

GOVERNMENT PATRONAGE IN AUSTRALIA : The  
Exercise of the Patronage prerogative by  
Commonwealth and New South Wales Governments  
in the Period 1927-1969.

by

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PREFACE

Patronage developments take place in a political context, not in a vacuum. Throughout this thesis, an effort has been made to link the discussion of patronage with more general political developments. Because of space limitations and the need to emphasise the patronage aspects, however, I have assumed the reader to be familiar with the general lines of political development at both the Commonwealth and State levels.

Patronage is about people - the individuals who exercise the patronage prerogative and those on whom the patron's favours are bestowed. The importance of the personal element has been recognised by citing the names of individuals in both of these categories. Again, because of space limitations, general familiarity with the careers of many of the leading political personalities has been assumed.

While recognising a general debt to my supervisor, Professor L.F. Crisp, I certify that this thesis is my own original work and that all sources used have been duly acknowledged.



E.A. Lyall

15th September, 1969.



LIST OF ABBREVIATIONS USED

- ABC - Australian Broadcasting Commission.  
 ACI - Australian Consolidated Industries Ltd.  
 ALP - Australian Labor Party.  
 ANAC - Australian National Airlines Commission.  
 BEM - British Empire Medal.  
 CBE - Commander of the Order of the British Empire.  
 CH - Order of the Companions of Honour.  
 CMG - Companion of the Order of St. Michael and St. George.  
 C.P.D. - Commonwealth Parliamentary Debates.  
 CSIR - Council for Scientific and Industrial Research.  
 CSIRO - Commonwealth Scientific and Industrial Research Organisation.  
 DBE - Dame Commander of the Order of the British Empire.  
 GBE - Knight Grand Cross or Dame Grand Cross of the Order of the British Empire.  
 GC - George Cross.  
 GCB - Knight Grand Cross of the Order of the Bath.  
 GCMG - Knight Grand Cross of the Order of St. Michael and St. George.  
 ISO - Companion of the Imperial Service Order.  
 JP - Justice of the Peace.  
 KBE - Knight Commander of the Order of the British Empire.  
 KCMG - Knight Commander of the Order of St. Michael and St. George.  
 KG - Knight of the Garter.  
 Kt - Knight Bachelor.  
 LCP - Liberal and Country Party.  
 MBE - Member of the Order of the British Empire.  
 MHR - Member of the House of Representatives.  
 MLA - Member of Legislative Assembly.  
 MLC - Member of Legislative Council.  
 MP - Member of Parliament.  
 OBE - Officer of the Order of the British Empire.  
 PC - Privy Councillor.  
 QC - Queen's Council.  
 UAP - United Australia Party.  
 VC - Victoria Cross.  
 WA - Western Australia.

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PART ONE

GENERAL BACKGROUND

Chapter 1: Government Patronage and Politics:  
An Introduction.

Chapter 2: Two Overseas Patterns: Government Patronage  
in Britain and the United States of America.



## CHAPTER 1

### GOVERNMENT PATRONAGE AND POLITICS: AN INTRODUCTION

Noting that the earliest sense of the word 'patron' in English use is 'one who holds the right of presentation to an ecclesiastical benefice', the Shorter Oxford Dictionary defines patronage as 'the control of appointments to offices, privileges, etc., in the public service'. In similar vein, but extending the span of attention beyond the public service, H.A. Bone has declared that 'patronage is the right vested in a person, official, or political party to appoint persons to offices and positions, to award contracts, and to dispose of emoluments and other favours'.<sup>1</sup>

While it would be legitimate to adopt this generic usage of the term as the basis for a discussion of government patronage, a more specialized usage has been utilized by most writers in this field. This narrower concept has been developed largely in the context of movements for administrative reform. Its main purpose has been to allow a contrast to be drawn between the unreformed system of 'recruitment of public servants by private recommendation'<sup>2</sup> and the subsequent pattern of competitive entry based on formal tests of ability.

In terms of either usage, patronage involves a relationship between two individuals, the 'patron' who possesses the power to confer the appointment or other favour, and the recipient. The essence of the narrower usage is that the patron is able to exercise a personal

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<sup>1</sup> In J. Gould and W.L.Kolb (eds.), A Dictionary of the Social Sciences, Tavistock Publications, London, 1964, p.486.

<sup>2</sup> S.E. Finer, 'Patronage and the Public Service: Jeffersonian Bureaucracy and the British Tradition', Public Administration (London), vol.30, 1952, p.329.

discretion in his choice of recipient. He is not bound by legally defined and objective criteria or procedures.

Students of administrative reform and the reformers themselves have made a distinction between 'political' and 'official' patronage. The former category is applied to situations where the patron is a politician or is assumed to be motivated by political considerations, whether of a personal, factional, or party kind.<sup>3</sup> The second category is reserved for the patronage exercised by officials on a personal basis and derived from their status in the official hierarchy. Applied to both categories, 'patronage is...an emotive word. It is associated in the public mind with a variety of abuses, for it provides obvious opportunities for corruption, speculation, undercover influence and power-seeking of various kinds'.<sup>4</sup> These pejorative undertones add a further dimension to the distinction between the generic and specialized usages of the term.

This thesis is concerned with 'government' patronage, i.e. with the exercise of the patronage prerogatives attaching to members of a government by virtue of their membership. Individual government members may, of course, have access to patronage derived from other sources such as their personal standing in a political party, their social status or their economic position, but these areas are excluded from our consideration.<sup>5</sup> It is not always possible to

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<sup>3</sup> The nature of these political considerations is discussed towards the end of this chapter.

<sup>4</sup> P.G. Richards, Patronage in British Government, Allen and Unwin, London, 1963, p.17.

<sup>5</sup> There are practical difficulties in maintaining this logical distinction because the exercise of the governmental patronage prerogative is often facilitated by access to these other sources of influence.



establish in particular cases whether the effective patronage decision has been taken by a government, individual Minister, parliamentary party, outside party organization or other individual or group. The practical concern of this thesis is with those areas where the formal patronage power is placed in the hands of the Government or individual Ministers, or where the fact of being a member of the Government allows the application of informal pressure on the individuals or organs vested with the formal power.

While assessments will be offered regarding the considerations underlying specific acts of patronage, my basic aim is to draw conclusions regarding the general exercise of the patronage prerogative rather than to offer 'definitive' assessments of the predominant political motives involved in individual cases. The main lines of investigation will be the extent and limitations of the governmental patronage prerogative, the procedural arrangements by which it is exercised, and its general political significance.

The emphasis on general patterns is derived partly from a belief that the nature of individual motives in specific instances is intrinsically less important than the fact that substantial scope is left for the satisfaction of such motives. In any event, the problem of analysing the motives of political figures, including some no longer alive, is inherently intractable. This general problem is particularly acute in relation to patronage partly because of the emotive connotations of the term, and partly because, as Richards notes, 'much information about patronage, especially in relation to individual cases, is necessarily confidential'.<sup>6</sup>

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<sup>6</sup> op.cit., p.7.

In Australia, as in Britain, the tendency towards dominance by the Executive is associated with restrictive attitudes to the release of information about the inner workings of government. The problems arising from this source are more severe in Australia because of the relative lack of thorough political biographies and autobiographies.

Exhaustive sifting of diverse and scattered sources does throw up a mass of material about the nature and extent of the patronage exercised by various individuals and the affiliations of the recipients. It is also possible to obtain information about the processes of selection. When we come to the vital question of assessing why a particular individual was awarded or denied a particular favour, however, we are reduced substantially to conjecture on the basis of known affiliations, general political considerations and the assumed predispositions of the 'patron'. Much of this conjecture is at the level of newspaper or bar-room gossip and plausibility is necessarily the major test. In these circumstances, any conclusions advanced regarding political motivation must necessarily be tentative and pitched at a general level. As intimated earlier, the validity of such conclusions is not central to my main thesis, but speculations regarding likely motives do contribute significantly to the more general issues which I shall analyse.

Whether as a result of these practical difficulties or for some other reason, the academic study of patronage in Australian Government does not seem to have progressed very far. There are a few articles dealing specifically with patronage in the colonial period and one or two dealing with very limited fields of more nearly contemporary patronage. In addition, some of the



more substantial works on other aspects of Australian government and politics have touched on the subject. When the total published output is analysed, however, it remains true that little has been revealed about the scope, role and exercise of the patronage prerogative in contemporary Australian politics. The prime purpose of this study is to make a start towards filling this gap.

As indicated by the title chosen, my major preoccupation is with the patronage exercised by Commonwealth and New South Wales Governments over the four decades from 1927 to the present day. While 1927 was selected as a general starting point for intensive study, earlier developments were taken into account where information was readily accessible and appeared to add something to the general pattern. The nature of the federal division of powers made it desirable to consider at least one of the States in addition to the Federal sphere of government. The choice of New South Wales was motivated by the practical consideration of accessibility of sources rather than any notion that that State was either representative of the others or of greater intrinsic interest.

Official publications of various kinds, including legal statutes, the Commonwealth and State Gazettes, annual reports of various authorities, the official records of parliamentary proceedings and reports of official inquiries, contain much detailed information about the extent of the patronage available to governments, the hands in which its exercise is placed, the conditions attached to its exercise, the recipients and their political affiliations, and some hints of underlying motivations.

There are severe practical problems, however, in extracting and utilising this information, partly because of its sheer physical volume, partly because a large proportion of the total information available does not have any real political significance and partly because much of what is highly significant is not readily identifiable from the 'outside'. More specifically, while the total volume of appointments (and other favours) in the gift of the Government is significant, the names and biographical details of the recipients in the majority of cases are not, and the parliamentary discussions of issues related to patronage are not readily identifiable from the indexes of the State and Commonwealth parliamentary records in many cases.

Partly because of these difficulties, but partly also because there seemed to be some positive merits in the alternative approach, it was thought to be more fruitful to seek an entrée to otherwise intractable material through newspaper reports. One of the off-setting advantages of traditional Australian attitudes to politicians, governments and patronage, is that newspapers devote considerable resources to the task of uncovering and reporting the inner workings of the governmental and political systems. As a result, few major appointments of 'friends' of the governing party or dismissals of their opponents escape journalistic attention and the same is true of significant parliamentary discussions of the use and abuse of patronage. One area in which newspaper reports are invaluable is the honours system, which is, as we shall note later, one of the most fertile fields of patronage in Australian, as in British, government. The lists are normally published in full, editorial comment is commonly offered on the main features of the lists and the known political affiliations of individual recipients are highlighted.

Newspaper reports, of course, do not provide the full answer and part of the problem of arriving at the objective truth is that the eagerness to 'muck-rake' or to dramatize often leads to a tendency to overstate the element of political calculation and the general political significance of particular appointments and awards. With this reservation in mind, together with the fact that some instances escape the attention of the reporters, it nevertheless remains true that an exhaustive sifting of newspaper reports can provide a useful starting point. Facts about the nature of particular appointments, the biographical details of the recipients, their political affiliations, and the precise content of parliamentary discussions can be checked against more authoritative sources with much more economy of time and effort than if the problem were to be tackled from the opposite end.

The spread of over 40 years covered by this study effectively ruled out any chance of pursuing the problem through the eyes of all major Australian newspapers. In fact the task of tackling even one paper over this period was a daunting one. Because it provided a reasonable coverage of both New South Wales and Commonwealth developments, and not least because its published index covered most of the period in a useful manner, the Sydney Morning Herald<sup>7</sup> was used as the basic newspaper source. Apart from the disability noted in the previous paragraph, its political orientation over the years has tended to over-expose the soft underbelly of the Labor Governments, particularly during the Lang era, and conversely, to cast at least a light protective shadow over governments of the non-Labor persuasion. The uncritical and unreserved acceptance of the Honours system for most of the period serves to reinforce these

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<sup>7</sup> Cited in footnotes and sometimes in the text as S.M.H.

limitations on its reliability as an objective source. Even in periods where editorial policy has been clearly aligned in the non-Labor direction, however, the other pressures to reveal rather than conceal have softened the impact of this factor.

While the detailed information and comment extracted from the S.M.H. was valuable in its own right, to a large extent it was used as a frame of reference for indicating leads to follow up through other sources. For each of the fields examined, the S.M.H. data constituted only one of many published sources consulted, and there were very few occasions on which other sources were not availed of as a cross-reference. Data from other published sources, too, were checked and counter-checked to the maximum extent possible.

Although I did not consider a programme of standard surveys and questionnaires to be appropriate, I have supplemented my sifting of published sources by ad hoc oral discussions with a large number of individuals, including officials intimately concerned with various patronage processes, some other participants in these processes, and veteran political commentators who have observed the system in action. I have had correspondence with other individuals I could not interview. Needless to say, these sources have often been accessible to me only on their own terms, chief amongst which were anonymity and non-attribution. This applies particularly to Government officials. As in the case of the material extracted from published sources, I have sought to check and counter-check information gathered in this way.

A comprehensive bibliography of the published sources consulted has been provided and I have listed those individuals who did not wish to remain anonymous.

This thesis has been divided into three parts. Part One is intended to provide a conceptual and comparative setting against which Australian experience can be examined. The first chapter is concerned with the definition of terms, the delimitation of the scope of the work, an outline of the research methods used, and concludes with a discussion of the political functions of government patronage. In Chapter 2, the general patterns of development in this field in Britain and the United States of America are discussed.

Discussion of the governmental patronage prerogative and of the political motives surrounding its exercise is unlikely to progress very far in the absence of some conception of the available forms of patronage. The form which has attracted most attention in the past is that of appointment to public office. The award of contracts, and other economic or financial favours has also come under close scrutiny while, in the British context, the conferring of honours and other awards has been recognized as significant. Other forms of patronage may be identified, but in practice these are often reducible to one or other of the three major forms referred to above. For the most part, this thesis will concentrate on these three classes of patronage.

In keeping with this approach, each of the first five chapters of Part Two deals with a special 'sub-class' of appointments, between them covering virtually the full range of appointments in the gift of the Governments concerned. The remaining two chapters of Part Two deal with the other two major forms of patronage, viz., honours and awards (Chapter 8) and economic and financial favours (Chapter 9). In each chapter, attention is paid to the scope for the exercise of government patronage in the field concerned, any special characteristics of the field,

and the performance of the Commonwealth and New South Wales Governments in exercising their patronage prerogative in the subject area.

Exclusive concentration on specific forms of patronage would tend to obscure some important features of the total pattern in much the same way as micro-economics provides an incomplete picture of the operation of the economic system. The purpose of Part Three is to provide a broader perspective by drawing the earlier threads together. Chapter 10 compares and contrasts the performance of the major political parties in exercising the patronage prerogative. Other features of the general pattern, including a comparison of experience at the two levels of government, are also discussed in this chapter.

The final chapter provides a general assessment of the overall significance of patronage in Australian government. Drawing on the material in the previous chapters, it examines the impact of patronage on the political system and the performance of the tasks of government. Emphasis is placed on the difficulties of assessing 'administrative' performance and on the pressures to perpetuate the current arrangements for the exercise of the patronage prerogative. It is argued, however, that there are fundamental inadequacies in the current arrangements, and an attempt is made to outline general principles which 'ought' to apply in this area.



## II

'Political' patronage is generally taken to mean patronage exercised on the basis of political calculation. The purpose of the remainder of this chapter is to indicate the range and nature of the calculations which are likely to enter into the minds of those charged with the responsibility for distributing government patronage. This requires an analysis of the range of motives which could be involved, or what amounts to the same thing, of the political functions which the exercise of government patronage is capable of performing. Since the range of alternatives open is dependent to some extent on the legal, constitutional, political and social framework, this discussion is oriented towards specifically Australian experience.

Perhaps the most obvious political function capable of being served by government patronage is the distribution of rewards to allies and punishments to enemies. In essence, this is what is involved in patronage as 'spoils'<sup>8</sup> or the 'fruits of office', a major preoccupation of most writers discussing patronage in the context of administrative reform. The term 'spoils' has been reserved traditionally for discussions of patronage appointments (and dismissals). While the term 'spoils system' is sometimes applied to patronage situations where no dismissals are involved, normal usage envisages a situation where there is a wholesale removal of political opponents and their replacement with supporters.

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<sup>8</sup> The coining of this term is attributed to United States Senator W.C. Marcy, reported in 1832 to have remarked 'to the victor belong the spoils of the enemy'. See H.A. Bone in J. Gould and W.L. Kolb, loc. cit.

Discussion of patronage at this level oversimplifies the problem in four different ways. In the first place, it ignores the fact that appointments are only one form of patronage. This emphasis is a logical consequence of the traditional preoccupation with the recruitment of public servants and only minor adjustments are necessary to accommodate other forms. Secondly, it assumes in effect that potential recipients of patronage can be divided into two classes, allies and opponents. From the point of view of political allies, the appointment of a neutral is almost as unpardonable as that of an enemy since it denies the loyal supporter his due. On the other hand, the dismissal of a neutral from office without 'due cause' runs the risk of converting him into an opponent, while the offer of an appointment or other favour could convert neutrality into commitment. The logic of the situation would appear to suggest that a policy of leaving neutral office-holders alone<sup>9</sup> is consistent with a spoils strategy.

Even with the addition of neutrals to the spoils equation, the analysis is oversimplified by the assumption that it is possible to classify individuals into three unambiguous, homogeneous and static groups. This presupposes a degree of certainty, consistency and rationality in human behaviour which is unlikely to be realised either on the part of the classifier or those being classified. But the most important deficiency in traditional 'patronage as spoils' treatments is that they rest on the implicit assumption that the only purpose of conferring appointments or other forms of patronage is to reward past services or to induce future services.

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<sup>9</sup> And offering favours to them only when suitable allies are not available.

Appointments granted to serve as rewards, i.e. patronage viewed as spoils, are commonly referred to as 'jobs for the boys' or 'political plums'. A second broad group of purposes which may be served by the distribution of patronage to allies is the removal of faithful servants<sup>10</sup> who have outlived their usefulness for one reason or another. I have identified three such reasons, viz:

- (i) that the servant is no longer capable of efficient service in his existing role;
- (ii) that he poses an actual or presumed threat to the security or authority of the 'master'; or
- (iii) that his place is reserved for another aspirant.

There is a separate political function or purpose corresponding to each of these three reasons.

In the first instance, the award is broadly equivalent to a retirement pension and is thus another variant of 'jobs for the boys'. The second reason corresponds to what is referred to in the vernacular as a 'kick upstairs', the third corresponding to a 'kick sideways', the direction of the kick being a reflection of the political purpose rather than the absolute or relative status of the award offered. Thus a particular ambassadorial post, for instance, could be regarded as a kick upstairs for a rival of the patron, or as a kick sideways for a minister being edged out to make room for a newcomer. In other circumstances, of course,

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<sup>10</sup> Or not-so-faithful servants. This part of the analysis applies particularly to Ministers and other members of Parliament.

the same post could serve equally well as a job for one of the boys.<sup>11</sup>

One further political function which may be advanced by the appointment of allies is the promotion by the appointee of the interests of the ruling group in the performance of his appointive role. Individuals who are not political allies in any formal sense may be appointed because they have known or assumed predispositions which will lead them to act in the same way. Even if these expectations are not realised in practice, the operative consideration in this analysis is political motivation on the part of the patron rather than the performance of the recipient.

This political function shades into another which may be served by the appointment of allies, neutrals or opponents. The interests of a government may be advanced not only by appointing persons with attitudes favourable to its interests, but by appointing those who are capable of performing the task in an efficient manner. The explicit motive may be administrative rather than political, but there is inevitably a latent political purpose of enhancing the credit of the regime. Where such appointments are determined on the basis of formal tests of competence, of course, they would be taken out of the field of patronage in the specialised sense in which we have been using the term.

Acts of patronage in favour of neutrals may perform the useful political function of converting neutrality into commitment or at least for insuring against a

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<sup>11</sup> The classification into 'jobs for the boys', the 'kick upstairs' and the 'kick sideways' was volunteered by the political journalist, Alan Reid, in the course of an informal discussion. He was discussing the Australian context and thinking largely in terms of appointments offered to members of Parliament. The first two categories in particular enjoy a wide currency in the Australian Press.

commitment to the other side. Alternatively, appointments of neutral parliamentarians may provide scope for building up the parliamentary strength of the governing group by creating a political vacancy. In addition, positive acts of patronage could be exercised in favour of neutrals with a view to rewarding or inducing specific services in the same way as in the case of allies. There is the added possibility that supporters may be stimulated to greater efforts in the hope of seeking their rewards on a later occasion. Then again, an opposite reaction might be stimulated, although the implications of a reaction in this direction are 'dysfunctional' rather than functional.

The political functions capable of being advanced by applying positive acts of patronage to opponents are broadly similar to those in relation to neutrals, the difference being mainly one of degree. Thus a genuine opponent may not be convertible into a genuine ally or even a neutral, but some of the sting might be taken out of his opposition. Again, specific services could be rewarded or induced. In addition, the potential dividends from removing a parliamentary opponent are greater than in the case of a neutral, since there is the possibility of weakening the opposition as well as strengthening the ruling group.

While the foregoing discussion of political functions has been conducted largely in the context of appointments, a large part of the argument would apply with more or less equal force to other forms of patronage. In many circumstances, the award of an honour or the offer of an appointment could be regarded as substitutes for the granting of an economic favour. One area in which some modifications would be necessary to a direct translation of the argument is that relating

to members of Parliament. Often there are formal restrictions on the types of appointments or the economic favours which parliamentarians are permitted to accept. Thus, members may be barred from accepting offices of profit under the Crown or entering into contractual arrangements with Government instrumentalities. Generally speaking, the acceptance of honours and similar awards does not preclude continued membership of Parliament, although in the British context those accepting peerages are barred from continued membership of the House of Commons. The award of a peerage, of course, amounts to an appointment as well as an honour, since it entitles the recipient to sit in the House of Lords. Apart from the complications raised by these factors, only minor modifications would be necessary to the arguments advanced regarding appointments.

Reference has already been made to the fact that a particular act of patronage may have dysfunctional as well as functional effects. The distribution of patronage to opponents or neutrals, as already noted, may cause dismay in the ranks of the Government's supporters, thus contributing to a diminution of their efforts. The same is true of the withdrawal of favours from allies. In the same way as the appointment of allies may promote the sectional interests of the Government, the appointment of opponents or neutrals may impede them. Where the supply of patronage fails to match the level of demands on it, there will be disappointed allies even in the absence of action in these directions.

The incidence of dysfunctional effects is by no means confined to the allies of the incumbent regime. If it is true that the making of administratively sound appointments and the conferring of merited favours



of other kinds can enhance the general credit of a government, it is equally true that the obvious use of patronage for partisan purposes can undermine it. Finally, it should be noted that the removal of leading parliamentary members from Parliament through the agency of patronage may not only lead to the election of an opponent but may also lower the level of parliamentary, policy and administrative performance of the Government.

Political constraints of various kinds operate to limit the freedom of governments to maximise the political dividends accruing by virtue of their possession of the patronage prerogative. Some of these constraints flow directly out of the functional and dysfunctional effects associated with the exercise of the patronage prerogative. Perhaps the most important single constraint is the realisation that patronage is a double-edged sword. There is always the danger that a whole-hearted spoils strategy will be reciprocated by the incumbent regime's opponents if and when they supplant it. The short term advantages conferred by the control of the patronage prerogative would then accrue to the other side. Fear of reaction by the public may also exercise an important constraining influence. If the reaction is sufficiently widespread, this could be an important factor in the replacement of one regime by another.

Other constraints are imposed by constitutional, statutory and conventional limitations on the power to confer favours. Examples include restrictions regarding offices of profit under the Crown, prescribed or conventional qualification requirements for particular classes of position and controls over the expenditure of public funds. To some extent career service principles have spilt over into areas where they are not formally prescribed. Even where this is not the case, a

government has a strong vested interest in ensuring that both its positive policy objectives and the more mundane problems of administration are tackled efficiently. Where the requisite talents are not available within its own ranks, there are strong pressures on a government to look elsewhere. These considerations alone would be likely to place limitations on the propensity to pursue a spoils strategy, even in the absence of high 'ethical' standards on the part of the decision-makers.

The balance arising from mutual interaction between functional and dysfunctional factors and constraints on the freedom of action of ruling groups will be subject to wide variation, not only as between policies, but also over time. It will be reflected in the degree to which the observed patronage pattern approximates to a spoils system.

In the course of examining the general patterns applicable to the exercise of the patronage prerogative in Britain, the United States of America and Australia, an attempt will be made to explain the observed differences in the balance struck and the main factors which have contributed to these differences. In the specifically Australian context to which this thesis is mainly directed, attempts will be made to link particular developments more directly with the concepts developed in this chapter.

CHAPTER 2TWO OVERSEAS PATTERNS: GOVERNMENT PATRONAGE  
IN BRITAIN AND THE UNITED STATES OF AMERICA

The Australian political system, like so many other facets of Australian life, is highly derivative. The basic framework and many aspects of the system in action have drawn heavily on British and American precedents. Thus the Westminster model of Parliamentary Government has been adapted to a Federal Constitution strongly influenced by its American predecessor. The impact of these borrowed institutions has been magnified by the close and generally subordinate relationships which Australia has maintained with these two countries. These considerations alone would be sufficient to warrant some examination of British and American experience as a prelude to analysing Australian developments. The potential value of such an examination is enhanced by the fact that the pattern of development of government patronage in America has diverged sharply from that experienced in Britain.

The basic purpose of this chapter is to provide a comparative perspective from which to view the Australian pattern. With this limited purpose in mind, it would clearly be inappropriate and wasteful of resources to attempt a major programme or original research, or even to essay an exhaustive culling of secondary sources. The commentary on British developments contained in this chapter draws heavily on work done for a sub-thesis on patronage in Britain as part of the qualifying course reading to this thesis. The approach to the American material has been more superficial, being limited to leading sufficient treatments of the subject to identify the general lines of development.

## II

The core of the argument in the sub-thesis referred to above is that it is possible to identify three separate and distinct periods in the development of government patronage in Britain. These periods were labelled 'the Era of "Old Corruption" ', 'the Age of Reform' and 'the Twentieth Century'. The transitions from one period to the next were evolutionary rather than revolutionary, although two specific events - the Reform Bill of 1832 and the First World War of 1914-18 - did serve to dramatise the change taking place and to accelerate the rate of change. In broad terms, then, the first period could be taken as emerging in the feudal period and ending with the First Reform Bill, the second extending from then until the outbreak of war in 1914.

The first period itself could be broken down into two distinct phases. In the first phase, government patronage took the form of Crown patronage and its broad political function was to secure the position of the sovereign. The remainder of the period saw a whittling down of the scope for the independent exercise of the prerogatives of the Crown. A common thread throughout the period, however, was that political patronage operated generally, openly and for the most part unchallenged as the appropriate basis for filling public office and for conferring other favours in the gift of the sovereign and/or the ruling political faction. On the other side of the political equation, patronage performed the vital role of ensuring parliamentary support for the governing group. In the absence of disciplined political parties and a career civil service,

political patronage thus formed the link which connected the Ministry with Parliament on the one hand and the administrative structure on the other.<sup>1</sup>

While many elements of the pattern could be traced to earlier times, the fully developed patronage system was essentially a product of the eighteenth century. The stage was set by the circumstances surrounding the accession of William III to the throne in 1689 since it then became necessary for the sovereign and his Ministers to ensure that they had the support of Parliament. Other factors which contributed to the development of the system were increases in the volume of patronage available and the emergence of Walpole as the first 'Prime Minister'. Walpole's greatest claim to originality was in his decision to remain in the Commons and to use the office of First Lord of the Treasury as the vehicle for gaining access to patronage. As a result, the patronage pre-eminence of the formal office of successive Prime Ministers was established on an enduring basis.

The control of the lion's share of the available patronage brought problems with it. 'Arlington Street, Chelsea, even Richmond, were besieged by men and women with hopes of employment for themselves or their dependants'.<sup>2</sup> Many were fated to go away empty-handed. One area in which the shortage was particularly noticeable was the conferment of honours. Both George I and George II were very frugal in their grants of titles, although 'in 1725 Walpole's influence was to great that he was able to resuscitate the moribund order of the Knighthood of the Bath...38 new red ribbons eased the demand on the Garter'.<sup>3</sup>

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<sup>1</sup> Patronage was also a key element in the whole fabric of social relationships outside the political realm.

<sup>2</sup> J.H. Plumb, *ibid*, p.172.

<sup>3</sup> *ibid*, p.101.

The problem of allocating patronage and securing adequate return from the recipients became particularly acute at election time. In this Walpole had the support of the Duke of Newcastle who raised the art of election management to a high level. From about 1720, 'every government, at least up to 1760, was dependent on his support'.<sup>4</sup> He was able to achieve this by the liberal application of money drawn from his own fortune and the 'Secret Service' fund,<sup>5</sup> and the distribution of government patronage. He himself had considerable electoral influence, but 'in the main his task was to organize the interests of his "friends" in such a manner that, without his support, no government could stand for long'.<sup>6</sup>

Newcastle's successor in the role of election manager was John Robinson. He largely continued the pattern established by Newcastle, but an important innovation was the transition of the position of Secretary of the Treasury from that of financial expert to that of Chief Whip, as well as election agent.<sup>7</sup> Robinson thus became the first of a long line of Patronage Secretaries.<sup>8</sup>

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<sup>4</sup> Sir Ivor Jennings, Party Politics, vol. II, The Growth of Parties, Cambridge University Press, 1961, p.34.

<sup>5</sup> Under a 1782 Act, £10,000 per annum was payable to the Parliamentary Secretary to the Treasury, and no account was required of how the money was spent. This Act stemmed from the 'economical reform' movement, and the specific provision of £10,000 constituted a reduction on the amounts previously payable into this fund.

<sup>6</sup> ibid.

<sup>7</sup> E. Hughes, Studies in Administration and Finance, 1558-1825, Manchester University Press, 1934, p.315.

<sup>8</sup> The title of Patronage Secretary was applied officially well into the twentieth century but has now fallen into disuse.

Underlying the developments outlined above and the general pre-eminence of patronage in this period was the congruence of four major factors. These were the rudimentary nature of the tasks required to be performed by 'civil servants', the general pattern of mutual obligation in social relationships, the 'unreformed' electoral system, and the relationship between Parliament and the Crown.

Since the patronage pattern of this period has been adopted as our point of departure, a brief outline of the mechanics of the system appears to be in order. Because of the need of support and the lack of a developed party system, the Ministry was faced with two main problems - ensuring the return of members favourable to their interests, and ensuring that a sufficient level of support continued to be forthcoming from the Parliament after the elections. Because the return of members in a large proportion of electorates depended on the influence of individuals or small groups of individuals, the exercise of the patronage prerogative was largely directed towards obtaining and maintaining the support of these men of influence.

Apart from the seats controlled by borough patrons, several others, 'the Treasury, Admiralty, and Ordnance boroughs, were controlled by the government in the sense that a majority or at least a considerable part of the electors held small crown offices and were expected to vote for government candidates'.<sup>9</sup> The combined total of these seats and those under the control of private patrons amounted to nearly half of

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<sup>9</sup> Betty Kemp, King and Commons, 1660-1832, London, Macmillan, 1957, p.93.



the total number of seats in the Commons. Control of the Government boroughs was not absolute and required nursing by the Government in much the same way as the others required nursing by the borough patrons.

The range of patronage available to governments was very wide. 'The whole of the public service, military, civil and judicial, was filled by nomination.'<sup>10</sup> In addition to 'places' in the public service, the Government was able to confer honours, to grant pensions and to award contracts. 'Nor must one forget the Church, where the patronage varied from the rich bishopries and deaneries to some 900 other livings vested in the Crown'.<sup>11</sup>

Much of this patronage was distributed directly to the patrons or the members elected by virtue of their influence. Those who were already peers could be promoted in the peerage. Others, including members of the Commons could be elevated to the peerage. Insofar as they were not incompatible with a seat in Parliament, sinecures or other offices in the Civil Service could be allotted to members. Thus '130 salaried placemen sat in [Walpole's] last parliament'.<sup>12</sup> Others could be allocated to retiring members. Finally, it was possible to allocate Government contracts to merchants who had been returned to Parliament. As Namier has it, 'contracts were the "places" of merchants'.<sup>13</sup>

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<sup>10</sup> Jennings, Party Politics, vol.I, Appeal to the People, Cambridge University Press, 1960, p.94.

<sup>11</sup> ibid, p.96.

<sup>12</sup> K.G. Feiling, The Second Tory Party 1714-1832, London, Macmillan, 1951, p.32.

<sup>13</sup> op. cit., p.51.

The bulk of the available government patronage was not awarded directly to patrons or members, however, but to their families, relatives or friends. There were no Place Bills or other legislative enactments to prevent these associates from accepting office or other marks of favour, and there were many positions to be filled.

Despite the importance of political patronage in the eighteenth century, it was by no means an ultimate weapon. Patronage was not particularly useful in securing the support of county members since the landed interest tended to guard its independence from the Government. Another limitation on the political effectiveness of patronage was that patronage was 'less of a bait or bribe for future services than a reward for past services'.<sup>14</sup> In addition, a 'spoils system' failed to develop because of acceptance of the notion that an office holder had a proprietary right in the office. This meant that only a small proportion of the total number of offices existing at any time were vacant. At the same time, the supply was rendered more elastic by the development of a system of payment by fees which meant that the number of individuals on the establishment did not come within the scope of parliamentary inquiry, and this tendency was accentuated by the fact that 'obsolete offices were not swept away but in fact tended to multiply'.<sup>15</sup>

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<sup>14</sup> Jennings, *Party Politics*, vol.I, op.cit., p.96.

<sup>15</sup> S.E. Finer, op.cit., p.336.

