexander Campbell, Thomas Icely and Thomas Holt were amongst Parkes' admirers and creditors.² Perhaps the ultimate proof that liberal-conservative conflict had long been dead came in 1875, when the ultra-conservative Joseph Docker took office in a ministry headed by his arch enemy, Robertson, ending a rivalry which had existed from at least 1856 when Robertson had beaten Docker in an election for the Assembly.

Many conservatives became reconciled to the new order as they helped to build it in a non-political capacity. George Allen, the Council's Chairman of Committees, was appointed to the Council of Education with Parkes, Martin, W.M. Arnold and Professor John Smith. Allen had seen merit in the Public Schools Act³ but, perhaps dismayed at the 'political' nature of some of the appointments to the Council of Education, he confided to his diary: 'I confess I do not think the selection a very wise one nor do I expect the Board [i.e. the Council of Education] will be of much use.'⁴ In the next eleven days, that body met five times under Parkes' chairmanship and embarked on a far reaching programme of educational reform. Surprised by such energetic administration, Allen observed that their appointments would 'not prove sinecures' and prayed for 'grace wisdom and strength to perform my duty'.⁵ Three weeks later, his doubts about the effectiveness of the Council had been dissolved:

I am beginning to think that it is not a bad change that the Parliament has made in the Scheme of Education I fear there was very much deception

¹Town and Country Journal, 19 April 1873.

²Macarthur to Parkes, 21 January 1870, Macarthur Papers, vol.42, A2938, pp.397-9; Campbell to Parkes, 20 October 1870, P.C., vol.50, A920, p.208; Icely to Parkes, 21 January 1870, P.C., vol.19, A889, p.371; Holt to Parkes, 18 November 1870, P.C., vol.16, A886.

³George Allen, Journal, Uncat. MSS set 477, 24 December 1866.

⁴Ibid., 2 January 1867.

⁵Ibid., 13 January 1867.

under the former [system] and that for want of proper inspection (which for want of means the Denominational Board could not fully carry out) they were often in the dark as to many of the schools under their care.¹

The confiscation of property which conservatives had feared in 1861 did not eventuate and many conservatives apart from Allen retained their position as leaders of the colony's economic and social life. In 1867, twenty members of the committee which organized a testimonial to Sir John Young were conservatives and only nine were liberals;² and an examination of the directors of companies listed in Sands' Sydney Directory for 1871 provides little evidence for the view that political success had given the liberals economic power. Twenty-five directors, holding sixty-six directorships, are known to have been conservatives in the early 1860s, and only seven directors, holding fourteen positions, are known to have been liberals.³ A similar examination of all office holders in the directory's list of religious, charitable, scientific, educational and cultural institutions showed that in that sphere, the liberals had achieved greater recognition. Henry Parkes was on the Council of the Agricultural Society of New South Wales, where he rubbed shoulders with Sir William Macarthur, T.S. Mort, Deas Thomson, James Chisholm and a host of other conservatives; and, all told, nineteen men known to have been liberals in the early 1860s held twenty-five offices in institutions devoted to the social, moral, cultural and educational improvement of the colony. The conservatives, however, were still dominant, for forty-one of them held a total of seventy-six positions.⁴

¹Ibid., 2 February 1867.

²The list is in Empire, 5 September 1867. Those classed as conservatives are G. Allen, A. Campbell, J. Chisholm, Major Christie, J. Docker, W.A. Duncan, J. Fairfax, Judge Francis, S.D. Gordon, J. Hay, R. Jones, E. Knox, Sir W.M. Manning, J. Martin, J.L. Montefiore, M.E. Murnin, S. Samuel, Sir A. Stephen, E.D. Thomson, R. Towns. Those described as liberals are W.M. Arnold, C. Cowper, W.B. Dalley, J. Hart, H. Parkes, J. Robertson, T.W. Smart, J. Sutherland, G. Thornton. Murray and Egan cannot be easily classified and have not been included in the figures above.

³See Appendix VIII.

⁴See Appendix IX.

Not only had the conservatives retained their position of leadership outside parliament, but by the 1870s they had regained access to parliamentary patronage. There were conservatives in every ministry from 1863, and by 1870 they had no reason to feel that in matters of patronage governments treated them badly. The use of patronage and 'influence' was a normal part of nineteenth century life,¹ legitimate in the case of one's friends and 'corrupt' only when used by one's enemies. Not unnaturally, therefore, many conservative members of the Council were amongst the suppliants at the Colonial Secretary's door when Parkes held that office: Sir William Macarthur, soliciting the appointment of a neighbour as police magistrate;² Sir William Manning, asking provision for 'deserving' people in financial difficulties;³ and Sir John Hay, pressing the claims of W.H. Suttor for appointment to the Council.⁴

One of the most successful conservatives in matters of patronage was Sir Alfred Stephen, who seems to have first become one of Parkes' clients in 1867 when he asked Eagar, Treasurer in the Martin-Parkes ministry, to arrange a transfer within the public service for a 'poor friend', J.H. Johnston, clerk at Berrima gaol.⁵ The request was forwarded to Parkes, but with no result. Six months later, Stephen tried again, sending Parkes testimonials to show the esteem in which his friend was held.⁶ Parkes immediately penned a stern reply, explaining that such testimonials were of little value and lecturing

¹Cf. P. Loveday, 'Patronage and Politics in New South Wales, 1856-70', Public Administration, vol.18, 1959, pp.341-58, passim.

²Macarthur to Parkes, 14 March 1873, P.C., vol.24, A894, pp.37-9.

³Manning to Parkes, 17 November 1865[?], 20 February 1868, P.C., vol.24, A894, pp.67-73.

⁴Hay to Parkes, 28 August 1873, P.C., vol.18, A888, pp.237-9. Suttor was not appointed.

⁵Stephen to the Treasurer, 16 November 1867, P.C., vol.34, A904, pp.425-7. See also note dated 18 November 1867 on pp.423-4. Johnston is described as a 'poor friend' in Stephen to Parkes, 29 May 1868, P.C., vol.35, A905, pp.158-9.

⁶Stephen to Parkes, 29 May 1868, P.C., vol.35, A905, pp.158-9.

Stephen on the principles of impartiality by which ministers had to be guided if 'the public service is to be raised in efficiency and economy'.¹ Parkes stated that appointments should always be guided by concern for the public interest and argued that

So long as we consider the interests of the applicant before the interests of the Public in filling situations so long will the Public who pays be served badly and at unnecessary cost.... I have no friends of my own whom I wish to serve. Why should I disregard my own judgment in serving the friends of others?...You have frequently yourself made observations reflecting on the manner in which appointments have been made in this Colony. But I think you would find great difficulty in pointing out any situation for which Mr. Johnson [sic] is especially fitted in the sense of best serving the Public....I hope I shall not be misunderstood....[I] shall be glad to see him receive any appointment for which his capabilities really qualify him.²

Stephen hastily replied that he agreed with the high principles which Parkes had enunciated, but that Johnson's appointment to a new position could be reconciled with the public interest.³ He then launched into a diatribe on the 'corruption' which had prevailed since the liberals had won power:

Parliamentary (or, as it is fancifully called, Responsible) Government is necessarily to some extent...a government by corruption. Donaldson refused to put the great Mr. Lucas into the Commn. of the Peace, & lost his election...in consequence of it. Pass a stringent Public House Act - or try to do so, - such as shall really restrain largely drunkenness, & you will not be Colonl. Secty six months. Appoint the sons & nephews of a suffict. number of M.Ps. to be Clks of P. Sessns, or waiters in the Customs, or something on the Roads, or in a Light House, & you will command votes for the session...probably two...next following.⁴

¹Parkes to Stephen, 30 May 1868, P.C., vol.35, A905, pp.160-66.

²Ibid.

³Stephen to Parkes, 31 May 1868, P.C., vol.35, A905, pp.148-54.

⁴Ibid.

The rest of Stephen's letter dealt mainly with a scheme to reform the public service and, in particular, to 'put patronage out of any minister's power'. Magistrates were to be appointed by a specially constituted board consisting of the Chief Justice, the President of the Council and the Speaker of the Assembly. Appointments in other sections of the public service were to be made by permanent heads of the departments, partly on the basis of competitive examinations, whose absence was 'no small evidence of the corruption that actually...in the Parlmtry sense...exists'.

Having established their bona fides as men who would never solicit or grant unworthy appointments, Stephen and Parkes settled down to a long and mutually beneficial relationship. Parkes had always craved recognition by the leading conservatives,¹ and from Stephen he gained sincere admiration, friendship and advice on the drafting of bills. Stephen's gains were more tangible. Johnston seems to have gained his transfer,² and Stephen became one of the most importunate clients at the Colonial Secretary's door. He requested a free railway pass for himself and for his family when they travelled with him, saying that 'by special favour' of another minister he already had 'the great comfort of a private (separate) compartment for myself individually';³ he urged the promotion of a nephew, Surgeon Bedford, commenting discreetly that 'It might wear a better appearance, with people who talk of influence, that he should obtain the advance after my supercession [as acting Governor]';⁴ in 1879, after years of

¹For example, in 1857, Parkes had dedicated some sonnets to Sir Charles Nicholson 'as A Link of A Valued Friendship'. See Parkes' Murmurs of the Stream, Sydney, 1857, p.93, and Nicholson's graceful reply, 16 October 1857, P.C., vol.56, A926, pp.31-3.

²When requesting the transfer, Stephen said Johnston had served 'ten or twelve' years as clerk at Berrima. In 1880, when soliciting yet another appointment for him, Stephen implied that his term at Berrima was twelve or thirteen years. Cf. Stephen to Parkes, 31 May 1868, 30 July 1880, P.C., vol.35, A905, pp.148-54, 206-8.

³Stephen to Parkes, n.d., P.C., vol.34, A904, pp.332-5.

⁴Stephen to Parkes, n.d., P.C., A928, pp.142-3.

lobbying, he finally gained compensation for the cut which the Assembly had made in his salary when he was on leave in 1860,¹ and he solicited numerous other favours.² One of his more notable successes concerned his brother, George Milner Stephen, who at various stages in his chequered career was barrister, public servant, geologist, land speculator, inventor, businessman and faith-healer. In 1877, George was appointed parliamentary draftsman after testimonials from Sir Alfred and many others,³ but lost the job when his fame as a faith-healer brought him up to fifty patients a day so that he was unable to carry out his duties.⁴ He still had one advantage, however, in that one of his patients was Lady Parkes,⁵ and to this was added another when Sir Alfred interceded with her husband, asking him to make George a District Court Judge or give him a position in the Attorney-General's Department or the Ministry of Justice.⁶ George was thereupon made Crown Prosecutor, but, no doubt to his brother's annoyance, he was soon forced to resign 'because his position required much travelling and he was beset wherever he went by sufferers eager for healing'.⁷

The cordial relationship between leading conservatives and liberals like Parkes was symptomatic of the declining importance of the old ideological distinctions. Men were still sometimes classified as liberals or conservatives, mainly on the basis of their political record in the late 1850s and early 1860s, and occasional attempts were made to gain political advantage by playing upon the old divisions. However, after 1866, the ideological differences of former years had little effect on voting patterns in the Council.

¹Stephen to Parkes, 10 April 1879.

²For example, Stephen to Parkes, 10 January [no year given], P.C., vol.35, A905, pp.481-2. Volumes 34 and 35 of the Parkes Correspondence contain many other letters from Stephen.

³Cf. P.C., vol.39, A909, pp.216-31.

⁴Article on George Milner Stephen in A.D.B., vol.2.

⁵Ibid.

⁶Stephen to Parkes, 23 June 1879, P.C., A928, pp.47-8.

⁷Article on George Milner Stephen in A.D.B., vol.2.

In the session of 1867-8 Hay and Manning, both conservatives, criticized some of the Martin ministry's legislation and sought to press forward other measures against the wishes of the government. Their stand provoked a 'patterned' response and, as shown by Table XVI, they had the support of approximately half the members. The table shows the proportion of votes cast with the representative of the government in the most strongly 'patterned' divisions.

TABLE XVI¹

VOTING OF MEMBERS OF THE LEGISLATIVE COUNCIL
IN MOST STRONGLY 'PATTERNED' DIVISIONS, SESSION OF 1867-68

<u>Vote</u> <u>with Government</u>		<u>'Independent'</u>		<u>Vote</u> <u>against Government</u>	
Allen	3/3	J. Campbell	2/3	Blaxland	2/9
Byrnes	6/8	Macfarlane	1/3	Busby	0/8
Docker (Govt. rep.)	9/9			A. Campbell	0/2
Icely	7/7			E. Cox	0/1
Jennings	5/6			Gordon	1/8
Lord	3/3			Hay	0/9
Mitchell	7/7			W. Macarthur	0/5
Plunkett	1/1			Manning	0/9
Thomson	6/7			Murray	0/3
Weekes	8/8			Russell	0/3
				Towns	0/1

A majority of the 'patterned' divisions involved considerations affecting the rights of the Council and of individuals against governments and the Assembly. In the early 1860s, such issues would probably have produced a split between liberals and conservatives, with the latter asserting the rights of 'individuals' and the Council against the 'tyranny' of a democratic Assembly and governments responsible to it. Such considerations were not, however, raised in 1867-68 and there was no sign of a cleavage on liberal-conservative lines. Of the

¹The table is based upon the divisions listed in Appendix III, which also describes the method by which they were chosen.

four liberals present, two voted with the government, one voted against it, and one was an 'independent' casting two of his three votes against the government.¹ The numbers are too small to be conclusive in themselves, but they are significant in the light of the debates, which did not place the issues in the context of liberalism and conservatism, and in view of the fact that there was no sign of a split between moderate conservatives and extreme ones. Allen, Mitchell and Thomson, for instance, moderate conservatives who had been reappointed by Cowper in 1861, voted with the government, while those who voted against it included the liberal-conservative T.A. Murray and moderate conservatives in Gordon, Manning and Sir William Macarthur.