By conventional modern standards of political morality in Britain and Australia the methods of political management described above leave a lot to be desired. But by eighteenth century standards, the methods used by the dealers in government patronage were as appropriate as the operations of the party machine today. In the absence of salaries, members of Parliament believed 'that those who dedicated their time and fortune to the service of the Government should be entitled to a share of the rewards that are in its disposal.'<sup>16</sup> On the other side of the coin:

...eighteenth century Administrations, not being able to control individual members through a party machine and a party-trained electorate, had to bind their following by honours, places of profit, contracts, and pensions; in these, Ministers had to find the attractive and constraining force to satisfy the self-interest, to tame the exuberance, and restrain the consciences of individual members, which otherwise would have produced a condition of permanent instability and uncertainty. 17

### III

In my second period, the parallel movements of political and administrative reform combined to whittle away the significance of government patronage. Reform of the electoral system reduced its political relevance and reform of the Civil Service progressively curtailed

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<sup>16</sup> W.T. Selley, England in the Eighteenth Century, 2nd ed. London, Adam and Charles Black, 1949, p.351.

<sup>17</sup> Sir Lewis Namier, The Structure of Politics at the Accession of George III, 2nd ed., London, Macmillan, 1957, p.81.

the scope for its exercise. So, too, did the progressive establishment of parliamentary control over the financial resources of the State.

The reduction in the volume of patronage was associated with a change in its general role in the political system. By the late nineteenth century, it could fairly be said that 'government by patronage had disappeared, but patronage in government remained.'<sup>18</sup> From a situation in which patronage was a dominant factor in 'party' formation and maintenance, there had emerged a new pattern in which government patronage was used largely as a basis for rewarding the party faithful. From the main basis of filling offices at all levels in the Civil Service, political patronage had been reduced to the lesser role of providing a supplementary basis for discriminating between qualified candidates in the lower reaches. As a corollary to these developments, emphasis came to be placed on the 'honest exercise of patronage' by applying the test of genuine political service to the governing party rather than on seeking to satisfy the demands of influential individuals.

The administrative reforms of 1782 to 1834 effected a considerable reduction in the number of places. They also saw the transfer of much of the available patronage from political to official hands. The electoral reforms of 1832 also played a part by reducing the number of pocket boroughs and extending the franchise, thereby reducing the influence of patronage on the outcome of elections. Nevertheless, there was still a large field of patronage left in the public service, the Church and

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<sup>18</sup> Norman Gash, Politics in the Age of Peel: A Study of the Technique of Parliamentary Representation, 1830-1850, London, Longmans, 1953, p.344.

the judiciary, and 'there was scarcely a feature of the old unreformed system that could not be found still in existence after 1832'.<sup>19</sup>

There was one important respect in which the reduction in the public service patronage did bring about a change in the existing pattern. In the period immediately preceding reform, honours were distributed as a supplement to places and the honours prerogative had been exercised sparingly. Under Pitt, honours were handed out lavishly to compensate for the dearth of places. As a result, Pitt was able to secure a strong majority in the Lords as well as enhancing his control over the Commons. Peel had a much more restrictive attitude, in keeping with his general view that 'the party interests of a government are in the long run much better promoted by the honest exercise of patronage than by the perversion of it for the purpose of satisfying individual supporters'.<sup>20</sup> Referring specifically to honours, he insisted that the 'power of conferring them (was) a great public trust'.<sup>21</sup> Lest we assume too much, it should be stressed that merit was to be assessed in terms of political service rather than administrative ability or other such 'irrelevant' principle.

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<sup>19</sup> *ibid.*, p.4.

<sup>20</sup> H.N. Gibbs, 2nd Edition of Keith's British Cabinet System, London, Stevens and Sons, 1952, p.418. Also quoted in Byrum W. Carter, The Office of Prime Minister, London, Faber and Faber, 1956, p.248.

<sup>21</sup> C.S. Parker, Sir Robert Peel from his Private Papers, vol.III, 1899, p.431.

Despite the parsimony of Peel and some of his successors, notably Melbourne and Russell, the relative importance of the honours prerogative gained ground in later years. In part this was a natural corollary of the shrinkage in the availability of places. But it also reflected in some measure the growing strength of the Commons in relation to both the Lords and the Crown. This was dramatised in the forcing of the First Reform Bill through the House of Lords by the threat of a large scale 'swamping'.

In the late nineteenth century, there was a marked change in the composition of the peerage and the recipients of other dignities, representatives of commerce and industry joining the landed gentry who had previously dominated the lists. Associated with these changes was a reversion to the perversion of the honours prerogative which was typical of the eighteenth century. In 1891, 'Mr Gladstone, of all people, agreed to sell two peerages in return for substantial contributions to the Liberal Party funds'.<sup>22</sup> More blatant abuses in later years led to a 1914 Resolution of the House of Lords that a contribution to party funds should not be a consideration. In 1917, the Lords were unanimous in demanding the statement of reasons for the conferment of honours in all cases and that the Prime Minister should satisfy himself that no payment was involved in any case. Following a report of a Royal Commission in 1922, the 1923 Honours (Prevention of Abuses) Act provided penalties for persons promising

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<sup>22</sup> H.J. Hanham, 'The Sale of Honours in Late Victorian England', *Victorian Studies*, vol.III, 1960, p.277.

to secure honours for payment and those promising to pay.<sup>23</sup> It also provided for the establishment of a Privy Council committee to examine future honours lists with a view to reporting any cases where there appeared to be good reason for excluding any individuals.

In the meantime, the tide of administrative and electoral reform continued to rise. The further widening of the franchise resulting from the second and third Reform Bills progressively reduced the scope for electoral influence, while administrative reform reached new peaks after the principles of the Northcote-Trevelyan Report gained acceptance. The implementation of the recommendations of the 1912 MacDonnel Royal Commission saw the final elimination of political patronage as a significant factor in the Civil Service.

Outside the Civil Service, there were some areas where the power to appoint remained with Ministers. The most important examples were the ecclesiastical and judicial patronage exercised by the Lord Chancellor and the Prime Minister. These offices have continued to remain in their gift.

Following a Royal Commission in 1910, the selection of magistrates became the responsibility of advisory committees set up in each borough and county. While magisterial appointments remained political because there was a conscious effort to strike a party balance in the composition of the committees, the scope for ministerial influence was drastically reduced. The other judicial and the ecclesiastical appointments were not regulated in the same way, but ceased to be of major political

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<sup>23</sup> The Royal Commission had noted the existence of 'touts' who claimed to be in a position to secure honours in return for payments of specified amounts. See Royal Commission on Honours, Cmd. 1789, 1922. See also G. Macmillan, Honours for Sale, London, The Richards Press, 1954.

significance as a result of the general change in attitudes, the qualification requirements attaching to the positions, and a declining interest in the Church on the part of the politicians.

The changing pattern of patronage in this 'reform' period was underpinned by two main factors. With the rise of a more developed party system, contingent rewards were no longer necessary to secure a majority in Parliament. At the same time, the growing emphasis on administrative efficiency and a democratised electorate were reconciled with the need to reward the 'friends' of the Government largely by shifting the political element in the selection process to a lower key. This showed out in the arrangements made for selecting magistrates, in the conventions<sup>24</sup> surrounding the nominations for other vacancies, and in the reaction to the sale of honours.

#### IV

In the period since the First World War, and particularly since the 1940s, there has been a striking reversal of the declining trend in the volume of patronage available to British Governments. To a large extent this has been due to the increasing demands placed on the welfare state and the extended use of special types of administrative organisation to meet those demands. Three broad types of such organisations can be distinguished, Administrative Boards, Administrative Tribunals and Advisory Committees.

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<sup>24</sup> The main convention was that the local member should be consulted regarding vacancies in his constituency if he was a member of the government party.



Each of these categories is made up of a large number of different bodies exhibiting considerable diversity in function, constitution and methods of selection. In 1960, it was estimated that for all of these bodies, 'something like 25,000 to 30,000 appointments'<sup>25</sup> would be involved. Many of the appointments are the responsibility of officials but a significant proportion remain in the gift of various Ministers.

In addition to these new sources of patronage, there has been an expansion in the numbers of appointments in the areas left to Ministers at the end of the second period. Included here are the judicial and ecclesiastical offices and the appointment to political offices. This latter category has not been referred to specifically in the earlier sections but has been of major importance throughout the history of Cabinet Government. While there are a number of restraints on its exercise, the basic control of this form of patronage rests in the hands of the Prime Minister.

Another traditional field which has been a prolific source of patronage in the twentieth century is the honours prerogative. In 1917 the various grades of the Order of the British Empire were added to the existing orders and have continued to be used freely. The Life Peerages Act of 1958 has also increased the scope for rewarding political services and other forms of award have continued to increase. While many awards are non-

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<sup>25</sup> P.E.P., 'Government by Appointment', Planning, vol. XXVI, No. 43, 1960, p. 213. See also K.C. Wheare, Government by Committee, Oxford University Press, 1955; P.G. Richards, op. cit., chapters 5, 6, 8; and P.E.P., Advisory Committees in British Government, 1960.

political in character, 'political and public services', especially services in the interests of the Government party, feature prominently in the official reasons offered for the conferment of awards.<sup>26</sup> The awards for political services are channelled through the Chief Whip but the final selections, as for other awards, are made by the Prime Minister.

While the downward trend in the volume of patronage has been reversed, there has not been a reversion to the eighteenth century pattern of blatant subordination of administrative efficiency to party advantage. The Honours system seems to be the only area where party considerations play a predominant role. Even there, the test of 'merit' is not entirely absent, and the purely political awards are in the minority. In other areas, even where there are not formal restraints on the power of appointment, Ministers have generally not blatantly misused it and have tended to rely on their departmental advisers or advisory committees. They may also take advantage of a central list of possible appointees maintained by the Treasury.<sup>27</sup> To a considerable extent, career service principles appear to have extended into areas where they are not legally prescribed. In practice, this tends to mean that party affiliation is applied as a basis for distinguishing between qualified candidates rather than that political criteria are irrelevant.

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<sup>26</sup> For an indication of the extent of 'political' honours, see Richards, op.cit. chap 10; C. Hollis, 'The Conservative Party in History', Political Quarterly, vol.32, 1961; and A. Roth, 'Christmas Twice a Year', New Statesman, 29th December, 1961.

<sup>27</sup> Richards, op. cit., p.96.

Associated with the resurgence of patronage has been a marked lack of public discussion of the issues connected with its exercise. There are a number of explanations for this apparent paradox. In the first place, 'there is inadequate realisation of the extent and the consequences of patronage powers held by Ministers of the Crown'.<sup>28</sup> The Royal prerogative provides a useful shelter from parliamentary criticism in relation to the honours lists and judicial and ecclesiastical appointments. Declining interest in issues of political principle is another contributing factor. To a large extent, it seems to be assumed that, with the reform of the Civil Service, the patronage battle has been won. In any event, the aura of secrecy surrounding appointment negotiations and the conferring of other favours reduces the scope for informed criticism. Finally, it is not easy to establish that particular appointments are determined by political considerations. The citing of political affiliation does not prove that this was the crucial consideration, while the fact that no selection system is infallible makes it difficult to demonstrate the validity of conclusions based on individual failures in office.

## V

The pattern in the United States of America can also be usefully discussed in terms of its historical development. The most conspicuous feature of this development has been, in the words of one of its senior students, 'the rise, persistence and gradual decline

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<sup>28</sup> ibid., p.11.

of the spoils system'.<sup>29</sup> As a consequence, the main task is to identify the salient features in the history of the spoils system and to offer an outline of its practical working. As one of the most distinctive features of American politics, the spoils system has attracted a vast literature. In view of the limited purpose of this brief survey of American practice, only a small portion of this literature has been sampled.

The original arrangements at the Federal level were partly a reaction against the British and colonial precedents.

All Americans were familiar with the power wielded in England by the "King's friends", and it is certainly true that in most cases colonial governors owed their positions wholly to favouritism, and that one of their chief duties was to use the offices within their gift for the upbuilding of a British party.<sup>30</sup>

The arrangements adopted in the Constitution also owed something to a reaction against the Legislature's exercise of the appointment power in some of the States.<sup>31</sup> As a result of these influences the power to appoint was accepted by the Constitution-makers as an Executive responsibility, but one which should not be left unchecked. The compromise arrived at provided for

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<sup>29</sup> Leonard D. White, Introduction to the Study of Public Administration, Fourth Edition, Macmillan, New York, 1955, p.307.

<sup>30</sup> Carl Russell Fish, The Civil Service and the Patronage, Russell and Russell, New York, 1963, p.1 (first published in 1904). Fish noted also that the early Americans regarded the patronage system as 'peculiarly characteristic of Monarchy' and thus unlikely to develop under a Republican constitution.

<sup>31</sup> See Joseph P. Harris, The Advice and Consent of the Senate, University of California Press, Berkeley, 1953, chaps 1 and 2; see also Fish, op.cit., p.2.

Presidential nomination with final appointment subject to the 'advice and consent' of the Senate. This provision, which in practice has developed in ways not foreseen by its original exponents, is the source of the major constraints on the exercise of the patronage prerogatives of the President.<sup>32</sup>

Washington is generally considered to have adopted high standards in his appointments, with merit and loyalty to the Constitution, rather than party affiliation, as his major criteria.<sup>33</sup> Under Adams, political considerations were accorded more weight, but 'the issue...was first clearly drawn in 1801 when the Jeffersonian Republicans replaced the Federalists. Jefferson introduced the doctrine of 'due participation' of each party in public service appointments'.<sup>34</sup> In the early stages, this involved substantial removals from office, but once a balance had been struck, 'removals were made only for cause'.<sup>35</sup>

The accession of Jackson in 1829 marked a watershed in the development of the spoils system, although 'technically one must assign its introduction to Jefferson, for party service was recognized as a reason

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<sup>32</sup> For a detailed exposition of the background to the adoption of this provision and its operation in practice, see Joseph P. Harris, op.cit.

<sup>33</sup> See Harris, op.cit., pp.36-43. Fish op.cit., pp.6-16. Both writers point to some gaps between Washington's theory and his practice, particularly in later years.

<sup>34</sup> White, op.cit., p.307. For a more detailed exposition, see Fish, op.cit., pp.29-51 and Paul P. Van Riper, History of the United States Civil Service, Row Peterson, New York, 1958, pp.22-24.

<sup>35</sup> ibid.

for appointment...and party dissent as a cause for removal'.<sup>36</sup> Jackson substituted for the Jeffersonian principles of 'due participation' the new and more drastic principle of 'rotation in office'. Facilitated by an 1820 Act providing that tenure of certain specified offices be limited to 4 years, the rotation principle was justified in terms of its educative effect, the assumed limited skills required in administration, and the notion that men left too long in office would tend to subordinate their public duties to their private interests. 'There followed during the next twenty years a constant alternation of parties which fixed the spoils system upon the country so thoroughly that it has not yet been wholly shaken off'.<sup>37</sup>

The career principle, however, began to make some inroads, Congress prescribing in 1853 that 'no clerk should be appointed until he had been examined and found qualified by a board of three examiners selected by the head of the department'.<sup>38</sup> A Civil Service Commission was established in 1871 but it lasted only until 1875. In 1883, however, the foundations of the modern career service were laid in the Pendleton Act. The passage of this Act owed something to the impact on public opinion of the assassination of President Garfield by a disappointed office-seeker.<sup>39</sup> The Act

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<sup>36</sup> Fish, op.cit., p.51. On this point see also p.155 and Van Riper, op.cit., pp.30-37.

<sup>37</sup> White, op.cit., p.310.

<sup>38</sup> ibid.

<sup>39</sup> Fish, p.218; White, p.311.

brought 14,000 positions, mainly in the post office and customs administrations, under the merit system, and provided for Presidents to extend the cover of the Act to other classes of position by Executive order. The subsequent history of the career Civil Service has been largely one of progressive extensions of the merit principle to additional classes of position. By 1954, the merit system applied to over 90 per cent of Federal employees.<sup>40</sup> While there have been some fluctuations since then, a recent observer has noted that 'in the daily operations of the federal government... perhaps only 10 per cent is concerned with partisan politics - if by that is meant patronage for partisan advantage.'<sup>41</sup>

The forward march of the merit system did encounter some setbacks. Thus in 1933, Congress exempted about 300,000 positions in the 'New Deal' agencies, federal attorneys were excluded in 1947 and in 1952 the incoming Eisenhower administration defined a limited class of policy-determining and confidential positions, to which appointments could be made without examination. In general, however, time has been on the side of the reformers and the 'depoliticising' of the career service has been assisted by the Hatch Act which placed a prohibition on active political work by federal employees, including those not employed under the merit system.

While the progressive 'covering in' of positions previously outside the merit system has reduced the area for the free play of political influence, there remains a substantial area where appointments are made on

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<sup>40</sup> White, op.cit., p.311.

<sup>41</sup> Dimock and Dimock, Public Administration, 4th edition, Holt, Rinehart and Winston, New York, 1969, p.66.

a patronage basis. Within this area, the provisions of senatorial 'advice and consent' apply. The complete pattern is a very complex one, varying according to the nature of the appointments under consideration, the general political climate and the personalities of the political actors. Some generalisations, however, appear to be worth making.

The first point to note is that the President has traditionally been given a fairly free hand in the selection of his Cabinet, his personal staff and diplomatic representatives. In the absence of the prerequisite of parliamentary membership, he has a much freer hand than a British Prime Minister in seeking to meet the twin requirements of administrative efficiency and political service in his appointments. Within the departmental structure, those excluded from the cover of the merit system are the occupants of the senior administrative and policy-making posts directly under the Cabinet members. In 1965, it was estimated that there were in this class 'well over a thousand men of importance in the federal government who face at least the possibility of being turned out of office after each presidential election'.<sup>42</sup> The President's nominees have to run the gauntlet of Senate confirmation, although Harris suggests that here too, 'nominees...have rarely been rejected except for reasons thought to be disqualifying',<sup>43</sup> and a large number of existing appointees is retained on a change of Administration.

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<sup>42</sup> Dean E. Mann, The Assistant Secretaries, Brookings Institution, Washington, 1965, p.4.

<sup>43</sup> op.cit., p.380



'Nominations of judges to the lower courts, courts of appeal, and to the Supreme Court are scrutinized with unusual care', although the 'Custom of senatorial courtesy...has in effect transferred from the President to the senators of his party the selection of district judges in their own states'.<sup>44</sup> This remains one of the most fertile fields of party patronage. The Senate also guards its prerogative jealously in relation to the members of administrative agencies and regulatory commissions. Here the pattern has been largely one of strong influence from the leading congressional members of the President's party, but modified by strong pressures from the organised interest groups coming into major contact with the individual agencies.<sup>45</sup>

For the bulk of appointments to lower level positions outside the civil service proper, including the armed forces, certain classes of postmasters and other minor groups of career employees, the Senate acts substantially as a rubber stamp and the Presidential prerogative is unimpaired from this source.

Because of the volume of appointments subject to Presidential nomination, it is obviously impossible for him to pay close attention to the lower level appointments. Of these custom assigns the selection of postmasters to members of the House, the remainder being left to the Senators. These therefore are an important part of the cement binding the President to his congressional supporters and his wider party organisation. The separation of powers and the nature of the American party system combine to place a premium on efforts in this direction. While the effective

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<sup>44</sup> ibid.

<sup>45</sup> ibid., pp.380-381.

decision is his personal prerogative in relation to the higher posts, domestic party considerations are also a major factor in his selections for these offices, although their strategic importance ensures that merit will also be treated seriously. Although the spoils system has been banished from the career service, then, patronage exercised on a partisan party basis is still clearly in the centre of the stage.

At the State, and more so at the local government level, patronage has an even stronger hold. The policy of rotation in office manifested itself in State politics well in advance of Jackson's adoption of the principle,<sup>46</sup> and it was partly in reaction to State practice that the formal nomination power was transferred to the executive under the Federal Constitution. The States, too, were much slower to accept the notion of a career service recruited on merit principles. At the State and local levels, the politicians are much closer to their party machines and pressures are correspondingly harder to resist.

One respect in which the problems for the chief executive is less severe at the State level is in the field of Senate confirmation. Where this provision exists, 'it is quite unusual for a nomination...to be rejected by the state senate'.<sup>47</sup> In addition, 'there is no custom of "senatorial courtesy" in the States'.<sup>48</sup> and the shorter sessions of State legislatures allow more scope for provisional appointments by the Governor.

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<sup>46</sup> Fish, *op.cit.*, pp.86-98.

<sup>47</sup> Harris, *op.cit.*, p.6.

<sup>48</sup> *ibid.*

The overall impact of patronage in American government at all levels has been to emphasise the strategic importance of the local party machines and the men who control them. While the worst abuses of Tammany Hall and 'bossism' have been eradicated, the basic incoherence of the party structure and the impact of the constitutional separation of powers remain strong forces pressing in the direction of bartering office in return for support. In this respect, the present American pattern is strongly reminiscent of the British pattern in the era of 'Old Corruption'.

The constitutional separation of powers and the nature of the American party system with its emphasis on regionalism and pursuit of office rather than ideology, helps to explain the reversion of the Americans to a pattern not unlike the one they had consciously shunned at the outset. Other factors have also played a part. Jackson's espousal of rotation stemmed partly from a belief that there was a need for the replacement of a privileged class of office-holders by individuals more representative of American egalitarianism. The notion that virtually anybody was capable of performing administrative tasks also played a part. The British notion of a proprietary right to office was formally rejected by the limited tenure legislation and found wide support in the community. As a result of these forces, 'the succession of purge and counter-purge established the spoils system formally as an institution of American government at precisely the time when the order in council of 1855 was beginning to take the British Civil Service out of politics'.<sup>49</sup>

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<sup>49</sup> S.E. Finer, op.cit., p.355.

PART TWO

SCOPE AND EXERCISE OF THE PATRONAGE  
PREROGATIVE BY COMMONWEALTH AND NEW  
SOUTH WALES GOVERNMENTS.

- Chapter 3: Appointments to Political Office.
- Chapter 4: Patronage and the Public Service.
- Chapter 5: Administrative Boards and Advisory Bodies.
- Chapter 6: Legal, Judicial and Quasi-Judicial Offices.
- Chapter 7: Overseas Appointments.
- Chapter 8: Honours and Awards.
- Chapter 9: Economic, Financial and Other Favours.

### CHAPTER 3

#### APPOINTMENTS TO POLITICAL OFFICE

While other classes of appointment may carry greater emoluments, security, status or satisfaction, the top political offices have a central importance because they provide their occupants with control over the machinery of government and access to the governmental patronage prerogatives. The power to appoint to these posts thus constitutes political patronage par excellence.

The most important political offices in the Australian context are those in the Ministry itself, with the office of Prime Minister or Premier taking pride of place. For the first few years of the main period covered by this thesis, and for all the earlier history of responsible government, New South Wales had an appointive Legislative Council, and this is an important second area of interest. The offices of Governor-General and State Governor, while their ceremonial and formal constitutional functions occupy more of the time of the incumbent, also qualify as political offices and will be dealt with in this chapter.

It is now a truism that a First Minister, in Australia as in Britain, is more than 'primus inter pares'. While party discipline, the impact of the media of communication and the nature of modern political problems have contributed to the current pattern, the genesis of the First Minister's pre-eminence lies in his patronage powers. Not only does he have the power to appoint and promote Ministers and to allocate their portfolios, but he has the power to dismiss them, to demote them and, by surrendering his commission or

seeking a dissolution, to end the life of the Ministry as a whole.<sup>1</sup> The access of individual Ministers to a share in the exercise of government patronage is thus conditional on the First Minister exercising his patronage prerogative in their favour in the first place.

In normal circumstances, the parliamentary and party electoral processes simplify the problem of selecting a First Minister. When Labor enjoys a majority in the Lower House, the parliamentary leader elected by the party caucus will be commissioned. When the non-Labor parties hold a majority of seats and are prepared to form a coalition ministry, the normal practice has been for the leader of the larger (i.e. normally the non-rural) party to be commissioned. On both sides of the political fence, therefore, the normal pattern is one of party election preceding the formal appointment.

Departures from this basic pattern have arisen largely from splits in the Labor Party and friction between the coalition partners. At the State level, there has been the added ingredient of the dismissal of a Premier by the Governor. The significant Federal cases from a patronage point of view were the Page boycotts of Hughes in 1923 and of Menzies in 1939, and the McEwen declaration against McMahon in 1967. These cases were clear examples of attempts to exercise

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<sup>1</sup> This statement is strictly true of the Labor Party only in the formal constitutional sense, although an astute and well-entrenched Prime Minister can evade the restraints imposed by Party rules.

'negatively' the patronage power derived from the coalition situation. In New South Wales, coalition frictions have driven two Premiers<sup>2</sup> from office but in each case the agent of destruction was a member of the Premier's own party and the Premiership has never been held by the rural party.

While constitutional practice confers the formal patronage prerogative on the First Minister so far as the appointment of his Ministry is concerned, a number of constraints inhibit his ability to exercise a free choice. These constraints arise from a combination of constitutional and political factors. The constitutional factors include limitations on the permissible size of Ministries, the requirement that Ministers be or become members of Parliament and the 'office of profit' provisions. Since the major purpose of the political battle is to secure control of the Treasury benches, the central political consideration is the need for a First Minister to sustain support at both the parliamentary and the electoral level. The general level of government performance can have a solid impact on electoral opinion and major failings by individual Ministers can cause unfavourable electoral reactions. The electorate tends to respond somewhat erratically to these factors, however, and the practical application of policies directly influencing the mass of voters is ordinarily of more moment in electoral arithmetic than the precise make-up of the Ministry.<sup>3</sup>

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<sup>2</sup> Fuller in 1921 and Stevens in 1939.

<sup>3</sup> The public personality of the Prime Minister is a more positive factor, but all of these factors are often too weak in their incidence to overcome the impact of apathy and conditioned voting reflexes.

The most central political factor, therefore, is the need to sustain the support of the parliamentary party and the outside party organisation. A number of subsidiary considerations flow from this, some applying to all parties, others being distinctive to particular parties.

In the first category is the need to ensure that all major shades of interest, both ideological and personal, are represented in a meaningful way. At the Federal level, this shades into a need to strike some sort of State balance,<sup>4</sup> while regional considerations are also important at the State level. A further requirement is that of including in the Ministry the leading personalities of the parliamentary party and those with the backing of the most influential elements in the outside organisation.

Special problems are created for Labor First Ministers by the formal relationship to the party caucus. At the Federal level, only the first Labor Prime Minister, Watson, was given a free hand in the selection of his Ministry.<sup>5</sup> In keeping with the Party's general faith in rank and file control and partly because of objections to the patronage implications, Federal Conference subsequently ruled in favour of caucus election with the Prime Minister retaining the right to determine the size of the Ministry and the allocation of portfolios.<sup>6</sup>

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<sup>4</sup> See Encel, Cabinet Government in Australia, Melbourne University Press, pp.116-120 (but note reference to Victorian predominance); K.A. MacKirdy, 'The Federalization of the Australian Cabinet, 1901-39', in Colin A. Hughes (ed.), Readings in Australian Government, University of Queensland Press, 1968, pp.76-85.

<sup>5</sup> This was in fact decided by a vote of caucus. See L.F. Crisp, The Australian Federal Labour Party, 1901-1951, Longmans, Melbourne, 1955, p.143.

<sup>6</sup> ibid., pp.143-147, for a summary of the main developments.



On his defection from the Labor ranks, Hughes formed a short-lived 'National Labor' Ministry. He had a free hand in selecting his team as well as in placing them in their individual positions.

In New South Wales, caucus elected the first Labor (McGowen) Ministry in 1910. The only exception to the established Labor pattern was the second Lang Ministry, formed in May, 1927. When Lang called a full meeting of the Executive Council to propose a dissolution over the issue of caucus repudiation of the so-called 'red rules', only Willis supported him. Following an exchange of letters between Lang and the Governor, the latter agreed to accept the surrender of Lang's commission, followed by a new commission, subject to dissolution at the earliest possible time after completion of the rolls. The recommissioned Ministry was handpicked by Lang from the ranks of his own supporters in caucus. When he formed his third Ministry in 1930, although the Party rules still gave him the power to select his own Ministers, he left the selection to caucus.

First Ministers on the non-Labor side also face restrictions of a special kind in their choice of Ministers. These restrictions arise from the coalition relationship rather than from internal party arrangements.

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<sup>7</sup> Hughes and Graham, A Handbook of Australian Government and Politics, 1890-1964, Australian National University Press, Canberra, 1968, p.4, pp.71-72. For extended discussions of these developments, see S. Encel, op.cit., pp.156-160; R.S. Parker, 'The Government of New South Wales' in S.R. Davis (ed.), The Government of the Australian States, Longmans, Sydney, 1960, p.140; J.T. Lang, I Remember, Invincible Press, Sydney, 1956, pp.310-316.

As Richards points out in the British context, 'on the occasions when a coalition has been formed, the distribution of offices is a matter of exceptional delicacy'.<sup>8</sup> The issue of ensuring that the coalition partners secure an adequate representation in the Ministry has assumed a central importance throughout the history of the Country Party at both State and Federal levels.

The first Federal coalition involving the Country Party was the Bruce-Page Government which resulted from the Country Party's refusal to come to terms with any government including Hughes.<sup>9</sup> Bruce chose the Nationalist Ministers, Page selecting those from his Party. One Nationalist Minister subsequently resigned on the coalition issue and the ultimate demise of this Ministry was contributed to by the defection of four Nationalist members of Parliament. The breakdown of negotiations for a coalition in 1932 led to the formation of a UAP Ministry, but coalitions were forced on Lyons when his party lost its absolute majority in the 1934 and 1937 elections. Page headed the coalition Ministry on a temporary basis following Lyons' death, but the Page-Menzies feud<sup>10</sup> saw the reversion to a UAP Ministry for nearly a year before protracted negotiations resulted in a coalition without Page. The negotiations were complicated by Menzies' refusal to allow the Country Party to select its own Ministers. The final bargain provided for Menzies to consult the leader of the Country

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<sup>8</sup> op.cit., p.71. As we have noted, so too is the original decision to form a coalition.

<sup>9</sup> For Page's version of these developments and correspondence exchanged, see Sir Earle Page, Truant Surgeon, Angus and Robertson, Sydney, 1963, pp.91-101.

<sup>10</sup> ibid., pp.264-284; Encel, op.cit., pp.237-239; See also C.P.D., vol.159, 1939, pp.14-18.

Party on the membership of the Ministry but to retain the final decision. On Menzies' resignation in 1941, Fadden avoided coalition difficulties by retaining the same Ministry. The subsequent pattern under Liberal Prime Ministers has followed the Menzies precedent of selection by the Prime Minister in consultation with the Country Party leader. In his short-term occupancy of the top post, McEwen retained the existing Ministry.

In general, the problems faced by non-Labor First Ministers in allocating portfolios have been more severe than those faced by their Labor counterparts. Caucus election may force unwanted Ministers on a Labor Prime Minister<sup>11</sup> or leave him with a limited choice in areas requiring special qualifications. However, he has personal discretion in the allocation of specific portfolios and is able, within limits, to sidetrack those he does not like into the less important areas. The coalition leader, on the other hand, has the power of choice only over the nominees of his own Party although this in itself gives him considerable room to manoeuvre.<sup>12</sup> In practice this latter limitation has given the Country Party a near monopoly in LCP Federal Governments over the portfolios of Primary Industry and Trade (and their earlier variants Commerce and Markets), and a predominant share in those of Interior and Postmaster-General. At the State level, the Country Party has monopolised the Education and Agriculture portfolios and has had

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<sup>11</sup> But see Crisp, op.cit., pp.146-153 and J.J. Dedman, 'The Selection of Labor Ministries 1941 to 1946', A.P.S.A. News, vol.9, No.1, March 1964, pp.2-6 on the impact of caucus selection on the membership of Labor Ministries.

<sup>12</sup> The same is true of the leader of the other coalition party.

a near monopoly over the Transport,<sup>13</sup> Lands, Mines and Forests ones. At both levels of government, the Party's option of withdrawing support has been the source of its leverage.

Notwithstanding the very real limitations on his choice in selecting his team, and, in the case of coalition governments, in deploying them, First Ministers still have important patronage powers left in this area. The power to allocate portfolios and to determine precedence in the Ministry, particularly since the Federal coalition adoption of a Cabinet of senior Ministers within the wider Ministry, provides considerable scope for the exercise of discretion in such a way as to encourage conformity with the leader's wishes. His power to dismiss Ministers or to end the life of a Ministry by handing in his commission is also a source of great strength. Political suicide is a step not undertaken lightly, and the threat of action along these lines by the First Minister can have a sobering effect on recalcitrants. The First Minister also has personal patronage prerogatives in fields other than ministerial office and these give him further leverage.

Although, as I have suggested above, coalition problems can be more frustrating than Caucus election on the Labor side, the fact remains that a non-Labor leader, within the context of his own party and the portfolios available to it, has considerable scope

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<sup>13</sup> Transport was held by a Liberal for the first time in the first Askin Ministry in 1965. A Liberal also became Minister for Lands and Mines in that year. In compensation, the portfolios of Public Works and Decentralization and Development were allocated to Country Party Ministers.

for exercising his own personal discretion in selecting Ministers. This stems from the fact that there are no formal constraints on his right to make his own selections. There are, of course, important informal constraints and his ability to surmount these will depend largely on the strength of his support in the Party and on his own personality. On the Labor side, Lang's control of the party machine allowed him to cast one Ministry aside, replacing it with a hand-picked team containing only one member of the previous Ministry, although as we have noted, this Ministry was doomed to a short life by the conditions under which it was commissioned.

In the history of non-Labor Governments at the Federal level since 1927, two Prime Ministers have shown sufficient individuality in their approach to Cabinet formation to be widely accepted by contemporary observers as having a distinctive 'style'. R.G. Menzies has been assailed by outside critics and dissident back-benchers alike for an alleged penchant for surrounding himself with 'yes-men' and mediocrities that his own light might shine all the brighter.<sup>14</sup> An important element in the Menzies 'myth' is his success in finding disqualifying offices outside Parliament for individuals who have posed threats to his political security or have apparently given cause for their loyalty to be suspect.<sup>15</sup>

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<sup>14</sup> See Donald Horne, The Lucky Country, Revised Edition, Penguin Books, 1964, Melbourne, pp.202-206, for a composite portrait based on a synthesis of these criticisms.

<sup>15</sup> Others have been left on, or demoted to the back benches. For a detailed and critical discussion of Menzies' style in Ministerial appointments, see Don Whittington, The Rulers: Fifteen Years of the Liberals, Lansdowne Press, Melbourne, 1964, pp.23-30.

'The ability of a Prime Minister to dominate his cabinet depends, in the long run, on the political situation, but within this given framework qualities of personality can be decisive.'<sup>16</sup> Inheriting a political situation overwhelmingly in his favour, Holt appeared to lack the personality or inclination to take advantage of it. While he made a few changes in personnel, the nature of the changes and his method of operation seemed directed more at achieving consensus than at imposing his own will. To some extent, Holt's approach was a reaction to the previous pattern and was welcomed initially as more in keeping with democracy and Australian egalitarianism. By the time of his death, however, there were indications that both the Party and the electorate expected something more in the way of positive leadership.

While the emergence of Gorton as Holt's successor resulted from the congruence of many influences,<sup>17</sup> an important factor was the belief that he would 'stop the rot' by displaying more individuality and decisiveness in his leadership role. It was this expectation which paved the way for him to establish his own individual style in Cabinet formation. In this respect, it is possible to detect two distinct phases in the development of 'Gortonism'. In the first phase, the selection of his initial Cabinet, he demonstrated his break, not only with Holt's way but with that of Menzies too, by elevating to the Ministry two individuals

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<sup>16</sup> S. Encel, op.cit., p.252.

<sup>17</sup> See Alan Reid, The Power Struggle, Shakespeare Head Press, Sydney, 1969, for a convincing, if not fully authenticated, outline of the developments leading to Gorton's election.

consistently passed over by Menzies.<sup>18</sup> He also removed two Ministers<sup>19</sup> who had been in the firing line during the period when the Government's stocks were declining. The bulk of the Ministry, however, was retained.

One aspect in the formation of this first Gorton Ministry was the rewarding of those who had supported him in the leadership contest. Included in this category were new Ministers Scott and Wright and M. Fraser, elevated to the Cabinet from the outer Ministry. In the second phase, this aspect was developed further but a new dimension was added by the removal or demotion of those who had worked against him. Thus in February, 1969, P. Hasluck, his main opponent for the leadership, was appointed Governor-General and in the resulting reshuffle, another contender, W. Snedden, was relieved of the post of Leader of the House of Representatives which, along with the Air portfolio, was conferred on the former Chief Whip, D. Erwin, one of the organisers of the Gorton 'coup'. These developments were seized on by the Leader of the Opposition, E.G. Whitlam, as the basis of an urgency motion to discuss 'the system of patronage in Ministerial appointments which the Prime Minister has practised contrary to the national interest'.<sup>20</sup>

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<sup>18</sup> Wentworth and Senator Wright.

<sup>19</sup> Howson and Chipp.

<sup>20</sup> C.P.D., H. of R., 26 February, 1969, p.161.

In the course of the ensuing debate, Whitlam argued that the Prime Minister, in introducing 'this spoils system',<sup>21</sup> compounded the 'dearth of talent in the Liberal Party...by restricting opportunities to a handful alone of his cronies'.<sup>22</sup> The Opposition attack was essentially just another ploy in the continuous campaign to discredit the Government with the electorate and to foster dissension within the Government parties. Its immediate impact was slight, although the apparent erosion of Liberal faith in their leader in subsequent months can be attributed in part to a lack of sympathy with his style in appointments. The main ingredients, however, appear to be his habit of making 'off-the-cuff' policy pronouncements and a fear that criticisms of aspects of his 'private life' might have electoral repercussions.

One aspect of the Opposition's argument which is likely to have struck a responsive chord in some parliamentary members of the Liberal Party is the lack of a safeguard against 'the accumulation of immense personal power...in the hands of the Prime Minister'.<sup>23</sup> Election of Labor Ministries, Mr Barnard added, 'has prevented the development of any sort of sharing of spoils or patronage in Labor governments'.<sup>24</sup> Over the years, there have been sporadic moves for Liberal Ministries to be elected.<sup>25</sup> At the State level, it was

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<sup>21</sup> ibid., p.162.

<sup>22</sup> ibid., p.164.

<sup>23</sup> ibid., p.167. The speaker was L.H. Barnard, Deputy Opposition Leader.

<sup>24</sup> ibid.

<sup>25</sup> See Alan Reid, op.cit., pp.147, 168, 201 regarding efforts in this direction under Menzies, Holt and Gorton.



reported that 'R.W. Askin experienced some difficulties in forming his first Cabinet'. First his parliamentary party was given the opportunity of filling cabinet positions itself, an offer that was unanimously rejected.<sup>26</sup>

Although the reported Askin deviation runs counter to the general pattern, the notion of appointive Ministries is in keeping with the organisational philosophy of the Liberal Party as it is with the traditional conventions of responsible government. It is also in keeping with political reality that incumbent Prime Ministers should seek to retain freedom to make their own selections.

Outside the Ministry itself, there are other offices which are at the effective disposition of the Prime Minister or his Cabinet.<sup>27</sup> Australia has not developed the British pattern of large numbers of parliamentary private secretaries and other minor offices outside the Ministry.<sup>28</sup> In Australia, however, the Speaker of the Lower House, the President of the Upper House and the Chairmen of Committees in both are essentially party appointments, changing with a change of government and being voted for on solid party lines. In addition, there are the Government Whips. While membership of parliamentary committees confers an obligation rather than a privilege in the short term it provides opportunities for later advancement. When

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<sup>26</sup> Richard Lucy, in 'Political Chronicle', Australian Journal of Politics and History, vol.XI, 1965, p.372.

<sup>27</sup> In this field, as for appointment to the Ministry, the scope for non-Labor Prime Ministers is much wider than for their opposite numbers.

<sup>28</sup> See Encel, op.cit., pp.266-275 and Crisp, Australian National Government, Longmans, 1965, pp.349-355, on constitutional problems regarding Assistant Ministers and Parliamentary Under-Secretaries.

all of these offices are taken into account, it is clear that the possession of office or the hope of office to come is likely to be an important factor in the calculations of a major portion of the membership of the Government parties, and to the extent that a change of Government is feasible, of Opposition members too. There are limits, of course, to the number of individuals who can be appointed, and consistent exclusion often leads to disillusionment, frustration and rebellion. Some disappointed aspirants remain in Parliament to harass their leaders, others disqualify themselves by accepting offices of profit, while yet others go away empty-handed. Clearly then, the possession of the patronage prerogative is not without its problems and there is some ground for believing that a Labor Prime Minister is in the happier position, being able to exercise influence in the selection of his team but without bearing personal responsibility when things go wrong.

## II

Until the emergence of the Labor Party, the New South Wales Legislative Council acted as a conservative bulwark and 'survived because moderate swamping from time to time kept it amenable to gradual social change, and it never resorted to the disruptive tactic of withholding supply'.<sup>29</sup> An indication of the limited extent to which swamping was exercised and of the overall scope for patronage appointments in this area is provided in Table I below. Only Holman and Lang (twice) ever nominated a single group larger than a quarter of the existing membership.

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<sup>29</sup> R.S. Parker, op.cit., pp.115-116.

TABLE 1: APPOINTMENTS TO THE LEGISLATIVE COUNCIL  
SINCE 1899

| <u>Ministry Responsible</u> | <u>Year</u>    | <u>No. Appointed</u> | <u>No. of members in House immediately before appointments</u> |
|-----------------------------|----------------|----------------------|--|
| Reid                        | 1899           | 13                   | 57   |
| Lyne                        | 1900           | 14                   | 68   |
| See                         | 1901 &<br>1903 | 2                    | 75   |
| Waddell                     | 1904           | 6                    | 57   |
| Carruthers                  | 1905 &<br>1907 | 4                    | 61   |
| Wade                        | 1908           | 13                   | 52   |
| McGowen                     | 1912           | 11                   | 49   |
| Holman<br>(Labor)           | 1915           | 1                    | 54   |
| "(National)                 | 1916           | 3                    | 52   |
| " "                         | 1917           | 21                   | 53   |
| " "                         | 1920           | 5                    | 67   |
| Storey-Dooley               | 1920           | 1                    | 70*  |
| " "                         | 1921           | 16                   | 70   |
| " "                         | 1922           | 1                    | 82   |
| Fuller                      | 1922           | 3                    | 82   |
| "                           | 1923           | 5                    | 80   |
| "                           | 1925           | 1                    | 75   |
| Lang                        | 1925           | 28                   | 75   |
| Bavin                       | 1927           | 5                    | 96   |
| Lang                        | 1931           | 25                   | 85   |
| Stevens                     | 1932           | 22                   | 106  |

\* Estimated, figure not given in original.

Source: S.M.H., 11 May 1933, p.10.

After the Labor Party had been established, the survival of the Council was called into question by the fact that abolition was adopted as part of the official party platform. Implementation of the policy was sought through the medium of a pledge by Labor nominees to the Council that they would vote for abolition when called upon. Under Labor, therefore, swamping took on a new and more sinister significance.

This threat to the Council's existence did not become serious until Lang's first Ministry. In 1925, he secured the appointment of 25 members, but defections by some of these and earlier Labor nominees frustrated his efforts. In 1926 and 1927, the Governor refused further appointments and the Bavin Government was returned on a programme which included a promise to reconstitute the Legislative Council on an elective basis. To ensure passage of the proposed legislation, Bavin made five nominations. The reform proposals were duly passed in the form of a constitutional amendment which made abolition impossible without a referendum. The Bavin Government was replaced by the second Lang Administration, however, before the reconstitution of the Council could be secured. A Bill to abolish the Council was then passed without opposition, the anti-Lang forces relying on litigation to declare the measure unconstitutional and seeking to avoid giving Lang an excuse for swamping. After the Bavin legislation passed the legal tests, Lang continued to press Governor Game to make appointments and ultimately on 20th November, 1931, 25 were added, making the total strength of the Council 109.

Lang's onslaught on the Council was brought to an end by his dismissal in May 1932. Following a resounding win at the ensuing elections, Stevens secured the appointment of nineteen new members and resumed the reform programme instituted by Bavin. By virtue of his majority in both Houses and the new indirect election arrangements, Stevens ensured the retention of a non-Labor majority for several years.<sup>30</sup> Labor has made

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<sup>30</sup> It in fact lasted until 1948 even though Labor took office in 1941. See Parker, op.cit., p.116.

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further attempts, some not taken seriously, to abolish the Council, but it has survived, sometimes serving as a bastion against the non-Labor parties. These parties themselves have talked of abolition from time to time.

More important from our point of view than the Council's battle for survival is the pattern of appointments made to it. Conservative rhetoric has consistently urged that until Labor prostituted the Council for partisan and destructive ends, it was a non-party House composed of worthy citizens guarding the public interest from hasty and ill-considered legislation pushed through the Assembly. In the course of Lang's battle with the Council, the Sydney Morning Herald emerged as a vigorous defender of this aspect of the conservative faith. Reviewing the first seventeen Stevens nominations, for example, it asserted:

The public will peruse their names with feelings vastly different from those with which it received the appointment of 25 Trades Hall extremists...The Langist list was one of avowed and embittered partisans, in their numbers designed to 'swamp' the Upper House debates, and in their persons pledged in advance to vote for repudiation of the State's public financial obligations and the furtherance of the post-election 'Lang plan' of revolution and destruction of the social structure of the State...

The new appointments are of the best within modern times, in that they are a selection of men in the main unknown for any partisan prepossessions, men who have in their spheres of activity...earned the respect of their fellow-citizens, and whose qualifications and experience should be of great value in Parliament at this juncture...

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31 For a summary of moves prior to 1960, see *ibid.*, pp.117-118.

Until the Socialists changed the whole spirit, as well as the voting power of the Council...it was not necessary for a new Government to consider whether it had a majority in the Upper House... The Council did not even recognize...an official Opposition...

...the Premier drew attention to the representation of rural life and industry as the special feature of the new appointments. Eleven of the seventeen new members have been chosen wholly out of regard for their standing in the farming and pastoral life of the State. They include men whose advice has been constantly sought by Ministers of all political parties...<sup>32</sup>

This extract captures the essence of the conservative case on the Upper House as well as much of the spirit in which the debate was conducted. It is thus a useful backdrop to a retrospective examination of Lang's 1931 nominations and those sponsored by Stevens in 1932. To facilitate this examination, the names and backgrounds of these appointees, as reported in the S.M.H.,<sup>33</sup> are reproduced in Tables 2 and 3 hereunder:

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<sup>32</sup> S.M.H., 7 Sept., 1932, p.12.

<sup>33</sup> 7 Sept., 1932; 14 Sept., 1932 and 22 Sept., 1932 for 20 of a total of 22 nominated by Stevens. 11 May 1933 for Lang's nominees.

TABLE 2: INDIVIDUALS APPOINTED TO LEGISLATIVE COUNCIL  
IN NOVEMBER, 1931, ON RECOMMENDATION OF J.T. LANG

| <u>Name</u>    | <u>Details</u>   |
|----------------|--|
| G.P. Buckley   | Organiser, Road Transport Union.   |
| J.W. Cowburn   | Secretary, Amalgamated Engineers' Union.                                     |
| J.M. Davoren   | Former occupant of 'all the official positions' in a local ALP branch.       |
| T. Falkingham  | Organiser, Boilermakers' Society.  |
| J. Fox         | Organiser, Stovemakers' Union.   |
| W.J. Gibb      | Organiser, Federated Clothing Trades Union.                                  |
| D. McL. Grant  | Alderman of City Council and a member of the Clerks' Union.                  |
| J.J. Graves    | General Secretary, State ALP.  |
| Mrs Green      | (no details given)   |
| J. Kilburn     | Secretary, Bricklayers' Union.   |
| R.A. King      | Organising Secretary, Labour Council.  |
| J.B. Martin    | Organising Secretary, ALP  |
| J.M. Martin    | Organiser, Electrical Trades' Union.   |
| A.W. McNamara  | Secretary, United Labourers' Union.  |
| G. Mullins     | Secretary, Waterside Workers' Union.   |
| J.F. O'Reilly  | Secretary, Hairdressers' Union.  |
| J.J. O'Reilly  | Vice-President Clerks' Union, and Secretary of ALP in Newcastle.             |
| F. Pollard     | Secretary, Meat Industry Union.  |
| D. Rees        | General President, Miners' Federation.                                       |
| F. Roels       | Federated Enginedrivers' and Firemans' Union and ex-member of ALP Executive. |
| R.E. Savage    | Assistant Secretary, Water and Sewerage Employees' Union.                    |
| G.J. Sinclair  | Secretary, Boilermakers' Society.  |
| S.J. Smith     | Assistant Secretary, Road Transport Union.                                   |
| C. Tannock     | Secretary, Federated Ironworkers' Association.                               |
| Mrs E. Webster | Forbes ALP and wife of ex-president of ALP.                                  |

TABLE 3: INDIVIDUALS APPOINTED TO LEGISLATIVE COUNCIL  
IN SEPTEMBER, 1933, ON RECOMMENDATION OF B.S.B.STEVENS

| <u>Name</u>      | <u>Details</u>   |
|------------------|--|
| G.D. Bassett     | President, Calare Electorate Council of UCP.   |
| A.N. Binks       | Chairman, Farmers and Dairymens' Cooperation Association. Also Chairman, Dairy Council and has taken active part in South Coast political matters. |
| W.C. Carbridge   | Secretary, Farmers and Settlers Association.   |
| E.E. Collins     | Member of Executive, UAP.  |
| Dr A.E. Colvin   | Mayor of Orange for many years.  |
| L.T. Courtenay   | Foundation member of National Party. Active in UAP affairs. Formerly member of City Council and of Transport Trust.                                |
| M.P. Dunlop      | General Secretary, Primary Producers' Union.   |
| T.S. Gordon      | Chairman and Managing Director of Birt and Co. Ltd.  |
| Dr H.R. Grieve   | One of young members of UAP.   |
| R.G. McKillop    | Grazier and orchardist, prominent figure in UCP.   |
| V. Molesworth    | Publicity officer for UAP. Formerly member for Cumberland and well known Sydney journalist.  |
| W.H. Moses       | Managing Director of Griffith Producers' Cooperative Society.  |
| H.C. Moulder     | Stock and Station Agent, Secretary local branch of Graziers' Association, former Mayor of Condobolin.  |
| H.S. Nicholas    | A leading constitutional lawyer.   |
| C.J. Parker      | Mayor of Newcastle. Stood as Independent candidate in State election.  |
| E.C. Sommerlad   | General manager, Country Press Association. Directed Country Party publicity campaign in last 3 elections.   |
| F.H. Tout        | President, Graziers' Association of New South Wales.   |
| S. Walder        | Lord Mayor of Sydney. Has for many years occupied high executive positions in UAP.   |
| Lt.Col.H.F.White | Commanded 36th Battalion, AIF and a noted grazier and breeder.   |
| H.M. Wragge      | Solicitor and President Namoi Electorate Council of UCP.   |



Even on the most superficial examination, there is an obvious difference between the two lists. Clearly, Lang's list is one of committed partisans and drawn, not only from the industrial movement, but, to a large extent, from the more radical elements within it. By social and occupational affiliation and training, the Stevens nominees were a different breed, but it is difficult to reconcile their backgrounds with the claims of political neutrality. The S.M.H. itself pinned a clear party label on nine of them and the sympathies of the remainder could no doubt be counted on in a direct confrontation with the Lang contingent. The stress on the representation of rural life could be interpreted as a recognition of the importance of keeping the Country Party happy with the coalition rather than a measure of rural virtues in the abstract.

In the context of the purpose intended to be served by the two groups of nominations, of course, a substantial deviation from the distinctive patterns adopted would be inconceivable. Lang's nominations were made against a background of severe strife within the labour movement and the failure of some of his previous nominees to honour their abolition pledges. Membership of the Council conferred privileges, some of which would be expected to continue after abolition. This made appointment a valued prize in itself<sup>34</sup> but also raised the spectre of a further repudiation of the pledge. In selecting his nominees, therefore, Lang could scarcely ignore the twin requirements of reinforcing his own support in the Party and the promotion of his abolition policy.

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<sup>34</sup> The S.M.H. of 2nd Dec., 1930, reported that 'no fewer than 1,347 applications for appointment...were received from Labour candidates by the ALP executive.'

The problems faced by Stevens were hardly less 'political' than those faced by Lang. Where Lang sought to ensure the passage of his programme, including abolition, a vital part of Stevens' programme was to preserve the Council and to reconstitute it on lines which would not hinder his own legislation. If this did not require the exclusive selection of individuals with an unambiguous public commitment to one or other of the coalition parties, it at least placed a premium on the nomination of 'safe' men whose general attitude would be predictable. Over the whole history of the Council, of course, it is obvious that the political affiliations and opinions of potential nominees could not be ignored. The very foundation of the concept of 'swamping' is that appointments should be directed towards changing the political balance of the House. If the earlier history was one of marginal adjustments,<sup>35</sup> this was more a reflection of the lack of sharply divisive issues than of the purity of intent of the decision-makers. The vigour of Lang's assault on the Council and the reaction it aroused are manifestations of a period of crisis in social and economic relations when not only the future of the Upper House but the whole fabric of society was in jeopardy.

One of the intriguing aspects of appointments to the Legislative Council is the fact that this is an area where State Governors have been able to exercise sufficient personal discretion to refuse appointments altogether or to delay them and to cause Premiers to accept a lesser number than they requested initially.

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As Table 1 indicates, some of the earlier efforts did involve a significant accretion to the membership.

In most cases, the State Governors have conceded the point eventually,<sup>36</sup> and Upper House appointments became part of the patronage prerogative of Premiers, with potential value both for rewarding supporters and for advancing the political interests of the Premier or his Party.

While the prerogative of formal recommendation was taken away from Premiers by the 1933 reforms, the scope for party patronage remained. As early as January 1930, correspondents were drawing attention to the fact that indirect election would 'ensure machine politics' in the Upper House, rather than prevent them.<sup>37</sup> As a corollary, machine politics have played a notable part in the election of new members. The initiative was taken by Labor in the form of tightly-controlled 'tickets' with sanctions on those found to be departing from them. Partly as a defence reaction, the non-Labor parties also have sought to avoid defections in their own ranks.<sup>38</sup> In general, the patronage in this area has passed to the outside party organs and the parliamentary party at large, but scope for Ministerial influence no doubt remains.

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<sup>36</sup> But note that de Chair outlasted Lang in 1926. See Encel, op.cit., p.60.

<sup>37</sup> Letter to S.M.H., 31 Jan. 1930, by A. Sinclair. See letters supporting this position by Sir Joseph Curruthers, MLC, former Premier. (S.M.H., 3, 7 and 13 February 1930).

<sup>38</sup> K. West, Power in the Liberal Party, Cheshire, Melbourne, 1965, pp.140-142, provides a brief outline of the Liberal conversion to this pattern.

## III

As the formal constitutional repository of executive power, the office of sovereign's representative is of central interest at both the State and Commonwealth levels. As in the case of the monarchy itself, the scope for the exercise of personal initiative by the incumbent has been progressively reduced by the developing logic of responsible government. In exceptional circumstances, however, the application of the residual discretionary powers can exercise some influence on the course of political events. The main areas where vice-regal discretion has been of political significance in Australia are the granting of dissolutions, the commissioning of a new Ministry in conditions of uncertainty and, in the New South Wales context, appointments to the Legislative Council. It has been suggested that a recent Governor-General has also sought to head off conditions of uncertainty by tackling the strains in the governing coalition.<sup>39</sup>

Even in the absence of any possibility that the incumbent would be required to exercise a political judgment, the pattern of appointment to these posts would be worthy of study because of their constitutional, ceremonial and social significance.

In the early years of federation, the operative conventions placed the power of appointment of Governors-General firmly in the hands of the sovereign's British advisers. As a result, the position was filled, with one exception, by 'minor British politicians',<sup>40</sup> all but one of these having been of the Conservative

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<sup>39</sup> Alan Reid, op.cit., pp.108-115.

<sup>40</sup> L.F. Crisp, Australian National Government, p.376. See p.378 for a table listing the political backgrounds of all but the current holder of the office.

persuasion. In 1926, however, the Balfour Declaration made it clear that the Governor-General was not the representative of the British Government, and from this flowed the logical assumption that the question of appointment was now properly the prerogative of His Majesty's Australian Ministers.<sup>41</sup>

The first opportunity to take advantage of this prerogative fell to the lot of the Scullin Government. As early as November, 1929, it was reported that 'a motion would be submitted to the Federal Parliamentary Labor Party...for the appointment of an Australian to the position of Governor-General... Members supporting the proposal consider that the Chief Justice (Sir Adrian Knox) should be invited to accept the position'.<sup>42</sup> After Knox's resignation from the High Court, his successor as Chief Justice, Sir Isaac Isaacs, took over the mantle of the favourite in the betting for the first Australian-born Governor-General.<sup>43</sup> Subsequent developments confirmed the early rumours and after negotiations over a period of 9 months, the appointment was acceded to by a reluctant sovereign.

The circumstances surrounding the appointment of Isaacs have been thoroughly explored from the perspective of the King, the Prime Minister and the nominee.<sup>44</sup>

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<sup>41</sup> The logic was apparently not so clear-cut at the time. See Zelman Cowen, Isaac Isaacs, Oxford University Press, Melbourne, 1967, pp.191-198. See also Harold Nicolson, King George V, Constable, London, 1952, pp.478-9/

<sup>42</sup> S.M.H., 13 Nov., 1929, p.15.

<sup>43</sup> The S.M.H. of 23 April 1930, stated that it had been 'learned authoritatively' that he had been offered the post.

<sup>44</sup> See Cowen, op.cit., pp.191-198 for an up-to-date version covering all three perspectives. See also Nicolson, op.cit., pp.477-482 and L.F. Crisp, 'The Appointment of Sir Isaac Isaacs as Governor-General of Australia, 1930', Historical Studies, Australia and

The main significance of these developments from our point of view is that they established clearly that the effective prerogative would henceforth rest in the hands of the Australian Prime Minister. The King and his advisers stressed the dangers flowing from this. While Australian critics concentrated on the threat to the Imperial relationship, the King's private secretary, Lord Stamfordham, emphasised that:

...any local man, whether in politics or not, must have local political predilections, political friends and political opponents... If...another Party was in office when a vacancy occurred...the same procedure would follow, and the selection would be made from the friends of the Party in office.<sup>45</sup>

In the event, the next Government did not bear out this prediction, Lyons informing the King:

...that he 'was most anxious that the next Governor-General should come from Great Britain and be of distinguished lineage'. ...Lord Gowrie...proved one of the most wise and popular Governors-General that Australia had ever known.<sup>46</sup>

The issue lay quiescent through the remainder of Gowrie's term, extended several times because of the exigencies of war, and through the term of his successor, the Duke of Gloucester, appointed by the Curtin Government.

The ogre of political patronage in vice-regal appointments was conjured up by Labor's opponents, however, when J.B. Chifley announced the appointment

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New Zealand, vol.II, No.42, April, 1964.

<sup>45</sup> Quoted in Nicolson, op.cit., p.479.

<sup>46</sup> ibid., p.482.

of W.J. McKell, the Labor Premier of New South Wales, as the Duke's successor. The new ingredient of his political affiliation aroused a storm of controversy. Leader of the Opposition, Menzies, included an attack on the appointment in a no-confidence motion and stressed that 'if the King...is bound to act on the advice of Australian Ministers in the selection of a Governor-General, he is equally bound to accept the advice of those Ministers in the removal of a Governor-General'.<sup>47</sup> Menzies did not follow this logic to its practical conclusion when he became Prime Minister, extending McKell's term in 1951 to take in the forthcoming Royal Tour, and having him knighted as well. Menzies, however, reverted to a pattern of British appointees until 1965 when he called Lord Casey from the House of Lords.

By this time, Australian origin was no longer a drawback and Casey's unique background would have made it difficult to challenge him on this score anyway. In addition, his lengthy retirement from active participation in Australian politics made him immune from the core of Menzies' attack on McKell's appointment. On the Labor side, there was no significant challenge.

The circumstances surrounding Casey's successor, however, have introduced a new dimension into the argument. Hasluck was not only a party and Cabinet colleague of the Prime Minister, but also the latter's major opponent in the leadership contest. It could be argued that his personal qualities, training and political style made him eminently suitable for the post, but there was a strong suspicion that Mr Gorton was more concerned to eliminate any possibility of a future challenge to his own authority.

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<sup>47</sup> C.P.D., H of R., vol.190, 1947, p.20.

As already noted, this appointment was an important element in the Opposition attack on 'Gortonism'. One speaker, Independent Senator Turnbull, drew on a statement made on the McKell appointment by Menzies in 1947 to charge that it was 'the most deplorable instance in the Government's growing record of political jobbery... [it] converts the Governor-Generalship into a mere political plum'.<sup>48</sup> He then pointed to the fact that 'there are only a few places upstairs to which members can be kicked'.<sup>49</sup> and suggested that it was inevitable that 'in future every Governor-General will have been a Minister of the Crown'.<sup>50</sup>

There was a strong ritual element in these protests, and Turnbull's attack in particular was decried by two Labor Senators.<sup>51</sup> Nevertheless, one observer reported that 'Gorton desperately desires to have his own men around him. It is no secret that he wanted to get rid of Hasluck'.<sup>52</sup> While complete certainty is lacking, it does seem reasonable to assume that an important factor in Hasluck's selection was, not only that he was a potential rival in the personal sense, but that he posed a threat to the Prime Minister's policy preferences. The Prime Minister had questioned the basic tenets of Australia's foreign policy, and there were suggestions that his selection of Freeth to replace Hasluck was partly motivated by a desire to be his own External Affairs Minister.

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<sup>48</sup> C.P.D., Senate, 4 March 1969, p.220. As part of the Menzies statement, reported in S.M.H., 1 Feb., 1947.

<sup>49</sup> ibid., p.221.

<sup>50</sup> ibid.

<sup>51</sup> ibid., p.223.

<sup>52</sup> The Bulletin, 8 March, 1969.



While subsequent developments have offered considerable support for Stamfordham's predictions in terms of the pattern of appointment, it is questionable whether the impact of this pattern on the nature of the office itself provides serious cause for concern. Despite the role alleged to have been played by Lord Casey in the Holt succession, the convention that Governors-General will act on the advice of their responsible Ministers seems immune from serious challenge. Certainly Isaacs and McKell were not found wanting on this score. There is, in addition, something positive to be said for the possession of political knowledge on the part of the incumbent.

As Lord Casey is reported to have said, 'It is difficult...to conceive of somebody out of politics being able to move straight in and do the job'.<sup>53</sup> In any event, any appointee is likely to have some personal political convictions. The vast majority of the British appointees have been Conservative politicians and the remainder would no doubt have had personal leanings in the same direction. It could well be questioned whether an 'Australian, even an Australian ex-Minister, should be less capable than a British ex-Minister...of rising above his former partisanship for a particular political philosophy'.<sup>54</sup> More important than nationality, political affiliation,

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<sup>53</sup> Don Aitkin, in Australian Quarterly, vol.41, March 1969, p.70. Reactions to this statement would be conditioned partly by individual conceptions of just what the 'job' is.

<sup>54</sup> L.F. Crisp, Australian National Government, p.379

or even the motivation of the Prime Minister, is the question of whether the appointee is better fitted to fill the post than other potential candidates.

Formally unaffected by the Balfour Declaration and its aftermath, appointments to the office of State Governor have followed a different pattern. Technically still the province of British Ministers, appointment follows informal negotiations with the State Premier and it is to be expected that the latter would get his way in the event of disagreement.

In New South Wales, the British monopoly was not broken until 1946 when Sir John Northcott, the recently-appointed Commander-in-Chief of the British Commonwealth Occupation Forces in Japan, was appointed by the McKell Government. When Northcott was due for replacement in 1957, there were rumours that Premier Cahill was considering his own appointment.<sup>55</sup> This was not to be, however, and Sir Eric Woodward, like his predecessor a Lieutenant-General, was appointed. One leader writer noted that 'when politicians, active and retired - if a politician can ever be said to be retired - are ruled out of consideration, as they should be, there remain few candidates outside the ranks of distinguished soldiers and Judges'.<sup>56</sup> The military precedent was followed in 1965 by the appointment of Sir Roden Cutler, a war-time VC winner who had had a subsequent career as a diplomat. Intriguing possibilities are opened up by the fact that he was a cousin of the Deputy Premier, but it is not clear whether his family relationship was an element in the selection. The Governor-designate himself had never had any formal party affiliation.

<sup>55</sup> S.M.H., 19 and 20 March 1957. See also NSW Parl. Debs., Assembly, (29.3.57) for Cahill's denial in reply to a parliamentary question.

<sup>56</sup> S.M.H., 9 July, 1957. Both groups, of course, are notoriously conservative in their general orientation.

While the appointment of political partisans has been avoided, the office has not been immune from political controversy. While Premiers have not had the formal power to appoint, they have had a power or a potential power to secure the termination of an appointment. In 1916, Holman was able to secure the recall of Strickland who had refused a request to extend the life of Parliament. In the course of Lang's battles with the Upper House, the recall of Game was also the subject of speculation, but in the end, as the Governor's daughter so well expressed it, 'stead of him 'bolishing Daddy, Daddy 'bolished him'.<sup>57</sup>

As in the case of individual Governors, the office itself has been under threat. Labor Party programmes called for the abolition of the office of State Governor as well as of Legislative Councils and the Senate. Like these other institutions,<sup>58</sup> however, the office, along with most of its occupants, has avoided this fate. As at the Commonwealth level, the steam has gone out of the debate and the advantages of having a ceremonial figurehead have come to outweigh the incongruity of the retention of some of the trappings of the State's colonial past.

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<sup>57</sup> Bethia Foott, Dismissal of a Premier: The Philip Game Papers, Morgan Publications, Sydney, 1968, p.213.

<sup>58</sup> With the notable exception of the Queensland Upper House.

CHAPTER 4PATRONAGE AND THE PUBLIC SERVICE

The most striking feature of the history of administrative reform has been the progressive elimination of political patronage as the basis for recruiting and promoting public servants. Partly for this reason and partly because it was one of the most fruitful sources of patronage in the pre-reform era, the Public Service has always been one of the central preoccupations in discussions of political patronage.

By 1927, the Commonwealth and New South Wales Public Services had been operating for an extensive period in an environment which ruled out political patronage as a dominant factor. In the interests of a more rounded discussion, therefore, considerable attention will be paid to developments before that year.

The pattern of development of patronage in the administration of New South Wales prior to Federation was broadly as follows:<sup>1</sup>

(a) In the period before responsible government, the initial pattern was for patronage to be shared between the British Secretary of State for Colonies and the Colonial Governor.

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<sup>1</sup> This summary is based on the accounts in R.S.Parker, Public Service Recruitment in Australia, Melbourne University Press, 1942; A.M. McMartin, 'Aspects of Patronage in Australia 1786-1836', Public Administration (Sydney), vol.18, 1959, pp.326-340; P.Loveday 'Patronage and Politics in New South Wales, 1856-1870', Public Administration (Sydney), vol.18, 1959, pp.341-358; and K.W. Knight, 'Patronage and the 1894 Royal Commission of Inquiry into the New South Wales Public Service', Australian Journal of Politics and History, vol.7, 1961, pp.166-185.

(b) Later in this period, the office of Secretary to the Governor developed into that of Colonial Secretary with independent patronage powers.

(c) With the development of responsible government, patronage remained the basic method of recruitment but the prerogative for its exercise passed to the individual colonial Ministers.