The votes in 'patterned' divisions were probably, in some cases, based partly upon attitudes towards Martin's government. William Byrnes, for instance, was the brother and business partner of Martin's Minister for Public Works, and he voted consistently with the government while Martin remained in power, then suddenly began to vote against it after Robertson took office late in 1868. The change is the more significant because Byrnes' previous record suggests that his personal convictions on some of the questions at issue should have led him to vote with the new government.² However, only Byrnes and Docker (the Martin government's representative in the Council) voted with Martin in 'patterned' divisions in 1867-68 then voted against Cowper and Robertson from 1868 to 1870. More typical were Thomson, Allen, Lord and Weekes, who voted with both governments.³ Thomson, in particular, seems to have sympathized with those who faced the burdens of office and was frequently prepared to give ministries the benefit of the doubt now that the prejudices

¹The liberals were Byrnes, Weekes, Macfarlane and Russell.

²In particular, Byrnes, as a liberal, might have been expected to demur at the Council's protests against the accidental occurrence of illegal expenditure. See the discussion later in this chapter.

³Compare Table XVI with Table XVII, below.

aroused by the old liberal-conservative conflicts had died down.¹

There were no strong avowals of 'party' preferences during the session of 1867-68, although the debates contain a vague suggestion that members sitting on the opposition benches formed a recognized group which was inclined to oppose the government. Certainly, this is the easiest interpretation to put upon Manning's statement, made when Docker inadvertently seemed to disprove his own case, that 'the hon. member...had argued on the other side of the House'.² Manning himself sat opposite Docker³ and voted against him on all strongly 'patterned' divisions, as did Hay.⁴ In fact, Hay voted against Docker in almost every division in the session, 'patterned' or 'unpatterned'. It would be wrong, however, to regard Hay as an opponent of the Martin government in particular. He had voted as an 'independent' in the Assembly before Martin appointed him to the Council,⁵ and his voting record in the Council was symptomatic of a disinclination to follow the line pressed by any government at all.⁶

Alexander Campbell was another member who, while not opposing Martin's government per se, saw no reason to fit in with its wishes. Campbell continued to vote against the government when Martin lost power, and he dissociated himself from those who voted in opposition on 'party' grounds.⁷ In the

¹See Tables XVI and XVII, together with the discussion below of Thomson's attitude towards illegal expenditure by the Robertson government. See also, for example, his speech on the second reading of the Claims Against the Government Bill, Empire, 13 September 1867; and his support for the government in a division on the Railway Loan Bill after he had expressed his dissatisfaction with the ministry's stand on the question at issue and asked it to reconsider its position. (S.M.H., 14 December 1867.)

²Empire, 18 December 1867.

³Cf. *ibid.*

⁴For Hay's sitting opposite Docker, see Docker, S.M.H., 26 September 1867.

⁵See P. Loveday, 'The Development of Parliamentary Government in New South Wales, 1856-1870', Ph.D. thesis, University of Sydney, 1962, p.512.

⁶See below, this chapter.

⁷Cf. A. Campbell, S.M.H., 19, 24 March 1869, 5 May 1870.

session of 1867-68, he showed quite clearly that he was not motivated by personal dislike of Martin's ministry in his speech supporting the second reading of a bill to facilitate legal actions by individuals against governments. The government opposed the bill, but its members could have taken comfort from the fact that Campbell argued that the measure was necessary because they might not 'always have such a liberal Government as the one they had at present' and that it was 'future governments' which he thought 'might act with tyranny'.¹

The years 1868-70, when ministries headed by Robertson and Cowper held power, saw the re-emergence of overtly partisan behaviour in the Council. The leader of the 'Opposition' was Docker, who alleged that one minister had bought his position, that Robertson was a perverter of the truth and that Cowper had attained office like a 'burglar' by climbing through the scullery window.² Docker played upon the Councillors' sensitivity about their financial powers in an effort to revive the old liberal-conservative divisions - a move which, had it succeeded, would have left Cowper and Robertson in a hopeless minority. His chance came in February 1869 when Robert Owen, the government's representative, introduced a partial appropriation bill to cover the government's expenditure for the month of March in anticipation of the final Appropriation Act. There was no urgent business on the notice paper and, when Owen was pressed by members on both sides of the house to consent to a week's adjournment so that they could write letters for the English mail, he readily agreed. He had forgotten, however, that February was a short month, so that the week's adjournment terminated two days after 1 April, the day on which the public service had to be paid. Confronted with this difficult situation, the government paid the public service in anticipation of the partial appropriation act, which it then tried to have passed as soon as the Council reconvened. The ministers were frustrated, however, by a gleeful Docker, who forced a debate on resolutions deploring the ministry's alleged

¹S.M.H., 13 September 1867.

²S.M.H., 5 May 1870.

slight to the Council in issuing money approved by the vote of the Assembly alone.¹

Docker's attempt to instigate a conflict based on the fears which had led to the battle over the Indemnity Bill in 1860 met with only limited success. John Campbell was the only member who joined him in professing the suspicion that Robertson, as an opponent of the Council, was seeking to undermine its powers.² The other conservatives divided into two groups which agreed that the illegal expenditure had been the result of an unfortunate oversight but differed on the appropriate response to such an occurrence. The first group consisted mainly of moderate conservatives led by Deas Thomson who thought the Council should ignore the affair completely. Thomson sat behind Docker on the opposition benches,³ but he attacked the resolutions censuring the government on the grounds that

There could be no doubt that they were somewhat of a partisan character - they were directed against the present Administration, and he thought that this Council should avoid all party considerations when conserving its rights and privileges, and not take any steps to assert them when they might possibly be infringed through a mere matter of accident....⁴

Docker, of course, denied the accusation that his resolutions were 'characterized by a spirit of partisanship', but drew from Thomson the retort that he 'was perfectly certain the resolutions had been so conceived, and it must be transparent to everybody that such was the case'.⁵ It was this conviction which led Thomson to move the previous question. He was supported by two of the three liberals of the early 1860s who were present;⁶ by Manning and Owen, conservative members of the ministry; and by Allen, Gordon and Towns, moderate conservatives

¹The above account is based upon the debates in S.M.H., 12, 17, 19, 24 March 1869.

²S.M.H., 24 March 1869.

³Cf. Thomson, *ibid.*

⁴S.M.H., 19 March 1869.

⁵S.M.H., 24 March 1869.

⁶Weekes and Macfarlane supported him. Byrnes opposed him.

reappointed to the Council by Cowper. However, the previous question was defeated by eleven votes to eight.

The course which most members favoured was pointed out by Hay, who objected to Docker's resolutions

because he felt that they were conceived in what appeared to him a hostile spirit of opposition to the present Administration....[He thought that] Hon. members would be pleased to remember that Ministries were not displaced from power by any vote of want of confidence passed in that House, and such resolutions as had been proposed were therefore more within the sphere of the Legislative Assembly.¹

Hay conceded that there was no 'settled plan on the part of the present Government to make payments without...Parliamentary sanction', but he thought that the Council was bound, under the circumstances, to make a temperate reassertion of its rights. The core of his case was that expenditure had, albeit inadvertently, been sanctioned by a vote of the Assembly alone, and he moved that Docker's resolutions be amended so that they simply expressed 'regret at the irregularity which had been permitted' and reaffirmed the resolutions against illegal expenditure which the Council had passed on the third reading of the Appropriation Bill in 1860.² Docker, sensing that the house was against him, agreed to Hay's formula. Thus amended, the resolutions were carried.

The divisions on the government's 'irregular' expenditure did not reflect the pattern of opinion on that issue alone. Members' opinions were not moulded by any isolated sense of constitutional propriety, but were subject to influences which provoked a similar voting pattern on other issues. In fact, there were twelve divisions on other matters during the Robertson and Cowper ministries of 1868-70 which closely resembled the divisions on the question of illegal expenditure. The nature of this 'patterned' response can be seen from Table XVII, which shows the proportion of votes which members cast with the representative of the government in the most strongly 'patterned' divisions.

¹S.M.H., 24 March 1869.

²Ibid. For the 1860 resolutions, see Chapter IV, part 3, above.

TABLE XVII¹

VOTING OF MEMBERS OF THE LEGISLATIVE COUNCIL
IN MOST STRONGLY 'PATTERNED' DIVISIONS, 1868-70

<u>Vote</u> <u>with Government</u>	<u>'Independent'</u>	<u>Vote</u> <u>against Government</u>
Allen	G.H. Cox 2/4	Blaxland 3/12
Owen (Govt. rep.) 15/15	Murray 1/3	Busby 0/6
Gordon 11/11		Byrnes 2/8
Lord 5/5		A. Campbell 0/10
Macarthur 4/5		C. Campbell 0/7
Macfarlane 12/12		J. Campbell 0/12
Manning (Att.-Gen.) 13/13		Chisholm 0/5
Russell 5/5		Darley 2/14
Thomson 5/6		Docker 0/15
Towns 3/3		Hay 0/15
Smart 1/1		Holt 3/10
Weekes 11/11		Icely 0/1
		Moore 0/12
		Park 1/7
		Richardson 3/13

Three of the divisions were on the question of illegal expenditure, and the others were on such diverse matters as a Road Act Amendment Bill, a Small-Pox Prevention Bill, an Unclaimed Balances Appropriation Bill, a Deficiency Loans Funding Bill and a Loan Bill. The only feature which some of these measures had in common was that they were supported by the government and attacked, either in part or as a whole, by Docker and his allies. It is, in fact, tempting to ascribe the cleavage to 'party' feeling, for ten of the twelve members who voted with the government had been appointed by Cowper and Robertson, while twelve of the fifteen members who voted against it had been appointed by Martin. But while personal allegiances and antipathies undoubtedly influenced the voting pattern,

¹The table is based upon the divisions listed in Appendix III, which also describes the method by which they were chosen.

it would be misleading to explain the members' behaviour purely in these terms.

Members who supported the government fell into two main categories. In one, there were five members who had been appointed as supporters of Cowper and Robertson - four liberals in Macfarlane, Russell, Weekes and Smart, and one conservative in Owen. These men consistently supported ministries headed by Cowper and Robertson, but they were little inclined to partisan behaviour and sometimes supported ministries headed by other men.¹ In the second category, there were seven moderate conservatives - five of them appointed by Cowper between 1861 and 1863 as men whose political principles were opposed to his own but who seemed unlikely to offer factious opposition. By the late 1860s and early 1870s, two of these moderate conservatives, Manning and Towns, were close to Cowper and Robertson.² The others - Thomson, Allen, Sir William Macarthur and Lord, were by no means identified with the ministry, but they were men of conciliatory temperament who abhorred factious opposition. They often opposed the government's point of view, but they were unwilling to press their objections to the point where they might cause serious inconvenience or appear obstructive. It was a natural consequence of their objection to factious opposition that, when Docker led the criticism of a ministry's measures, they should often have found themselves voting with the government.

Several members who voted against Cowper and Robertson were clearly actuated to some extent by 'party feeling'. Docker's hostility was unique in its virulence, but even members who deplored his conduct were sometimes influenced by mistrust of Cowper and Robertson. The brothers John and Charles Campbell, for instance, rebuked Docker for his personal attacks,³ but revealed that they were, in part, actuated by a

¹See their voting records in Appendix III. Cf. the discussing of liberal attitudes to the Forster ministry in Chapter II, above.

²For Manning, see S.M.H., 6 February 1875. Towns had taken Cowper into business from about 1865 to about 1867. (Town and Country Journal, 19 April 1873.)

³S.M.H., 5 May 1870.

less extreme version of the same prejudices. John Campbell supported Docker's attempt to argue that the illegal payments made in March 1869 were part of an attack on the Council and he professed to believe that Robertson's radical opinions still posed a threat to its existence.¹ Charles Campbell's political preferences were revealed when he welcomed Martin's return to power in 1871, commenting that 'he had the pleasure of reflecting that that gentleman professed, like himself, Conservative principles'.²

The Campbells' hostility towards Cowper and Robertson was based partly upon the memory of past conflicts and partly upon dismay at their financial policy.³ Their 'party' preferences were not therefore unrelated to principle and when Martin, as Premier, failed to produce a financial policy to their liking, they led the opposition to his financial measures in the Council.⁴

Any attempt by the Council to reject bills passed by the Assembly or to force governments to accept amendments to their legislation raised questions about the proper role of the upper house. Some of the opposition to Cowper and Robertson, as also to Martin, was motivated by a highly developed sense of the Council's power and 'independence'. Hay was pre-eminent amongst those members whose determination to ensure that the Council made a distinctive contribution to the work of the parliament led them to take a critical attitude towards the Assembly and towards governments, no matter who was in power. From the time of his appointment in 1867 until Parkes' accession to power in 1872, Hay voted against successive ministries in every 'patterned' division.⁵ His standing as an 'independent' spokesman for the Council was duly recognized when he was appointed its President on the death of T.A. Murray in 1873.

¹S.M.H., 24 March 1869.

²S.M.H., 16 June 1871.

³Ibid., for Charles Campbell's criticism of the Cowper ministry's deficiencies in financial matters.

⁴Ibid. Cf. the last table in Appendix III, below.

⁵See his voting record in Appendix III.

Conservatives, particularly some of the extreme ones appointed by Martin, were more likely to stand upon the dignity of the Council than liberals, and a few members harked back to the conflicts of years gone by; but conservatism and liberalism no longer formed the basis of 'party' in the Council. The attainment of liberal demands in the early 1860s and the lack of new issues calculated to produce class antipathies meant that the old distinctions became blurred. Men who had been staunch conservatives in the 1850s and early 1860s often became more 'liberal' as the threat to their social, economic and political interests waned, while many liberals, having attained their goals, became more conservative. Sir William Manning, for instance, a member of the old conservative *élite* which had framed the constitution, now felt able to discard the idea that the Council should contain more of 'the wealth, the intelligence and the education of the colony' than the Assembly¹ and proposed an upper house which was based partly on manhood suffrage.² Bourn Russell, on the other hand, who in the early 1860s had advocated an upper house elected by manhood suffrage,³ now favoured a nominated Council on the grounds that

If they conceded that the Council should be elected at all, he could not see what was to prevent them from coming down, at length, to universal suffrage, and that was a consummation which he should be very sorry to see.⁴

A striking demonstration of the development of a relative community of opinion amongst liberals and conservatives was given when Parkes tried to reform the Council after it had rejected his border duties and stamp duties bills in 1872. Parkes' Legislative Council Bill was by no means as democratic as those which had been proposed by Cowper and Robertson in the early 1860s. In the first place, it provided that all members of the existing Council should retain their seats, sitting with the elective members in a mixed chamber. This meant that the

¹S.M.H., 4 May 1870.