(d) This pattern was not affected significantly by the Civil Service Act of 1884,<sup>2</sup> but it was overturned by the Public Service Act of 1895 which followed a Royal Commission instituted in 1894.

(e) The new Public Service Board established by the 1895 Act, took its role very seriously and immediately embarked on a major pruning exercise, completely reclassifying the Service, abolishing surplus positions and removing unqualified staff. The Board stressed that the higher officials, as well as the politicians, had had widespread patronage powers which were 'not always exercised with proper regard for the public interests'.<sup>3</sup> In its approach to its duties, therefore, the Board sought to ensure that full cognizance was taken of the fact that the new Act 'absolutely abolishes all patronage, whether of the political heads of departments or of higher officials'.<sup>4</sup>

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<sup>2</sup> The new Civil Service Board had only a limited examining function and the Act left considerable scope for political influence.

<sup>3</sup> NSW Public Service Board, First Report, 1896, p.4.

<sup>4</sup> ibid., p.1.

(f) The spirit of the 1895 arrangements has been perpetuated in subsequent legislation and the New South Wales Board has remained the most powerful of the Australian agencies operating in this area.

The initial Commonwealth legislation built on the foundations laid in the colonial enactments. In place of the Public Service Board there was a single Public Service Commissioner. In the interregnum between Federation and the passing of the 1902 Public Service Act, Ministers and senior officials did take advantage of their patronage powers to appoint individuals on the basis of personal, political or regional considerations, although the majority were drawn from the State Public Services.<sup>5</sup> This was essentially a transitory phase and it was not long before the first Commissioner, D.C. McLachlan, asserted his authority. To underline the point, he devoted part of his second annual report to a severe warning against outside influence, whether by officials or politicians.<sup>6</sup>

From this brief outline of the background to the establishment of the Commonwealth and State central personnel agencies, it is clear that those in charge had similar views of their responsibilities and that they faced the same types of problems in carrying them out. While the precise pattern of subsequent development has not been identical, the general lines have followed parallel paths. The remainder of this chapter will

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<sup>5</sup> G.E. Caiden, Career Service, Melbourne University Press, 1965, pp.56-63.

<sup>6</sup> Commonwealth Public Service Commissioner, Second Report, 1906, pp.26-27.

compare and contrast Commonwealth and New South Wales experience under four headings - permanent heads and other senior officers; temporary employment; exclusions from the Public Service Act; and the general impact of patronage on the Public Service.

## II

One chink in the anti-patronage armour of the Commonwealth Public Service Commissioner was the fact that appointments of permanent heads were in the hands of Cabinet. In his role of Royal Commissioner in 1920, McLachlan had argued strongly for the closing of the legal loophole which permitted the appointment of permanent heads without first seeking a report from the Commissioner. His plea fell on deaf ears, however, and under Section 54(2) of the 1922 Act, the appointment of permanent heads remained a Cabinet prerogative.

Following McLachlan's precedent, the Boyer Committee in 1958 bemoaned the fact that, while the Public Service Board was normally given the opportunity to offer its views, 'there is nothing to prevent the making of a purely political appointment'.<sup>7</sup> The Committee accordingly argued that 'there should be a statutory obligation on the Government to consult the Public Service Board... and any departure from the recommendation of the Board should be required to be notified to Parliament'.<sup>8</sup>

The reception of these proposals was no more favourable than that accorded McLachlan's, Prime Minister

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<sup>7</sup> Report of the Committee of Inquiry into Public Service Recruitment, 1958, para.116.

<sup>8</sup> ibid.; this was also the recommendation made by McLachlan.

Menzies describing them as 'over-theoretical' and Opposition Leader Calwell decrying the Committee's 'impertinence'.<sup>9</sup> At the Commonwealth level, therefore, an important potential source of political patronage has continued to lie in the power to appoint permanent heads.

Despite the formal freedom of Cabinet to look elsewhere, there is a strong tradition of drawing permanent heads from the ranks of the career Public Service. G.E. Caiden has listed the names of all of the permanent heads appointed in the period 1901-1961.<sup>10</sup> Of a total of about 140 individuals, apart from the initial appointees drawn largely from the State services and a handful of wartime appointees brought in to head new departments, only two<sup>11</sup> were genuine 'outsiders'.<sup>12</sup>

Since 1961, this pattern has continued, with one recent exception. In 1967, to the accompaniment of unconvincing staff association protests, Sir Hugh Ennor, Deputy Vice-Chancellor of the Australian National University and head of the John Curtin School of Medical

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<sup>9</sup> C.P.D., H of R, vol.29, 1960, p.2985. The basic criticism was that the tabling procedure would expose appointees to politically-motivated and uninformed public criticism, thereby undermining the anonymity and impartiality of the Service.

<sup>10</sup> op.cit., pp.451-462.

<sup>11</sup> K.H. Bailey, Professor of Law at Melbourne University, appointed as Secretary to the Attorney-General's Department in 1946, and Sir Harry Brown, brought over from England to overhaul the Postmaster-General's Department in 1923.

<sup>12</sup> i.e. those who had not been career public servants at some time prior to their appointment. Some others had left the Service to take up other posts.



Research in that institution, was appointed Secretary of the new Department of Education and Science.<sup>13</sup>

All of the appointments of non-career public servants to permanent headships are explicable in administrative rather than political terms. The same is true of the appointments of all of the career public servants who have reached the top, although political considerations have no doubt intruded at times.

Two acknowledged Labor partisans were appointed to permanent headships from the ranks of the career service under Chifley Cabinets. The first, Dr J. Burton, was appointed to the External Affairs Department in 1947 and subsequently became the centre of political controversy. In a public address shortly after his own resignation from the Department, the present Governor-General accused Evatt of seeking to make the Department and the diplomatic service his 'personal possession',<sup>14</sup> and the Burton appointment was presumably an important element in his assessment. In 1948, Burton created a furore in political circles by standing for ALP pre-selection for the Canberra seat in Federal Parliament. When he applied for extended leave in 1950, it was granted on condition that he relinquish his post as permanent head and he was subsequently appointed as High Commissioner in Ceylon.

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<sup>13</sup> W. Ives, appointed from the Executive of the CSIRO in 1968 to the Secretaryship of the Department of Primary Industry, was also generally reported in the Press as an 'outsider', but had held appointments in the Department of War Organisation of Industry and Post-War Reconstruction before transferring to CSIRO in 1946.

<sup>14</sup> See C.P.D., vol.193, 1947, pp.177-179. See also his The Public Service and Politics, Royal Institute of Public Administration (ACT Group), 1968, pp.8, 11.

He later left that post to contest the Federal seat of Lowe, again as a Labor candidate.<sup>15</sup> He did not seek to return to the Commonwealth service after his defeat in this contest.

The second Labor partisan, L.F. Crisp, was appointed as permanent head of the Department of Post-War Reconstruction in the twilight of its existence in 1949. Presiding over the Department's formal demise under the new non-Labor Government, he did not remain in the Service long enough for the good faith of the new regime to be thoroughly tested, taking up a professorial appointment at the Canberra University College. This appointment had been arranged well in advance of the elections leading to the change of government.

The fact of open political affiliation, of course, does not necessarily mean that this was decisive in the selection. Both of the individuals concerned had exceptional academic qualifications<sup>16</sup> in a period when this was becoming a serious consideration for the first time in the history of the Service. The fact that they were the two youngest permanent heads ever appointed<sup>17</sup> could also be taken as a reflection of a new administrative breakthrough rather than a political one.<sup>18</sup> Nevertheless, it is at least probable that the political affiliation was a positive rather than a negative factor in the selection process.

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<sup>15</sup> See S.M.H., 28 March 1951, p.2; 29 March 1951, pp2, 3; 30 March 1951, p.2.

<sup>16</sup> Burton had earned his doctorate as a Public Service scholar, and Crisp had been a South Australian Rhodes Scholar.

<sup>17</sup> Both were 32, Burton being the younger by a few months as at the date of appointment.

<sup>18</sup> The Service was going through a period of transformation and rapid expansion in a period of manpower shortage and against a background of a recognised need for 'new blood' at the top.

The External Affairs Department has been the centre of more recent reshuffles, although these appear to have resulted from administrative rather than party political considerations. Burton's successor, A.S. Watt, was replaced by A.H. Tange in 1954, being himself appointed as Commissioner to Malaya. In 1965 Tange became High Commissioner in India, being replaced by J. Plimsoll. Other permanent heads have also found their way into overseas posts, diplomacy being one of the major outlets for permanent heads seeking or being induced to accept a change. One permanent head, Sir John Bunting, was widely rumoured to have spurned the attractions of diplomatic life and his exit from the Prime Minister's Department was effected finally by the creation of the new Department of the Cabinet Office. One other permanent head, A.B. McFarlane, was shifted to the Public Service Board, but this has been interpreted by some observers as the prelude to easing him into the chair occupied by the Chairman of the Board rather than to remove him from his former post. Others have transferred to administrative posts in the wider Commonwealth bureaucracy while yet others have established new careers in the academic or business world.

The purpose here is not to suggest that political patronage is rife in relation to permanent headships but to indicate that the patronage power enjoyed by Ministers in this area does enable them to exercise some personal discretion in their choice of administrative help-mates. The exercise of this discretion is facilitated by their access to other patronage resources.

The logic of allowing Cabinet to appoint its own permanent heads without any formal restraints is surely consistent with the notion of creating vacancies instead of waiting for them to occur, providing that the

statutory rights of those being removed are met in spirit as well as in form and providing that the public interest is not undermined in their new capacities. As J.G. Crawford has pointed out,<sup>19</sup> the relationship between a Minister and his permanent head is a delicate one, requiring mutual trust and confidence. Hasluck, too, noted that permanent heads would inevitably be drawn into close involvement with Ministerial affairs because they 'have been selected and appointed by the Executive and stand in a special relationship to it'.<sup>20</sup> If, as Menzies and McEwen suggested in relation to the Burton affair,<sup>21</sup> political partisanship in the wrong direction<sup>22</sup> is subversive of this trust, so, too, is any feeling on the part of the Minister that his permanent head is not capable of fulfilling his role satisfactorily. This raises the spectre of a spoils system developing in this area with an associated decline in the morale of the career service, but there are limits to how many supernumerary permanent heads can be placed in other employment at any one time, and Ministers have a vested interest in ensuring that the functions of their Departments are performed effectively in the technical as well as the political sense.

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<sup>19</sup> J.G. Crawford, 'The Role of the Permanent Head', Public Administration (Sydney), vol.13, 1954, pp.153-165.

<sup>20</sup> op.cit., p.7. In its original context, this point was made as a negative qualification rather than a positive assertion.

<sup>21</sup> C.P.D., vol.202, 1949, pp.666-671. See also P.M. Hasluck, op.cit., pp.9-11.

<sup>22</sup> In fairness to Hasluck, it is necessary to point out that his objection was to political partisanship in any direction.

One of the important side effects of the growing involvement of public servants in policy formulation has been the tendency for Ministers to make substantial contact with policy advisers below the level of the permanent head. There appears to be a growing belief that this entitles the Minister to be consulted when appointments to senior posts in his Department are being considered. As a corollary, it has been argued that public servants entering this area should eschew overt political partisanship. In particular, it is argued, they should not expect to retain the confidence of the Minister and the status of trusted policy advisers if they choose to stand for election to Parliament as Opposition candidates. In essence, these arguments amount to a downward extension of the special relationship between the Minister and his permanent head. The issues were brought into sharp focus when one senior policy adviser<sup>23</sup> announced his intention of standing for election as a Labor candidate in 1965. His action was attacked vigorously by Prime Minister Menzies in terms markedly similar to those he had used as Leader of the Opposition some 16 years before.<sup>24</sup>

It is difficult to dispute the logic of this line of argument. Nevertheless, some disquieting implications flow from it. In the first place, it implies that the

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<sup>23</sup> Dr R.A. Patterson, then Director of the Division of Northern Development in the Department of National Development and later MHR for Dawson.

<sup>24</sup> See C.P.D., H of R, vol.47, 1965, p.1187.

integrity of declared candidates is not to be relied upon. Secondly, individuals whose experience and knowledge could be expected to contribute something positive to the quality of parliamentary performance will be inhibited from standing for election. Thirdly, while parliamentary candidature is an overt admission of political commitment, some who have not declared themselves could well be equally opposed to the Government's policies and their very anonymity could pose a greater threat. There is also the practical problem of knowing where to draw the line. Today's junior policy adviser or non-policy administrator may be tomorrow's senior adviser.<sup>25</sup>

Finally, the notion that a Minister should be consulted in the appointment of senior officers of his Department raises the question of whether a new Minister should be consulted about their retention and opens the door which the original Public Service Act was meant to close. It is but a short step from the barring of a negative commitment to the insistence on a positive one. The extent to which a Minister's opinions are decisive will depend basically on the nature of his working relationship with his permanent head. A Minister with strong convictions and the will to carry them out would be difficult to resist.

In New South Wales, too, there have been common threads in patronage developments in relation to permanent heads and other senior officers. The context in which

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<sup>25</sup> Hasluck's summary dismissal of this problem suggests that he assumed either that the passage of time would lead the unsuccessful candidate to see the error of his ways, or render his opposition irrelevant.

these links have been forged, however, is rather different than in the case of the Commonwealth. In place of the common element of policy-advice, the New South Wales pattern has its origin in the fact that permanent heads and other senior officers have been classified in the Special Division.

The pattern of appointment of permanent heads has paralleled that in the Commonwealth sphere, with the State Public Service Board generally exercising a tighter control than its Commonwealth counterpart. One consequence has been that permanent heads and other senior officers have been drawn almost exclusively from within the Service<sup>26</sup> and the disputes which have occurred between the Board and Ministers have been over the relative merits of individual career officers.

The Board lost its first major battle in this area in 1903 when the Government justified one appointment on the basis that the interpretation clause of the Act gave the Government power to appoint a permanent head without reference to the Board.<sup>27</sup> It lost the second round, too, when the Attorney-General held that Section 49 of the Act justified the appointment of a permanent head without reference to the Board. This legal loophole attracted the attention of the Mason Allard Royal Commission in 1918,<sup>28</sup> and the Act was amended in 1919 to make it clear that a Board recommendation was an essential prerequisite.

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<sup>26</sup> The same general pattern has applied to the membership of the Board itself.

<sup>27</sup> Seventh Report, 1903, p.8. The Board did not claim that any political considerations were involved.

<sup>28</sup> Royal Commission into the Public Service of New South Wales. First Sectional Report 1918, pp.xxxiv-xxxv.

The amendment was not fully effective in re-establishing the Board's control. Section 65 of the 1902 Act provided that 'nothing in this Act...shall be construed or held to abrogate or restrict the right or power of the Crown, as it existed...to dispense with the services of any person employed in the Public Service'. In 1925, the Premier (J.T. Lang) who was also Colonial Treasurer, requested the Board to separate the duties of the Treasury permanent head from those of Director of Finance and Chief Accountant, and intimated that the incumbent (B.S.B. Stevens, originally a Board officer and appointed Under-Secretary of the Treasury by the previous Government), was unacceptable as permanent head. The Board took the view that Stevens could not be deprived of his status as a permanent head against his will, wothough it was bound to try to meet the Premier's wishes in the question of organisational arrangements. As Stevens did not accept the new arrangements 'the Board were informed that the power of the Government [under Section 65] would be exercised'.<sup>29</sup> The Premier conceded, however, that Stevens could be compensated on the same basis as retrenched officers and the latter resigned on this understanding'.<sup>30</sup>

While the Board did not mention Section 65 specifically, it was presumably also an important

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<sup>29</sup> Twenty-ninth Report, 1925, p.7. See pp.6-7 for the Board's outline of these developments.

<sup>30</sup> He later stood for Parliament, becoming Assistant Treasurer and Treasurer under Bavin and the wheel turned full circle when Governor Game commissioned him as Premier when Lang was dismissed in 1932.



factor in the decision of the Comptroller-General of Prisons to accept a transfer out of this position after the incoming Lang Government demanded his removal.<sup>31</sup>

A more general problem faced by the Board in other areas of the Service also occasionally reared its head in relation to senior appointments. This was the tendency for Ministers either to ignore the Board's role altogether or to act counter to its specific recommendations. A notable example was the appointment of an acting Registrar-General by the Lang Government in 1931. The Board's recommendation was rejected without reasons being given and without the Board being asked to recommend an alternative officer. After the change of Government in the next year, the Board was able to report that its original nominee had been appointed to the position.<sup>32</sup>

One other means of side-tracking the Board was to place particular offices outside the provisions of the Public Service Act. In May 1927, A.T. Treble, a Treasury officer who had been Lang's private secretary for extensive periods, was appointed Family Endowment Commissioner, a new statutory appointment, with his staff employed under the Public Service Act. His salary of £1,850 per annum, as well as his qualifications for the position attracted critical attention. When the Bavin Government came into office, the position was brought under the Public Service Act, and applications were invited by the Board which finally decided to appoint Treble as permanent head but at the reduced salary of £950 per annum.<sup>33</sup>

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<sup>31</sup> Twenty-ninth Report, 1925, p.5.

<sup>32</sup> See Thirty-fifth Report, 1932, pp.12-13 and Thirty-sixth Report, 1933, p.5.

<sup>33</sup> See S.M.H., 20 May 1927; 1, 2, 6, 7 June 1927; PSB Thirty-first Report, 1927, p.7.

Notwithstanding these problems encountered by the Board over the years, the problem of political influence in appointments of permanent heads and other senior officers appears to have been very limited in its incidence. The current practice requires a Board recommendation, although recommendations are submitted through the relevant Minister and require his endorsement.

There are some other categories of appointment which, while not necessarily of senior officers, are subject to similar considerations. The basic link with senior appointments is that these, too, lend themselves to the exercise of influence by Ministers by virtue of their special relationship with their permanent heads. The main appointments concerned are those of Ministerial private secretaries.

Some private secretaries have been conspicuously successful in their subsequent appointments. At the State level, we have already noted some aspects of A.T. Treble's career. W. Howell, Premier McGirr's private secretary was appointed Chairman of the Milk Board in 1949, while C.T. Tallentire, Premier Cahill's private secretary became Director of State Lotteries in 1954. Two private secretaries to Health Ministers have been appointed to the Hospitals Commission.

At the Commonwealth level, three private secretaries were appointed as permanent heads in early years,<sup>34</sup> but the relatively low status and salary of the position has not made this a viable proposition in recent years.

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<sup>34</sup> A.A.Hunt in 1901; M.L. Shepherd in 1911; and P.E. Deane in 1921. Others have been appointed to senior positions both within the Public Service proper and in other Government posts.

Holt's appointment of a First Assistant Secretary from his Department in 1967 was seen as opening up new possibilities,<sup>35</sup> but the Prime Minister's premature death and a different type of appointment by his successor have cast some doubt on the lines of future development.

On balance, it is open to question whether subsequent Public Service careers have been advanced or retarded by a period of attachment to a Minister. In addition to the notable successes alluded to above, there are large numbers of former private secretaries who have become immersed in the Departmental stream and their general career patterns seem to have been dominated by other considerations than their short sojourns on the direct Ministerial establishment.

Over the years, members of the staff associations have also pressed the view that political patronage was being exercised in relation to the lateral recruitment provisions of the Public Service Act. In view of the elaborate procedures adopted in this area, it is difficult to take these claims very seriously. Fundamentally, the attacks have been sponsored by the fear of established public servants that their own career prospects would be threatened by the closing off of some avenues of promotion and the fact that the graduate influx in particular would commend themselves to the decision-makers as better 'executive material'. A similar

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<sup>35</sup> See P. Samuel, 'Harold Holt's Way' in The Bulletin, 18 March 1967, p.38 and Maxwell Newton, 'In-Between Men' in Nation, 11 March 1967, pp.8-9.

conditioned reflex met the wartime influx into positions vacated by military recruits and new posts made necessary by the war. There was more substance in complaints regarding the wartime appointments because many of the normal procedures were abandoned, not only in selection, but in salaries as well. Permanent officers were often prevented from contending for these posts because they were not established positions or because their Departments would not release them. It is difficult to arrive at a definitive assessment here, but on balance it is doubtful whether direct political influence was a major consideration.<sup>36</sup>

### III

The anti-patronage measures of the 1884 New South Wales Civil Service Act had been rendered nugatory by provisions allowing Ministers to appoint temporary staff without reference to the Civil Service Board. Because of the critical attention paid to this problem by the 1894 Royal Commission, the 1895 Act tightened up the provisions and the Board set out to make them work.

From the outset, the Board was plagued by attempts to avoid the requirements of the Act. One loophole was that Section 38 of the Act allowed the Minister to retain temporary employees until the completion of the specific project for which they were engaged. More serious,

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<sup>36</sup> For a sample of the arguments advanced by staff associations and an indication of the representations made on their behalf, see Federal Public Service Journal, April, 1941, p.8.

however, were direct breaches and evasions of the Act. A constantly recurring theme of the early Reports was the extent to which temporary staff was being engaged without reference to the Board, retained beyond the statutory period and drawn from outside the temporary employment register.<sup>37</sup>

One feature of the New South Wales pattern was the progressive absorption into the permanent staff of large numbers of temporary employees. In 1910 and 1915, special Acts were passed to provide for the absorption of temporary officers without examination. The dangers of this form of entry were highlighted by the Allard Royal Commission and the provision was subsequently repealed.<sup>38</sup> Apart from the watering down of standards, the major cause for concern was the fact that some of the employees had owed their original selection to political influence.

In more recent years, the problem of temporary employment has continued to exercise the attention of the Board. In the absence of any evidence to the contrary, however, it must be assumed that political influence has ceased to be a significant factor in this area.

At the Commonwealth level, the initial statutory provisions made temporary employment less amenable to control by the Public Service Commissioner. McLachlan

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<sup>37</sup> For some particularly blatant examples, see Fifth Report, 1901, pp.4-5; Seventh Report, 1903, pp.17-20, 27-30; Nineteenth Report, 1914, pp.12-15.

<sup>38</sup> First Sectional Report, pp.1xxii-1xxvi; see also Parker, op.cit., pp.74-76.

was particularly critical of the fact that Section 40 of the Act vested the permanent head with responsibility for selecting temporary employees. The temporary employment registers were maintained by the Commissioner and the Public Service Inspectors, but the Chief Officer of a Department requiring temporary staff was able to exercise a free choice from those listed in the register. As in the case of New South Wales, continuous periods of temporary employment were limited to nine months. As at the State level, too, these provisions tended to be honoured in the breach.

While not making any direct accusations, McLachlan asserted that:

It must be acknowledged that where opportunities occur for the exercise of patronage, they are liable to be availed of, and, in the absence of restriction as to the method of engaging temporary assistance, the greatest temptation exists to find work for solicitous applicants, irrespective of the requirements of Departments, or of claims of other applicants for prior consideration. And the danger does not end at this stage, as once having secured temporary employment by means of undue influence, the same influence is brought to bear to prevent the services of temporary hands being dispensed with.<sup>39</sup>

In 1914, he reported that 'the most fruitful source of breaches [of the Act]...is in connexion with temporary employment'.<sup>40</sup> He returned to this theme in his Royal Commission report and the 1922 Act transferred to the new Public Service Board the responsibility of deciding whether temporary employment was justified, as well as the selection

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<sup>39</sup> Commonwealth Public Service Commissioner, Seventh Report, 1911, p.41. See also First Report, 1904, p.34 for an earlier critique.

<sup>40</sup> Tenth Report, 1914, p.25. See also Thirteenth Report, 1918, pp.12-14; Fourteenth Report, 1919, pp.13-14.

of individuals for such employment. In appraising the operation of the new provisions at the end of its first year of operations, the Board boasted that 'the opportunities for exercise of patronage, whether social or political, in respect of temporary appointments have now disappeared with considerable advantage to the public finance'.<sup>41</sup>

#### IV

Both the Commonwealth and New South Wales Public Service Acts excluded some employees of the Crown from the outset. These included those holding offices in such special spheres as the judiciary, armed services, police force, railways and the parliamentary offices. In addition, there were a few individuals holding statutory offices. Subsequent chapters will deal with two of the categories listed above, those holding statutory offices (Chapter 5) and those holding judicial or similar offices (Chapter 6). The other groups will not be discussed in detail, but it is worthy of note that with the exception of the railways staffs they appear to have escaped any major criticism in the patronage context. The parliamentary staffs at both levels of government come under the control of the presiding officers, but seem to have been above suspicion despite the fact that the presiding officers themselves have been party men.

While the central personnel agencies were reconciled to these initial exclusions, they were extremely critical of later moves to exclude other classes of employee from the coverage of the Act. Again, while there were differences in detail, there was a broad similarity in the course of development at the two levels of government.

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<sup>41</sup> Commonwealth Public Service Board, First Report, 1924, p.68.

On the evidence of its annual reports, the New South Wales Board was not particularly disturbed by these developments in the first few years of its operations. In 1925, however, it drew attention to the fact that under the new Main Roads Act (introduced by the Fuller Government) and the proposed Workers' Compensation Act (introduced by the Lang Government) the responsibility for appointing staff would be shared between the Board and the governing authority set up by the legislation.<sup>42</sup> Subsequently, the 1927 Family Endowment Act also provided for divided control, but this was short-lived as the Bavin Government brought the Commissioner and his staff under the control of the Public Service Act later in the same year.

A more serious assault on the Board's powers of control was the establishment of a Council for Prevention and Relief of Unemployment under the Prevention and Relief of Unemployment Act 1930-32, also introduced by the Lang Government. Under Section 10 of this Act the Council was authorised to employ 'such officers and at such rates as are prescribed'. The practical implementation of these provisions was an important element in widespread charges that Lang was pursuing a policy of 'spoils for the victors'.

The new Minister for Labour announced shortly after taking office that he had found that 'no fewer than 258 political appointments had been made...for the work of inspection of food relief and other activities'.<sup>43</sup>

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<sup>42</sup> The staff were placed under the Public Service Act, but the concurrence of the governing authority was required before they could be appointed.

<sup>43</sup> S.M.H., 23 May, 1932, p.9.



He reported that he had suspended a number of these appointees for distributing political propaganda in the course of their work. Against the background of these 'spoils' charges, the Stevens Government stressed that it reserved the right to 'review' appointments made by Lang.<sup>44</sup> The possible implications of such a 'review' by Cabinet itself were not lost on outside observers.<sup>45</sup>

The Government stopped short of acting as judge and executioner, however, and had already requested the Public Service Board to conduct a review on its behalf. On 20th May 1932, the Board appointed a committee to inquire and report on 'the necessity for the employment of, and the qualifications and efficiency of, each of the persons [245 in number] who, at the date mentioned were employed under the authority of the Unemployment Relief Council'.<sup>46</sup> As a result of the report, the Board admitted 149 under the temporary employment provisions of the Public Service Act but rejected the other 96.<sup>47</sup> As part of the resultant reorganisation, A.T. Treble, on the recommendation of the Board, had the duties of Director of Government Relief added to those of Commissioner of Family Endowment.

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<sup>44</sup> S.M.H., 16 May, 1932.

<sup>45</sup> See address by F.A. Bland reported in S.M.H., 24 May 1932; letter to editor by G.S. Reichenbach, S.M.H., 18 May 1932.

<sup>46</sup> Thirty-sixth Report, 1933, p.3.

<sup>47</sup> The services of 22 of these were stated to be no longer required because of reorganisation and the cessation of some work.

In its public accounts of the problems arising from these areas of public employment outside its direct control, the Board avoided specific reference to political patronage and directed its criticisms at the undermining of uniformity of standards and co-ordination of staffing policies.

In 1934, while noting that a large number of 'quasi-Governmental bodies' had been authorised to engage their own staffs, the Board acknowledged that:

...these authorities have adopted almost completely the method of recruiting of the Public Service Board and the general conditions attaching to employment in the Public Service proper apply also to the staff. There has been a marked disposition...particularly during the last few years to use the Board's machinery, especially when appointments are being made to their services...<sup>48</sup>

Nevertheless, the Board felt constrained to stress the advantages which would flow from placing the personnel control of all administrative agencies in their own hands. It returned to this theme regularly over the following few years.<sup>49</sup> The Board appears to have become resigned to this feature of its operations in more recent times, and there is little public evidence of disquiet on its part. In addition, appointments to the staffs of these bodies have ceased to attract public attention, presumably because there is general acceptance that political patronage has ceased to be a significant factor. Appointments to the governing bodies of these organisations, however, are a different proposition as we shall note in the next chapter.

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<sup>48</sup> Thirty-eighth Report, 1934, p.5.

<sup>49</sup> See, e.g. Fortieth Report, 1936, pp.4-5; Forty-third Report, 1939, pp.61-62; Forty-eighth Report, 1944, p.16.

Exclusions from the cover of the Commonwealth Public Service Act do not appear to have been a major concern of McLachlan or his successor. As Royal Commissioner, however, McLachlan was very critical of the fact that the 'objects of the Act... have to some extent been neutralised by subsequent legislation dealing with new services, which vested in Ministers the power to make appointments...'<sup>50</sup> His main concern was with new and essentially short-term agencies created during the war, but he referred also to the parliamentary staffs and the Territorial services. Two of these groups, he acknowledged, required separate treatment and he recommended the establishment of Territorial and 'Provisional' Services, each to be subject to the Public Service Commissioner, but separate from the Public Service proper. The recommendation for a Provisional Service was accepted and the 1922 Act included several sections covering the establishment of such a Service. Appointments were to be provisional and at pleasure, but firmly under the control of the Board.

The new arrangements were not used, however, and the pattern of setting up new agencies outside the control of the Public Service Act continued. In 1929, the Board was strongly critical of the fact that 'this part of the Public Service Act has remained a dead letter'.<sup>51</sup> Some of its strictures were heeded, and in the following year the Board was able to express its satisfaction that the staff of the Federal Capital Commission and the Development and Migration Commission

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<sup>50</sup> Report, p.25.

<sup>51</sup> Commonwealth Public Service Board Sixth Report, 1929, p.6.

had been brought completely under the Act. The Board had not made specific charges of political patronage, but it was clear that its concern was partly attributable to developments in this direction. In later years it continued to stress problems of co-ordination and uniformity. As in New South Wales, the staffs of some outside bodies were brought under its control, and the post-war period saw a progressive extension of Public Service Board standards and procedures to a large proportion of the others. In more recent years, the Commonwealth Board, too, seems to have become reconciled to the exclusion of these staffs from the Act and the scope remaining for patronage is primarily in the hands of the governing bodies rather than Ministers.

## V

The assertion by the first New South Wales Public Service Board that the 1895 Act had absolutely abolished all patronage was a statement of intent rather than an accurate assessment of the ~~factual~~ situation. Nevertheless, the Board and its Commonwealth counterpart did enjoy considerable success in converting the theory into practice so far as the Public Service was concerned. In this respect, Australian experience has been much closer to the British pattern than the American. While the pattern was not one of continuous progress, the problem areas were generally brought under control and by the time the central agencies had loosened their grip over significant segments of the Service, the competitive system had become firmly entrenched.

Several factors have contributed to the course of development. Two important respects in which the Australian foundations were different from the American were the continuance of British institutions and the timing of the break from Britain. Whereas the Americans sought deliberately to strike out on their own, the Australians strove to apply British solutions to their local problems. Responsible government came to the colonies in the first phase of the decisive British thrust for administrative reform. By the time of the 1895 Public Service Act and the initial Commonwealth legislation, Britain had established firm control through the combined influence of the Civil Service Commission and the Treasury.<sup>52</sup> In advancing their own proposals, the New South Wales Royal Commissioners in 1895 acknowledged their debt to the British precedent and their rejection of the earlier American pattern.

The whole system of the British Civil Service has undergone a complete transformation... The system of political patronage which was the bane of the English Civil Service was transplanted into America in 1830 by President Jackson... We cite the case of America, as it represents, or did represent when the system was in full play, the state of degradation to which a Civil Service could sink.<sup>53</sup>

Australian experience of the unreformed system, the commitment to egalitarianism and the nature of the statutory provisions combined to ensure that the new agencies would be operating from a position of strength. In addition, the career public servants themselves have

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<sup>52</sup> The central personnel agencies themselves had wider powers and functions than the British Civil Service Commission, but the role of the British Treasury compensated for this disparity.

<sup>53</sup> Royal Commission Report, 1895, p.26.

been alert, perhaps even hyper-sensitive, to any hint that outside influence was being brought to bear. The continuance of the British notion of office as a proprietary right also inhibited the development of a spoils system. G. Mason Allard, as Royal Commissioner in 1918, contended that the later members of the Board had failed to measure up to the standards of the pioneers and recommended that the appointments of the incumbents should be terminated on the grounds of their general laxity. He acknowledged that 'except in less than a dozen instances in a large service, no direct evidence was tendered to show that political influence is exerted in permanent appointments to the Public Service'. Nevertheless, he was 'satisfied that such influence is exerted, both directly and indirectly'.<sup>54</sup>

It is difficult from this distance to assess the strength of his arguments. The members of the Board staged a vigorous counter-attack, but in the end were induced to resign rather than face removal. In the event, the Commissioner's recommendation for the granting of tenure to 65, the payment of a higher salary for the Chairman and for the appointment of an 'outsider' to this post, were all accepted, and such scope as there was for political influence was further curtailed. Subsequently, there were dangers in the disturbed conditions of the Lang period that this particular British inheritance might be squandered. The dire predictions of the prophets of doom were not borne out, however, and the developments of this period may be seen, in retrospect, as a temporary aberration rather than as the foundations of a new approach.

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<sup>54</sup> First Sectional Report, 1918, p.xxxv.

Apart from real but limited dangers of 'politicization' of the Public Service by the perpetuation of one-party rule, increasing public service involvement in policy-making, and the impact of public service unionism, it is difficult to dispute the assessment of an otherwise critical observer that:

No Commonwealth Government has ever interfered with the Service personnel system for party political advantage in the way that patronage was used in the Australian colonies before federation... In no sense, can the Commonwealth Public Service be called a patronage bureaucracy.<sup>55</sup>

The same statements could be made, with minor qualifications regarding the New South Wales Public Service. One respect in which it needs to be qualified for both levels of government, however, is to stress that this is essentially an assertion about Ministerial or political patronage. Official patronage, too, has been virtually eliminated so far as recruitment is concerned since entry at base levels of the Service is based on objective assessments, largely by independent authorities, and the procedures for lateral recruitment are also rigidly controlled. With the abandonment of seniority as the prime criterion for promotion, however, there is a general lack of objective tests of merit, and the whole process of determining promotions is a very subjective one. In this respect as in others the permanent heads and other senior officers still enjoy wide influence over the careers of their staffs. The problem is not that these official 'patrons' regard objective merit as irrelevant, but that they do not have access to effective tools for assessing it. Patronage, then, has been 'depolticized' but it has not been eliminated.

## CHAPTER 5

### ADMINISTRATIVE BOARDS AND ADVISORY BODIES

Australia was one of the pioneers of the administrative form known variously as the public, statutory or government corporation and wide use has been made of this device at both the Commonwealth and State levels. In addition to public corporations, there are numerous other administrative agencies headed by one or more individuals appointed by Ministers.

In the British context, F.M.G. Willson has used two criteria to distinguish between 'Ministries' and 'Boards'. In contrast to a Ministry, a board is 'an authority composed of more than one person...and...is not itself directly responsible to Parliament, though some Minister may be answerable for all or part of its activities'.<sup>1</sup> Most of the agencies I will be discussing would meet both of these criteria, but a few are headed by one individual rather than a group exercising joint responsibility. In practice, the distinction between direct responsibility and general answerability to a Minister is sometimes blurred, but the essential point for the purpose of this chapter is that the individual appointments we are concerned with fall outside the ambit of the respective Public Service Acts.

Both in Britain and Australia observers have stressed special difficulties in analysing the operations of these agencies. In Britain, 'there is great variety in the constitution and functions of administrative boards. No complete list can be given... The boards defy

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<sup>1</sup> F.M.G. Willson, 'Ministries and Boards: Some Aspects of Administrative Development Since 1832', Public Administration (London), vol.33, 1955, p.44. (my underlining)



generalizations'.<sup>2</sup> In Australia, they 'vary enormously as to their functions, area of jurisdiction, membership, financing, staffing, relations with Ministers and departments, and whether they operate administratively or quasi-judicially'.<sup>3</sup> As in Britain, even to define the field is a problem because 'they have always been so numerous that it is impossible to count them precisely'.<sup>4</sup> The effort has been made, however, and the same observer noted that 'there are about fifty Commonwealth statutory authorities... New South Wales had at least 400 before the last war, and more than 500 in 1955'.<sup>5</sup>

As well as having many more statutory authorities than the Commonwealth, a feature of State experience in this area is that the percentage of Government employees outside the regular Public Service is much higher. In 1956, Parker reports, nearly three-quarters of the New South Wales Government employees were in the non-departmental agencies, compared with one-quarter at the Commonwealth level.<sup>6</sup> In April 1965, the operations of statutory bodies in New South Wales were governed by no fewer than 149 separate statutes.<sup>7</sup> Some of the statutes

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<sup>2</sup> P.G. Richards, op.cit., pp.89-90.

<sup>3</sup> R.S. Parker, 'Structure and Functions of Government', in R.N. Spann (ed.) Public Administration in Australia, Second Edition, 1960, Sydney, p.75.

<sup>4</sup> ibid., p.74. For a classification of the main bodies, see ibid., pp.75-77.

<sup>5</sup> ibid. Since that time the Commonwealth number has increased substantially, but still falls considerably short of the State total.

<sup>6</sup> ibid., p.77.

<sup>7</sup> NSW Parliamentary Library, Statutory Bodies in New South Wales, Sydney, 1965. This is a useful source because it summarises the main provisions of the statutes establishing the various agencies.

provide for the establishment of a number of separate authorities, often on a regional basis. Even a cursory examination of the provisions of the statutes indicates the vast complexity of this field.

At the Commonwealth level, while the number of separate agencies is less, the task of making meaningful generalisations is equally intractable.<sup>8</sup> There is the same wide sweep of functions, the same variability in constitution, tenure and power. Even in the performance of functions which are more characteristic of State responsibilities, the Commonwealth has established its own machinery either because it exercises State-type functions in its own Territories,<sup>9</sup> or because its control of the purse-strings has led it to intervene in areas where the States have run into difficulties.<sup>10</sup> The Commonwealth, of course, has also established agencies to handle functions outside the State charter, together with some which involve Commonwealth-State co-operation.

## II

As noted in earlier chapters, the Lang-Bavin-Stevens era in New South Wales politics was one of intense political division, with the person and policies of Lang the storm-centre for much of the time. Appointments to administrative 'boards', like appointments to the Public Service and the Legislative Council, became the focus of some major and minor skirmishes which contributed to the overall battle.

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<sup>8</sup> There is no Commonwealth equivalent of the NSW Parliamentary Library compilation, although the Commonwealth Directory does list the statutory authorities associated with each Department and the occupants of the main offices.

<sup>9</sup> e.g. police activities, professional registration boards, public utilities.

<sup>10</sup> e.g. education, housing finance.

Although the total number of appointments involved was not large, it can hardly be doubted that political considerations were sometimes a major factor when Lang was selecting individuals to serve on the various administrative agencies. Several Labor partisans were appointed to different agencies, some of the more notable examples being:

1. T.J. Smith, a former Labor MLA who lost his seat in 1920 under the proportional representation system, had been appointed to the Legislative Council in 1925 by Lang who appointed him as Chairman of the Fire Brigades Board in the same year. He continued to hold this post until 1956.

2. In September 1927, W.T. Ritchie, assistant secretary of the Trades and Labour Council and brother-in-law of the Secretary, J.S. Garden, was appointed President of the newly-created Silicosis Joint Committee. His occupancy of the position was declared null and void a few weeks later and the Bavin Government appointed Professor Chapman of the University of Sydney.<sup>11</sup>

3. As reported in chapter 4, the appointment of A.T. Treble, Lang's former private secretary, as Family Endowment Commissioner in May 1927, came under strong criticism, and it was thought likely that the appointment would be terminated when the Bavin Government was returned.<sup>12</sup> In the event, the Public Service Board recommended his reappointment at a reduced salary after the position was transferred to the Public Service proper.<sup>13</sup>

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<sup>11</sup> S.M.H., 9 Nov., 1927, pp.17, 19.

<sup>12</sup> S.M.H., 28 Oct., 1927.

<sup>13</sup> See above, p.88.

4. In December, 1931, after a Royal Commission had found the three members of the Western Lands Board incompetent and guilty of misbehaviour, Lang dismissed them and two of their replacements were:

P.M. McGirr, MLC, brother of the Minister for Local Government, and

T. Watson, formerly an officer of the Lands Department and an unsuccessful Lang candidate for the Federal seat of Calare.

5. In December 1931, J.M. Martin, MLC, brother of the organising secretary of the Labor Party, was appointed as consumers' representative on the Milk Board.

6. W. Couch, former President of the Murrumbidgee Electorate Council of the Labor Party and also President of the ex-Broken Hill Miners' Association in the irrigation areas, had been appointed Chairman of the Horticultural Review Board by the Lang Government. In June 1932, he resigned, apparently on the grounds of policy differences with the Stevens Government.<sup>14</sup>

Lang's approach was not restricted to the appointment of members of his own party, however. The most controversial of his appointments was that of A.D. Kay to the Meat Board in 1926. Kay had been elected to Parliament as an Independent under proportional representation. Under the provisions for filling casual vacancies in the Legislative Assembly, his seat was filled by a Lang supporter who had been unsuccessful at the previous election. The appointment was attacked as 'the most corrupt and indecent transaction in the history of this State' on the basis that it was made only to increase Lang's support in the Assembly.<sup>15</sup>

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<sup>14</sup> See S.M.H., 27 June 1932, p.9.

<sup>15</sup> NSW Parl.Debs., vol.107, 1926, p.111. Lang's retrospective version offers substantial confirmation of this interpretation. See J.T. Lang, op.cit., pp.302-310. See also R.S. Parker, 'The Government of New South Wales' in Davis (ed.), op.cit., p.166.

One of the first acts of the incoming Bavin Government was to introduce a Bill to remove Kay and reconstitute the Board. After returning to power the Lang Government in 1931 again appointed Kay as consumers' representative, also appointing F.C. Hutt, the federal president of the Meat Employees' Union and an unsuccessful Labor parliamentary candidate, as employees' representative and Deputy-Chairman. A Grazier, A.W. Scott, was appointed Chairman. In December 1932, the Stevens Government abolished the Board, replacing it with an interim Management Committee pending the appointment of a General Manager supported by an Advisory Council.

Another individual who had a chequered administrative career in this period was W.J. Cleary, appointed from the general managership of Tooth and Co. Ltd, to the post of Chief Commissioner for Railways by the Bavin Government in November 1929. Under a new Transport Act in 1932, Lang established a new Transport Commission and abolished the separate Railways Commission. The Legislative Council secured an amendment to the Bill, requiring the payment of compensation to Cleary and also to Maddocks, the Chairman of the superseded Transport Trust. Lang's appointee as Transport Commissioner was A.C. Goode, who had earlier been dismissed from the railways on charges which had not been publicly investigated at the time of his new appointment.

A Royal Commission set up in June 1932 by the Stevens Government found Goode guilty of misconduct in transactions with two companies. Goode resigned and was replaced by Cleary. The latter's term was short-lived, however, as he resigned before the end of the year, claiming that Labor actions had demoralised the staff and

that the drastic reorganisation he felt was needed would have little hope of success unless it was carried out by someone not associated with the previous disputes.<sup>16</sup>

The Bavin and Stevens Governments adopted a policy of limited response to Lang's initiatives. The Ritchie removal was justified in terms of a legal opinion by the Solicitor-General and the other removals were effected by legislation rather than Executive act. The reappointment of the previous occupants in the case of Simpson<sup>17</sup> and Cleary did lay them open to charges that they were introducing an element of spoils. They were very circumspect in their other appointments, however, avoiding the appointment of open partisans and selecting individuals with some claims to expertise, often drawing on the subordinate staffs of the agency concerned.

To some extent, this 'purist' approach seems to have been a natural corollary of the terms in which their criticisms of Lang had been couched. Assailing Lang for applying a political test and ignoring questions of efficiency, it was logical for them to stress that their own approach was different. It is also probable that Stevens' background as a Public Service Board and Treasury officer and his own experience of 'Langism' would have influenced him to resist any tendency by his followers to move too far in the spoils direction. That some such steadying influence was needed and was in fact exercised is indicated by developments associated with R.W.D. Weaver, Minister for Health in the first Stevens-Bruxner Ministry.

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<sup>16</sup> See S.M.H., 17 December 1932, p.13, for details of his letter of resignation.

<sup>17</sup> The member of the Meat Board displaced by Kay in 1926.

On 4th July 1933, it was reported that, under instructions from Weaver, a Gazette notification would be issued to the effect that Government nominees would be appointed to all hospital boards. The reported proposal was for one out of every four members to be a Government nominee.<sup>18</sup> A few days later, the Premier was reported as announcing 'that the Cabinet had... decided to instruct the Hospitals Commission not to insist on the appointment of Government nominees, because this was opposed to the Government's policy'.<sup>19</sup> Two days later Weaver issued a statement to the effect that Cabinet's decision had been made at his own instigation.<sup>20</sup>

About a year later Weaver came under attack by F.A. Bland, then lecturer in Public Administration and an uncompromising critic of Langism and any other threat to the sanctity of the Public Service. The initial point of issue was Weaver's decision that the Minister should be the Chairman of the Hospitals Commission because of the Government's responsibility for providing hospital finance. Bland's attack was broadened out, however, to take in other aspects of Weaver's activities. As he put it:

Mr Weaver could hardly expect that the people would believe that his assumption of the chairmanship of the Hospitals Commission had no significance, in the light of his dismissal of the Meat Board and the Medical Board, and of his acute differences with the Water Board and a score of Hospital boards. His unfortunate reference to the proposed dismissal

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<sup>18</sup> S.M.H., 4 July 1933, p.9.

<sup>19</sup> S.M.H., 15 July 1933, p.13.

<sup>20</sup> S.M.H., 17 July 1933, p.9.

of the Western Lands Board showed how far he had surrendered to the policy of 'spoils to the victors'...<sup>21</sup>

Some months later, a new Hospitals Act provided for Government nominees on all hospital boards. The formula adopted provided for four Government nominees on boards of no more than ten members and five for large ones. Some 370 individuals were subsequently appointed. Drawn largely from the white collar and rural aristocracy, the occupational categories represented most heavily were graziers, bank managers and solicitors, with other managerial and professional groups well to the fore.<sup>22</sup> Under a later Labor Government, local election of members of hospital boards was completely abolished, although the responsible Minister stated that in making nominations, he would 'act on the recommendation of the Hospitals Commission'.<sup>23</sup> Whether because of his spoils proclivities or for other reasons:

Weaver clashed with other members of Cabinet and eventually refused to attend Cabinet meetings. When he refused to resign Stevens submitted the Ministry's resignation and reconstructed it without Weaver.<sup>24</sup>

The first Labor Government after the dismissal of Lang took office in the middle of the Second World War. Although there were some new agencies created at the

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<sup>21</sup> S.M.H., 10 Aug., 1934. See also 3, 6, 8 Aug. for earlier exchanges on these issues.

<sup>22</sup> S.M.H., 1 Feb., 1935, 27 Feb., 1935, 6 March 1935. Party affiliations were not stated, but it is unlikely that Labor Party representation was very substantial.

<sup>23</sup> S.M.H., 8 July 1959, p.9.

<sup>24</sup> Hughes and Graham, op.cit., p.74.



State level and replacements had to be found for existing agencies, political patronage does not appear to have been a significant issue for the remainder of the war. To a large extent the problem seems to have been one of finding people for jobs rather than jobs for people and one common solution to meeting the manpower shortage was to add to the tasks allotted to career public servants, members of the non-departmental agencies, and sometimes the Ministers themselves.

After the war, however, the pattern changed. In the 1920s and 1930s Lang had had to contend with severe conflict within the labour movement and much of his effort was devoted to consolidating the support of the factions supporting him and widening the base of this support. After the war, under his successors, divisions were less pronounced, and, to the extent that patronage was used for party purposes, it was dispensed largely as a form of reward for loyal services or as a consolation for defeated politicians. In the period to 1955, there were numerous examples of appointments which were explicable in these terms.<sup>25</sup>

The distribution of the 'fruits of office' to party men ranged over a wide area, from major executive offices carrying substantial salaries to honorific advisory and part-time administrative posts. There was only a slight element of hyperbole in the Sydney Morning Herald's plaintive cry that:

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<sup>25</sup> See S.M.H., 27 Feb., 1956, p.2, for a comprehensive listing of appointments in this category.

There is never an 'authority', never a board in all the proliferation of boards, where staunch Labor men do not flourish as the green bay tree; there is never a trust, however quaint the term, where a good proportion of its members cannot be relied upon to produce the right party card on demand.<sup>26</sup>

One of the most striking examples of the policy in action was provided by J.J. McGirr's explanation of how he came to resign from the Premiership in 1952 to accept the position of Chairman of the Maritime Services Board:

Only this week my medical advisers strongly counselled me to discontinue my public activities. Cabinet...decided to appoint me as chairman of the Maritime Services Board, a post which, they considered, would not take the same toll of health as the Premiership... I very much regret the circumstances which have forced me to retire after thirty years of public life.<sup>27</sup>

Some three years earlier, McGirr's ageing Deputy Premier J.M. Baddeley, who had held the Mines portfolio in all Labor Ministries since 1925, had been appointed Director of the State Coal Mines Control Board. Aged 66 at the time of his seven-year appointment, Baddeley died in office four years later. J.J. Cahill who had succeeded Baddeley as Deputy Premier before taking over the Premiership from McGirr, also came under fire for his appointment of F.J. Finnan as Chairman of the Hunter District Water Board in March 1953. A former Minister, Finnan had lost his parliamentary seat through redistribution and had been defeated by the sitting candidate when he contested a new electorate. The target

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<sup>26</sup> 30 Oct., 1954, p.2.

<sup>27</sup> Quoted in S.M.H., 3 April, p.2.

of an uncharitable S.M.H. cartoon and critical press comment,<sup>28</sup> Finnan also faced a major local protest meeting on taking up his post.

Other appointments to major executive posts included that of W. Howell, McGirr's private secretary and public relations officer, as Chairman of the Milk Board in 1949. He was succeeded in 1952 by the Federal President of the Labor Party, J.A. Ferguson, MLC, who had been a part-time member ('employees' representative) on the Transport and Highways Commission since 1950.<sup>29</sup> At the same time, the Milk Board also gained the services of K. Smith, President of the Gas Employees' Union, appointed as consumers' representative. In 1954, Cahill's private secretary became Director of State Lotteries and two private secretaries to Health Ministers had earlier been appointed to the Hospitals Commission. A few individuals who had been campaign organisers for individual Ministers also received executive appointments.<sup>30</sup>

Turning to the various trusts, we note that in 1956, the Sydney Morning Herald could report that:

Six of the 10 trustees of the Kurringai Chase are active or former Labour Parliamentarians...  
Six of the nine members of the National Park Trust are active or retired Labour politicians. Seven of the 11 members of the Cricket Ground-Sports Ground Trust announced in 1952 were Labour politicians...<sup>31</sup>

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<sup>28</sup> S.M.H., 11 March 1953, pp.1-2. See also The Bulletin, 3 Oct., 1964, pp.18-19 for a laudatory assessment of his performance in his 11 years' occupancy of the post.

<sup>29</sup> As in the case of Finnan, retrospective assessments of his performance have been favourable. He retained the Milk Board office until he reached the mandatory retiring age in 1968.

<sup>30</sup> See S.M.H., 27 Feb., 1956, p.2.

<sup>31</sup> ibid.

Leader of the Opposition, V. Treatt had complained in respect of the latter appointments that 'it would have been fair and courteous to look further than its own ranks'.<sup>32</sup> In 1956, the new Minister for Lands, R.B. Nott, departed from his party's tradition by appointing Treatt, noting the latter's distinguished sporting, scholastic and parliamentary career. Treatt, the 1920 New South Wales Rhodes Scholar, had received university blues for three separate sports.<sup>33</sup> Nott also distinguished himself a month later by removing the Chief Secretary, C.A. Kelly, and Labor MLA, C.R. Evatt, from the Kuring-gai Chase Trust for failing to attend the required proportion of meetings, appointing in their stead the President of the Rural Bank and a botanist.<sup>34</sup>

A modified pattern of party preferment applied to Government nominees on the Senate of the University of Sydney. On the appointment of a Labor MLA to the former body in 1953, Treatt pointed out that there were equally qualified men on the Opposition side. In this case, however, his arguments fell on deaf ears and his academic record failed to receive the same measure of recognition that Nott had accorded to his athletic achievements. When the principle of Government nomination to these positions and to their equivalents at the University of Technology were attacked editorially, by Opposition members and a visiting British university

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<sup>32</sup> S.M.H., 18 Feb., 1952, p.2.

<sup>33</sup> S.M.H., 2 June 1956, p.13.

<sup>34</sup> S.M.H., 14 June 1956, pp.2, 6.

Vice-Chancellor, both the principle and the practice were defended strongly by the Director of the latter institution and the President of the Students' Union.<sup>35</sup>

Throughout the post-war period, Labor's general approach and the individual appointments contributing to the pattern had been subjected to sustained and vigorous criticism both in Parliament and the Press. There is some evidence of a change of heart at the beginning of 1955. One observer suggested on 12th January of that year that the Premier 'has become sensitive to the sharp criticism of past appointments of a blatantly political nature'<sup>36</sup> and speculated that pending appointments would not be reserved for party men. His prognostications were borne out, not only in respect of the appointments he mentioned, but for other posts, too, a point which was conceded grudgingly by the S.M.H.'s leader writer.<sup>37</sup> The approach adopted by Nott in 1956 was thus not the action of a 'maverick', but broadly in keeping with the new orthodoxy.

Since this apparent volte-face, the heat of controversy over appointments in this area has died, although appointments to the various trusts have continued to come under critical notice from time to time. The Labor Party did appoint some leading sportsmen to the Cricket Ground and Sports Ground Trust in later years, but party followers continued to secure their share. The incoming non-Labor Government made no

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<sup>36</sup> S.M.H., 12 January 1955, p.2.

<sup>37</sup> S.M.H., 8 April 1955, p.2. Ten months later, the S.M.H. (see issue of 27 March 1956, p.2.) had no new names to add to its earlier lists of political appointees.

<sup>35</sup> S.M.H., 4 March 1954, pp.2,4; 17 March 1954, p.2.

removals and its own appointments have generally not been blatantly political in character. V. Treatt, already honoured by Nott in 1956, was appointed by the Labor Government as Chairman of the Local Government Boundaries Commission in 1964 two years after his failure to secure election after his former electorate was abolished. In 1967 his own former party rewarded him, at the age of 70, with the post of Chairman of Civic Commissioners, a body set up to administer the Sydney City Council pending elections on new boundaries aimed at breaking Labor's stranglehold.

In the course of this survey of New South Wales experience, the Liberal and Country Parties have emerged somewhat larger than life and so, too, has J.T. Lang, albeit in the opposite direction. As one observer has stressed, the practice of exploiting the opportunities for political patronage in this area:

...began long before 1926... It has not been confined to governments of one political party, but it is easier for non-Labor parties, in awarding jobs, to select proteges who have some claim to independent expertise or public standing.<sup>38</sup>

The approach of Labor Governments is easier to document because of the formalised relationship between the party structure and the outside 'movement'. This element of bias is accentuated by the political bias of the Press and the efforts of the media to extract the maximum news content from the operation of the party machinery.

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<sup>38</sup> Parker in Davis, op. cit., p.166.

## III

Appointments to the governing boards of Commonwealth agencies have not been so central to the party battle, and the intensity of the struggle has not led to anything approaching the New South Wales flirtation with the spoils system. Some individual appointments, however, have been controversial and some particular organisations have been centres of sustained political interest. During the Second World War, although many non-Labor appointments of leading businessmen were roundly criticised by the Opposition at the time, most of them were retained by Labor and others were added to their ranks.

One of the most controversial incidents involved E.G. Theodore, former Labor Federal Treasurer and Queensland Premier. On 29th May 1940, it was reported that the Loan Council had decided to offer him the newly-created position of Co-ordinator of Works. Although no specific confirmation of the decision was forthcoming, subsequent developments left little doubt that it had been made and that the Federal Government rejected it because of the reaction of some of its members and supporters, notably the Leader of the Country Party, A.G. Cameron. The generally inconclusive parliamentary discussion of the issue included a plea by Country Party member H.L. Anthony that:

...before Mr Theodore is discarded, the names of all other people under consideration...should be placed upon the table, and then whoever is thought to be the most efficient man should be selected, regardless of any other consideration.<sup>39</sup>

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<sup>39</sup> C.P.D.: vol.163, p.1600. For other parliamentary and Press discussion see ibid., pp.1431-2, 1445, 1594-5, 1719, 1734; S.M.H., 29 May 1940, p.13; 30 May, p.9; 31 May, p.11; 6 June, p.40. See also S.M.H., 18 Feb., 1942, p.8 and 5 Sept., 1945, p.7, for retrospective assessments.

In the event, the post was conferred on Sir Harry Brown, Director-General of Posts and Telegraphs. Theodore was subsequently appointed as Director-General of the Allied Works Council by Curtin 1942.

In the course of parliamentary discussion of Theodore's non-appointment, one Labor speaker had made pointed reference to the fact that Sir George Pearce, the only remaining original member of the Senate prior to his defeat in 1937, had been treated more kindly by his erstwhile colleagues. In 1938 he was tipped to be Chairman of the proposed Interstate Commission and when the Bill to establish it was not proceeded with, he was appointed to the Commonwealth Grants Commission,<sup>40</sup> a post he held from 1939 to 1944. He was also appointed Chairman of the Defence Board of Business Administration later in 1939. Future Labor Prime Minister J.B. Chifley also had had his talents recognised by non-Labor Governments, his compulsory spell from Parliament before re-election in 1940 being punctuated by appointments to the Royal Commission on Banking, the Capital Issues Advisory Board and an administrative post in the Ministry of Munitions.

Individual Labor Government appointments which attracted critical attention were those of W.C. Taylor to the Commonwealth Bank Board in 1941 and to the Australian National Airlines Commission (ANAC) in 1946, A.W. Coles to the latter body in the same year and of D.A. Mountjoy to the Executive of the CSIR in 1946.

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<sup>40</sup> S.M.H., 18 June 1938, p.11; 30 Dec., 1938, p.9.



Taylor, a Sydney solicitor, was senior vice-president of the New South Wales branch of the Labor Party. His appointment was attacked in Parliament on the basis of his lack of relevant experience and training, and the vigour of the attack owed something to the fact that the man he replaced had been a representative of the primary industries.<sup>41</sup> After the Government abolished the Bank Board, he was appointed in 1946 as Vice-Chairman of the new ANAC. At the conclusion of his term in 1950, the non-Labor Government chose not to reappoint him.

The Chairman of the ANAC was Mr A.W. Coles, one of the two Independent MHRs whose votes had been decisive in the fall of the Fadden Government in 1941. As one of the founders of the retail firm of G.J. Coles and Co., he had impeccable business credentials and had also had more relevant administrative experience as Chairman of the Commonwealth Rationing Commission during the war. Nevertheless, his appointment was generally interpreted in political terms, one observer noting that by their personal and political hostility to him, Opposition members had 'presented the Government with Mr Coles on a platter'.<sup>42</sup> Coles subsequently resigned from the Commission in 1950.

Mountjoy, a former Labor MHR was defeated in the 1946 elections and his appointment was justified by the responsible Minister, J.J. Dedman, on the basis that:

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<sup>41</sup> C.P.D., vol.169, espec. pp.321, 345-6, 374, 405-6, 417-8, 870-1.

<sup>42</sup> R. Gollan in S.M.H., 11 Feb., 1946, p.2.

matters in relation to research should be taken into account from the point of view of the workers of the community...one way in which the standard of living of the workers...can be raised is by paying greater attention to scientific research generally.<sup>43</sup>

The Opposition attacks ranged over a wide front, including his lack of expertise, alleged Communist sympathies and associations, his previous deportment as a member of Parliament and the fact that he was not an ex-serviceman.<sup>44</sup>

As one member put it:

I have no objection...to defeated politicians receiving some kind of appointment, but not this kind...there can be no...honest suggestion... that he has one of the qualifications necessary to be a member of that executive.<sup>45</sup>

Two organisations which have often been the subject of intensive party controversy are the Commonwealth Bank and the Australian Broadcasting Commission (ABC). Labor Party ideology includes a strong emotional attachment to the preservation of the Bank as a bulwark against exploitation by the private banks and their capitalist cohorts. This attitude underlay the original campaign for its creation, the running battle with Sir Robert Gibson and the Bank Board in the 1930s, and the unsuccessful attempt to nationalise the private banks in the 1940s. So far as appointments are concerned, the attitude finds expression in the preference for control by a Governor instead of a Board, criticism of individual Board appointments made by non-Labor Governments and the

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<sup>43</sup> C.P.D., vol.189, p.634.

<sup>44</sup> C.P.D., vol.189, espec. pp.634-5, 804-7, 817-37.

<sup>45</sup> ibid., p.826.

insistence on 'reliable' appointees when holding the power of nomination. While making concessions to the economic imperatives of an efficient central bank, the non-Labor parties have stressed 'fair competition' in the operation of the Commonwealth Bank and the regulation of the banking system and have sought to maintain some sort of balance of commercial interests in the composition of the Bank Board. Although the backgrounds of most of their appointees have fitted in with this latter criterion, party affiliation and personal acceptability also appear to have played a part. One obvious example was W.H. Anderson, appointed in 1959. A one-time Chief Accountant and Director of the Shell Co. of Australia, his claims on the post were enhanced by the fact that he had been Federal President of the Liberal Party for six years.

The significance of the ABC derives largely from its potential influence as a moulder of public opinion. As a result, the Opposition of the day tends to see itself as a guardian of the public and the ABC itself against attempts of the Government to compromise its independence by improper use of the appointment power or undue influence over its day-to-day operations. Additional factors are the Labor insistence on the need for a positive counter to the conservatively oriented Press and non-Labor belief that the staff of the ABC has an unhealthily radical streak. Some notable examples of disputes involving individual appointees were:

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In 1945 the resignation of W.J. Cleary<sup>46</sup> from the Chairmanship of the ABC was the occasion of Opposition charges that he had been forced out by political interference by the Labor Government.<sup>47</sup> Some six years earlier, Opposition Leader Curtin, in commenting on three new appointments complained that:

...it is quite patent that the Government regards the control of the Commission as so politically important that it has taken the greatest care to ensure that its party is dominantly represented, and no representation given to Labor...these most astonishing appointments...reveal that the Prime Minister has a very keen sense of political values.<sup>48</sup>

In 1951, when the former Labor appointee, Mrs Ivy Kent, was replaced on the expiry of her term by Dame Enid Lyons, A.A. Calwell was reported as saying that:

...her removal clearly indicates that the Government intends to make the Commission's network and the national service of the ABC more and more a propaganda medium for the policies of the Liberal and Country Parties. Such action as this might tempt the next Labor Government to take reprisals.<sup>49</sup>

The following year the same Minister, H.L. Anthony, came under heavy Opposition fire for his dismissal of

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<sup>46</sup> The former New South Wales Chief Railways Commissioner, appointed to the ABC by the Lyons Government in 1934.

<sup>47</sup> C.P.D., vol.181, espec. pp.110, 152, 367, 390-6.

<sup>48</sup> As reported in S.M.H., 30 Dec., 1939, p.12.

<sup>49</sup> S.M.H., 14 July 1951, p.2. See also C.P.D., vol.217, pp.877-8.

C.W. Anderson<sup>50</sup> on the grounds of his non-attendance at two consecutive meetings of the Commission.<sup>51</sup>

There was a familiar ring about Opposition arguments in 1967 when the Government declined to renew the terms of the Chairman (Dr J.R. Darling), Vice Chairman (Mr E.R. Dawes) and one other member (H.B. Halvorsen). Added ingredients were the allegation in a political newsheet that the Chairman was to be replaced by a former Liberal Minister, an attack on the ABC by the Prime Minister for the manner of its discussion of the allegations, and a reported statement by Dr Darling that he had been 'thrown out'. Dawes, a former Labor leader in the South Australian Parliament noted also that he left:

with the realisation that my association with the Labor Party no doubt influenced my original selection in 1945, and I appreciate the fact that since 1949 Liberal-Country Party Governments have seen fit to re-appoint me.<sup>52</sup>

More recent appointments of party members to Commonwealth boards by Governments of their own persuasion include that of L.H. Moore former New South Wales and Federal President of the Liberal Party as a part-time

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<sup>50</sup> A New South Wales MLC and State organising secretary of the ALP, appointed by Labor in 1949 and re-appointed by the non-Labor Government in 1950. See C.P.D., vol.217, pp.804, 875-80.

<sup>51</sup> For a more comprehensive discussion of these developments and attempts at political interference see G.C. Bolton, Dick Boyer: An Australian Humanist, ANU Press, Canberra, 1967, espec. chapters 5-8, 11.

<sup>52</sup> Canberra Times, 12 April and 1 July 1967. See also C.P.D., H of R, vol.55, pp.1319-21, 1391-93, 1481-84; vol.56, pp.1025, 1163-4. Senate vol.33, pp.655-6, 938-48.

member of the Housing Loans Insurance Corporation at its inception in 1965, F.J. Davis, former Liberal Party MHR to the Chairmanship of the Commonwealth Serum Laboratories Commission in 1967, retired Minister Sir Denham Henty to the Overseas Telecommunications Commission in 1968, and sitting Country Party member A.I. Allan to a senior executive post with the Commonwealth War Graves Commission in 1969.

In keeping with a recurring theme of this thesis, it must be conceded that political affiliation on the part of an appointee is neither proof of political motivation on the part of the decision-maker nor a harbinger of administrative inefficiency. In some cases, of course, positive commitment to a political cause is more conducive to the effective performance of Government functions than insistence on administrative impartiality. Many of the political partisans appointed have carried solid, and some exceptional, technical qualifications for their posts. In some cases, too, the recommendations have come from the Minister's official advisers rather than from party or personal contacts.

Notwithstanding these qualifications and the fundamental difficulty of securing reliable information on precise political motivations, there are sufficient regularities in the pattern of appointments for some broad generalisations to be attempted. Each of the three major parties has had a distinctive approach, even though the particular party image does not show out in all appointments, or even in the majority. Many of the posts involved are in technical areas required, or

assumed to require,<sup>53</sup> a degree of expertise as well as managerial skill. All parties have appointed senior public servants, career staff members from the agencies themselves and outside experts to many of the important executive posts and also to the less important advisory bodies. Often the appointees of one party have been reappointed by its opponents when they have taken over the reigns of government.

The elemental nature of the characteristic Labor approach has shown through the material presented above. To a large extent, positions for which the lack of formal qualifications is not a firm barrier, are distributed among the party faithful, as rewards for past services, inducements for future service, or as compensation for falling on 'hard times'.<sup>54</sup> A few instances of appointments of non-Labor politicians have mostly been explicable in partisan terms also. Where the party has recruited from outside its own ranks, it has tended to look to the Public Service and academic experts rather than to the business and social elites. One notable exception to this pattern was the

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<sup>53</sup> A feature of Australian public administration has been an emphasis on the relevance of technical qualifications and experience in selecting for top administrative posts, in sharp contrast to the traditional British 'cult of the generalist'.