²See below, this chapter.

³S.M.H., 6 December 1861.

⁴S.M.H., 20 March 1874.

Council would not have become wholly elective until the existing members had died or retired. In the second place, it was to be elected upon a somewhat less democratic franchise than the Assembly. The electors included freeholders, leaseholders, householders, lodgers of six months standing, university graduates and men holding a variety of professional qualifications. The simple residential franchise which allowed men to vote for the Assembly was, however, omitted, and electors who qualified to vote for the Council had to register on a separate roll for that house.

The restriction on the franchise was not severe, but the fact that it could be proposed at all by a liberal Premier showed that the political temper of the colony was more conservative than it had been in the early 1860s, when the reform bills put forward by all ministries had been based on the assumption that the qualification for both houses should be the same.¹ The strength of support for that view had been shown in 1861, when the Assembly voted in favour of equal qualifications for both houses by twenty-two to seven.² In 1873, however, Parkes' attempt to establish a separate franchise for the Council was rejected by only seventeen votes to fifteen.³

When the bill reached the Council, it was refused a first reading on the grounds that it had been originated in the Assembly, but the following session, the government introduced a similar bill in the Council. It was referred to a select committee, whose minutes of evidence showed that both conservatives and liberals were far more favourable to the nominated upper house than they had been in the early 1860s. The Reverend J.D. Lang, for instance, that ancient enemy of the nominated Council, told the select committee that his confidence in the elective principle had been shaken by the

¹See above, Chapter IV, part 2 and Chapter VI, part 4.

²V. & P. (L.A., N.S.W.), 1861, pt.1, divisions in committee, 3 April 1861.

³V. & P. (L.A., N.S.W.), 1872-73, pt.1, p.380.

protracted conflict between the two houses in Victoria¹ from 1865 to 1868, during which the Council had three times rejected the annual appropriation bills. He thought that the nominated Council in New South Wales had worked better than the elective one in Victoria, and that an upper house elected on the same franchise as the Assembly would be even worse than the Victorian one. He felt, however, that although nomination had worked better than election, he was not free to advocate it because he was trammelled by his life-long advocacy of elective institutions.² He attempted to solve the difficulty by opting for unicameralism in the form of a single mixed house such as had existed before responsible government, alleging that

There were no complaints about it as being based on a wrong principle. The public were satisfied with the legislation which it afforded, and there was no strong desire for change when the new Constitution was introduced.³

Another liberal who hankered after the old mixed chamber was Samuel Bennett, proprietor of the Empire, who thought that before 1856, the colony had enjoyed 'very much better legislation' and been governed by more able men.⁴ Bennett said that the public regarded proposals for reform of the Council with 'the greatest indifference', but that in so far as there was any opinion on the subject it was favourable to the elective principle.⁵ He himself preferred election to nomination, but admitted that 'The [nominated] Legislative Council has worked on the whole satisfactorily' - a view which contrasted with his harsh judgment of the Assembly as a chamber whose membership

¹J.L.C., 1873-74, pt.1, pp.381-6, passim. For the conflict between the two houses in Victoria, see Dorothy P. Clarke, 'The Colonial Office and the Constitutional Crises in Victoria, 1865-68', Historical Studies, vol.5, no.18, May 1952, pp.160-71; and F.K. Crowley, 'Aspects of the Constitutional Conflicts between the two Houses of the Victorian Legislative, 1864-1868', M.A. thesis, University of Melbourne, 1947.

²J.L.C., 1873-74, pt.1, pp.381-6, passim.

³Ibid., p.384.

⁴Ibid., pp.340.

⁵Ibid., pp.337, 340.

had been subject to a process of 'deterioration...gradually going on to the present time'.¹

Praise for the nominated Council also came from P.R. Holdsworth, a political agitator who claimed to speak for 'the great masses of the people'.² On their behalf, he denied 'the right of any irresponsible body to override the views of our representatives' but he stressed that popular discontent with the Council was largely confined to this matter of constitutional principle.³ He told the select committee that

the public as a whole have been very well satisfied with the acts of the Legislative Council. In fact, at times you have acted as a very wise bar to the acts of the Assembly.⁴

He also feared that future appointments to the Council might not be so wise:

We may not always have men who would act as the present members have done....I do not wish to flatter you, but we have known most of you from our childhood, and we have reason to respect you; but we have no guarantee for the future.⁵

Like Holdsworth, most opponents of the nominated upper house based their case on abstract principle and praised the actual workings of the Council. John Fairfax, proprietor of the Sydney Morning Herald, thought that it had 'worked upon the whole remarkably well';⁶ J.B. Watt and A.T. Holroyd thought that its members were men of high quality;⁷ L.F. De Salis could not 'find any serious fault with the Council in anything they do';⁸ and Richard Jones, who had advocated an elective Council since the early 1850s, said that while he still favoured election in theory, he had lost much practical enthusiasm for change because

¹Ibid., pp.336, 341.

²Ibid., p.405.

³Ibid., p.404.

⁴Ibid.

⁵Ibid., p.405.

⁶Ibid., p.329.

⁷Ibid., pp.387, 410-11.

⁸Ibid., p.398.

'the results of our Constitution, as now framed, have been so far satisfactory that we might continue the experiment for some time longer without any injury to the public'.¹ In fact, the only witnesses who seriously criticized the performance of the Council were Frank Senior,² a chemist who seems to have been examined as a representative of the politically illiterate, and Andrew Garran, editor of the Herald, who said that the Council lacked public support and that, because so few members were regular in their attendance, the debates were somewhat perfunctory.³

Eight of the twenty witnesses called by the select committee favoured the continuation of the nominated Council. They were T.S. Mort, who had been a member of the Constitution Committee which had opposed the proposed nominated upper house in 1853; William Barker and Thomas Walker, conservative members of the Legislative Council before responsible government; Thomas Buckland, conservative merchant and banker; Alexander Stuart, a future Premier; John Davies, ironmonger, president of the Protestant Political Association and a future Postmaster-General; James Merriman, mayor of Sydney; and Deas Thomson, who had been temporarily converted to the elective principle by the swamping in 1861. All these witnesses agreed that the Council had worked well and that there was no real demand for change. They assumed that an elective Council would return inferior men because, as Davies put it,

there is an indisposition on the part of gentlemen of independent means, intelligence and ability, to offer themselves to constituencies, on account of the annoyance, expense, and trouble of a contested election. The people therefore have not the same opportunity of making a good selection that the Government have by nominating gentlemen.⁴

Deas Thomson told the committee that he had become once more a proponent of nomination because the elective principle had failed in Canada (which had reverted to a nominated Council)

¹Ibid., p.375.

²Ibid., p.395-6.

³Ibid., p.344.

⁴Ibid., p.380. Cf. Barker and Merriman, *ibid.*, pp.368, 400.

and because the elective upper houses in neighbouring colonies had caused 'constant collisions and dead-locks, and constant attempts to obtain power on the one hand, or to resist it on the other'.¹ By contrast, said Thomson, the nominated Council in New South Wales had on the whole

worked very well. I do not think there has been any dead-lock. There has sometimes been a difference of opinion between the Upper or Lower Houses, but the result has always been, as in England, that when there has been a persistent determination to carry particular measures, the Upper House has given way to the other, as recently in the case of the Border Duties and also in the case of postage upon newspapers. There was another case also....When free selection before survey was insisted on by the Assembly, the Council gave way.²

Thomson remained true to the tradition of flexible conservatism which had influenced the choice of a nominated upper house in 1853. In his view, the Council's inability to act as a permanent barrier to change was one of its strengths.

From the testimony given before the select committee, it appears that while most colonists were tepid supporters of the elective principle, conservative opinion had, on the whole, swung back in favour of nomination.³ Hardly anyone advocated an oligarchic upper house like the one which had failed so disastrously in Victoria,⁴ for most feared deadlocks or felt, with Fairfax, that the high property qualification in the Southern colony had produced a Council whose members were inferior to the members of the Assembly.⁵

The select committee was chaired by Docker, but it was dominated by Manning and its report advocated an upper house which would not pose a 'greater danger of unyielding conflict than exists in the present constitution of the Imperial Parliament'.⁶ In order to achieve this and to avoid 'class

¹Ibid., p.328.

²Ibid., p.322.

³See especially *ibid.*, pp.331, 366, 368, 378, 401.

⁴The exception was De Salis. See *ibid.*, p.397.

⁵*Ibid.*, pp.330, 332-3.

⁶*Ibid.*, p.283.

distinctions', the committee recommended that everyone entitled to vote in elections for the Assembly should be allowed to vote for the Council. However, there was to be a separate Council roll to which admission would be granted only upon application, and other 'elements of distinctiveness' were guaranteed by such means as larger electorates, longer terms of office and the lack of provision for a dissolution. Above all, not only were the members of the existing Council to retain their seats, but the proposed upper house was to be given a permanent nominee element consisting of

a limited number of tried public men, such as retired Judges of the Supreme Court, past Presidents of the Council, and Speakers of the Assembly, and persons who may for certain lengthened periods have held seats in the Executive Council as responsible Ministers.¹

The report had been adopted by the select committee over Docker's opposition, and it was he who led the criticism when it was tabled in the Council. On his motion, the Council rejected the report and resolved that

it is not advisable to recommend any alteration of the fundamental principles of the Constitution of the Council...more especially as the bulk of the evidence conclusively shows that the subject is viewed with the greatest indifference by the public generally, whilst nearly the whole of the witnesses testify to the satisfactory working of the Constitution in its present form, and desire no change in its fundamental principle.²

So perished Manning's report and, with it, Parkes' bill to reform the Council. The only changes which the Council was prepared to consider at all were proposals that the Governor alone should make the appointments and that there should be a maximum and minimum number of members.³ No one, however, tried to force the adoption of these changes, for, in the eyes of most conservatives, the upper house had fulfilled its purpose. It had delayed or moderated some 'popular' reforms, and it had rejected others without proving unduly 'obstructive'. Those reforms which it had passed had also been conceded in much the

¹Ibid., pp.283-4.

²Ibid., pp.143-5.

³Ibid.

same form by the Victorian Council, so that few conservatives in New South Wales were tempted to attribute the triumph of democracy to the peculiar weakness of their nominated upper house. Meanwhile, as the architects of the constitution had prophesied in 1853, New South Wales had escaped those bitter and fruitless constitutional deadlocks which led A.C.V. Melbourne to conclude many years later that 'The whole course of legislative history in the Australian colonies bears witness to the unsatisfactory nature of the elective upper house'.¹

¹A.C.V. Melbourne, Australian Constitutional Development, second edition, Brisbane, 1963, p.421.

CONCLUSION

In 1853, the leading conservatives in New South Wales had felt sufficiently confident in their society to choose a nominated Legislative Council, knowing full well that it could be swamped to break a constitutional deadlock with the Assembly. They had not believed that democratic pressures would be so strong that the Governor could be coerced into using the power of swamping 'unwisely'. By the early 1860s, their confidence had been shattered, for those years witnessed the final triumphs of a radical liberal movement dominated by men of low station. For respectable men accustomed to political power, the consequences were traumatic. They lost control of patronage; they were 'insulted' and attacked by the 'hungry adventurers' who had driven them from office; they could not prevent the enactment of 'class legislation' which threw 'all power' into the hands of the lower orders and prevented the big man from utilizing the advantages of wealth; they heard liberal politicians scorn statute law and noted that liberal rule had been followed by the collapse of constituted authority on the goldfields and an epidemic of bushranging; they saw state aid withdrawn at a time when society seemed desperately in need of the conventional restraints of religion; they heard liberals reject the British concept of the 'balanced constitution' as irrelevant and demand a democratic upper house - or even no upper house at all; and they saw the Governor ignore constitutional precedent in swamping the Council. In short, having lost the power to control society themselves, they felt that it was out of control and headed towards chaos.

Under these circumstances, many conservatives left the colony, others wished to leave it, and they all took a perverse satisfaction from attributing the colony's social and financial difficulties to the triumph of their opponents. They also abandoned their preference for a nominated upper house, for they believed that the colony lacked that attachment to British constitutional principles which alone could prevent abuse of the power of swamping.

By the early 1870s, however, even the conservatives realized that their doleful prophecies of chaos were not going to be fulfilled. The people of New South Wales were more law-abiding and better educated than ever before;¹ the colony was prosperous, the population was increasing and government revenues were beginning to outstrip expenditure;² the squatters had suffered losses as a result of free selection, but there had been no wider attacks on property; and the conservatives still dominated the colony's economic and social life. Moreover, most people seemed to agree that the nominated Council had worked well, and its future seemed assured because of the readiness with which most politicians accepted the Governor's right to veto appointments and guard its integrity.³ In fact, it was not until the 1920s that New South Wales had, in J.T. Lang, a premier whose scorn for nineteenth century constitutional conventions made the nominated Council unworkable; and even he was frustrated in his attempts to abolish the Council when two successive governors refused to make the necessary appointments.⁴

When the liberals had achieved their major goals and the old ideological divisions had begun to lose their significance, many conservatives returned to positions of political power. Every ministry in the 1870s included men who had been conservatives in the 1850s. In fact, such men made a significant contribution to the 'liberal' ethos which prevailed from the late 1860s to the late 1880s. This reflected the transformation of 'liberalism' into an ideology based upon assumptions which had been common to both liberals and conservatives in the 1850s. As Loveday and Martin have pointed

¹Cf. A. Barcan, 'Opinion, Policy, and Practice in N.S.W. Education 1833-1880', Ph.D. thesis, A.N.U., 1962, Appendix D. The crime rate declined rapidly after 1866.

²See G.D. Patterson, The Tariff in the Australian Colonies, 1856-1900, Melbourne, 1968, pp.62, 66.

³One exception was William Forster, who resigned from Martin's ministry in 1865 after the Governor had refused to accept advice to make appointments. His colleagues repudiated his action. See Forster to Young, 23 January 1865, Martin to Forster, 26 January 1865, enclosed with Young to Cardwell, 16 February 1865, P.R.O./C.O., 201/533. Cf. S.M.H., 28 January 1865 and Empire, 31 January 1865.

⁴Ken Turner, House of Review?, Sydney, 1969, pp.12-13, 17, 19-20.

out, although the ideal of 'independence' was usually 'taken as an essential part of liberalism', it in fact belonged to a wider political tradition, for conservatives had tried to claim it as their own at the 1856 elections.¹ The argument can be extended to the other ideals which characterized liberalism in the 1870s - the commitment to laissez faire, free trade and 'good government', the belief in 'progress', and the conviction that parliament should legislate for 'the whole community' rather than class or sectional interests. In the late 1850s and early 1860s, commitment to free trade had been more common amongst conservative merchants and pastoralists than amongst radical artisans and petty manufacturers;² and men of all political opinions had appealed to the principles of laissez faire in the debate over the land bills.³ Similarly, both liberals and conservatives had always professed devotion to 'good government' and the conservative belief in liberal 'corruption' and 'incompetence' had formed the basis for many complaints when Cowper held office.⁴ Both sides, of course, identified the interests of their favoured classes with the interests of the community as a whole, while accusing their opponents of favouring sectional interests and imposing 'class rule';⁵ and conservatives, as well as liberals, had always been in favour of 'progress'.

For conservatives, the term 'liberal' had never had the pejorative connotations of the word 'democracy'. 'Liberalism' had always referred, not simply to political doctrines of a democratic or 'popular' nature, but to a general belief in freedom, tolerance, laissez faire, progress and reform. Conservatives had claimed to believe in these things as much as liberals, and they asserted the right to describe themselves as liberal as well as conservative. Thus, in a letter explaining

¹P. Loveday and A.W. Martin, Parliament, Factions and Parties, Melbourne, 1966, pp.57-8.

²Cf. Chapter VII, above.

³See Chapter IV, part 4, above.

⁴See especially Chapter VII, above.

⁵See especially Chapter IV, parts 1 and 4, and Chapter VI, part 1.

the policies of the 'Anglo-Constitutional, or Conservative' party, James Macarthur had attributed to it a commitment to 'a liberal and unrestrictive policy in commercial and fiscal matters generally, carrying out as far as practicable the great principles of free trade and municipal self government'. He also described the anti-democratic Parker ministry, which adhered to the principles of the 'Conservative' party, as 'truly liberal'.¹ Similarly, many conservatives in the early and middle 1850s described themselves as 'liberal conservatives' or 'progressive conservatives'.² Not unnaturally, they bitterly resented the democrats' largely successful attempt to claim that they were the only real liberals, depicting the conservatives as a selfish clique opposed to freedom, progress and reform.

After the achievement of the major 'popular' reforms by the early 1860s, liberalism's specifically democratic content began to fade. Men still occasionally distinguished between liberals and conservatives on the basis of their past attitudes to democratic reforms, but, for most practical purposes, the term 'liberal' had been shorn of its democratic connotations. Thus, A.T. Holroyd could say in 1873: 'I have always been a liberal, though I have never advocated democracy.'³ Liberalism had come to mean what the conservatives had tried to make it mean in the 1850s and its all-pervasive influence stemmed from the fact that it embodied beliefs which had always been characteristic of both liberals and conservatives.

United by a common ideology, the rival political groups of the early 1860s were, by the 1870s, being fused into a single political class. The process culminated in 1889 in the appointment to the Council of James Hoskins and David Buchanan, the most extreme radicals in the Assembly in the early 1860s

¹James Macarthur to Henry Oxley, 20 October 1856, Macarthur Papers, vol.24, A2920, pp.139-70.

²See, for example, P. Loveday, 'The Development of Parliamentary Government in New South Wales, 1856-1870', Ph.D. thesis, University of Sydney, 1962, pp.75-6; and Barrie Dyster, 'The Fate of Colonial Conservatism on the Eve of the Gold-Rush', J.R.A.H.S., vol.54, part 4, December 1968, pp.334-5.

³J.L.C., 1873-74, p.410.

and in those days the bitterest opponents of the upper house. By the late 1880s, most politicians who had been liberals in the early 1860s were, as much as the conservatives of those years, the representatives of an old order. They were bound together by common memories, traditions, convictions, and by the threat from new men and new ideas. The old conservatives regarded Parkes, the last prominent politician of their generation, with affection and admiration. Like him, they were exponents of the 'liberal' values of the 1870s and early 1880s and with him, they were being by-passed by a new generation of liberals bent on a new type of social reform. They were seldom, however, amongst the active defenders of the old order, for their thoughts were turning increasingly to reminiscence and calm reflection. As Sir Alfred Stephen passed his ninetieth birthday, he recalled wistfully the happy days which he had spent with Parkes, Dalley, Martin and their friends.¹ When angry thoughts welled up, it was not the labour movement or new political doctrines which provoked them, but the memory of the reduction of his salary by the Assembly in 1860.² Stephen knew he would soon be dead, and the current crop of radicals could scarcely hurt him now.

As W.R. Piddington lay dying, his thoughts turned once more to that democracy from which he had formerly expected such dire results. His estimation of its consequences was more tentative now, and perhaps more hopeful. 'By the bye', he asked Parkes, do you think that in the next world we shall be permitted to know what is going on here? If so, I shall be curious to know the result of manhood suffrage and payment of members. Will it be an enlightened despotism? I believe it most likely.³

¹Stephen to Parkes, 24 November 1892, P.C., vol.35, A905, pp.282-4.

²Stephen to Parkes, 25 July 1894, P.C., vol.35, A905, pp.423-8. Cf. Chapter IV, part 3, above.

³Piddington to Parkes, 13 August 1887, P.C., vol.30, A900, pp.40-42. Slight changes have been made in the quotation, to the extent of using capital letters at the beginning of each sentence.

From Sir William Manning, there came, during the great Maritime Strike of 1890, not impassioned defence of the rights of property, but sad comment on the futility of reform.

'These are troublesome times', he wrote to Parkes,

What is to be done?...You must feel the strain a great deal, though I do not doubt you go a long way - as I do - in sympathy with the struggle for more equality and higher manhood than is the lot of most men at present. But there will not be the utopia to which they look; and which, if it came, would end in more degradation than exists under the existing system.¹

Manning had seen one generation of reformers fail to change society and it was with more sorrow than satisfaction that he awaited the failure of the next.

¹Manning to Parkes, 7 October 1890, P.C., vol.24, A894, pp.55-7. 'Higher manhood' is a transcription based only on a tentative interpretation of Manning's handwriting.

Proportion of
CONSERVATIVE VOTES

DIVISIONS

2. CONSERVATIVES

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18

(a) Officials

Barney, G.	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	17/17	=	100%
Christie, W.H.	C	C		C	C	C	C	C	C	C	C	C	C	C	C	C	C	15/16	=	94%
Gibbes, J.G.N.	C	C	C	C	C	C	C	C	C	C	C	C	C	C				14/14	=	100%
Manning, W.M.	C	C	C	C	C	C	L	L	C	C	C	C	C	C	C	C	C	14/17	=	82%
Mayne, W.C.	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	16/17	=	94%
Merewether, F.L.S.	C	C	C	C	C	C	C	L	C	C	C	C	C	C	C	C	C	16/17	=	94%
Plunkett, J.H.	C	C	C	C	C	C	C	L	L	L	C	C	C	L	C	C	C	12/17	=	71%
Thomson, E. Deas	C	C	C	C	C	C	C	L	L	C	C	C	C	C	C	C	L	14/17	=	82%
Riddell, C.D.	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	17/17	=	100%

(b) Non-official
nominees

Allen, G.	C	C	C	C	C	C	L	L	L			C	L	C	C	L	L	9/16	=	56%
Barker, T.	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	18/18	=	100%
Berry, A.	C		C	C	C	C	C	C	C			C	C	C	C	C	C	13/13	=	100%
Bradley, W.	C	C		C								C	L	C	C	C		7/8	=	88%
Broadhurst, E.	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	15/15	=	100%
Cox, E.	C		C									C	C	C	C	C	C	7/7	=	100%
Dobie, J. ⁴	C																	1/1	=	100%
Holden, J.R. ⁵	C	C	C	C								C	C	L	C	C	C	6/7	=	86%
Parker, H.W.	C	C	C															3/3	=	100%

Proportion of
CONSERVATIVE VOTES

DIVISIONS

2. CONSERVATIVES

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18

(c) Elective members

Bowman, G.	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	15/15	=	100%
Bowman, W.	C	C		C	C	C	C	C	C	C	C	C		C				11/11	=	100%
Chisholm, J.	C		C	L	C	C	L	C	C	C	C	C	L	C	C	L		11/15	=	73%
Douglass, H.G.	C	C	C	C	C	C	L	L	C		C	C	C	C	C	L		12/15	=	80%
Dumaresq, W.	C	C									C	C						4/4	=	100%
Finch, C.W.	C	C		C	C	C	C	C	C									9/9	=	100%
Fitzgerald, R.	C		C								C	C	C	C	C	C		7/7	=	100%
Holroyd, A.T.		C	C	C	C	C	L	C	C	L	L	C	L	C	C	C	C	12/16	=	75%
Jeffreys, A.	C																	1/1	=	100%
King, P.P.	C	C	C	C	C	C	C	C	C	C		C	C	C	C	C	C	16/16	=	100%
Leslie, G.F.	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	17/17	=	100%
Macarthur, J.	C	C	C	C	C	C	L	C	C	C	C	C	C	C	C	C	C	17/18	=	94%
Macarthur, W.	C	C	C	C	C	C	L	L	C	C	C	C	C	C	C	C	C	16/18	=	89%
Macleay, G.	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	18/18	=	100%
Marsh, M.H.																				
Martin, J.	C	C	C	L ⁷	C	C	C	C	C	C	C	C	C	C	C	C	C	16/17	=	94%

⁶

PART B: Divisions Used in Compiling Part A.

The divisions used in the table are ones which contemporaries regarded as good tests of liberalism and conservatism. They are:

1. Second reading of Constitution Bill.
2. Motion for committal of Constitution Bill, 8 December 1853.
3. Third reading of Constitution Bill, 21 December 1853.
4. Martin's amendment in favour of the elective, as opposed to the nominee, principle, 8 December 1853.
5. Wentworth's motion that the property qualification be held for at least six months prior to the election, 9 December 1853.
6. Flood's motion that £5 householders be entitled to vote, 9 December 1853.
7. Murray's motion to increase the representation of East and West Camden from one member each to two, 9 December 1853.
8. Allen's motion to increase Sydney's representation from four members to six, 9 December 1853.
9. Plunkett's motion to increase Sydney's representation from four members to five, 9 December 1853.
10. Allen's motion to increase the representation of Sydney Hamlets from one member to three, 9 December 1853.
11. Holroyd's motion to reduce the representation of the Murrumbidgee from two members to one, 9 December 1853.
12. Holroyd's motion to reduce the representation of the Liverpool Plains and the Gwydir and of the New England and the Macleay from two members to one, 9 December 1853.
13. Flood's amendment to eliminate the two-thirds clauses, 13 December 1853.
14. Wentworth's motion that the clergy be incapable of sitting in the Assembly, 13 December 1853.
15. Wentworth's motion giving large pensions to senior government officials and judges on their retirement or release from office, 14 December 1853.
16. Wentworth's motion that the colony have control of Crown land 'Subject to the provisions' of the Constitution Bill, 14 December 1853.

17. Darvall's amendment to omit the constitutional guarantee that 'vested or other rights' of the squatters be honoured, 14 December 1853.
18. Allen's amendment to increase the representation of Sydney from four members to six, 14 December 1853.

PART C: Footnotes to Table in Part A.

1. Campbell cast his vote with the conservatives, but from liberal motives. See his speech in Silvester (ed.), The Speeches in the Legislative Council..., p.146.
2. Oakes has been classed as a liberal, although absent, because in subsequent years he always sided with the liberals.
3. Park has been classed as a liberal on the basis of his single vote because he generally sided with the liberals in the session of 1855. (Cf. P. Loveday, 'The Development of Parliamentary Government in New South Wales, 1856-1870', Ph.D. thesis, Sydney University, p.457.)
4. Dobie was well known as a conservative pastoralist and surgeon, and has therefore been classified on the basis of a single vote.
5. Parker gave few votes as he was Chairman of Committees. He was James Macarthur's brother-in-law and a leading conservative. See his speech on the second reading in Silvester, op.cit., p.209, et passim.
6. For Marsh's conservative convictions, see his speech on the second reading in Silvester, op.cit., pp.72-4, et passim.
7. This was not really a 'liberal' vote. Martin voted in favour of the principle of an elective upper house from conservative motives, and those who voted with him did so from liberal ones. Cf. Chapter I, above.
8. Nicholson was Speaker and abstained from voting even in committee. He was a leading conservative. For his views on the constitution see, for example, Nicholson to James Macarthur, 21 April 1853, Macarthur Papers, vol.27, A2923.

9. Nichols was an associate of Wentworth's, and can safely be classified on the basis of a single vote. See his speech on the second reading in Silvester, *op.cit.*, p.197, et passim.
10. Russell seems to have voted with the liberals against the second reading of the Constitution Bill only because clause 51 prevented the separation of Moreton Bay. He was otherwise in favour of it. Cf. Silvester, *op.cit.*, p.201.