<sup>54</sup> One Labor stalwart has in fact used this term in referring to specific appointments.

Labor Government's continued reliance in war-time on many of the businessmen appointed by its predecessors and its appointment of other businessmen in similar capacities.

While the Country Party has not relied so heavily on card-carrying party members, it has put a sectional gloss on its appointments by other means. One of the Party's major achievements at both State and Federal levels has been the establishment of a comprehensive network of marketing and regulatory bodies to handle arrangements connected with rural production. Some of these bodies are substantially grower-financed and the great majority of them provide for grower-representation on either an elective or nominated basis. Government nominees and grower-nominees alike tend to be drawn from the rural 'establishment' and therefore from the major areas of support of the Country Party.<sup>55</sup> Because of the ethos of control of rural activities by rural experts, it is inevitable that both the membership and the policies of the commodity boards will be broadly sympathetic to Country Party purposes, although there have been signs of strain in recent years as a result of the current leader's attempts to broaden the base of his Party's support and the intensification of specifically rural problems.

For the Liberals and their direct antecedents, the approach is less direct. The pattern showed out well in the views and actions of former Nationalist Prime Minister

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<sup>55</sup> It is conceded that there is not perfect correlation between these two groups.



S.M. Bruce. With an abiding faith in the application of business methods, and applied by businessmen, to the affairs of government, his approach was the appointment of boards to control the general operations of the administrative agencies. Executive responsibility was to rest in the hands of the general manager, and the boards, composed of businessmen, would serve, ideally, on a part-time basis. With salaries determined accordingly, the posts would only be a viable proposition for individuals with other income. As in the case of the appointment of rural leaders to rural commodity boards, the lack of formal party affiliation is not a guarantee of political impartiality. A variation on the theme developed above is the prescription that a balance should be struck in the regional and economic interests included on the 'boards'.

In the specific context of the ABC, one observer has noted that the UAP established low salaries:

...ostensibly as an economy but also to emphasise that the positions were not meant as full-time appointments, nor as comfortable jobs for political hacks. The consequence was of course that only people with spare time and other means of livelihood could afford to serve on the Commission, and this tended from the start to perpetuate a built-in bias against Labor sympathizers. Of thirty people who served on the Commission from 1932 to Boyer's death in 1961, probably not more than a quarter were in the habit of voting Labor, and most of these were appointed under the Curtin and Chifley Governments. If members of the Australian Broadcasting Commission have behaved with political impartiality it is little thanks to the governments who appointed them.<sup>56</sup>

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<sup>56</sup> G.C. Bolton, op.cit., pp.100-101.

Both the Country and Liberal Parties also do 'look after their own' more directly as occasion demands.

The types of appointments made are explicable largely in terms of the processes by which selections are made. The essential pattern, as I understand it, is that the responsibility for making most appointments of this nature is left very much in the hands of the Minister under whose general control the agency falls.<sup>57</sup> In exercising this responsibility the Minister, as in other areas, will seek advice wherever he can.<sup>58</sup> To a large extent, he will place reliance on his permanent head, who will often have alerted him to impending vacancies and will in many cases have drawn up his own list of suitable prospects. The Minister will also have a wide range of party, business and social contacts, some of whom will also proffer suggestions of their own volition or in response to questions by the Minister. In the absence of formal advertisement for most of these vacancies, there must inevitably be a heavy reliance on informal, 'grape-vine' methods. Quite apart from the question of a general preference for political allies, other things being equal, the non-departmental sources of information will tend to be drawn from groups oriented in the same general direction as the party concerned.

One of the striking features of lists of those called to Government service on a part-time basis, and sometimes on a full-time basis too, is the frequent recurrence of

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<sup>57</sup> I have been advised that the current practice in New South Wales is for Cabinet approval to be sought for proposed full-time appointments and any part-time appointments with 'unusual features'. However, the Minister still has the initiative in making recommendations.

<sup>58</sup> One source of information apparently lacking in Australia is a local equivalent to the central list maintained by the British Treasury. See Richards, op.cit., p.96.

many of the same names. One veteran observer<sup>59</sup> has labelled the membership of this group the 'charmed circle' on the basis that those who have gained entry will continue to receive the call when Ministers are seeking assistance. Whether entry is based on personal or party influence, special competence, or some other factor, the crucial factor is the breakthrough into the group. Because of the essentially informal and ad hoc approach to filling these positions, individuals who have become favourably known for their performance of an initial task, and who have thereby indicated also their willingness to serve, clearly have above-average opportunities for coming under consideration.

To the extent that specifically party considerations do not enter into these selections, this is not political patronage, but it is still patronage in the sense that the criterion of selection is not some objective test of merit but the personal inclination of the individual vested with the power of appointment. The extent to which the exercise of patronage in this manner is a legitimate target for criticism will be subject to wide variation because of the interaction of such factors as the nature of the position (including amoluments, functions, tenure, prescribed qualifications), the general and political background to the appointment, the processes of selection and the ability of the appointee. In pointing to a similar phenomenon in the content of British advisory bodies, one writer noted that it was at least partly attributable to the desire to appoint 'safe' men and drew attention to the danger that this approach would militate against the critical appraisal of Government performance. As he expressed it, 'the

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<sup>59</sup> Alan Reid, in informal discussion.

ability to choose the members of inquiries - the power of patronage - is a powerful weapon with which to avoid the unexpected'.<sup>60</sup> In Australia, the marked reluctance of Governments to accept advice, even from members of the 'charmed circle', is an additional factor.

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<sup>60</sup> P.G. Richards, op.cit., p.118.

CHAPTER 6LEGAL, JUDICIAL AND QUASI-JUDICIAL OFFICES

There are special features which make the power of appointment to judicial office one of the most important aspects of the governmental patronage prerogative. Judicial offices are attractive because of the status and emoluments<sup>1</sup> they carry, the conventional respect accorded to the judiciary, and their privileged tenure of office.

Some elements of the relationship between law and politics build on the importance of these factors. One of the traditions of British government has been that those who are expert in law ought to have a hand in the making of laws. The tradition of lawyer-politicians owed something, too, to the fact that a flourishing legal business could be carried on, perhaps even enhanced, in conjunction with a parliamentary career, an important factor before the introduction of parliamentary salaries. Once in Parliament, the lawyer-politician tends to retain his respect for the law and his reverence for the dignity of judicial office.

For all of these reasons, aided by the fact that judicial appointments were in the hands of the Prime Minister and the Lord Chancellor, the House of Commons was a prolific source of recruitment for the British judiciary. Thus 'Laski has shown that of the 139 judges appointed between 1832 and 1906, 80 were appointed

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<sup>1</sup> Successful practising barristers often suffer a loss of income on translation to the Bench, but judicial salaries are substantial by other standards.

directly to the Bench from the House of Commons and a further 11 had been parliamentary candidates. Sixty-three of the 80 M.P.s who became judges attained the office while their own party was in power'.<sup>2</sup> To a considerable extent, therefore, the House of Commons performed the function of an intermediate stage in the metamorphosis from lawyer into judge.

In more recent years, there has been a fundamental change in the British pattern. 'When Mr. Gerald Howard, M.P., became a judge in 1961, it was the first time an M.P. had joined the English Bench for eleven years... Only about one-tenth of the judges on the English Bench have sat in the House of Commons'.<sup>3</sup> The change has not come about because of a paucity of lawyers in the House. The most important factors appear to have been a decline in the attraction of judicial office, the fact that the more demanding nature of parliamentary duties has made politics less attractive to the leading figures of the Bar, the new breed of lawyer-politicians being more interested in politics than law.

The traditional British pattern was paralleled in colonial Australia. With the coming of Federation, a new ingredient was added. The framing of the Constitution was a legal as well as a political exercise, and the lawyer-politicians played a dominant role. In addition, with the arrangements for judicial interpretation of the Constitution, the judicial function took on a quasi-political character for one important group of judges. As Sir Robert Menzies has noted, 'constitutional law is

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<sup>2</sup> P.G. Richards, op.cit., p.123.

<sup>3</sup> ibid., p.124.

only half law and half...political philosophy'.<sup>4</sup>  
The political philosophy and political affiliations of the High Court judges are therefore of more than passing moment.

The same general issue, albeit in a modified form, arises in the context of the arbitral jurisdictions, both at the Federal and the State level. Since Australian politics is, to a considerable extent, 'economic' politics, employers and employees tend to be on opposite sides of the political, as well as the economic fence. The political philosophy and affiliations of Industrial or Arbitration Court judges, and quasi-judicial office-holders in the conciliation, industrial and arbitral fields are thus also very significant.

The range of offices discussed in this chapter is substantial, extending from the prestigious judicial posts in the Commonwealth High Court and New South Wales Supreme Court down to Justices of the Peace. They include State and Commonwealth arbitration and conciliation commissioners as well as the purely judicial offices. Attorneys-General and the staffs of their Departments, while clearly exercising legal functions, are excluded from consideration because they have been covered in the discussion of appointments to political office and the Public Service respectively. The appointment of Queen's Counsel, however, is included in this chapter.

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<sup>4</sup> Quoted in L.F. Crisp, Australian National Government, op.cit., p.65.

Before proceeding to the discussion of patterns of appointment in the various jurisdictions, a few brief comments will be offered on the general arrangements for filling judicial offices. For most of the offices concerned, the formal appointing power is vested in the Governor-in-Council and Governor-General-in-Council respectively, on the advice of the relevant Attorney-General. Exceptions to this pattern are that the Chief Secretary is the advising Minister in respect of J.P.s in New South Wales, while the appointment of J.P.s in the Australian Capital Territory is vested formally in the Attorney-General, and the Minister for External Territories and the Administrator for the Northern Territory carry responsibility in their own domains.

No formal provisions are laid down to govern the sources from which the responsible Ministers are to seek advice. The processing of appointments once a selection has been made is the responsibility of the Department, but the extent to which the Minister will rely on Departmental or other sources of advice is strictly the prerogative of the Minister and will vary according to his own personal inclinations. Most Attorneys-General would have their own contacts in the legal, as well as in the political and administrative worlds, as well as having their own direct impressions of the abilities of many prospective candidates. In the arbitral jurisdictions, and particularly in relation to the lesser, quasi-judicial, offices it seems to be the normal practice for Ministers dealing with industrial matters to be consulted as a matter of courtesy.



## II

The political-legal significance of the High Court was reflected in the initial appointments made to it. The first Chief Justice, Sir Samuel Griffith, had been a colonial Premier before being appointed as Queensland's Chief Justice in 1893. His two associates,<sup>5</sup> like him, leading contributors to the making of the Federal Constitution, were translated directly from the Ministry, one being the Prime Minister.

It was not until 1913 that the first appointee<sup>6</sup> without parliamentary experience was selected, the three intervening appointments including two former Commonwealth Attorneys-General<sup>7</sup> and a former State member.<sup>8</sup> Of the total of 24 appointments to the High Court, twelve have been members of Commonwealth and/or State Parliaments, one has been an unsuccessful parliamentary candidate, one was an unsuccessful contender for party pre-selection and one was a member of extra-parliamentary party organisations. There has been a general change in the pattern, however, in that the current Chief Justice, Sir Garfield Barwick, translated from the Attorney-Generalship in 1964, is the

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<sup>5</sup> Edmund Barton, the Prime Minister, and R.E. O'Connor, Vice-President of the Executive Council.

<sup>6</sup> G. Duffy.

<sup>7</sup> Isaac Isaacs, appointed direct from the Ministry, and H.B. Higgins.

<sup>8</sup> A.B. Piddington.

first to be appointed direct from either Commonwealth or State Parliament since McTiernan in 1930.<sup>9</sup>

Despite the early monopoly of High Court posts by the lawyer-politicians, it was not until 1913 that an appointment became the subject of major political controversy. The individual concerned, A.B. Piddington, a Liberal MLA in New South Wales prior to Federation, was the first to be appointed by a Labor Government. His appointment aroused a storm of criticism, ostensibly based on the fact that Prime Minister W.M. Hughes had sought to establish, through an intermediary, his views on Commonwealth powers prior to offering him the appointment.<sup>10</sup> Piddington resigned without taking his place on the Court, apparently because of his concern that the Court should not be exposed to public criticism. While the action of Hughes did lay him open to charges of attempting to 'pack' the Court, it seems highly likely that the intensity of the criticism by the legal fraternity was contributed to by Piddington's radical inclinations and the fact that it was a Labor Government which appointed him.

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<sup>9</sup> See L.F. Crisp, Australian National Government, op.cit., pp.66-67, for a table setting out the prior political and judicial experience of all individuals appointed to the High Court. See also G. Sawyer, Australian Federalism in the Courts, Melbourne University Press, 1967, pp.20-72 for an impressionistic summary of their backgrounds and subsequent performance.

<sup>10</sup> See L.F. Fitzhardinge, William Morris Hughes - A Political Biography, vol.I, Angus and Robertson, Sydney, 1964, pp.276-83.

Appointments to the High Court became a political storm-centre in 1930, again with a Labor Government in office. As early as 1st January, it was reported that 'an influential section of the Federal Cabinet favours the elevation of Mr E.A. McTiernan, M.P., to the vacancy on the High Court Bench...',<sup>11</sup> and two days later Dr H.V. Evatt, a New South Wales MLA, was also mentioned as a possibility.<sup>12</sup> In the event, they were both appointed, but not until late December. By that stage, there were three vacancies to be filled by virtue of the resignation of one Chief Justice (Sir Adrian Knox) and the appointment of another (Sir Isaac Isaacs) as Governor-General. The irony of these High Court appointments was that they were effected by Cabinet against the wishes of the Prime Minister and his Attorney-General before their return from the negotiations which had resulted in the appointment of Isaacs as Governor-General.

The texts of the cables exchanged, and subsequently leaked to the Press,<sup>13</sup> between Scullin and two members of the Cabinet made it apparent that Caucus had forced the decision on Cabinet. Evatt's appointment was hardly open to criticism on strictly professional grounds, although one near-contemporary observer found his acceptance unexpected 'because he was thought to have a

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11 S.M.H., 1 Jan., 1930, p.7.

12 S.M.H., 3 Jan., 1930, p.11.

13 S.M.H., 16 Mar., 1931, p.9.

brilliant political career before him.<sup>14</sup>  
McTiernan's legal standing, however, was of a lower order and clearly subordinate to his political affiliations.

During the dispute over the proposals to appoint Evatt and McTiernan, it was reported that the sense of urgency in Caucus was partly engendered by fear that if the Nationalists were returned they would appoint their own nominees, perhaps including the then Opposition Leader, J.G. Latham.<sup>15</sup> On the formation of the UAP, Latham had accepted the role of Deputy Leader under Lyons, and he resigned from Parliament in 1934 to return to private practice at the Bar. Slightly over a year later, he was appointed Chief Justice. Labor speakers expressed strong criticisms of Latham's alleged bias against the working class in an effort to discourage his rumoured appointment a fortnight before it was made. The Attorney-General, R.G. Menzies, who was Latham's replacement in this portfolio as well as in the Kooyong electorate, was attacked subsequently for announcing the appointment to the Press a few hours

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<sup>14</sup> Warren Denning, Caucus Crisis: The Rise and Fall of the Scullin Government, Cumberland Argus, Sydney, 1937, p.73.

<sup>15</sup> S.M.H., 22 Nov., 1930, p.16. Latham's name had also been mentioned in January 1929, when his party was in office, together with that of the then New South Wales Premier, Bavin. See S.M.H., 18 Jan., 1929, p.14.

after stating in reply to a question that an appointment would be made 'at an early date'.<sup>16</sup> In dismissing the Opposition's 'unmannerly comments', the Sydney Morning Herald asserted that the appointment would:

.....be received by the Commonwealth at large with satisfaction and congratulation to Sir John himself and to the High Court Bench... His administration as Attorney-General was performed essentially in service of the public rather than of party; and it might almost be said that he did not engage in party politics until obliged to do so as leader of the Opposition in 1930-31. Then, also, his stand was one of readiness to sink party considerations in the main matter of saving Australia from the worst incidence of the Depression...<sup>17</sup>

Following Latham's appointment, the only other appointee with parliamentary experience was Sir Garfield Barwick, translated direct from the Ministry in 1964. The Leader of the Opposition (A.A. Calwell) conceded his qualifications for the post, but he and other members of his Party attacked the timing of the appointment on the grounds that it indicated he was being sacked from the Ministry.<sup>18</sup> The Prime Minister's defence of the timing of the appointment was not particularly convincing, although his assertion that once the decision was taken, it was undesirable for the Chief Justice-designate to be exposed to political controversy was plausible enough.<sup>19</sup>

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<sup>16</sup> See C.P.D., vol.147, 1935, espec. pp.196-9, 235-243, 255-257, 267-8, 627, 679-82, 734.

<sup>17</sup> S.M.H., 16 Oct., 1935, p.12.

<sup>18</sup> See C.P.D., H of R, vol.42, 1964, pp.1463-70, 1475-6.

<sup>19</sup> See 'The Minister's Dilemma', in The Age, 28 April 1964, for a balanced contemporary assessment.

Two other appointees who had not had parliamentary experience but had unsuccessfully contested office in the non-Labor interest were W.F.L. Owen, appointed in 1961 and W.J.V. Windeyer, appointed in 1958. Both had been key figures in the Petrov Royal Commission of 1955, Owen as Chairman and Windeyer as chief counsel assisting the Commission. Owen had been on the New South Wales Supreme Court since 1937. Owen's experience in constitutional cases was limited, and it is likely that his translation was influenced by a desire to avoid embarrassment from the fact that Evatt had taken up duty as Chief Justice for New South Wales.<sup>20</sup>

In reviewing the overall pattern of appointments to the High Court it is clear that the distinguishing features of the controversial Evatt and McTiernan appointments was the colour of their political affiliations rather than the fact that they had any. Of the seven Labor appointees, only these two had been members of the Party, and three of the others had no party-political background at all. Although Higgins had been an Attorney-General in a Labor Government, and both Isaacs and Griffith had radical leanings in their political careers, it is clear that 'the justices have been drawn predominantly from the political centre and right'.<sup>21</sup>

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<sup>20</sup> There had been some heavy clashes between Evatt and Owen in the course of the Petrov inquiry.

<sup>21</sup> G. Sawyer, op.cit., p.61.

In addition, 'it is a reasonable guess that Rich and Starke, though non-political, refrained from retiring until 1950 [at the ages of 87 and 79 respectively] partly because they did not want the Chifley Labor Government and in particular its Attorney-General... to be in a position to replace them'.<sup>22</sup>

Appointing an individual with the appropriate party label is no guarantee that his decisions will be in accord with the desires of those who sponsored his appointment. The influences leading a Justice to a particular decision are very complex and those who place heavy reliance on choosing the 'right' man -

...have a grossly simplified view of the relationship between political opinion and judicial activity... They underestimate the strength and discipline of a professional and intellectual tradition; they also ignore the complexity of the interrelationships between politics and judicial activity, especially in a federation'.<sup>23</sup>

Some regularities, however, are apparent in the decisions of individual Justices, and while Evatt's liberalism led him to emphasise the rights of the individual against the Government, he and McTiernan showed more consistency in their 'support for the worker' in industrial cases than their colleagues, while McTiernan's general attitudes to the role of Government and the extent of the federal power were generally much more in keeping with the Labor Party

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<sup>22</sup> ibid. Labor members expressed criticisms of their ages in the House.

<sup>23</sup> G. Sawyer, Australian Federalism in the Courts, p.67. See also pp.68-72 and R.N. Douglas, 'Judges and Policy on the Latham Court', Politics, vol.IV, 1969, pp.20-41.

attitudes than those of other members of the Latham Court.<sup>24</sup> Latham's apparent attitudes to the worker offer retrospective support for the original Labor reactions to his appointment. His more favourable attitude to federal powers and the general role of the Government is probably a consequence of his contact with the practical problems of government.

Given the political role of the Court, it is difficult to dispute the assertion in relation to the Evatt and McTiernan appointments that 'Labor was entitled to seek to influence the general social outlook of the High Court by appointing men of different background from those whom the non-Labor parties would normally choose for such positions'.<sup>25</sup> In seeking to exercise this right in this instance and on other occasions, the Labor Party has been plagued by a general dilemma which assumes a more restrictive form in relation to the High Court. 'The parties of the right habitually appoint social conservatives but need make no parade of it because most eminent lawyers are social conservatives'.<sup>26</sup> Labor, apart from the Evatt and McTiernan appointments and the abortive appointment of Piddington, does not appear to have made a direct assault on this problem. Although statements by some

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<sup>24</sup> See tables in R.N. Douglas, op.cit. Evatt, on the other hand, tended to support 'States' Rights'.

<sup>25</sup> G. Sawyer, Australian Federal Politics and Law, 1929-1949, Melbourne University Press, 1963, p.34.

<sup>26</sup> ibid. For further development of this argument see Sawyer's Australian Federalism in the Courts, pp.64-66, and John Playford, 'Judges and Politics in Australia', APSA News, vol.6, no.3, 1961, pp.5-11.



of the more radical members of the Parliamentary Labor Party and sections of the outside party organisation have at times lent credence to Opposition claims that Labor is intent on packing the Court at every opportunity, these claims<sup>27</sup> have not been borne out in practice. Whether their actions have been motivated by the desire to avoid further critical outbursts, by acceptance of the notion that the High Court should be above the political battle, or because of the lack of suitably qualified supporters, the nature of the other Labor appointments are difficult to reconcile with any notion of the High Court as an instrument for the advancement of Labor aims.

### III

The Australian conciliation and arbitration machinery has been developed in an attempt to bring some order into industrial relations by seeking to achieve agreement between employer and employee and, failing that, to impose the decision of an impartial 'umpire' on the disputants. For the machinery to work, there is an obvious need for the credentials of the umpire to be accepted by both sides. At both State and Commonwealth levels, individual appointments, ranging from conciliation commissioners to Judges, have been criticised as failing to match this requirement.

In the period since 1927, two senior Federal appointments by non-Labor governments came under vigorous

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<sup>27</sup> C.P.D., vol.183, 1945, pp.2941-2; vol.184, 1945, p.4731; vol.186, 1946, pp.1301-1319; vol.187, 1946, p.2208; vol.193, pp589-90, 618-25, p.641, pp.652-655; vol.194, pp.2075, 2167-8, 2203-2209; vol.195, p.2250.

attack, with the critics by no means confined to Labor supporters. The first was that of former Senator Drake-Brockman as an additional Judge in the Court of Conciliation and Arbitration in 1927. The appointment and aspects of his performance as a Judge were roundly attacked in Parliament, and Opposition speakers were able to point to numerous Press criticisms.<sup>28</sup> He had been President of the Employers' Federation as well as Government Whip in the Senate, credentials not calculated to commend themselves to the industrial movement. There were reports of decisions by union bodies to refuse to appear before Drake-Brockman.<sup>29</sup> He survived the crisis, however, and remained on the Court until 1949.

The second case was that of Sir John Spicer, appointed as Chief Judge of the Commonwealth Industrial Court in 1956 when constitutional difficulties led to a separation of the judicial from the conciliation and arbitration functions of the former Arbitration Court. Spicer, as Attorney-General, had been responsible for the legislation providing for the new arrangements, the appointment was made in the absence of the Prime Minister (R.G. Menzies), and it is at least open to question whether the latter was completely happy with the choice. Labor Party and unionist criticism was supported editorially by the Sydney Morning Herald,<sup>30</sup> and the Director of the Chamber of Manufactures in New South Wales was also quoted as describing it as 'the worst kind of political appointment'.<sup>31</sup>

<sup>28</sup> C.P.D., vol.117, 1927, pp.1973-82, 1988-93, 2131-2,2719.

<sup>29</sup> See S.M.H., 1 May, 1927, p.14. Other Judges of the Arbitration Court without a political background also came under union fire at about this time.

<sup>30</sup> S.M.H., 13 Aug., 1956, pp.1, 2.

<sup>31</sup> S.M.H., 14 August 1956, p.5. He expressed particular concern at the embarrassment the appointment would cause to the State Opposition because of its consistent criticism of Labor appointments.

Other appointees to the Federal Arbitration Courts and Commissions<sup>32</sup> have had political affiliations. These included Sir George Beeby, who had been a New South Wales Minister in both the Labor and non-Labor (Holman Nationalist) interests, A.W. Foster, an unsuccessful Labor candidate at three Federal elections, P.C. Joske, a Federal Liberal back-bencher and one-time aspirant for the Attorney-Generalship, and Sir Richard Kirby, a member of the Labor Party in his early years. Foster and Kirby were appointed by Labor Governments, the other two by non-Labor. Only Joske was an active politician at the time of his appointment<sup>33</sup> and his qualifications were such that no serious criticism was mounted, even though his appointment meant that the Bench of four included two former Liberal M.P.s.<sup>34</sup>

The lesser appointments in the Federal arbitral bodies have also attracted critical attention, but have followed a different pattern. In 1928, an amendment of the Conciliation and Arbitration Act had provided for the appointment of Government inspectors for the policing of awards so that this would not be left to the unions themselves.

It was not until 1935, however, that the first appointment was made.<sup>35</sup> Arthur Blakeley, who had been

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<sup>32</sup> Including the Commonwealth Industrial Court. The concern here is with appointments at the level of Justice and above, including the President and Deputy-Presidents of the Arbitration Commission as well as the Industrial Court.

<sup>33</sup> He was appointed to the ACT Supreme Court as well as to the Industrial Court.

<sup>34</sup> Kirby and Beeby were translated direct from judicial offices in New South Wales. Joske's role as an Industrial Court Judge removed him from the main industrial battleground, a point which was more obvious in 1960 than in 1956 when the new arrangements had yet to be tested.

<sup>35</sup> There were rumours that the Labor Government was to make some appointments in 1930. See S.M.H., 23 June 1930, p.11.

Minister for Home Affairs under Scullin and was a former President of the AWU, was appointed by the Lyons Government, initially on three months' probation.<sup>36</sup> In 1940, he was appointed senior inspector and he was joined by seven new inspectors. Although appointed by the UAP Government, five of the seven had solid union affiliations.<sup>37</sup> One of the others, J.A. Guy, had been a Tasmanian Labor Minister under Lyons and a Federal Nationalist Assistant Minister, again under Lyons. Out of Parliament for six years at the time of his appointment, he was re-elected the following month, thereby becoming ineligible for the post.

The surface incongruity of the sources of recruitment for these positions is explicable in terms of the low salaries offered. The maximum salary for the senior inspector was only £600, that for the others a lowly £450. These levels would hardly be attractive to active politicians, senior public servants or the general run of non-Labor political activists. The union officials who accepted appointment were of relatively low standing in the movement.

Non-Labor Governments have experienced similar, but less severe problems in relation to conciliation commissioners. The salaries have been higher, but not sufficiently high to attract successful industrial advocates or industrialists. In view of the need for

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<sup>36</sup> Officially it was the system, rather than Blakeley, which was on trial. His confirmation in the post was reported to have been postponed for a day because the Victorian Chamber of Manufactures urged that the job should be left to State inspectors. See S.M.H., 29 May 1935, p.13.

<sup>37</sup> One was a public servant, but had been secretary of the State branch of the Postal Assistants' Union.

people with some relevant qualifications or experience, the only viable alternatives to union officials have generally been legal or industrial public servants. In 1940, the UAP appointed the Registrar and Deputy Registrar from the Arbitration Court, an officer from the Department of Labour and National Service, and an industrial lawyer. In more recent years, similar sources of recruitment have been tapped, but at least four of the thirteen commissioners and conciliators listed in the 1968 Commonwealth Directory, all appointed by the LCP, have Labor or trade union backgrounds.<sup>38</sup> Later appointments have included one white collar union's industrial officer and two personnel managers of commercial companies.

The Labor appointments have been of a more obviously partisan nature. This showed out particularly in 1947 when there was a major expansion in the number of commissioners who were given extended powers.<sup>39</sup> In stressing the new emphasis on conciliation and prevention of disputes, the Attorney-General (H.V. Evatt) emphasised that its success:

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<sup>38</sup> J.B. Holmes, a trade union official and member of the ACTU Executive, J.P. Horan, former President of Victorian Branch of ALP and Melbourne Trades Hall Council; M.F. Lyttleton, former President of Melbourne Trades Hall Council; and T.C. Winter, a former ACTU advocate and member of the ACTU Executive.

<sup>39</sup> If conciliation failed, the commissioners were empowered to settle disputes, i.e. they were to have both conciliation and arbitration powers. They were also given tenure to 65 years of age, subject to good behaviour.

...will depend almost entirely on the men who administer it... Men are required with a strong sense of social justice, and high degree of personal disinterestedness and that impartiality without which the trust of both sides can never be secured. Common sense, human understanding and courage are also necessary.<sup>40</sup>

When the appointments of the nine new commissioners were announced a few months later, the Sydney Morning Herald remarked sarcastically on the coincidence that a majority of-

...these paragons...have been found among supporters of the Labor Party... They must be congratulated on having, despite what might be supposed to have been the handicap of a party background, measured up to the requirements so loftily stipulated by the Attorney-General.<sup>41</sup>

The four appointees from New South Wales were the private secretary to the Minister for Transport (E.J.Ward), the State President of the ALP, and two union officials. Only one of the other five, however, was a union official, the others including a Stipendiary Magistrate, a barrister (Brigadier A.S. Blackburn, V.C., a former non-Labor member of the South Australian Parliament) and two public servants. Three of the non-unionists subsequently resigned,<sup>42</sup> although their actions do not appear to have been politically motivated.<sup>43</sup> Their replacements, on the

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<sup>40</sup> C.P.D., vol.190, 1947, p.552.

<sup>41</sup> S.M.H., 18 August 1947, p.2. See also 22 Oct., 1947, p.2.

<sup>42</sup> Of the non-unionists, only Blackburn remained.

<sup>43</sup> See C.P.D., vol.193, 1947, pp.670-1, 870-1.

other hand, provided more substance to the original S.M.H. assessment. They were the New South Wales Minister for Labour and Industry (H. Knight), the General Secretary of the Australian Locomotive Enginemen's Union (J.M. Galvin), and the president of the New South Wales Trades and Labour Council (L.P. Austin).<sup>44</sup>

In the course of the debate on the legislation introducing the new arrangements, R.G. Menzies had noted that 'all our recent experience suggests that the fifteen conciliation commissioners are likely to be chosen more for their politics than their impartiality'.<sup>45</sup> When Menzies asserted in an exchange with the Attorney-General that 'every appointment made by this Government completely supports [this assessment]', Evatt made the revealing rejoinder, 'not judicial appointments'.<sup>46</sup> Other Opposition members had used Question Time to express fears regarding the likely pattern of appointment,<sup>47</sup> and while most of the appointees were drawn from the moderate wing of the Labor movement, these fears were clearly well-founded. The Leader of the Opposition does not appear to have followed up his earlier promise to 'look up what I have said on this matter when I read the list of new conciliation commissioners in due course'.<sup>48</sup>

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<sup>44</sup> The absence of Austin from the original list was stated to have been a surprise to 'some Labour supporters'. See S.M.H., 16 Aug., 1947, p.1.

<sup>45</sup> C.P.D., vol.191, 1947, p.1307.

<sup>46</sup> ibid. Menzies was able to score the points in this round by noting that the appointments in question were not judicial ones.

<sup>47</sup> C.P.D., vol.191, 1947, pp.1289, 1960. For a full list, see C.P.D., vol.196, 1948, pp.771-2.

<sup>48</sup> ibid., p.1307.

Other Opposition members, however, did have something to say.<sup>49</sup> When two additional commissioners were appointed in 1949, they were drawn from the State and Commonwealth Public Services, although one (E.W. Tonkin) had been a private secretary to leaders of the Parliamentary Labor Party for many years, including both Curtin and Chifley in their terms as Prime Minister.

Some appointments to the industrial and arbitral jurisdictions in New South Wales are also of interest from a patronage point of view. Two of the individuals concerned, G.S. Beeby and A.B. Piddington, have already been mentioned in the Commonwealth context. Beeby was appointed to the State Arbitration Court in 1920, leaving in 1926 for the Federal Court. In 1927, Lang had replaced the State Arbitration Court by an Industrial Commission with Piddington as sole Commissioner. Later in the same year, the Bavin Government had added two more and had given the three the status of Supreme Court Judges. In 1931, Lang introduced legislation to revert to a single Commissioner, again in the person of Piddington. The measure failed to meet with the approval of the Upper House, and before the dispute was settled, Game's dismissal of Lang restored the status quo. Lang's dismissal was followed by Piddington's resignation in protest.<sup>50</sup> The disputes over Piddington's appointments appear to have been derived from differing attitudes to his liberal approach in industrial matters rather than from direct party political considerations.

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<sup>49</sup> S.M.H., 22 Oct., 1947, p.1; 11 June 1948, p.4.  
See also C.P.D., vol. 197, 1948, 1872-9.

<sup>50</sup> See S.M.H., 23 May, 1932, p.8; 26 May 1932, p.8; 27 May 1932, p.10, 28 May 1932, p.12. for correspondence and editorial comment on Piddington's resignation.



Other judicial appointments in this general area included J.A. Browne, KC, appointed to the Legislative Council by Labor in 1912, but appointed as Chairman of the Industrial Commission by the Stevens Government in 1932. The only other member of Parliament appointed since 1927 was G. Weir, appointed as Judge of the Industrial Commission by the Labor Government in 1953. Weir had had a varied career as a public servant, a barrister in private practice and Minister for Conservation. He had apparently suffered a heart attack in 1952 and had not contested the elections for Cabinet in 1953.<sup>51</sup> Two other Labor appointees<sup>52</sup> had unsuccessfully contested elections as Labor candidates. Other appointments by both parties have been of a non-political character.