APPENDIX IIOCCUPATIONS OF MEMBERS OF THE
LEGISLATIVE COUNCIL, DECEMBER 1853A. CONSERVATIVES:1. Officials:

Barney, Lieut.-Col.G.	- Chief Commissioner of Crown Lands
Christie, Major W.H.	- Postmaster-General
Gibbes, Lieut-Col.J.G.N.	- Collector of Customs
Manning, W.M.	- Solicitor-General (squattng interests)
Mayne, W.C.	- Inspector-General of Police
Merewether, F.L.S.	- Auditor-General
Plunkett, J.H.	- Attorney-General
Thomson, E. Deas	- Colonial Secretary
Riddell, C.D.	- Colonial Treasurer

2. Non-official Nominees:

Allen, G.	- Solicitor
Barker, T.	- Manufacturer
Berry, A.	- Pastoralist and agriculturalist (squattng interests)
Bradley, W.	- Pastoralist (squattng interests)
Broadhurst, E.	- Barrister (squattng interests)
Cox, E.	- Pastoralist (squattng interests)
Dobie, J.	- Pastoralist and surgeon (squattng interests)
Holden, J.R.	- Solicitor
Parker, H.W.	- Company director with private means

3. Elective Members:

Bowman, G.	- Pastoralist (squattng interests)
Bowman, W.	- Pastoralist (squattng interests)

Chisholm, J.	- Pastoralist (squatting interests)
Douglass, Dr H.G.	- Medical practitioner and landowner
Dumaresq, W.	- Pastoralist (squatting interests)
Finch, C.W.	- Pastoralist (squatting interests)
Fitzgerald, R.	- Pastoralist (squatting interests)
Holroyd, A.T.	- Barrister
Jeffreys, A.	- Pastoralist (squatting interests)
King, P.P.	- Pastoralist
Leslie, G.F.	- Pastoralist (squatting interests)
Macarthur, J.	- Pastoralist (squatting interests)
Macarthur, W.	- Pastoralist (squatting interests)
Macleay, G.	- Pastoralist (squatting interests)
Marsh, M.H.	- Pastoralist (squatting interests)
Martin, J.	- Barrister
Morris, A.	- Pastoralist (squatting interests)
Murray, T.A.	- Pastoralist
Nicholson, Sir C.	- Medical practitioner, businessman, landowner
Nichols, G.R.	- Solicitor
Osborne, A.	- Pastoralist (squatting interests)
Osborne, H.	- Pastoralist (squatting interests)
Russell, H.S.	- Pastoralist (squatting interests)
Suttor, W.H.	- Pastoralist (squatting interests)
Smith, R.J.	- Unknown
Wentworth, W.C.	- Pastoralist and barrister (squatting interests)

B. LIBERALS:

1. Officials: - Nil
2. Non-official Nominees: - Nil
3. Elective Members:
 - Bligh, J.W. - Solicitor
 - Campbell, R. - Merchant
(squatting interests)
 - Cowper, C. - Pastoralist
(squatting interests)
 - Darvall, J.B. - Barrister
 - Flood, E. - Pastoralist
(squatting interests)
 - Oakes, G. - Pastoralist
(squatting interests)
 - Park, A. - Pastoralist and
agriculturalist
 - Richardson, J. - Merchant
(squatting interests)
 - Smart, T.W. - Merchant
 - Thurlow, W. - Solicitor

Sources: The Australian Dictionary of Biography and its associated files; contemporary directories (listed in bibliography); and squatting lists appended to the report on Crown lands, V. & P. (L.C., N.S.W.), 1854, pt.2.

APPENDIX III
ANALYSIS OF VOTING PATTERNS IN
THE LEGISLATIVE COUNCIL, 1858-72

PART A: DESCRIPTION OF THE METHOD

The following analysis of voting patterns is based partly upon the POLIT computer programme devised by L.G. Veitch and D.H. Jaensch. Details of their technique have recently been published¹ and they need not be explained in full here. Briefly, however, the POLIT programme uses a variant of principal component analysis to provide:

1. A measure of 'patterned' voting in legislative bodies, identifying significant patterns and isolating those divisions which contribute most strongly to each pattern.
2. A statistical measure of where members of legislative bodies are placed, by their votes, in relation to other members in each of the patterns identified.

If POLIT analysis were applied to a modern legislature containing two parties whose members voted strictly on party lines, it would simply reveal what should have already been obvious - the fact that the legislature was polarized into two distinct groups whose members were opposed on a single voting pattern to which all divisions contributed strongly. However, POLIT is invaluable in studying the structure of voting in bodies without a strong party system for, in such cases, the voting patterns are difficult and sometimes impossible to detect with the naked eye. It has the additional advantage of providing a safeguard against unconscious bias in the identification of voting patterns by less systematic methods.

¹L.G. Veitch and D.H. Jaensch, 'A Procedure for the Analysis of Colonial Australasian Legislatures', Political Science (New Zealand), vol.26, no.1, July 1974. POLIT analysis has also been used by Peter Loveday in 'The Federal Convention, an analysis of the voting', Australian Journal of Politics and History, vol.XVIII, no.2, August 1972, pp.180-88.

Unfortunately, the results given by POLIT are subject to distortion where there is a very high level of absenteeism, as in the case of the New South Wales Legislative Council. To overcome this difficulty, a modified technique has been adopted. First, the computer excluded from POLIT analysis all members who were not present for at least 40 per cent of divisions in the period for which voting patterns were being analysed. When this was done, absenteeism produced no significant distortion in the identification of the divisions which made the greatest contribution to the voting patterns, and the voting patterns themselves were real ones. However, it was found that when members missed divisions which were strongly associated with a particular pattern, absenteeism still affected their position relative to other members in respect of that pattern. For this reason POLIT was not used as the final arbitrator of the members' position: it was used mainly to identify the significant patterns and the divisions which contributed to them most strongly.

The calculation of the members' position in relation to each other in 'patterned' voting was made as follows:

1. A table was constructed giving the votes in strongly patterned divisions of all members, including those excluded from POLIT analysis on the grounds of absenteeism.
2. The votes of members whom POLIT had shown to be most strongly opposed on a particular pattern were checked in order to construct opposing paradigms of voting behaviour for the pattern.
3. The positions of other members were then calculated by comparing their voting patterns with the paradigmatic responses.
4. Since the votes of the representative of the government usually conformed to one of the paradigms, it was normally convenient to express members' positions by showing the number of times they voted with the government in strongly 'patterned' divisions as a proportion of all the votes which they cast in those divisions.

5. Members who cast more than two-thirds of their votes with the government's representative were grouped with the government; members who cast more than two-thirds of their votes against the government's representative were designated as 'anti-government voters'; other members were classed as 'independents', or, if they did not vote in any 'patterned' divisions, excluded.
6. In order to standardize the selection of 'patterned' divisions in a manner intelligible to those unfamiliar with POLIT analysis, all the 'strongly patterned' divisions were checked to ensure that they had more than two-thirds of 'government voters' opposed to more than two-thirds of 'anti-government' voters. This was almost invariably the case, but in several sessions a few divisions were omitted because they did not conform to the pattern closely enough to satisfy this criterion. When such exclusions were made, members' votes were re-calculated. This never resulted in a significant realignment of voting patterns.

The remainder of this appendix consists of tables constructed by the above method for the years 1858 to 1872. The voting for several sessions has not been analysed on the grounds that there were too few divisions. No table has been given for the session of 1857 because POLIT analysis failed to detect any voting patterns significant at the 5 per cent level.

PART B: TABLES OF VOTING PATTERNS, 1858-18721. SECOND COWPER MINISTRY,
SESSION OF 1858Level of Agreement with Representative of Cowper Government:
Votes in Eighteen Most Strongly 'Patterned' Divisions

<u>Liberals</u>		<u>Independents</u>		<u>Conservatives</u>	
Blake	7/8	Jones	10/15	A'Beckett	0/13
Bland	14/14	Prince	4/8	Alexander	0/17
Bligh	10/11			Allen	0/5
Byrnes	16/16			Berry	0/12
Dickson	14/14			Broadhurst	0/12
Forbes	13/13			Burton	1/9
Hill	12/12			Comrie	1/9
Hunt	15/15			Docker	0/18
Lang	11/12			Douglass	0/7
Lutwyche (Govt. rep.)	18/18			Faithful	0/3
MacFarlane	11/11			Fitzgerald	0/2
Pennington	18/18			Holden	0/18
Robey	11/13			Isaacs	0/16
Russell	12/13			Lamb	1/11
Wilshire	11/11			Lord	1/13
				Macnamara	0/1
				Merewether	0/17
				Mitchell	0/18
				Norton	0/17
				Park	0/9
				Stephen	1/9
				Therry	0/12
				Thomson	0/17
				Wise	0/14

Note:

The table was compiled from the following divisions:

- (a) District Courts Bill (two divisions, 16, 29 April 1858).
- (b) Electoral Law Amendment Bill (sixteen divisions). These divisions were held on the following dates in 1858: 10 September; 15 September (two divisions); 5, 6 October; 7 October (two divisions); 12 October; 13 October (three divisions, being the one passed 24-8 and the ones lost 6-17 and 8-14); 11 November (three divisions, being the ones passed 13-12 and the one lost 14-17); 12 November (two divisions).

2. SECOND COWPER MINISTRY,
SESSIONS OF 1858-9 AND 1859-60

Level of Agreement with 'Liberal' Paradigm:
Votes cast in Seven Divisions
with Most Strongly 'Patterned' response

<u>'Liberals'</u>		<u>'Independents'</u>		<u>'Conservatives'</u>	
Bayley	4/4	Dickson	3/5	A'Beckett	1/4
Bland	6/6	Forbes	3/5	Alexander	1/6
Bligh	2/2	Jones	2/3	Allen	1/6
Byrnes	3/3	Montefiore	2/5	Berry	0/3
Hunt	4/5	Pennington	2/3	Broadhurst	0/3
Lang	2/2			Docker	0/2
Lutwyche	3/3			Douglass	1/4
Macfarlane	5/6			Holden	0/3
Russell	4/4			Hood	0/2
Wilshire	4/4			Isaacs	0/6
				Johnson	0/7
				Lamb	0/5
				Merewether	0/2
				Mitchell	0/6
				Norton	0/4
				Thomson	0/6
				Want	0/4
				Wise	0/7

Notes:

- (i) Nine members who cast only a single vote in relevant divisions have been omitted, as the issues raised were not strong 'ideological' ones which would admit of reliable classification on the basis of a single vote.
- (ii) The table was compiled from the following divisions:
- (a) District Courts Act Amendment Bill (19 January 1859).
 - (b) Adjournment of debate on motion of Douglass (3 February 1859).
 - (c) Unparliamentary words by Attorney-General (3 February 1859).

- (d) Adjournment of the House (2 March 1859).
- (e) Prosecutions for Libel Amendment Bill
(23 February 1859).
- (f) Adjournment (7 September 1859).
- (g) Representation of the Government (5 October 1859).

3. ROBERTSON MINISTRY AND THIRD COWPER MINISTRY,
SESSIONS OF 1859-60, 1860 AND 1861

Level of Agreement with Representatives of Robertson and Cowper
Governments: Votes in Twenty-two Most Strongly 'Patterned'
Divisions in Council

<u>Liberals</u>		<u>'Independents'</u>		<u>Conservatives</u>	
Bland	9/9	Eagar	2/5	Alexander	1/19
Byrnes	12/12	Forbes	2/5	Allen, G.	2/16
Cowper (Govt. rep.)	4/4			Allen, G.W.	1/5
Hargrave (Govt. rep.)	2/22			Berry	0/11
Macfarlane	10/13			Broadhurst	0/4
? Montefiore	1/1			Comrie	2/10
Oakes	11/11			Docker	0/20
Robey	15/17			Douglass	0/4
Russell	20/20			Faithfull	0/1
Robertson (Govt. rep.)	10/10			Fitzgerald	0/2
Wilshire	1/1			Hill	0/5
				Holden	1/14
				Hood	0/6
				Hunt	2/9
				Isaacs	0/21
				Johnson	0/22
				? Jones	0/1
				Lamb	3/19
				Lord	0/5
				Merewether	0/19
				Mitchell	1/21
				Norton	0/8
				Park	1/5
				Prince	0/13
				Thomson	0/14
				Towns	0/14
				Want	0/18

Notes:

- (i) The categorization of Montefiore as a 'liberal' on the basis of a single vote would be unwarranted. Montefiore was in fact a conservative, but friendly to the ministry. The question involved in the division was as much a matter of courtesy to the ministry as a matter of ideology.
- (ii) The categorization of Jones as a conservative on the basis of a single division has been queried, because that division had no strong ideological overtones and Jones had in previous sessions voted as an 'independent'.
- (iii) The table was compiled from the following divisions:
 - (a) Adjournment (8 March 1860).
 - (b) Proceedings in Lunacy Bill (17 May 1860).
 - (c) Lien on Wool Act Continuation Bill (17 May 1860).
 - (d) Shoalhaven Municipality Petition (20 June 1860).
 - (e) Appropriation Bill for 1859-60 (29 June 1860).
 - (f) Address in Reply and Adjournment (four divisions on 11 January 1861).
 - (g) Customs Duties Bill and tabling of estimates (three divisions on 13, 20 February 1861).
 - (h) Legislative Council Bill of 1861 (six divisions on 11, 19, 24, 25 April 1861).
 - (i) Crown Lands Alienation Bill (two divisions on 12 April, 6 May 1861).
 - (j) Adjournment (24 April 1861).
 - (k) Additional days for despatch of business (26 April 1861).

4. THIRD COWPER MINISTRY,
SESSION OF 1861-62

Level of Agreement with Representative of Cowper Government:
Votes in Fourteen Most Strongly 'Patterned' Divisions

<u>'Liberal'</u> <u>Voters</u>	<u>'Independent'</u> <u>Voters</u>	<u>'Conservative'</u> <u>Voters</u>
Butler 10/11	Robey 5/8	Darvall 0/2
Byrnes 7/7	McArthur 6/10	Fitzgerald 0/1
Hargrave (Attorney- General) 9/9	Campbell 3/8	Gordon 1/4
Robertson (Govt. rep) 11/11	Allen 1/3	Holden 1/11
B. Russell 9/9	Kemp 5/10	Manning 0/11
Plunkett 10/10	Ward 5/8	Merewether 0/7
W. Russell 9/10		Mitchell 0/11
		Thomson 0/7
		Watt 2/8
		Wentworth 2/9

Notes:

- (i) 'Liberal' voters in this session were not always liberals by ideological conviction. The reader is referred to Table XI in Chapter V, above, for a comparison of voting behaviour with ideological orientation. In particular, it will be found that although Plunkett and W. Russell voted consistently as liberals, they had conservative views on most questions.
- (ii) The table is based on the divisions on the following bills:
- (a) Crown Lands Alienation Bill (five divisions on 10 October 1861 and two divisions on 11 October 1861).
 - (b) Chinese Immigration Restriction Bill (two divisions on 16 October 1861).
 - (c) Goldfields Bill, divisions on 23 October and 30 October 1861.

5. THIRD COWPER MINISTRY,
SESSION OF 1862

Level of Agreement with Representative of Cowper Government:
Votes in Twenty Most Strongly 'Patterned' Divisions.

<u>'Liberal'</u> <u>Voters</u>	<u>'Independent'</u> <u>Voters</u>	<u>'Conservative'</u> <u>Voters</u>
Butler 13/13	Allen 3/8	Campbell 0/16
Byrnes 16/16	Holden 7/12	Kemp 0/16
Hargrave (govt. rep.) 20/20	Watt 8/12	Manning 0/18
Macfarlane 12/12		Merewether 0/18
B. Russell 13/13		Mitchell 0/17
Robey 12/12		Plunkett 0/20
Scott 19/19		W. Russell 2/9
McArthur 8/8		Thomson 0/17
Murray 6/7		Wentworth 0/3
Ward 15/15		

Notes:

- (i) Although Murray and Ward voted with the liberals in this session, which was dominated by the issue of state aid to religion, they had conservative views on some matters. For a comparison of voting behaviour with general ideological orientation see Table XII in Chapter V, above.
- (ii) The table is based on divisions on the following issues:
- (a) Grants for Public Worship Prohibition Bill, divisions in Council on 24 September 1862 (two divisions), 1 October 1862, 8 October 1862, 30 October 1862 (two divisions), 3 December 1862; divisions in committee on 28 October 1862 (three divisions), 3 December 1862 (two divisions).
 - (b) Legislative Council Bill, two divisions on clause 1 and one division on clause 4, 30 September 1862.
 - (c) Life Assurance Encouragement Bill, divisions in Council, 17, 18 December 1862; division in committee, 17 December 1862.
 - (d) Seamen's Laws Amendment Bill, 20 December 1862.
 - (e) Coal Fields Regulation Bill, 12 December 1862.

6. MARTIN MINISTRY:
SESSION OF 1863-4

Level of Agreement with Representative of Martin Government:
Votes in Thirteen Most Strongly 'Patterned' Divisions

<u>'Government'</u> <u>Voters</u>	<u>'Independent'</u> <u>Voters</u>	<u>'Anti-Government'</u> <u>Voters</u>
Blaxland 10/10	Kemp 8/13	Allen 0/3
Byrnes 6/6	Macfarlane 6/9	G.H. Cox 0/2
J. Campbell 10/10	Walker 2/5	Docker 0/10
Hargrave 7/7		Johnson 1/13
Gordon 1/1		Lloyd 0/4
Murray 12/12		Manning 0/10
Ogilvie 5/5		Mitchell 0/11
Plunkett (Govt. rep.) 13/13		B. Russell 1/8
Ward 6/6		Scott 1/7
		Thomson 1/11
		Towns 2/10
		Watt 2/11

Notes:

- (i) It should be noted that most 'Anti-Government' voters favoured the government in principle. Their voting behaviour was dictated mainly by the principles involved in the divisions. Similarly, Hargrave, who voted with the government, was strongly opposed to it. See the discussion in Chapter VII, above.
- (ii) The table is based on divisions on the following matters:
- (a) Customs Duties Bill, division in Council, 18 February 1864; divisions in committee, 16 February 1864 (three divisions), 17 February 1864 (four divisions).
 - (b) Orders of Sequestration in Insolvency Bill, division in Council, 9 December 1863; divisions in committee, 9 December 1863 (two divisions).
 - (c) Prevention and Cure of Scab in Sheep Bill, 23 December 1863 (two divisions - involving the powers of the Council to amend money bills).

7. FOURTH COWPER MINISTRY,
SESSION OF 1865

Level of Agreement with Representative of Cowper Government:
Votes in Ten Most Strongly 'Patterned' Divisions

<u>'Ministerialist'</u> <u>Voters</u>	<u>'Independent'</u> <u>Voters</u>	<u>'Opposition'</u> <u>Voters</u>
Gordon 5/5	Allen 1/2	A. Campbell 2/8
Hargrave (Govt. rep.) 10/10	Blaxland 4/7	J. Campbell 2/7
Macfarlane 5/5	Byrnes 2/3	J. Chisholm 2/8
B. Russell 4/4	Murray 3/5	G.H. Cox 0/3
Scott 1/1	Plunkett 3/7	Docker 0/10
Watt 1/1		Icely 0/9
		Johnson 0/7
		Lord 0/3
		W. Macarthur 0/5
		Manning 0/8
		Ogilvie 0/2
		Thomson 0/7
		Towns 0/3
		Walker 0/4

Notes:

- (i) Divisions for the session of 1865-6 were also included in the POLIT analysis but none were strongly 'patterned'. The table therefore includes only divisions for the session of 1865.
- (ii) The table is based on divisions on the following matters:
- (a) Coal Fields Regulation Act Amendment Bill, 17 May 1865 (two divisions).
 - (b) Package Bill, division in Council, 15 June 1865; division in committee, 13 June 1865.
 - (c) Stamp Duties Bill, division on clause 2, 2 June 1865; division on clause 8, 6 June 1865.
 - (d) Impounding Bill, divisions on clause 30, 17 May, 2 June 1865.
 - (e) Leases and Sales of Settled Estates Facilitation Bill, 26 April 1865.
 - (f) Tabling of papers on expenses of general elections and electoral rolls, 12 April 1865.

8. MARTIN MINISTRY,
SESSION OF 1866

Level of Agreement with Representative of Martin Government:
Votes in Eighteen Most Strongly 'Patterned' Divisions

<u>'Liberal'</u> <u>Voters</u>	<u>'Independent'</u> <u>Voters</u>	<u>'Conservative'</u> <u>Voters</u>
Blaxland 9/9	Chisholm 2/4	J. Campbell 0/18
Byrnes 13/13	Manning 8/17	E. Cox 2/15
A. Campbell 18/18	Ogilvie 7/18	Icely 1/12
G.H. Cox 12/12		Lord 1/11
Docker (Govt. rep.) 18/18		J. Macarthur 4/18
Gordon 16/16		W. Macarthur 1/15
Murray 16/16		J. Mitchell 0/14
B. Russell 7/7		Plunkett 0/18
		Thomson 0/18
		Towns 0/16
		Weekes 0/17

Notes:

- (i) All the divisions were on Parkes' Public Schools Bill, which involved sufficient questions of liberal and conservative principle to make it regarded as, in some respects, a distinctively 'liberal' reform. This seemed to justify the use of the terms 'liberal' and 'conservative' as very loose labels to describe supporters and opponents of the bill's distinctive features. However, as noted in Chapter VII, some conservatives supported the bill whole-heartedly and many others approved of its basic objectives. Consequently, the division between liberals and conservatives was not as clear as it had been on such issues as land reform and electoral reform.
- (ii) The table is based on divisions on the following clauses of the bill:
- Clause 1, four divisions on 29 November 1866; one division on 30 November 1866; one division on 4 December 1866.
 - Clause 5, three divisions on 4 December 1866
 - Clause 6, one division on 4 December 1866; one division on 5 December 1866; one division on 19 December 1866.
 - Clause 9, one division on 5 December 1866; two divisions on 19 December 1866.
 - Clause 10, two divisions on 6 December 1866; one division on 19 December 1866.

9. MARTIN MINISTRY,
SESSION OF 1867-8

Level of Agreement with Representative of Martin Government:
Votes in Nine Most Strongly 'Patterned' Divisions

<u>Vote with</u> <u>Government</u>		<u>'Independent'</u> <u>Voters</u>		<u>Vote against</u> <u>Government</u>	
Allen	3/3	J. Campbell	2/3	Blaxland	2/9
Byrnes	6/8	Macfarlane	1/3	Busby	0/8
Docker (Govt. rep.)	9/9			A. Campbell	0/2
Icely	7/7			E. Cox	0/1
Jennings	5/6			Gordon	1/8
Lord	3/3			Hay	0/9
Mitchell	7/7			W. Macarthur	0/5
Plunkett	1/1			Manning	0/9
Thomson	6/7			Murray	0/3
Weekes	8/8			Russell	0/3
				Towns	0/1

Note:

The table is based on divisions on the following bills:

- (a) Claims Against the Government Bill, divisions on 12, 19, 25 September 1861.
- (b) Railway Loan Bill, division in Council, 17 December 1867; two divisions in committee, 13 December 1867.
- (c) Municipalities Bill, division on clause 161, 13 December 1867.
- (d) Gates on Public Roads Bill, 13 December 1867.
- (e) St. Andrew's (Presbyterian) College Bill, 31 July 1867.

10. ROBERTSON AND COWPER MINISTRIES,SESSIONS OF 1868-9, 1870Level of Agreement with Representative
of Robertson and Cowper Governments:
Votes in Fifteen Most Strongly 'Patterned' Divisions

<u>Vote with Government</u>	<u>'Independent' Voters</u>	<u>Vote against Government</u>
Allen 5/5	G.H. Cox 2/4	Blaxland 3/12
Owen (Govt. rep.) 15/15	Murray 1/3	Busby 0/6
Gordon 11/11		Byrnes 2/8
Lord 5/5		A. Campbell 0/10
Macarthur 4/5		C. Campbell 0/7
Macfarlane 12/12		J. Campbell 0/12
Manning (Att.-Gen.) 13/13		Chisholm 0/5
Russell 5/5		Darley 2/14
Thomson 5/6		Docker 0/15
Towns 3/3		Hay 0/15
Smart 1/1		Holt 3/10
Weekes 11/11		Icely 0/1
		Moore 0/12
		Park 1/7
		Richardson 3/13

Note:

The table is based on divisions on the following matters:

- (a) Expenditure of public monies without statutory authority (three divisions on 23 March 1869).
- (b) Road Act Amendment Bill (28 January 1869 and two divisions on 4 February 1869).
- (c) Small Debts Recovery Act Amendment Bill, 4 March 1869.
- (d) Small-Pox Prevention Bill, 30 March 1869 (two divisions).
- (e) Unclaimed Balances Appropriation Bill, 23 February 1870 (two divisions).
- (f) Deficiency Loans Funding Bill, 4, 5 and 6 May 1870.
- (g) Loan Bill of 1870, 3 May 1870 (two divisions).

11. MARTIN-ROBERTSON MINISTRY,
SESSIONS OF 1870-1, 1871-2

Level of Agreement with Representative
of Martin-Robertson Government:
Votes in Thirteen Most Strongly 'Patterned' Divisions

<u>Vote with</u> <u>Government</u>		<u>'Independent'</u> <u>Voters</u>	<u>Vote against</u> <u>Government</u>		
Allen	3/4	Darley	3/8	Busby	1/7
Blaxland	8/11	Gordon	1/3	C. Campbell	0/11
Byrnes	11/11	Holt	3/6	J. Campbell	0/13
Docker	13/13	Manning	5/10	Chisholm	0/1
Moore	12/13	Murray	1/2	Hay	0/9
Owen	3/4	Thomson	3/6	Lord	0/6
Richardson	10/11			Macarthur	0/4
Weekes	13/13			Smart	0/1

Notes:

- (i) The confusion created by the Martin-Robertson coalition, which completely disrupted traditional allegiances, was reflected in the large number of 'independent' voters. This heavy 'independent' vote was characteristic of most sessions in the 1870s, contrasting with the comparatively 'disciplined' voting which hitherto prevailed. Analyses of voting in the Council during the 1870s are in my possession.
- (ii) The table is based on divisions on the following bills:
- (a) Customs Duties Bill, division in Council, 10 May 1871; divisions in committee, 27 April 1871, 3 May 1871 (division on clause 9 passed 9-5), 5 May 1871 (divisions on clauses 12, 14).
 - (b) Sydney Meat Company's Incorporation Bill, 2 June 1871.
 - (c) Main Roads Act Amendment Bill, 15 June 1871.
 - (d) Roads Bill, 1 March 1871.
 - (e) Superannuation Act Amendment Bill, division in Council, 16 June 1871; divisions in committee, 16 June 1871 (division on clause 2 tied 7-7, and division on clause 6).
 - (f) Appropriation Bill, 21 June 1871.
 - (g) Cumberland and Camden Bathurst-Burr and Thistle Bill, 12 April 1871.

APPENDIX IV
PRINCIPAL OCCUPATION OF MEMBERS
TAKING SEATS IN LEGISLATIVE COUNCIL,
1856-1872

The following table has been compiled from personal files containing 'potted biographies' of all members of the Council from 1856 to 1900. The files contain, as well as occupational details, such standard information as place and date of birth, religion and public appointments, together with some information on political and social activities. I would be happy to make this information available to those who require it.

The limitations of the type of occupational classifications adopted below are well known, and they are particularly relevant to members of the Council, for most men who had the stature conventionally required for appointment had a wide variety of interests. Most big merchants were heavily involved in banking or insurance, and many had pastoral interests. Similarly, wealthy lawyers usually had business connections and a few had pastoral interests. The colonial élite from which most members of the Council were drawn was, in an occupational sense, more integrated than either the following table or traditional accounts imply. This community of interest between a horizontally defined élite was, in fact, basic to the analysis of political conflict in Chapters III, IV and VI, above.