At the lower levels, Labor appointments have been more consistently partisan than for their Commonwealth counterparts. They have also attracted sustained Press and parliamentary criticism. As at the Federal level, one of the problems in this area has been the relatively low salaries on offer. Conciliation commissioners appointed by Labor Governments have included a strong unionist element. In 1931, these included the general secretary of the ALP, a Lang-appointed MLC, president of the Labour Council and another union official. These appointments called forth a strong protest by the president of the Employers' Federation.<sup>53</sup> In 1943, a

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<sup>51</sup> See S.M.H., 25 March 1953, p.1.

<sup>52</sup> S.C. Taylor, appointed to the Industrial Commission in 1942 and W.J. Dignam, appointed to the Workers' Compensation Commission in 1950.

<sup>53</sup> S.M.H., 4 June 1931, p.11.

former president of the ARU, and in 1950, R.D. Gorman, a State MLA who had lost his seat as a result of an electoral redistribution, were appointed as commissioners. In 1954, G. Herron, who had been an AEU organiser before being appointed as a Commonwealth arbitration inspector in 1949, was appointed as a State conciliation commissioner.

Most appointments of conciliation commissioners by non-Labor Governments do not appear to have had a political flavour. One appointment worthy of note, however, was that of E. Kavanagh as Apprenticeship Commissioner in 1937. A former president and secretary of the Labour Council, he had been an MLC for many years, Minister for Labour and Vice-President of the Executive Council in the Storey and Dooley Governments, and had been appointed as Deputy Industrial Commissioner by Lang in 1926. He had been in private practice as an industrial advocate for several years prior to his 1937 appointment and was subsequently to hold a Commonwealth administrative post during the Second World War.

#### IV

At the Commonwealth level, there has been little evidence of 'political' appointments to Courts outside the High Court and the Industrial Courts. The only appointment of an active politician was that of Joske to the ACT Supreme Court in 1960 in conjunction with his Industrial Court appointment. It was confidently predicted in 1935 that the Acting Federal Attorney-General, Senator T.C. Brennan, KC, would be appointed to a vacancy on the Bankruptcy Court. However, the

official announcement 'expected soon after the return of the Attorney-General [R.G. Menzies] from abroad'<sup>54</sup> did not eventuate. Not only was judicial office denied him, he also failed to be re-elected to the Senate in 1937.

The State Supreme Courts, like the High Court, represent the pinnacle of the judicial hierarchy and are thus attractive to those lawyer-politicians seeking to test their judicial wings. Noting that the modern tendency to appoint as judges 'men who have played no public part in politics...has proceeded slower in N.S.W. than in the other States',<sup>55</sup> J. Playford listed seventeen twentieth-century Supreme Court Judges who had held or contested political office. Added to the seven holding industrial/arbitration appointments and the four appointed to the District Court, they constituted a major share of the total of 79 individuals listed for all States and the Commonwealth.<sup>56</sup> In the period since this list was compiled, the only 'political' appointment I have detected was that of C.E. Begg, Liberal MLC, appointed by Labor in 1964.

Of these eighteen appointments to the New South Wales Supreme Court, only three<sup>57</sup> had Labor affiliations

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<sup>54</sup> S.M.H., 22 August 1935, p.8.

<sup>55</sup> 'Judges and Politics in Australia', APSA News, vol.6, no.3, pp.5-11.

<sup>56</sup> ibid., pp.8-11. The total of 79 shown includes three names added in a subsequent list. See APSA News, vol.7, no.2, p.17. The additional list also included four Acting Judges including two from NSW.

<sup>57</sup> J.S. Clancy (1947), E.P. Kinsella (1950), H.V. Evatt (1960).

and all of these were appointed by Labor Governments. Labor, in addition to Begg, had also appointed A.G.F. James, a Nationalist MLA, in 1921 and A.R. Richardson, a Liberal MLA and former Minister, in 1952. One unsuccessful Nationalist candidate, and an unsuccessful Independent candidate were also appointed by Labor.<sup>58</sup> The remaining ten, all oriented towards non-Labor were appointed by non-Labor Governments. Of the non-Labor appointees, two (C.G. Wade and T.R. Bavin), had held the offices of Premier and Attorney-General, but had been out of Parliament for about two years at the time of appointment. Bavin's name had been linked with that of Latham as a possible choice for the High Court a few years earlier.<sup>59</sup> In the event, their respective judicial appointments were separated by only a few days. In the same leading article which had stressed Latham's aloofness from the party battle, the S.M.H., while conceding that Bavin's 'political life was longer and was spent in a more turbulent political arena', argued that 'during recent years in the Assembly he has, partly because of ill-health, taken little part in political controversies'.<sup>60</sup>

The other non-Labor appointments do not appear to call for any special comment, but unusual features of three of the Labor appointments are worth noting.

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<sup>58</sup> J.R. Nield (1954); M.F. Hardie (1952).

<sup>59</sup> S.M.H. 18 January 1929, p.14. Bavin was then Premier and Latham was Federal Attorney-General.

<sup>60</sup> S.M.H., 16 October 1935, p.12.

By far the most controversial was that of Dr H.V. Evatt as Chief Justice in February 1960. A magnet for publicity for most of his public career because of the causes he espoused and the manner of his espousal, Evatt in this case played a passive role. In a manner reminiscent of the events of 1940 in the Federal sphere, the State Labor Party allowed its internal divisions over the appointment to become patently obvious, to the advantage of its political opponents and the delight of the Press. There had been some speculation in 1950 that he might be in the running, but the then Premier made public a letter from the Opposition Leader (J.B. Chifley) reporting that Evatt had said that he was 'not available because of his work in the Federal party'.<sup>61</sup> By 1960, it was apparent that his political colleagues and Evatt himself placed a lower priority on his party work. There were rumours of his impending selection in October 1959.<sup>62</sup> In the ensuing period before the announcement was made in February 1960, there was a spate of speculation and criticism with much canvassing of Evatt's qualifications for the post. Evatt's political heir-apparent, A.A. Calwell, was criticised by the Bar Association and the Law Institute and lampooned by the S.M.H. over a reported statement on television that Evatt 'would make one of the best Chief Justices in the history of New South Wales [and that] the New South Wales Bench, I understand from my legal friends, is woefully weak'.<sup>63</sup> Against a

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<sup>61</sup> S.M.H., 7 Jan., 1950, p.1. See also 6 Jan., 1950, p.1.

<sup>62</sup> S.M.H., 17 Oct., 1959; 21 Oct., 1959.

<sup>63</sup> S.M.H., 7 Dec., 1959; 8 Dec., 1959. See also cartoon 25 Jan., 1960.

background of reports that the Cabinet was evenly divided with the Attorney-General opposed, State Opposition Leader, R.W. Askin, argued that 'the controversy and misgivings have been allowed to snowball to the stage where the appointment...would irreparably damage the time-honoured prestige and impartiality of the position'.<sup>64</sup> There were also reports of Caucus and State Executive pressure on Cabinet to make the appointment.<sup>65</sup>

In the end, the Attorney-General made the formal nomination, the critics had to accept that the deed was done, and the office appears to have survived without any significant lessening of its authority. Evatt's subsequent failing health left little scope for posterity to judge the technical merits of the appointment.

The other two appointments to be considered were both of State Opposition members. The first, that of A.R. Richardson, MLA, in 1952, was notable for the fact that the Labor Party won his former seat at the subsequent by-election, although Labor Ministers were reported as saying that they 'held no hope of a Labor win'.<sup>66</sup> The second, the 1964 appointment of C.E. Begg, QC and MLC, had a similar result, in that it allowed Labor to substitute one of their own supporters, thereby bringing it one step closer to a majority in the Upper House.<sup>67</sup>

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<sup>64</sup> S.M.H., 30 Jan., 1960.

<sup>65</sup> S.M.H., 1, 4, 10 Feb., 1960.

<sup>66</sup> S.M.H., 30 April 1952, p.3. The successful candidate was J.F. Richardson.

<sup>67</sup> Labor was just short of a bare majority in the Council and its Assembly majority ensured the election of its nominee under the indirect voting arrangements. See comments by 'Onlooker' in Sun-Herald, 5 April 1964, 12 April, 1964.

The four appointments of declared party supporters to the lesser New South Wales Courts, all being to the District Court, were made by Labor, but one of the four, T.S. Holden, had been a non-Labor member of the Upper House. On his appointment, the Government's nominee was returned unopposed to the Council vacancy.<sup>68</sup> The other three included a former Labor Attorney-General and two unsuccessful Labor election candidates.<sup>69</sup>

The classes of appointments which remain to be considered are those of Justices of the Peace, Magistrates and Queen's Counsel. The British Justice of the Peace was traditionally a key figure in the judicial and administrative systems. While the administrative role of the J.P. has declined substantially, the judicial function has remained important. Because of the importance of this latter function, with Labor and Liberal criticism of the Conservative bias of justices providing stimulus for reform, there have been two major inquiries into the system and a number of changes in the method of selection of justices.<sup>70</sup>

While some of the Australian States vest their J.P.s with substantial powers, the New South Wales and Federal products are pale images of their British counterparts

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<sup>68</sup> The successful candidate was J.A. Ferguson, secretary of the ARU and later Milk Board Chairman. For critical Press reactions, see S.M.H., 13 Oct., 1945, p.2; 15 October 1945, p.2.

<sup>69</sup> J. Lamaro, 1947; J.S. Clancy, 1931 (appointed to Supreme Court in 1947); G.J.J. O'Sullivan, 1950; Clancy's appointment drew a protest by the State Bar Council. See S.M.H., 14, 17 Nov., 1931.

<sup>70</sup> For an extended outline of these developments and a discussion of the main issues, see P.G. Richards, op.cit., pp.154-177.

Thus 'a J.P. is properly described as a magistrate, although with the vast majority of them their present duties extend little beyond the administration of oaths, the taking of declarations and the attestation of instruments'.<sup>71</sup> Their judicial functions are performed, in the main, by permanent magistrates. Perhaps largely for this reason, there has been no major inquiry into their operations and no serious challenge to what appears to be an extremely haphazard and inefficient method of selection.

The formal provisions at the State and Commonwealth levels vary, but the selection methods are broadly similar. In New South Wales, the authority of a justice to act is derived from a Commission signed by the Governor and the Chief Secretary.<sup>72</sup> In the Australian Capital Territory, justices do not hold a commission of the peace, but are appointed by the Attorney-General on his own authority under a provision of the Seat of Government Administration Ordinance. Residentially qualified J.P.s from Australian States are accepted on application. The ACT justice also is specifically restricted to the types of 'executive' functions that the New South Wales justices normally perform, rather than 'judicial' functions. At both levels of government, appointments may be withdrawn, but only for 'cause'.

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<sup>71</sup> J. Baalman, Outline of Law in Australia, Law Book Co., Sydney, 2nd ed., 1955, p.36.

<sup>72</sup> For detailed provisions, see Judge D.S. Edwards, An Outline of the Duties of Justices of the Peace in New South Wales, Law Book Co., Sydney, 7th ed., 1959, pp.1-5.



At both levels of government, the part played by the appointing authority in the selection of justices is essentially a passive one, being largely restricted to refusing applications which are subject to adverse police reports or are considered inappropriate for other, often technical, reasons. Because of the convenience of having justices available in large organisations to witness signatures, and perform similar tasks, many nominations are sponsored by the organisations themselves, the individuals concerned being selected, in a sense, ex-officio. While for these individuals and for other justices too, the functions performed are, in themselves, unrewarding and unrewarded, appointment does have a vague aura of status and prestige attached to it. This seems to derive partly from the historical links with the British prototype and partly because the initials 'J.P.' themselves distinguish those who are entitled to use them from those who are not. The following parliamentary question and answer is informative in this connection:

Mr Shannon: In view of the proximity of Christmas and the anxiety of a number of persons to become justice of the peace, can the Colonial Secretary inform the House when the new list of justices of the peace will be issued?

Captain Chaffey: I think I shall have the pleasure of giving these good people a Christmas box next week.<sup>73</sup>

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<sup>73</sup> NSW Parl. Debs., vol.146, 1935, p.1925.

The right to nominate individuals for selection as J.P. is vested by custom in the local member of Parliament, whether he is a Government or Opposition member. Nomination, therefore, is one of the patronage prerogatives available to the local member. A measure of the extent to which the prerogative has been used is that one observer could report some years ago that 'in Australia at the present time there are upwards of 100,000 justices, of whom about 70,000 are in New South Wales'.<sup>74</sup> The current number in the Australian Capital Territory is of the order of 600. In New South Wales, the number of justices and uncertainty regarding how many remain active, has led to attempts to bring some order into the lists. Thus in 1931, a circular letter was addressed to the listed total of 26,803 who were asked to advise their current whereabouts. The 4,090 who failed to respond were struck off the lists.

There has been some questioning of the ways in which police reports are handled.<sup>75</sup> There have also been sporadic charges of political bias in the making of appointments. In 1936, for example, the Colonial Secretary, in reply to a Parliamentary question, said that he had made two recommendations himself because the local member had refused to do so.<sup>76</sup> The more usual

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<sup>74</sup> J. Baalman, Outline of Law in Australia, Law Book Co., Sydney, 2nd ed., 1955, p.36.

<sup>75</sup> See, e.g. NSW Parl Debs., 2nd series, vol.116, 1928, pp.2902-3; vol.145, 1935, p.890; vol.146, 1935, p.1230.

<sup>76</sup> NSW Parl Debs., 2nd series, vol.148, 1936, pp.3777-8.

complaint has been that the Colonial Secretary has ignored recommendations made by the local member or has made nominations without consulting him.

Magistrates and Queen's Counsel have little patronage significance, but a few brief comments will be offered to complete the picture. Both New South Wales and Commonwealth magistrates have tended to be drawn from the clerks of petty sessions and the occupants of other administrative posts connected with the courts. This pattern of selection has been attacked from time to time as (a) conducive to a bias in favour of police evidence, and (b) inhibiting to the necessary degree of independence because the magistrates come under control of the Public Service Board.<sup>77</sup>

The power to appoint QCs is vested in the Governor on the recommendation of the State Attorney-General. The Commonwealth Government also has power to appoint QCs, but to date has appointed only one, Sir Kenneth Bailey, former Solicitor-General and Secretary of the Attorney-General's Department. The patronage possibilities are reduced by the fact that the QC will only be able to make a success of his practice if his professional standing is sufficient to attract a regular flow of briefs from the solicitors. Although two Attorneys-General (T.R. Bavin in 1924 and C.E. Martin in 1952) and one Minister for Justice (V.H. Treatt in 1940) have taken silk on the recommendation of their Cabinet colleagues, I have seen no evidence to suggest that this prerogative has been exercised for party political purposes to any significant extent.

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<sup>77</sup> See e.g. S.M.H., 29 Aug., 1958, pp.2, 3; 30 Aug., 1958, p.2; 5 Sept., 1958, p.2.

CHAPTER 7  
OVERSEAS APPOINTMENTS

As in the case of judicial appointments, the status and other advantages attaching to overseas appointments make them attractive propositions to seekers and dispensers of political rewards and inducements. The potential value of this source of patronage is enhanced by the fact that diplomacy as a profession is not the closed shop that law is. While career diplomats are expected to have academic qualifications and to serve a lengthy apprenticeship in the lower administrative offices both at home and abroad, they do not enjoy a monopoly of the available diplomatic posts.

The Commonwealth Constitution formally envisaged 'external affairs' as a concurrent rather than an exclusive power, but diplomacy is obviously a prerogative of national rather than State Governments. Although the functions of State Agents-General parallel those of Commonwealth High Commissioners, the staffing and operation of the Diplomatic Service is the responsibility of the Commonwealth Government. Even outside the diplomatic area, the Commonwealth has maintained a much more substantial overseas presence than the States. The central preoccupation of this chapter, therefore, is with appointments made by Commonwealth Governments,<sup>1</sup> with diplomatic posts as the most important individual focus of interest.

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<sup>1</sup> The basic material and much of the text for the sections dealing with Commonwealth appointments has been published under the title of 'Australia's Overseas Representation and Government Patronage' in Australian Outlook, Vol.23, 1969, pp.120-143.

Although the original seven Commonwealth Departments included a Department of External Affairs, Australia's Diplomatic Service was not established until the Second World War, its major development taking place since the war. A High Commission was established in London in 1909 as a basis for improving two-way communications between the United Kingdom and Australian Governments, but the High Commissioner was, as he still is, responsible to the Prime Minister rather than the Minister for External Affairs. In 1924, a liaison officer, in the person of R.G. Casey, was appointed to supplement the efforts of the High Commissioner. The liaison officer subsequently became subject to the control of the External Affairs Department, thereby creating a system of dual representation in London. The Minister for External Affairs is responsible for all other diplomatic appointments, including those of High Commissioners to other Commonwealth countries.

The next stage in the pre-history of the Diplomatic Service was the 1937 appointment of F.K. Officer as Australian Counsellor attached to the British Embassy in Washington, the first Australian diplomatic representative on foreign soil. With the coming of the Second World War, it became apparent that Australia could neither 'contract out' of world affairs nor rely completely on Britain to look after her interests.<sup>2</sup> In January 1940, Casey, who was by that time a Cabinet Minister, was appointed as Minister in Washington, thus being Australia's

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<sup>2</sup> As early as April 1939, the Prime Minister (R.G. Menzies) had foreshadowed the opening of legations in Washington and Tokyo, but these did not eventuate until 1940.

first fully-accredited representative in a foreign country. This appointment was followed in short order by the establishment of a High Commission in Canada, and diplomatic posts in Japan, New Caledonia, Portuguese Timor, Malaya and China. Over the next few years, diplomatic representation was extended to many other countries in all parts of the world. By August 1968, there were 32 Embassies in foreign countries, 14 High Commissions in Commonwealth countries, a Commission in Fiji, two missions to the United Nations and one to the European Economic Community, a total of 50 posts.

In the early stages, there was neither a career diplomatic structure nor even a substantial policy and administrative establishment in the Department of External Affairs as a basis for the recruitment of diplomats. Casey had been recruited from outside the Public Service but Officer, a former member of the British Colonial Service, was on the staff of the External Affairs Department when appointed to Washington in 1937.<sup>3</sup> The Department had placed emphasis on the recruitment of university graduates before the war, but it was not until 1943 that the first 'diplomatic cadet' scheme was instituted to provide for the training of future diplomats on an organised professional basis. The pre-war graduate recruits and the subsequent cadet intake<sup>4</sup> have provided the career core for the Diplomatic Service in later years.

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<sup>3</sup> He was, in fact, the Department's representative in London from 1933.

<sup>4</sup> The 'cadet' part of the designation of trainees has been dropped in recent years.

The unavailability of trained career officers at the outset and the rapid growth of overseas representation made it inevitable that a significant number of diplomatic posts would have to be filled from outside sources. The remainder of this section is devoted to an analysis of the sources which have been tapped by Commonwealth Governments, with particular emphasis on cases where individual appointees have had parliamentary experience or known political affiliations.

Since Casey's 1924 appointment was not only the fore-runner of the future Diplomatic Service, but also the effective starting point of his own unique public career, some attention should be paid to the circumstances under which it came about. The position was advertised both within and outside the Public Service. Casey was a graduate of Melbourne and Cambridge universities and held decorations from the First World War, as well as having the right social connections. Contemporary critics of the appointment suggested that the social connections were the crucial factor.<sup>5</sup> Some support for this view is offered in a recent account of Bruce's retrospective version of the events leading to the appointment. Bruce is reported to have stated in an interview that:

When I arrived back in Australia, our Richard Casey... came to see me one night as a personal friend. While I was talking to him I said I had the perfect job for him and outlined the proposal for a liaison officer in London..... The next morning when I arrived at the office Richard was on the doorstep and told me that if I had been serious the night before he was prepared to drop everything and take on the job.<sup>6</sup>

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<sup>5</sup> See C.P.D., vol.109, 1924, pp.5213-7, 5224-7, 5323-31 for charges by F. Anstey, and replies by S.M. Bruce.

<sup>6</sup> Cecil Edwards, Bruce of Melbourne: Man of Two Worlds, Heinemann, London, 1965, p.86.

While Bruce would presumably argue that his sole concern was to select the best man for the job, this version, if an authentic outline of the sequence of events,<sup>7</sup> suggests that this was in fact a patronage appointment, though not specifically party-political.<sup>8</sup>

In my examination of the pattern of appointments, I have identified a total of 120 individuals<sup>9</sup> appointed as heads of mission since the establishment of the High Commission in London. Of these, 71 were 'career diplomats' at the time of their initial appointment and the others were 'outsiders'. Some of these outsiders (four on my count) have been absorbed into the career service<sup>10</sup> subsequently, but the remainder have served only one term. Of the 49 outsiders, 27 were or had been members of Parliament (23 Federal and 4 State) and a further three had known<sup>11</sup> party affiliations. The remainder consisted predominantly of former occupants of civil, judicial and military offices, but included also a

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<sup>7</sup> Bruce argued this way in 1924, but claimed that the decision was made by the Public Service Board. See C.P.D., vol.109, 1924, pp.5328-31.

<sup>8</sup> Later in the same passage, Edwards quoted Bruce as saying that he suggested in 1929 that Casey return to Australia and 'get into politics'. See ibid., p.87.

<sup>9</sup> This list is intended to be exhaustive, but one or two may have escaped my net.

<sup>10</sup> Technically a genuine career officer is interchangeable between diplomatic posts and administrative positions in the home Department. When serving as head of mission, they are granted leave without pay from their substantive post. Those recruited from outside have not become career officers in this sense but have been restricted to overseas posts.

<sup>11</sup> i.e. Affiliations known to me.



former managing editor of the Sydney Morning Herald and three 'academics'. Brief details of the 49 non-career appointees are included in Table 4 below.

TABLE 4

'NON-CAREER' DIPLOMATS APPOINTED AS HEADS OF MISSION,  
1909-1968

| <u>Year</u> | <u>Name</u>      | <u>Post</u>             | <u>Political Background</u>    |
|-------------|------------------|-------------------------|--------------------------------|
| 1909        | Sir G.Reid       | HC to London            | MHR and former PM.             |
| 1915        | A.Fisher         | do.                     | PM.                            |
| 1921        | Sir J.Cook       | do.                     | Minister and former PM.        |
| 1927        | Sir G.Ryrie      | do.                     | MHR and former Asst. Minister. |
| 1932        | S.M.Bruce        | Resident Min. in London | Minister and former PM         |
| 1933        | do.              | HC to London            | do.                            |
| 1940        | R.G.Casey        | Min. to Washington      | Minister.                      |
| 1940        | Sir T.W. Glasgow | HC to Canada            | Former Min. and Senator.       |
| 1940        | Sir J.G.Latham   | Min. to Japan           | Former Minister.               |
| 1941        | Sir F.Eggleston  | Min. to China           | Former State Minister.         |
| 1942        | Sir O.Dixon      | Min. to Washington      | - (Justice of High Court)      |
| 1943        | W.Slater         | Min. to Moscow          | State Minister.                |
| 1943        | J.J.Maloney      | do.                     | State MLC                      |
| 1943        | T.G.D'Alton      | HC to NZ                | State Dep.Premier.             |
| 1943        | Sir I.Mackay     | HC to India             | - (A Lt.General)               |
| 1945        | D.B.Copland      | Min. to China           | - (Academic)                   |
| 1945        | J.Beasley        | Res.Min. in London      | Minister                       |
| 1946        | do.              | HC to London            | do.                            |
| 1945        | J.S.Duncan       | Min. to Chile           | - (public servant)             |
| 1946        | Sir G.Knowles    | HC to South Africa      | - do.                          |
| 1946        | N.Makin          | Min. to Washington      | Minister.                      |
| 1946        | do.              | Ambass. to Washington   | do.                            |
| 1946        | W.J.Dignam       | HC to Eire              | Party member.                  |
| 1946        | F.M.Forde        | HC to Canada            | Former PM and Dep.PM           |
| 1946        | A.R.Cutler       | HC to NZ                | - (VC winner)                  |
| 1947        | C.W.Frost        | Commsnr.to Ceylon       | Former Minister.               |
| 1948        | do.              | HC to Ceylon            | do.                            |

| <u>Year</u> | <u>Name</u>           | <u>Post</u>              | <u>Political Background</u> |
|-------------|-----------------------|--------------------------|-----------------------------|
| 1947        | W.Macmahon Ball       | Min.to Japan             | - (Academic)                |
| 1950        | G.D.Moore             | Min.to<br>Philippines    | - (a Rear-Admiral)          |
| 1950        | E.J.Harrison          | Res.Min. in<br>London    | Minister.                   |
| 1951        | P.C.Spender           | Ambass.to<br>Washington  | do.                         |
| 1951        | T.W.White             | HC to London             | do.                         |
| 1952        | L.E.Beavis            | HC to Pakistan           | - (a Maj.-Gen.)             |
| 1952        | W.R.Crocker           | HC to India              | - (Academic)                |
| 1953        | H.A.McClure-<br>Smith | Min.to Egypt             | - (newspaper ed.)           |
| 1953        | D.P.McGuire           | Ambass.to<br>Ireland*    | - (Litterateur)             |
| 1954        | do.                   | Ambass.to Italy          | - do.                       |
| 1954        | W.Cawthorn            | HC to Pakistan           | - (a Maj.-Gen.)             |
| 1956        | Sir E.J.<br>Harrison  | HC to London             | Minister.                   |
| 1956        | Sir J.Collins         | HC to NZ                 | - (a Vice-Admiral)          |
| 1957        | D.McKinnon            | Min.to Brazil            | Party official              |
| 1957        | H.Beale               | Ambass.to<br>Washington  | Minister.                   |
| 1958        | Sir E.McCarthy        | Ambass.to The<br>Hague   | - (public servant)          |
| 1962        | Dr.D.A.<br>Cameron    | HC to NZ                 | Former Minister.            |
| 1963        | A.Townley             | Ambass.to<br>Washington+ | Minister.                   |
| 1964        | Sir K.Bailey          | HC to Canada             | - (public servant)          |
| 1964        | A.Downer              | HC to London             | Minister.                   |
| 1965        | H.S.Roberton          | Ambass.to<br>Ireland     | do.                         |
| 1965        | Sir A.Brown           | Ambass.to<br>Tokyo       | - (public servant)          |
| 1965        | H.B.Gullett           | Ambass.to<br>Greece      | Former Govt.Whip.           |
| 1966        | H.F.Opperman          | HC to Malta              | Minister.                   |
| 1967        | E.D.McKinnon          | Ambass to<br>Argentine   | Former MHR.                 |
| 1967        | E.Hicks               | HC to NZ                 | - (public servant)          |
| 1968        | Lt.Col.R.<br>Honner   | Ambass.to<br>Ireland     | Party official.             |
| 1968        | A.W.R.McNicoll        | Ambass to<br>Turkey      | - (a Vice-Admiral)          |

\* Appointment cancelled because of dispute with Ireland over letters of credence.

+ Died without taking up post.

The following comments on each of the 30 non-career appointees with known party affiliations and other appointees considered to be of interest are intended to supplement the summary information contained in Table 4.

The High Commission in London was established initially to highlight and sustain the special relationship between the two countries, and the ritual significance of the office has continued to dominate both the conduct of the Commission and the nature of appointments to the post of High Commissioner.

The initial pattern was for the post to be used as an honourable exit by which former Prime Ministers could vacate the local political scene. Reid's appointment facilitated the formation of Deakin's 'Fusion Government' by removing his 'bete noir'. For Fisher it was a restful haven from the strain of office and for Cook it appears to have been a reward for past services. The chain was broken with the appointment of Ryrle, a point which was not lost on him. As he put it, he 'was a rank outsider', and he had 'wondered and marvelled why the position was not offered to Mr Hughes, and if it was offered to him, why he did not accept it...'<sup>12</sup> Hughes would have maintained the sequence of superannuated Prime Ministers. Bruce's biographer reports that:

Hughes often hinted privately that he expected to be appointed High Commissioner', but after his demotion, he 'almost immediately began

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<sup>12</sup> As reported in Sydney Morning Herald, 31st March, 1927.

to behave in a way unlike that of one with a lively sense of favours to come. Bruce denied that any promise was made to Hughes, who, he believed, would have been most unsuitable for the post'.<sup>13</sup>

Bruce's appointment as Resident Minister was initially regarded as a temporary one to allow him to deal with financial problems engendered by the Depression, but the traditional pattern was resumed when he was appointed High Commissioner. He was reappointed in 1938 by Lyons and war-time difficulties led to his reappointment by Curtin in 1943.

The pre-war pattern was not repeated in the post-war period. Beasley's appointment was to some extent a reward for services rendered and the same appears to be true of Harrison, while D. Whittington has suggested that White's appointment was motivated by a desire on the part of Menzies to remove an old rival.<sup>14</sup> These first three post-war appointees were all senior Ministers, but the Downer appointment seems to indicate that the attraction of the post has declined. There has been a paucity of former Prime Ministers available for selection in recent years and other senior Ministers do not appear to have been keen to go into political limbo.

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<sup>13</sup> Cecil Edwards, op.cit., p.75.

<sup>14</sup> In The Australian, 21 Jan., 1966. This seems to overrate White's political standing, but see also Don Whittington, The Rulers, op.cit., pp.23-4.

There were sporadic rumours during the 1950s that Menzies himself was interested in the post, or in an aggrandised version of it. Whether or not there was any substance in these reports, he failed to take the plunge.

The pattern of appointment to the senior Washington post has been similar to that for London. It was the first Australian diplomatic mission in a foreign country and the appointment of Casey as the first Minister was accepted as a symbol of the importance attached to relations with the United States. While there is a widespread feeling that the Prime Minister's (Menzies) motives were not unmixed, it would hardly be possible to envisage any single Australian who could have matched Casey's unique combination of political and diplomatic qualifications for the post. When he was called away for a wider Commonwealth role, he was replaced by Sir Owen Dixon who was granted leave from the High Court. Until the appointment of Sir Keith Waller in 1964, Dixon was the only 'non-political' appointee to the post. On Dixon's recall to the Bench in 1944, his place was taken by Eggleston who had been the first Minister to China. While he had had State parliamentary and Ministerial experience in the non-Labor interest, his initial appointment does not appear to have been politically motivated.

Makin's appointment became effective at the same time as Beasley's to London. Like Beasley, Makin was to hold his place in the Ministry until the election. About four months after his appointment, his load was relieved by the appointment of one of the top career officers, A. Stirling, as Minister to assist him,

Stirling being replaced as High Commissioner in Canada by F.M. Forde. The policy of selecting a senior Minister was continued when Spender was appointed, as was the practice of appointing a career diplomat to assist.

One of the cornerstones of the Menzies myth is that the Spender appointment, like the Casey one, was a notable example of his skill at purging his Cabinet of potential dangers to his dominance. The plausibility of this interpretation was enhanced by the fact that Spender 'had been one of the main conspirators against Menzies in 1940-41, and was the only real threat to Menzies' leadership after 1949'.<sup>15</sup> The official explanation was that Spender's health was affected by the stress of ministerial office and in particular by the need to commute between Sydney and Melbourne. Chifley captured the general reaction to this version in his diagnosis that 'Mr Spender may have proved to be a pain in the neck to the Prime Minister'.<sup>16</sup>

Beale's appointment seems to fall clearly into what had become the normal pattern for Washington and London, but the problem of appointing a successor appears to have been one of the most vexing ones faced by Australian governments in this area. Against a background of persistent and widespread rumours that a number of Ministers had been approached without success, the

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<sup>15</sup> Don Whittington, op.cit., p.27. See also K. West, op.cit., p.223

<sup>16</sup> In an election speech quoted in Sydney Morning Herald, 17 April 1951.

the ailing Townley was selected, but died before he could take up the post. His death led to a fresh round of speculations and the choice of Waller was generally seen as forced on Menzies by his failure to find a suitable Minister prepared to go.

Appointments to individual posts other than London and Washington have not been pre-empted for politicians, although there is a clear tendency for them to miss out on some of the more arduous posts. None of the non-career diplomats, whether politically affiliated or not, has been appointed to a post in Africa apart from South Africa. The only foreign posts in Asia filled by 'political' appointees have been Japan and China (by Latham and Eggleston under the special circumstances of the war). The other posts filled have been High Commissionerships in Canada (2), New Zealand (2), Eire, Ceylon and Malta and Embassies or Legations in Russia (2 short-term war-time appointments), Ireland (2), Greece, Brazil and Argentina.

The most fruitful way of describing the pattern of appointment to these other posts seems to be to discuss them in chronological order. Following the first war-time Labor appointment, that of Dixon, Evatt's choice of Slater, Maloney and D'Alton appears on the surface to fall clearly into the pattern of a distribution of the fruits of office to the Party faithful but there was apparently more to it than that. Slater, appointed because it was thought that a 'sympathiser' would help to smooth relationships with the Soviet Government relinquished office on formal grounds of ill-health but the view has been expressed that the real reason was his deep disillusionment with the Soviet system. Maloney, a right-winger, was

apparently selected as a reaction to the failure of the Slater appointment. It has been suggested, also, that there were unusual circumstances surrounding the appointment of D'Alton. These appointments were followed by the despatch of a general to India and the first three career diplomats to become heads of missions were appointed in 1945. There was a reversion to what is generally regarded as the traditional Labor pattern when Dignam, a barrister and Labor Party activist who later became a judge of the NSW Workers' Compensation Commission, was appointed to Eire. Following defeat at the 1946 election, Forde was compensated with the High Commissionership in Canada at the expense of the career officer, A. Stirling, who was appointed as backstop to Makin in Washington until he became High Commissioner in South Africa in 1948. Former Repatriation Minister Frost,<sup>17</sup> defeated at the same election, went to Ceylon as the first Australian Commissioner. He became High Commissioner when Ceylon achieved Dominion status in February 1948, but had fame of a different sort thrust upon him when Menzies terminated his appointment in October 1950. Menzies had protested that Frost was unsuited for the post at the time of his initial appointment. The Ceylon post was again a source of contention in 1951 when Dr J. Burton, the former Secretary of the Department of External Affairs left to contest the Lowe seat as a Labor candidate.