The following abbreviations have been used for the sources referred to in the table:

ABBREVIATIONS

A/Asian

Australasian

A.D.B.

Australian Dictionary of Biography, ed. D. Pike, vols.1 to 5, Melbourne, 1966-74.

A.E.

The Australian Encyclopedia, ed. A.H. Chisholm, 10 vols, Sydney, 1958.

A.O.N.S.W.

Archives Office of New South Wales.

Bedford

Ruth Bedford, Think of Stephen, Sydney, 1954.

- Crew B.H. Crew, 'The History of the Walker and Archer Families in Australia, 1813-1968', M.A. thesis, A.N.U., 1963.
- Ford's, 1851 Ford's Sydney Commercial Directory, Sydney, 1851.
- Ford's, 1853 Ford's Australian Almanac..., Sydney, 1853.
- Heaton J.H. Heaton, Australian Dictionary of Dates and Men of the Time, London, 1879.
- J.L.C. New South Wales. Journal of the Legislative Council.
- M.I. Mitchell Library.
- M. & W. A.W. Martin and P. Wardle, Members of the New South Wales Legislative Assembly, 1856-1900, Canberra, 1959.
- Mennell P. Mennell, Dictionary of Australasian Biography, London, 1892.
- Mowle P.C. Mowle, Pioneer Families of New South Wales, Sydney, 1948.
- Sands & Kenny Sands & Kenny's Commercial and General Sydney Directory, Sydney, 1861.
- S.S.D. Sands' Sydney Directory, Sydney, various years.
- S.M.H. Sydney Morning Herald
- T. & C.J. Town and Country Journal
- V. & P. (L.A., N.S.W.) New South Wales. Votes and Proceedings of the Legislative Assembly.
- Waugh's Waugh's Australian Almanac, Sydney, 1860.

Name	Years in Council	Occupation	Sources
A'Beckett, A.M.	1856-60	Surgeon	Heaton; Mowle
Alexander, John	1856-61	Merchant	<u>S.S.D.</u> , 1861, p.135.
Allen, George	1856-61 1861-77	Solicitor	<u>A.D.B.</u>
Allen, G.W.	1860-1	Solicitor	<u>A.D.B.</u>
Bayley, L.H.	1859	Barrister	<u>A.D.B.</u>
Berry, A.	1856-61	Pastoralist/ agriculturalist	<u>A.D.B.</u>
Blake, I.J.	1858-60	Barrister	M. & W.
Bland, W.	1858-61	Medical practitioner	<u>A.D.B.</u>
Blaxland, J.	1863-84	Businessman	Unidentified obituary in my possession.
Bligh, J.W.	1856-9	Solicitor (retired)	<u>V. & P.</u> (L.C., N.S.W.), 1854, pt.2.
Bloomfield, H.K.	1856-7	Commanding Officer H.M. Austn Forces	<u>J.L.C.</u> , 1857, p.15.
Broadhurst, E.	1856-61	Barrister	<u>A.D.B.</u>
Burton, Sir W.W.	1857-61	Judge (retired)	<u>A.D.B.</u>
Busby, A.	1856-8	Pastoralist	<u>A.D.B.</u> ; Mowle
Busby, W.	1867-87	Pastoralist	<u>A.D.B.</u>
Butler, E.	1861-3 1877-9	Barrister	<u>A.D.B.</u>
Byrnes, W.	1858-61 1861-91	Businessman	<u>A.D.B.</u> under W. Byrnes; <u>T. & C.J.</u> , 31 October 1891, p.28.
Campbell, A.	1864-90	Businessman	<u>A.D.B.</u>
Campbell, C.	1870-88	Pastoralist	<u>A.D.B.</u>

Name	Years in Council	Occupation	Sources
Campbell, J.	1856 1861-86	Merchant	<u>A.D.B.</u>
Chisholm, James	1864-88	Pastoralist	Mowle; T. & C.J., 30 June 1888, p.1344.
Comrie, J.	1856-61	Pastoralist and businessman	<u>S.M.H.</u> , 4/2/50, p.4; <u>V. & P.</u> (L.A., N.S.W.), 1857, pt.1, p.562.
Cowper, C.	1860	Pastoralist	<u>A.D.B.</u>
Cox, E.	1866-8	Pastoralist	<u>A.D.B.</u> , under E.K. Cox
Cox, G.H.	1863-1901	Pastoralist	M. & W.
Dalley, W.B.	1870-3 1875-80 1883-8	Barrister	<u>A.D.B.</u>
Darley, F.M.	1868-86	Barrister	<u>A.D.B.</u>
Darvall, J.B.	1861-3	Barrister	<u>A.D.B.</u>
Dickinson, J.N.	1856-8	Supreme Court judge	Mennell
Dickson, Dr J.	1856-9	Pastoralist; investor; periodically active as medical practitioner	<u>V. & P.</u> (L.A., N.S.W.), 1857, pt.1, p.561; <u>N.S.W. Govt. Gazette</u> , 1868, vol.1, p.593; Ford's, 1853, p.144; <u>S.M.H.</u> , 3, 10 Dec. 1859, 25 Feb. 1860, 19 April 1860, 5 May 1860.
Docker, J.	1856-61 1863-84	Pastoralist, agriculturalist, surgeon	<u>A.D.B.</u>
Douglass, H.G.	1856-61	Medical practitioner, landowner	<u>A.D.B.</u>
Eagar, G.	1859-60	Accountant and agent	<u>S.S.D.</u> , 1861; <u>S.M.H.</u> , 24 April 1861, ads.

Name	Years in Council	Occupation	Sources
Faithfull, W.P.	1856-61	Pastoralist	<u>A.D.B.</u>
Fitzgerald, R.	1856-61 1861-5	Pastoralist	<u>A.D.B.</u>
Forbes, George	1858-61	Unknown; lived at Parramatta	Sands & Kenny, 1861.
Gordon, S.D.	1861-82	Wine & spirit merchant	<u>A.D.B.</u>
Hargrave, J.F.	1859-61 1861-5	Barrister	<u>A.D.B.</u>
Hay, Sir John	1867-92	Pastoralist	<u>A.D.B.</u>
Hill, George	1856-61	Butcher & pastoralist	<u>A.D.B.</u>
Holden, G.K.	1856-61 1861-3	Solicitor	<u>A.D.B.</u>
Holt, T.	1868-83	Businessman & pastoralist	Henry E. Holt, <u>An Energetic Colonist</u> , Melbourne, 1972.
Hood, T.	1856-61	Pastoralist	<u>V. & P.</u> (L.A., N.S.W.), 1857, pt.1, p.562.
Hunt, E.	1858-61	Businessman	Ford's, 1853, p.108f; Waugh's, 1858, p.188f; <u>V. & P.</u> (L.A., N.S.W.), 1862, pt.5, pp.1108-13.
Icely, T.	1864-74	Stock-breeder; pastoralist	<u>A.D.B.</u>
Isaacs, R.M.	1857-61	Barrister	M. & W.
Jenkins, R.P.	1856-9	Pastoralist	Mowle
Jennings, P.A.	1867-70 1890-7	Pastoralist	M. & W.

Name	Years in Council	Occupation	Sources
Johnson, R.	1856-61 1863-6	Solicitor	<u>A.D.B.</u>
Jones, D.	1856-60	Merchant	<u>A.D.B.</u>
Kemp, C.	1861-4	Businessman	<u>A.D.B.</u> ; M. & W.
Knox, E.	1856-7 1881-94	Businessman	<u>A.D.B.</u>
Lamb, J.	1857-61	Merchant	<u>A.D.B.</u>
Lang, A.	1858-61	Agricultural proprietor	<u>V. & P.</u> (L.A., N.S.W.), 1858, pt.2, p.732; M.L. card entries under Andrew Lang.
Lethbridge, Robert	1856-7	Pastoralist	<u>V. & P.</u> (L.A., N.S.W.), 1857, pt.1, p.562; M.L. card entries under Robert Lethbridge.
Lloyd, E.H.	1863-5	Pastoralist	M. & W.
Lord, F.	1856-61 1864-92	Pastoralist	<u>A.E.; V. & P.</u> (L.A., N.S.W.), 1857, pt.1, pp.560, 562; M.L. card entries under Francis Lord.
Lutwyche, A.J.P.	1856-9	Barrister	<u>A.D.B.</u> (5)
McArthur, A.	1861-5	Merchant	M. & W.
Macarthur, James	1866-7	Pastoralist & agricultural proprietor	<u>A.D.B.</u>
Macarthur, Sir W.	1864-82	Pastoralist & agricultural proprietor	<u>A.D.B.</u> , v.5; <u>T. & C.J.</u> , 12 May 1877.
Macfarlane, Dr J.	1858-61 1861-70	Medical practitioner	<u>S.S.D.</u> , 1858-9

Name	Years in Council	Occupation	Sources
Macnamara, J.	1856-9	Merchant	<u>S.S.D.</u> , 1858-9; <u>S.M.H.</u> , 10 Jan. 1850.
Manning, Sir W.	1861-76 1887-95	Barrister	<u>A.D.B.</u>
Mayne, W.C.	1856	Inspector-General of Police	<u>A.D.B.</u>
Merewether, F.L.S.	1856-61 1861-5	Retired public servant	<u>A.D.B.</u>
Mitchell, Dr J.	1856-61 1861-9	Industrialist, landowner, physician	<u>A.D.B.</u>
Montefiore, J.L.	1856-60 1874-7	Merchant	<u>S.M.H.</u> , 28 Jan. 1885; <u>A/Asian</u> , 31 Jan. 1885, p.221; Aust. Jewish Hist.Soc., <u>Journal</u> , vol.4, 1957.
Moore, H.	1868-88	Merchant	<u>T. & C.J.</u> , 7 July 1888, p.10; <u>S.S.D.</u> , 1858-9.
Murray, J.F.	1856	Medical practitioner; pastoralist	E. Lea-Scarlett, <u>Queanbeyan District and People</u> ; M.L., MSS AM63; <u>Wilson, Murray of Yarralumla</u> .
Norton, J.	1856-6	Solicitor	Mennell; <u>T. & C.J.</u> , 8 Jan. 1881, p.60; <u>J.R.A.H.S.</u> , vol.10, 1924, p.322; <u>A.D.B.</u> files.
Oakes, F.	1860-1	Pastoralist	M.L. card entries under F. Oakes; information from Martha Campbell.
Ogilvie, E.D.S.	1863-89	Pastoralist	<u>A.D.B.</u>
Owen, R.	1868-78	Barrister	M. & W.
Park, A.	1858-61 1868-73	Agricultural proprietor and pastoralist	<u>S.M.H.</u> , 25 July 1873, p.4; M.L. card entries under A. Park.

Name	Years in Council	Occupation	Sources
Pennington, W.G.	1858-9	Solicitor	<u>S.S.D.</u> , 1858-9; letters from Pennington in P.C., vols 30, 31, 53, 54, 56.
Plunkett, J.H.	1857-8 1861-9	Barrister	J.N. Molony, <u>An Architect of Freedom</u> , Canberra, 1973.
Prince, H.	1858-61	Merchant	<u>S.S.D.</u> , 1858-9.
Richardson, J.	1868-87	Merchant	M. & W.
Riddell, C.D.	1856-8	Retired Public Servant	<u>A.D.B.</u>
Riley, C.	1856-8	Barrister	<u>S.S.D.</u> , 1858-9; Executive Council Minutes, 11 Sept. 1856, A.O.N.S.W. 4/1534.
Robertson, J.	1861 1878-81	Agricultural proprietor and pastoralist	M. & W.; <u>V. & P.</u> (L.A., N.S.W.), 1855, pt.3, pp.311-16; Robertson and Docker in <u>S.M.H.</u> , 13 April 1861.
Robey, R.M.	1858-61 1861-4	Businessman	<u>Empire</u> , 21 Nov. 1853, 3 April 1856; <u>Maitland Mercury</u> , 20 March 1847; <u>S.M.H.</u> , 6 Feb. 1850, p.1; <u>S.S.D.</u> , 1858-9.
Russell, B.	1858-61 1861-80	Retired businessman	M. & W., <u>Empire</u> , 10 April 1856.
Russell, W.	1861-5	Agricultural proprietor and pastoralist	<u>Empire</u> , 7 April 1856; <u>V. & P.</u> (L.A., N.S.W.), 1859-60, pt.3, pp. 899-902.
Salomons, J.E.	1870-1 1887-99	Barrister	Mennell; <u>Bulletin</u> , 19 Mar. 1881, p.1.
Samuel, S.	1872-80	Merchant	M. & W.

Name	Years in Council	Occupation	Sources
Scott, A.W.	1861-6	Country entrepreneur	M. & W.; <u>A.D.B.</u> files.
Smart, T.W.	1870-81	Businessman	M. & W.; Ford's, 1853, p.109; <u>S.S.D.</u> , 1871.
Smith, H.G.	1856-8	Merchant	<u>A.D.B.</u> files.
Spain, W.	1856-8	Solicitor	Sands & Kenny, 1861; <u>A.D.B.</u> vol.
Stephen, Sir Alfred	1856-8	Chief Justice until	Bedford; <u>T. & C.J.</u> , 29 May 1893,
	1875-9	1873.	p.20.
	1879-85		
	1885-90		
Therry, R.	1856-9	Supreme Court judge	<u>A.D.B.</u> , vol.2.
Thomson, E. Deas	1856-61	Retired public	<u>A.D.B.</u> , vol.2.
	1861-79	servant	
Tooth, R.	1856-7	Businessman	M. & W.
Towns, R.	1856-61	Merchant and agricultural proprietor	<u>T. & C.J.</u> , 19 April 1873.
Walker, James	1856	Pastoralist	Crew.
Walker, W.	1863-7	Businessman	<u>S.S.D.</u> , 1863, 1865; <u>S.M.H.</u> , 5 Jan. 1850, p.7.
Wallace, H.	1866-8	Pastoralist	<u>A/Asian</u> , 13 June 1868, p.751; information from I. Matheson.
Want, R.J.	1856-61	Solicitor	<u>A.D.B.</u> files.
Ward, E.W.	1861-5	Master of the Mint	Mennell; <u>A/Asian</u> , 8 Feb. 1890, p.275.
Warren, A.	1856-8	Agricultural proprietor	<u>Maitland Mercury</u> , 8 July 1876.

Name	Years in Council	Occupation	Sources
Watt, J.B.	1861-6 1874-90	Businessman	<u>Bulletin</u> , 21 Jan. 1882.
Weekes, E.C.	1865-80	Businessman	M. & W.
Wentworth, W.C.	1861-2	Pastoralist	<u>A.D.B.</u> , vol.2.
Wilshire, J.R.	1858-61	Hide and tallow merchant	M. & W.
Wise, E.	1857-60	Barrister	Heaton

APPENDIX V

POLITICAL OPINIONS OF DIRECTORS AND TRUSTEES
OF COMPANIES LISTED IN 'SANDS AND KENNY'S
SYDNEY DIRECTORY', 1861

Liberals

R.M. Robey
 G. Thornton

Conservatives

E. Hunt
 G. Hill
 Sir Daniel Cooper
 S.D. Gordon
 J. Alexander
 A. Campbell
 James Mitchell
 John Fairfax
 Thomas Holt
 A.T. Holroyd
 M.E. Murnin
 G.K. Holden
 J.B. Watt
 E. Deas Thomson
 George Allen
 Clark Irving
 J.B. Darvall
 C. Kemp
 H. Prince
 F.L.S. Merewether
 J.E. Graham
 Henry Mort
 George Rattray
 R.J. Want
 Saul Samuel
 G.W. Allen
 Sir Charles Nicholson
 Thomas Barker
 George Barney
 G.R. Hirst

Note on political classifications:

Robey was a liberal member of the Council from 1858 to 1864. Thornton was one of the twenty-one members appointed to 'swamp' the Council on 10 May 1861, and was therefore presumably a liberal.

Cooper and Gordon had been regarded as liberal members of the Assembly until they opposed free selection before survey in 1860. Gordon was thereafter a moderate conservative in the Council, while Cooper, who returned to England in 1861, seems to have been regarded as one of the 'old colonists' driven from the colony by democracy. (George Allen, Journal, 21 February 1865, Uncat. MSS, set 477.) Hunt and Hill had been liberal members of the Council in 1858, but by 1860 they were voting with the conservatives. Nicholson, Barker and Barney had been conservative members of the old Legislative Council before responsible government. (See Appendix I.) Hirst had been a public opponent of the Cowper ministry in 1856 and was therefore probably a conservative. (Empire, 30 September 1856.) All the other men listed were members of the conservative Constitutional Association or conservative members of the Council or the Assembly in 1860-61.

APPENDIX VIPOLITICAL OPINIONS OF LAWYERS IN 1861Lawyers in practice in New South Wales
before 1850Liberals

W. Redman
 J.W. Bligh
 W.G. Pennington

Conservatives

G. Allen
 G.W. Allen
 J.R. Brennan
 G.K. Holden
 R. Holdsworth
 T. Icton
 Robert Johnson
 Richard Johnson
 J. Norton
 G.R. Nichols
 W. Roberts
 G. Rowley
 J.P. Roxburgh
 R.J. Want
 J. Martin
 J.H. Plunkett
 W.M. Manning
 E. Broadhurst
 J.B. Darvall
 A.T. Holroyd

Lawyers beginning practice in New South Wales
in 1850 or later

<u>Liberals</u>	<u>Conservatives</u>
A. Dick	W. Teale
D. Deniehy	T. Weedon
J. Hart	F.J. Garrick
R. Driver	W. Barker
I. Blake	P. Faucett
J.F. Hargrave	E. Wise
E. Butler	W.V. Wild
W.C. Windeyer	W.D. Somerville
W.B. Dalley	H.R. Francis
R. Wisdom	Herman Milford
W. Hellyer	
G. Graham	

Notes:

- (i) The dates at which lawyers were registered for practice in New South Wales have been taken from Moore's Handbook and Almanac for New South Wales...., Sydney, 1856, and from information based on the New South Wales bar roll in the files of the A.D.B.
- (ii) Hellyer and Graham were amongst the twenty-one members appointed to 'swamp' the Council on 10 May 1861. All the other liberals were active members of the Assembly or the Council in 1860-61.
- (iii) For Brennan's conservatism, see P. Loveday and A.W. Martin, Parliament Factions and Parties, Melbourne, 1966, pp.12-13. For Nichols' political views, see Chapter I, above, and Appendix I. All the other conservatives were active members of the Council, the Assembly or the Constitutional Association in 1860-61.

APPENDIX VIICOMPOSITION OF THE NEW SOUTH WALES
CONSTITUTIONAL ASSOCIATION, 18601. MERCHANTS AND OTHER BUSINESSMEN

Allardice, A.	Manning, J.E.
Beit, J.N.	Martyn, J.
Cape, W.F.	Mort, H.
Caraher, O.	Murnin, M.E.
Donovan, J.	Phenna, R.
Eagar, G.	Piddington, W.R.
Fairfax, J.	Rattray, G.
Felton, T.	Raymond, R.P.
Graham, J.E.	Rundle, J.B.
Hely, H.	Samuel, S.
Johnson, W.J.	? Taylor, J.
Lacy, M.	Thomson, J.
Lenehan, A.	Tooth, R.
McEncroe, E.	

TOTAL BUSINESSMEN: 27

2. BARRISTERS

Darvall, J.B.	Milford, Herman
Francis, H.R.	Somerville, W.D.
Isaacs, R.M.	Wild, W.V.
Martin, J.	

TOTAL BARRISTERS: 7

3. SOLICITORS

Barker,	Norton, J.
Deniehy, D.H.	Roberts, W.
Garrick, F.J.	Rowley, G.
Holdsworth, R.	Roxburgh, T.P.
Iceton, T.	Teale, W.
Johnson, Richard	Want, R.J.
Johnson, Robert	Weedon, T.E.

TOTAL SOLICITORS: 14

4. PASTORALISTS WITH SQUATTING INTERESTS

? Binney, J.	Macleay, W.
Chauvel, C.G.T.	Morris, A.
Cox, A.B.	? Morris, J.
Hay, J.	? Ryan, T.
Lord, E.	Simpson
Macleay, J.D.	

TOTAL PASTORALIST-SQUATTERS: 11

5. LANDOWNERS WITHOUT SQUATTING INTERESTS

Docker, J.
Farnell, J.S.

TOTAL LANDOWNERS: 2

6. UNKNOWN

Allen, E.A.	Henrey, W.G.
Bolton, E.	Humphery, F.F.
Bunn, J.W.	Jones, A.
Clark, T.B.	Morrison, M.
Cohen, S.	Osborne, P.
Curtis, W.C.	Smith, J.
Graham, A.H.	Windeyer, W.O.
Gwynne, R.	

TOTAL UNKNOWN: 15.

TOTAL MEMBERSHIP: 76

TOTAL IDENTIFIED: 61

7. SOURCES

The list of members is in the Macarthur Papers, vol.39, A2935, p.93. Occupations of the less well known members have been obtained from contemporary Sydney directories and from lists of pastoralists and squatters in V. & P. (L.A., N.S.W.), 1859-60, pt.3, pp.635-708, and The New South Wales Gazetteer, Sydney, 1866.

APPENDIX VIIICLASSIFICATION ACCORDING TO POLITICAL OPINIONS IN 1861
OF DIRECTORS OF COMPANIES IN 'SANDS' SYDNEY DIRECTORY', 1871

CONSERVATIVES	LIBERALS
Allen, E.A.	Byrnes, J.
Allen, G.	Flood, E.
Allen, G.W.	Lucas, J.
Campbell, A.	Thornton, G.
Campbell, J.	Smart, T.W.
Darvall, J.	Weekes, E.C.
Fairfax, J.	Wilson, J.B.
Francis, Judge H.R.	
Gordon, S.D.	TOTAL: 7
Hay, J.	
Holden, G.K.	
? Jones, R.	
Knox, E.	
Lord, E.	
Lord, G.W.	
Martin, J.	
Montefiore, J.L.	
Mort, H.	
Piddington, W.R.	
Prince, H.	
Rotton, H.	
Rundle, J.B.	
Samuel, S.	
Thomson, E. Deas	
Watt, J.B.	
TOTAL: 25	

NOTES:

1. The twenty-five conservatives held a total of sixty-six directorships, while the seven liberals held only fourteen.
2. All the men listed except for Knox and Thornton were active members of either the Council, the Assembly or the Constitutional Association in 1860-1, and their opinions were a matter of public record. Knox had been in the Council in 1856-7 and showed his principles by voting for a motion asserting the Council's right to amend money bills,¹ while Thornton had been one of the members appointed to the Council to swamp it in 1861. A few of those classed as conservatives, notably Gordon, J. Campbell and Jones, had been regarded as liberals until they opposed Robertson's land bills in 1860-1. Campbell and Gordon were subsequently appointed to the Council, where they normally spoke the language of conservatism. Jones has been classified only tentatively as a conservative because he retired from politics, leaving no way of confirming that his conservative views on the land question were fully representative of his political position. Wilson equivocated on the land issue in 1860-1, but has been grouped with the liberals because he was consistently radical on most issues.

¹Empire, 5 February 1857.

APPENDIX IX

CLASSIFICATION ACCORDING TO POLITICAL OPINIONS IN 1861
OF OFFICE HOLDERS IN EDUCATIONAL, CULTURAL, SCIENTIFIC,
CHARITABLE AND RELIGIOUS BODIES LISTED IN
'SANDS' SYDNEY DIRECTORY', 1871

1. CONSERVATIVES

<u>Name of</u> <u>Office-holder</u>	<u>Number of</u> <u>Offices Held</u>	<u>Name of</u> <u>Office-holder</u>	<u>Number of</u> <u>Offices Held</u>
A'Beckett, A.M.	1	? Jones, R.	2
Alexander, J.	1	Knox, E.	2
Allen, G.	9	Lackey, J.	1
Allen, G.W.	2	Macarthur, Sir W.	3
Allen, H.E.A.	4	Macleay, W.	2
Barker, T.	1	Manning, J.E.	2
Campbell, A.	1	Manning, Sir W.	2
Campbell, C.	2	Martin, J.	1
Campbell, J.	1	Mort, T.S.	1
Chisholm, J.	1	Murnin, M.E.	1
Comrie, J.	2	Nicholson, Sir C.	1
Cox, G.H.	1	Oxley, J.N.	1
Curtis, W.C.	1	Stephen, Sir A.	2
Duncan, W.A.	1	Suttor, W.	1
Fairfax, J.	5	Teale, W.	1
Faithfull, W.P.	1	Thomson, E. Deas	6
Faucett, P.	1	Towns, R.	1
Gordon, S.D.	3	Watt, J.B.	1
Hay, J.	2	Wentworth, W.C.	1
Holroyd, A.T.	1	West, Reverend J.	1
Holt, T.	2		

TOTAL OF CONSERVATIVE OFFICE-HOLDERS: 41

NUMBER OF OFFICES HELD BY CONSERVATIVES: 76.

2. LIBERALS

<u>Name of Office-holder</u>	<u>Number of Offices Held</u>
Arnold, W.M.	1
Butler, E.	1
Cowper, C. (jr)	1
Dalley, W.B.	1
Hart, J.	1
Hill, E.S.	1
Lang, Rev. J.D.	2
Love, W.	2
Macfarlane, J.	1
Parkes, H.	1
Pennington, W.G.	1
Sadleir, R.	1
Scott, A.W.	3
Smart, T.W.	1
Stewart, R.	1
Sutherland, J.	1
Weekes, E.C.	1
Wilson, J.B.	1
Windeyer, W.C.	3

TOTAL OF LIBERAL OFFICE-HOLDERS: 19

NUMBER OF OFFICES HELD BY LIBERALS: 25.

3. NOTE ON THE CLASSIFICATION

In most cases, classification as liberal or conservative is very easy, for all the liberals and most of the conservatives were members of the Council, the Assembly or the Constitutional Association in 1860-1 whose opinions were a matter of public record. Those who were not members at that period were Thomas Barker, James Chisholm, Sir Charles Nicholson and Sir William Macarthur, conservative members of the legislature in 1853;¹ Edward Knox, a conservative in the Council in 1856-7;² Sir Alfred Stephen, first President of the Council and a conservative in that body until 1858;³ G.H. Cox, a conservative in the Assembly from 1856 to 1859;⁴ J.N. Oxley, a conservative neighbour of the Macarthurs at Camden;⁵ Charles Campbell, who used the language of Toryism when appointed to the Council in 1870 and had held such views since the 1840s;⁶ T.S. Mort, who had opposed Cowper in 1856 and spoke slightly of political 'cries' like free selection;⁷ W.A. Duncan, a radical in the 1840s but a conservative supporter of the constitution in 1856;⁸ and John West, editor of the Sydney Morning Herald. See also the comments on the criteria for the classification of J. Campbell, S.D. Gordon, R. Jones and J.B. Wilson in Appendix VIII, above.

¹See Appendix I, above.

²See Appendix VII, above.

³See, for example, his votes for the session of 1858 in Appendix III, above.

⁴See, for example, his votes and classification in P. Loveday, 'The Development of Parliamentary Government in New South Wales, 1856-1870', Ph.D. thesis, Sydney University, 1962, pp.493-4.

⁵Cf. P. Loveday and A.W. Martin, Parliament, Factions and Parties, Melbourne, 1966, p.12.

⁶Cf. B.D. Dyster, 'The Role of Sydney and the Roles of its Citizens in New South Wales, 1841-1851', M.A. thesis, Sydney University, 1965, p.257; and Michael Roe, Quest for Authority in Eastern Australia, Melbourne, 1965, pp.45-7, et passim.

⁷Empire, 30 September 1856; J.L.C., 1873-4, p.400.

⁸W.A. Duncan, A Plea for the New South Wales Constitution, Sydney, 1856.

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