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<sup>17</sup> Frost was the fifth defeated Labor Party member to receive an appointment, others being Breen (trade commissioner), Mountjoy (executive of CSIRO) and Bryson (private secretary to a Minister). The spirit of the overseas appointments was captured for posterity by a pungent Frith cartoon in the SMH on 12th December 1946.



While Cutler did not have any formal political affiliations, it has been suggested that his appointment was not without political significance. Awarded a VC in 1941, his status as a war hero was used for patriotic propaganda and he became NSW Secretary of the RSL. Dr Evatt's former private secretary has suggested that it was because Evatt sensed a move by the UAP to use him as a candidate in a 'khaki election' that he invited him to accept a post in the Attorney-General's Department in 1943.<sup>18</sup> He subsequently became an Assistant Commissioner in the Repatriation Department until accepting the New Zealand appointment.

The appointment of career diplomats accelerated in the early years of the Menzies Governments, and apart from the London and Washington posts, the non-career appointees were essentially 'non-political' until 1957 when D. McKinnon established the first leg of a unique family double. To date, he and his brother E.D. McKinnon are the only two blood relations to have been appointed as heads of overseas missions. Following a gap of five years after Beale's appointment, there was a resurgence of 'political' appointments in the 1960s. Gullett had been retired from Parliament for some years and E. McKinnon had not sought re-election, while Honner was not a parliamentarian, but the others were drafted from the ranks of the Ministry. The Opperman appointment has generally been interpreted as a 'sacking' motivated by the need for interstate balance in the Ministry. The innocuous nature of the post would appear to offer some

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<sup>18</sup> A. Dalziel, Evatt the Enigma, Lansdowne Press, Melbourne, 1967, p.33.

support for this view, although his Immigration background is directly relevant to the major preoccupation of Australian-Maltese relations. The others appear to have been more in the nature of rewards for past service.

## II

Appointment as an Ambassador or High Commissioner has a special attraction to aspirants for office and is also a strong inducement to those who would prefer to stay where they are. Part of the mystique surrounding ambassadorial status seems to have rubbed off on the more mundane overseas offices and this has permitted a widening of the scope for patronage appointments beyond the diplomatic area. The main categories of such offices available are consular appointments, Administrators of individual external territories,<sup>19</sup> representatives on international organisations, trade commissioners, and immigration officers.

The first Australian consular appointment was made in 1945. The nominee, C.V. Kellway, a senior career public servant, was appointed to the post of Consul-General in New York. He subsequently<sup>20</sup> became the first Minister to Italy. With one notable exception, all subsequent consular appointees I have identified have been career officers. The exception was J. Francis, non-Labor Minister for the Army and Navy who resigned in November 1955 to accept the post of Consul-General in New York. He was stated to have been offered the

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<sup>19</sup> External territories are included because such appointments are in fact 'overseas' posts. Logically, there are close affinities between these offices and those of Administrator of internal territories. Brief comments will also be made on some appointments in the latter category.

<sup>20</sup> In 1949.

position somewhat earlier but to have refused to step down from ministerial office initially.<sup>21</sup>

Many of the early Administrators of the external territories were senior Army officers, but some of these were or had been political activists. Of the individual appointments I have identified in this area, there are nine which seem to have some political relevance. These are discussed briefly below:

1. Brig.-Gen. E.A. Wisdom, one of the early Administrators of New Guinea (appointed in 1921) had been a non-Labor MLA in Western Australia in 1911-17.
2. Brig.-Gen. W.R. McNicoll, non-Labor MHR, resigned in 1934 to accept the office of Administrator of New Guinea.
3. Maj.-Gen. Sir C. Rosenthal, a NSW non-Labor MLA in 1922-24 and appointed to the Legislative Council in 1936, stood down from the Council in 1937 to accept appointment to Norfolk Island.
4. Lt.Col. Chalmers, appointed as Administrator of Nauru in 1938, does not appear to have had direct political affiliations, but Hughes, in announcing the appointment, noted that he had been strongly recommended by Wisdom (see above) and Maj.-Gen. Sir John Gellibrand who had been a non-Labor MHR in 1925-28.<sup>22</sup>
5. Lt.Col. J.K. Murray's term as Administrator of Papua-New Guinea was notable for the circumstances surrounding the termination of his appointment rather than for the initial appointment. He was

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<sup>21</sup> See S.M.H., 5 Nov., 1955, pp.1, 2 for background information and critical leader.

<sup>22</sup> S.M.H., 3 Sept., 1938, p.11.

appointed by the Labor Government in 1945 largely on the basis of his background as an agricultural expert. Following the appointment of Hasluck as Minister for Territories in 1951, he was dismissed in 1952 to the accompaniment of a chorus of protests by religious leaders in the Territory and on the mainland. His dismissal was followed by an acrimonious exchange between him and the Minister. Murray claimed, and the missionary element feared, that the dismissal presaged a change of policy to the detriment of the indigenous population, and Murray also stated that:

...it appears that the Prime Minister and Mr Hasluck believe that colonial administration will be best provided here by the appointment of a person highly experienced in organizing successful post-war election campaigns'.<sup>23</sup>

Hasluck countered by suggesting that the strain of office and tropical conditions had combined to sap Murray's strength, although a recent report<sup>24</sup> of Murray's return to the Territory to deliver a paper at a Seminar on Melanesian history, conveys the impression that the diagnosis of administrative senility may have been premature. He also refuted Murray's suggestion of political motivation by pointing out that the acting Administrator, Cleland, who had been chosen as the first Assistant Administrator from a field of 120 applicants in 1951,

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<sup>23</sup> As reported in S.M.H., 11th July 1952, p.2. See also 11, 18 June; 2, 3, 14 July. See also C.P.D., vol.218, 1952, pp.1456-66 (Urgency Debate); vol.219, 1952, pp.1686-7, 1772-1777 (Adjournment).

<sup>24</sup> B. Jinks in Nation, 22 June 1968.

had very sound qualifications for the post. Hasluck, however, omitted to mention Cleland's political pedigree.

6. Brig. D.M. Cleland, appointed to succeed Murray in 1953, had been chairman of the State Executive of the Nationalist Party of WA from 1936-1939, Vice-President of the WA Division of the Liberal Party in 1945, and the Director of the Federal Secretariat of the Liberal Party in 1945-51. In addition, he had been an unsuccessful Nationalist candidate at the 1933, 1936 and 1939 WA State elections as well as being an unsuccessful Liberal candidate in the 1945 Federal by-election for Fremantle.
7. In 1945, A. Wilson, retiring from the House of Representatives for health reasons, was appointed Administrator of Norfolk Island to replace Rosenthal. As an Independent member with a Country Party background, his vote, together with that of A.W. Coles, was decisive in the parliamentary defeat of the Fadden Government in 1941. The Minister for Territories, E. Ward, in announcing the appointment commented that Wilson had to be strongly pressed to accept it.<sup>25</sup> In the following year, the Opposition attacked the appointment on the grounds that it was a political plum, was not advertised and was unfair to returned servicemen.<sup>26</sup>
8. R.S. Richards, Labor Party Opposition Leader in South Australia since 1938 and a former Premier,

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<sup>25</sup> S.M.H., 23 Nov., 1945, p.4.

<sup>26</sup> C.P.D., vol.186, 1946, pp.37, 147, 1066, 1433; vol.187, 1946, pp.1481-2, 1485-6.

was selected as Administrator of Nauru in 1949 from a field of 243 applicants. His appointment had been rumoured for some weeks before the announcement was made.<sup>27</sup>

9. R.B. Nott had been plucked from the NSW Labor Cabinet by the Federal LCP Government in 1961 to fill the post of Administrator of the Northern Territory. He transferred to the external territory of Norfolk Island in 1964, apparently at his own request, and was replaced in Darwin by R.L. Dean, a Liberal member of the Federal Parliament.

The office of Administrator of the Northern Territory is not an overseas one, but because of the affinities with appointments to the corresponding post in Papua/NewGuinea, it warrants discussion here. There have been two 'political' appointments to the Northern Territory post in addition to Nott and Dean. That of C.L.A. Abbott, Country Party member for Gwydir, appointed in 1937, aroused a major controversy because of Abbott's commercial interests in the Territory.<sup>28</sup> F.J.S. Wise, a former Labor Premier of Western Australia and then in Opposition, was appointed by the Menzies Government in 1951. His appointment was not controversial because of his background as an expert in tropical agriculture.

At least three Australian appointees to international organisations have had clear party affiliations. The first of these, Sir B.S.B. Stevens, former NSW Premier,

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<sup>27</sup> C.P.D., vol.204, 1949, pp.725, 1050. See also S.M.H., 12, 18, 21 Oct., 1949.

<sup>28</sup> See S.M.H., 22 Oct., 29 Oct., 12 Nov., 30 Dec., 1936; 5, 7, 12, 15 Jan., 13 March 1937.

was chosen as Australian representative on the Eastern Group Supply Council in Delhi in 1941. His selection was strongly criticised by Labor members of the Advisory War Council<sup>29</sup> and Labor MPs kept up a sniping attack both in Opposition and in Government.<sup>30</sup> His fate was in the balance when the Curtin Government took over later in the year.<sup>31</sup> By 14th May 1942, the Minister for Supply could report that Stevens was no longer 'on the Commonwealth payroll'.<sup>32</sup>

In 1948, Maj.-Gen. C.E.M. Lloyd, unsuccessful candidate for Liberal pre-selection in a 1946 Federal election, was appointed by the Labor Government as the Australian representative on the International Refugee Organisation. In 1958, Sir Percy Spender was elected as a Justice of the International Court of Justice. Formally, Justices are elected by the General Assembly of the United Nations. Nominations are submitted by individual governments, but on the basis of recommendations made independently of the Government by national selection committees composed of eminent lawyers. While appointees are not representatives of their home governments in any sense, and despite the fact that such appointments are not technically in the Government's gift, two aspects of the Spender appointment are worthy of note. Sir Owen Dixon, then Chief Justice and nominated as a member of the Australian selection panel, was reported to have dissociated himself from the selection on the grounds that it was inappropriate for him

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<sup>29</sup> S.M.H., 24 Jan 1941, p.10; 6 Feb., 1941, p.6.

<sup>30</sup> C.P.D., vol.166, 1941, pp.5, 44, 99-100, 147-8; vol.167, 1941, pp.74, 202, 464, 690.

<sup>31</sup> C.P.D., vol.169, 1941, pp.67, 130, 376, 397-8, 817, 892

<sup>32</sup> C.P.D., vol.170, 1942, p.1230.

to be associated with the appointment of a former member of the Government.<sup>33</sup> A month later, in reply to a question from E.G. Whitlam, the Minister for External Affairs, R.G. Casey, quoted a letter, dated 28th November 1956, from the Chief Justice in which he stated that: 'as I understand you are to put forward a nomination on behalf of the Government, I would not consider it appropriate for me as a Chief Justice to support or oppose the proposal'.<sup>34</sup> Lady Spender's treatment of the events leading to the nomination is also interesting. As in the case of his original selection for the Washington post, she reports Menzies as considering it unthinkable that Spender, then about to vacate the Washington post, should go back to private life. He therefore suggested that Spender should consider being nominated for election to the Court.<sup>35</sup>

Over the years there have been changes in the general approach to staffing Australia's trade commissioner posts. The Bruce Government's policy was to appoint people with commercial experience, whereas the Scullin Government opted for career public servants. In keeping with their policy, the Bruce Government had given R.A. Haynes a 5-year appointment as the first Trade Commissioner in Canada on 1st April 1929. In keeping with theirs, the Scullin Government recalled him

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<sup>33</sup> S.M.H., 10 April, 1957, p.8. (Report of letter from R.G. Casey to E.G. Whitlam).

<sup>34</sup> C.P.D., H of R, vol.15, 1947, p.1894. See also H of R vol.14, 1947, p.13.

<sup>35</sup> Jean Spender, Ambassador's Wife, Angus and Robertson, 1968, p.182. She did not attach a date to this discussion.



in February 1930. The change in policy was largely attributable to traditional Labor antipathy to businessmen and to the fact that public servants could be hired for less. The termination of Haynes's appointment was also influenced by the fact that he had supported a statement by a representative of an Australian firm to the effect that it was establishing works in Canada because of adverse industrial conditions in Australia.<sup>36</sup>

Although the Labor Government re-established a career trade commissioner service after the war in 1946, it appointed J.P. Breen, a defeated Labor member in the general election, without any obvious qualifications for the post, as trade commissioner for the Middle East.<sup>37</sup> So far as I know, this is the only direct political appointment to the service.

In the post-war period, individuals selected for overseas posts in connection with the immigration programme have been recruited largely from within the Public Service. Three appointees with firm political affiliations, however, were Mrs Nancy Wake, C. Chambers and W. Snedden. Mrs Wake, Evatt's opponent in Barton in the 1949 and 1951 elections, was appointed in 1950 as a welfare and information officer on board migrant ships. Chambers, a former Minister who was expelled from the ALP for criticising Evatt in 1957 and reinstated too late to secure preselection for his Adelaide seat, was appointed by the LCP Government as a selection officer

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<sup>36</sup> S.M.H., 29 Mar., 1930, p.15. See also 26, 27 Feb., 6 Mar., 1930.

<sup>37</sup> See S.M.H., 11-13, 16 Dec., 1946.

in Belfast in 1959, with subsequent postings to Rome and Scotland. Snedden, the present Minister for Immigration, was a selection officer in Italy and England over the period 1952-54. The Minister for Immigration at this time was the late Harold Holt, and Snedden had previously unsuccessfully contested a State and a Federal seat as a Liberal candidate. He entered Parliament shortly after this overseas experience, and Jonathon Gaul recently reported Holt as having stated that the purpose of his overseas tour of duty was 'to broaden him out'.<sup>38</sup>

### III

As I have mentioned, there are close affinities between the State Agencies-General and the Commonwealth High Commission in London. The State offices have a much longer history, having been created between 1858 and 1886. 'The Agent-General himself was regarded as a cross between an ambassador, a minister and a public servant'.<sup>39</sup> He was expected to represent the State at conferences and official functions, to act as its commercial agent and to attract bank loans, tourists and immigrants. Appointment was vested in the Governor-in-Council, on the recommendation of the Premier.

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<sup>38</sup> Canberra Times, 8 Jan., 1968.

<sup>39</sup> Barbara R. Penny, 'Establishing a Nineteenth Century Government Office - the Australian Agencies-General'. Public Administration (Sydney), vol.xxii, 1967, p.178.

As in the case of the State governments themselves, the arrival of Federation presaged a downgrading of the States' representatives. The establishment of the High Commission in London led not only to a relative decline in the status of the Agencies-General, but also to sporadic and at times powerful pressures for their abolition. Through the 1920s, the Supply and Estimates debates in the New South Wales Parliament occasioned regular challenges to the continuance of the office, criticism frequently coming from Government supporters as well as the Opposition. In 1927, the former Premier, Sir George Fuller, was initially appointed as Agent-General for a one-year term because Cabinet had decided to refer the whole question to the next Premiers' Conference.<sup>40</sup> The Loan Council arrangements, instituted at about that time, had served to underline the growing irrelevance of separate State representation. However, the Premiers decided to continue their separate representation and Fuller's term was extended to three years.<sup>41</sup>

In commenting on Bruce's appointment as the Commonwealth's Resident Minister in London in 1932, the Premier, J.T. Lang, stressed the need for the State to maintain its own representation 'so that the Australian position, put from Australia's point of view, may be always available in London'.<sup>42</sup> Later in the same year, however, the incoming non-Labor Premier, B.S.B. Stevens,

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<sup>40</sup> See S.M.H., 19 Nov., 1927, p.17; 21 Feb., 1928, p.11.

<sup>41</sup> S.M.H., 27 June 1928, p.13.

<sup>42</sup> S.M.H., 11 Feb., 1932, p.9.

abolished the office of Agent-General and reduced the size of the State's London establishment.<sup>43</sup> Two years later it appointed an 'official representative' to handle commercial and administrative matters and the office of Agent-General was restored in 1938. The office has been retained since that date, although it was not filled during most of the Second World War and it has sometimes been filled on a temporary basis.

The characteristic nineteenth century pattern for all of the Australian colonies was to appoint retired or retiring members of State Parliament, particularly Ministers, and sometimes even the Premier himself.<sup>44</sup> One modern observer has questioned the fashionable view that the Agency-General was 'simply a political tee-totum',<sup>45</sup> providing a convenient method for rewarding political services or for removing a political embarrassment. If there is some doubt about the motivations involved, however, it remains true that prior parliamentary experience was a common feature of most appointments.

Apart from the period when the office was in abeyance, the traditional pattern has been substantially repeated in New South Wales in the twentieth century, although the political standing of those accepting the office in recent years has been lower than previously.

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<sup>43</sup> The decision seems to have been strongly influenced by the dispute between the Lang-appointed Agent-General and the Stevens Government.

<sup>44</sup> Sometimes the expedient was adopted of appointing a London resident, usually a colonial expatriate.

<sup>45</sup> B.R. Penny, op.cit., p.184. See also pp.184-188.

With one notable exception, political calculation in the twentieth century appears to have been a more important factor than B. Penny's treatment suggests it was in the nineteenth. The exception, Sir Timothy Coghlan, doyen of Australian Government Statisticians, was Agent-General from 1905 to 1915 and also held the office on a permanent or temporary basis for most of the period from 1920 to 1926. Table 5 lists all of the occupants of the position since its inception.

TABLE 5

AGENTS-GENERAL FOR NEW SOUTH WALES

(Information supplied by Premier's Department)

| <u>Year</u> | <u>Name</u>                  | <u>Political Background</u>          |
|-------------|------------------------------|--------------------------------------|
| 1863        | Edward Hamilton              | ) not stated                         |
| 1864        | W.C. Mayne                   |                                      |
| 1870        | Charles Cowper               | Ex-Premier.                          |
| 1878        | William Forster              | Ex-Premier.                          |
| 1880        | Sir D.Cooper, Bart.          | Ex-Speaker.                          |
| 1880        | Saul Samuel                  | Ex-Minister.                         |
| 1899        | Sir J.E.Salomons             | Vice President of Executive Council. |
| 1900        | Henry Copeland               | Ex-Minister.                         |
| 1905        | T.A. Coghlan                 | - (ex-civil servant)                 |
| 1915        | B.R.Wise                     | Ex-Minister and Acting Premier.      |
| 1917        | C.G.Wade                     | Ex-Premier.                          |
| 1920        | D.R.Hall+                    | Vice President of Executive Council. |
| 1920        | Sir T.A.Coghlan              | - (ex-civil servant).                |
| 1925        | Sir A.A.C.Cocks              | Ex-Minister.                         |
| 1925        | Sir T.A.Coghlan              | - (ex-civil servant).                |
| 1926        | E.A.McTiernan (a/g)*         | Ex-Minister.                         |
| 1926        | Viscount Chelmsford          | Former Governor of NSW.              |
| 1928        | Sir G.W. Fuller              | Ex-Premier.                          |
| 1931        | A.C. Willis                  | Vice-President of Executive Council. |
| 1934        | A.E.Heath<br>(official rep.) | - (businessman)                      |
| 1938        | C.H.Hay                      | - (civil servant).                   |
| 1940        | H.A.Bland (a/g) x            | - (civil servant).                   |
| 1946        | J.M.Tully                    | Ex-Minister.                         |
| 1954        | F.P. Buckley                 | Ex-Minister.                         |
| 1965        | Abram Landa                  | Ex-Minister.                         |

+ Recalled without taking up post (not included in official list).

\* Acted for 6 weeks on death of Coghlan.

x Not on official list.

In 1915, Coghlan was replaced by B.R. Wise, former Minister and acting Premier. His successor was former Premier C.G. Wade, who had stood down as leader of the Liberals in favour of Fuller on the formation of Holman's Nationalist Ministry. Wade returned to New South Wales in 1920 to take his seat on the Bench of the Supreme Court. Wade's successor, D.R. Hall,<sup>46</sup> appointed by W.A. Holman, was recalled by the incoming Storey (Labor) Government before he reached London, Coghlan stepping in to fill the breach on a temporary basis. In 1925, A.A.C. Cocks, the Colonial Treasurer, was appointed by Bavin, but he was induced to resign later the same year, after correspondence with the incoming Premier J.T. Lang, who appointed Coghlan in his stead.<sup>47</sup>

In 1928, as already mentioned, Fuller was appointed by Bavin and at the conclusion of his term in 1931, A.C. Willis, MLC and Vice-President of the Executive Council in all of Lang's three Ministries, was appointed.<sup>48</sup> His occupancy of the office was short-lived. Accused by Stevens of distributing 'Lang repudiation propaganda', he was dismissed in 1932 and the office abolished.<sup>49</sup>

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<sup>46</sup> A former MHR and New South Wales MLC and MLA, he had been State Attorney-General under Holman both before and after the Labor Party split, and was vice-president of the Executive Council at the time of his nomination.

<sup>47</sup> See N.S.W. Parl.Debs., 2nd series, vol.102, pp.848-9, 1067-8.

<sup>48</sup> Willis, former President of the NSW Labor Party, had been appointed to the Legislative Council by Lang in 1925.

<sup>49</sup> See S.M.H., 22 June 1932; 2nd Jan., 1933.

The position of official representative, created in 1934, was filled by A.E. Heath, an accountant and company director. In 1938-39, the permanent head of the Premier's Department, C.H. Hay, acted as Agent-General, and he was followed by H.A. Bland, then a State public servant and currently permanent head of the Commonwealth Department of Defence. In 1946, the pattern of political appointments was resumed. J.M. Tully, who had been Minister for Lands since 1941 and had held the same portfolio in the third Lang Ministry, was the choice. He was replaced in 1954 by F.P. Buckley, MLC and Minister for Mines.

Buckley's replacement was A. Landa, appointed by the Askin non-Labor Government in 1965. Landa had been a Labor MLA since 1941 and a Minister for about 12 years. His appointment was generally interpreted as an attempt to win his Bondi seat for the Liberals.<sup>50</sup> The attempted coup, if such it was, failed by a handful of votes, but the New South Wales Executive of the Labor Party was sufficiently upset by Landa's acceptance of the post to expel him.<sup>51</sup>

The London Agency-General is not the only overseas office maintained by the State Government. To a large extent the other offices<sup>52</sup> and the subsidiary positions in the London office have been staffed by public servants or individuals engaged from local sources. While political

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<sup>50</sup> See The Bulletin, 2 Oct.; 6, 13, Nov., 1965; 'Onlooker' in the Sun-Herald, 26 Sept., 14 Nov., 1965; Nation, 13 Nov., 1965; Douglas Brass in The Australian, 30 Sept., 1965.

<sup>51</sup> See The Australian, 22 Nov., 1965; The Bulletin, 6 Nov., 1965.

<sup>52</sup> Including the Administrator of Lord Howe Island and commercial offices in the USA.

considerations have no doubt intruded at times, I have encountered little evidence to suggest that political patronage has been a major factor. J.J. Cahill, as Premier, found it necessary in 1959 to deny that he was planning to create an office of Agent-General in New York and to translate himself into it.<sup>53</sup> In April 1968, the non-Labor Premier, R.W. Askin, announced that the Government was about to establish an Agency-General in Tokyo.<sup>54</sup> An office has been established but no appointment as Agent-General has yet been made.

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<sup>53</sup> See S.M.H., 20 Nov., 1957, p.6.

<sup>54</sup> N.S.W. Parl.Debs., 3rd series, 1968, p.199.



CHAPTER 8HONOURS AND AWARDS

In Britain, as we have noted, the honours system has been a fruitful source of political patronage and it has been able to serve a wide range of political functions. The avowedly-political nature of a significant proportion of awards is reflected in the fact that 'political and public services' is cited officially as a reason for granting honours.<sup>1</sup> The use of the honours prerogative for purposes other than rewarding faithful supporters is facilitated by the fact that a peerage is both an honour and an appointment, while the acceptance of a peerage is simultaneously a qualification for the Lords and a disqualification from the Commons.

While the honours system has been adopted in Australia, there are two major respects in which Australian practice departs from the British. A handful of Australians have been elevated to the peerage, but only Sir John Forrest, who died in 1918 on his way to take his seat in the House of Lords, was so honoured on the recommendation of the Commonwealth Government. It is generally accepted that the Prime Minister W.M. Hughes, deliberately chose this as a means of inducing Forrest to quit the Cabinet,<sup>2</sup> but the fact remains that this avenue is not freely available to Australian Prime

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<sup>1</sup> See P.G. Richards, *op.cit.*, pp.214-217, for an analysis of the extent to which political honours are awarded.

<sup>2</sup> See e.g. L.F. Crisp, Australian National Government, *op.cit.*, p.326. For an account of the background to Forrest's nomination and departure from the Cabinet, see Frank C. Browne, They Called Him Billy: A Biography of the Right Honourable W.M. Hughes, P.C., M.P., Peter Huston, Sydney (undated), pp.134-136.

Ministers. In fact, in discussing the elevation of R.G. Casey in 1960, the Prime Minister, R.G. Menzies pointed out that life peerages were made on the recommendation of the British Prime Minister because the House of Lords formed part of the British Parliament. In outlining the sequence of events leading to the award, however, Mr Menzies indicated that it was on his initiative that the award had been made.<sup>3</sup>

The other major difference between the two countries lies in the attitudes and practice of the respective Labo(u)r Parties.<sup>4</sup> Although the perpetuation of the system has been attacked strongly in Labour Party and trade union circles in Britain over the years, British Labour Governments have continued to make recommendations for awards and members of the labour movement have continued to accept them. In 1936, the Party's conference produced a report which concluded 'that it would be impossible for the Labour Party to lay down a binding rule debarring members from accepting Honours'.<sup>5</sup> Harold Wilson, as Prime Minister has substituted life peerages for hereditary ones, has eschewed the award of baronetcies, and Labour Prime Ministers have generally conferred fewer political honours. Otherwise the main difference in the Labour lists has been in the affiliations of those receiving political awards.

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<sup>3</sup> See S.M.H., 25 Jan., 1960, p.1.

<sup>4</sup> See John Playford, 'The Labour Aristocracy', Outlook, Feb., 1968, pp.11-14.

<sup>5</sup> *ibid.*, p.11.

The Australian Labor Party has taken a stronger line against honours. In 1918, the following plank was inserted in the Federal Platform: 'Cessation of the practice of recommending Australian citizens for Imperial Honours'. After changes of wording in 1921 and 1930, the current provision of 'No knighthoods or like honours to Australian citizens' was inserted in 1955.<sup>6</sup> In practice, most Australian Labor Governments and most members of the party have observed the official policy, especially in regard to knighthoods. Labor Prime Ministers have restricted awards to military officers, the single exception being the Secretary of the Department of Defence, Sir Frederick Shedden, awarded a KCMG in 1943, apparently on the grounds that this would enable him to match the status of his opposite numbers from other countries. In 1923, a Labor member of the New South Wales Parliament, G. Cann, launched a motion directing the Speaker to advise the British authorities that the State did not approve of the granting of titles. The motion was passed in a snap vote with some of the non-Labor Government's supporters voting for it. The motion was not rescinded, but later non-Labor Governments and the British authorities regarded it as binding only for the life of the Parliament in which it was passed. Labor Governments in New South Wales consistently refused to make any awards<sup>7</sup> until 1954. In that year, the Birthday list included several awards below the level of

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<sup>6</sup> See ibid., p.12.

<sup>7</sup> The 1931 New Year list was not proceeded with because Lang refused to sanction a list of recommendations submitted by Bavin shortly before the latter's defeat.

knighthoods and subsequent Labor Governments continued the same practice.<sup>8</sup>

The traditional Labor Party abhorrence of the honours system is derived from the conjunction of the egalitarian and anti-imperialist (or Australian nationalist) strands of Party ideology. The whole structure of awards, of course, has a rigid hierarchical form, as reflected in the official orders of precedence and the fact that recipients of knighthoods and their wives are entitled to be addressed as 'Sir' and 'Lady' respectively. The hierarchical pattern is reflected, too, in the levels of award to which different 'classes' of people can aspire. This shows out particularly in awards to members of the armed forces where the level of award is linked rigidly with official rank. It also shows out clearly in awards to public servants and in the patterns of promotion of individuals through the various grades. The anti-imperialist strand in Labor attitudes derives from the fact that awards are made formally by the British sovereign, albeit in the capacity of Queen of Australia, and the most prolific awards since the inception of the Order have been in the various grades of the Order of the British Empire.

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<sup>8</sup> Some of the other State Governments have recommended honours, usually below knighthoods. One State Premier, Sir Robert Cosgrove, secured the award of a DBE for his wife in 1947 as well as accepting a KCMG~~%~~ for himself in 1959 shortly after his retirement.

In addition to the weakening in the traditional attitudes on the part of State Governments, there is some evidence of tendencies in the same direction at the Federal parliamentary level.<sup>9</sup> In 1965, a Labor member asked the Prime Minister if he did not:

...feel that Australia should be able to honour her distinguished sons and daughters for their services, without resort to the titles and honours of the United Kingdom? Will he consider the establishment of an appropriate Australian award?<sup>10</sup>

His parliamentary leader has subsequently raised the issue in the House on three separate occasions. In May 1967 he prefaced a question with claims that awards of the Order of the British Empire created embarrassment to Australian recipients in overseas countries and bewilderment to their overseas contacts. He drew pointed attention to the newly-adopted Canadian system of national honours which excluded titles.<sup>11</sup> Later in the same year he asked the Prime Minister if he could state 'when awards in the Order of the British Empire will cease?'.<sup>12</sup> In May 1969, he brought the two strands of his approach together by

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<sup>9</sup> Senator Tangney escaped public criticism when she accepted a DBE in 1968, despite the fact that Senator Gair made a pointed reference to the breach of the Party platform. See C.P.D., Senate, 1968, pp.1567-8.

<sup>10</sup> C.P.D., H of R, vol.49, 1965, p.3405. The questioner was Mr M.D.Cross; Sir Robert Menzies, in conceding his readiness to 'give further thought to it at some convenient time', added that 'I do know what the result will be'.

<sup>11</sup> C.P.D., H of R, vol.55, 1967, p.2317. Canada had discontinued making recommendations before the Second World War, but instituted national awards in 1967, her centennial year. They are made by the Governor-General on the recommendation of an Advisory Council.

<sup>12</sup> C.P.D., H of R, vol.56, 1967, p.819. Mr Holt's answer was 'No'.

asking the Prime Minister whether he had considered 'establishing a system of national awards without titles in anticipation of Australia's bi-centenary as Canada did during her centennial year', and whether he was 'able to say which countries still recommend appointment to the anachronistic Order of the British Empire'.<sup>13</sup>

The position to which Mr Whitlam has moved seeks to make concessions to both elements in his party's traditional approach. Thus the institution of national awards would remove the imperial element and the abolition of titles would be a sop to egalitarianism. Playford suggests that Whitlam's approach derives from a penchant for following rather than leading public opinion and supports his case by reference to the findings of recent public opinion polls. The latest polls indicate only minor support for Imperial honours with substantial support for national awards.<sup>14</sup> This explanation appears plausible enough, but Mr Whitlam is also likely to have had in mind the patronage advantages, to a future Labor Government, of retaining

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<sup>13</sup> C.P.D., H of R, 29 and 30 May 1969, p.2580. Mr Gorton's answer to the first question was 'No'. The other countries still conferring British Empire awards were Barbados, Mauritius, New Zealand, Sierra Leone, The Gambia and the United Kingdom.

<sup>14</sup> op.cit., p.13. The figures quoted for a 1967 Australian Gallup Poll were 24 per cent in favour of Imperial honours, 43 per cent in favour of Australian awards, 24 per cent in favour of complete abolition and 9 per cent undecided.

some system of awards, and perhaps also the notion that outstanding contributions to national life should receive some such recognition. These arguments presuppose that he had some more positive purpose than merely to harass the Government.

One aspect of Labor's approach which appears to be at variance with its general attitude to honours has been the readiness of Commonwealth Prime Ministers to recommend the appointment of Privy Councillors. While a Privy Councillorship bestows no right to wear a decoration, it carries the title 'Right Honourable' and the letters 'P.C.' take order and precedence over all other orders and decorations except the V.C., the G.C. and the K.G. Appointment of new P.C.'s are also normally announced in conjunction with the regular honours lists. Although P.C.'s 'under summons' constitute the British Ministry, Australian Councillors have only a symbolic or occasional ceremonial role. The title is intended to be reserved for those who have given distinguished public service and Australian awards have been reserved mainly for senior Ministers, although it has also been the practice since 1963 for Justices of the High Court to be automatically appointed.<sup>15</sup> Critics have pointed to the apparent inconsistency in the Labor Party's attitudes, but I have not encountered any specific defence of the practice of nominating P.C.'s. It has been suggested that the fact that there is no right to wear a decoration 'emphasises the essentially democratic nature of this distinction which...recognises

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<sup>15</sup> Some former Governors-General and Mr A.A. Calwell (in 1967 shortly after relinquishing the position of Opposition Leader) have also been appointed.

no barriers of birth, fortune or environment.

The sole qualification is distinguished service to the Crown'.<sup>16</sup> While this argument is fully consonant with Labor principles, it is difficult to accept as the full answer, given the essentially honorific nature of the appointment. In any event, non-Labor Prime Ministers would presumably argue that they were observing similar principles in making recommendations for other awards.

Privy Councillorships aside, the main result of Labor Party attitudes is that the honours system, as a source of patronage, is exclusively a non-Labor prerogative at the Federal level, and is a more potent weapon for non-Labor Governments in New South Wales because of the Labor shunning of knighthoods. Since the advantages accruing from possession of the honours prerogative are a function of the total number of awards available and the processes of making selections, some attention will be paid to these aspects before the patterns of awards made are discussed.

In discussing the pattern of nomination, attention will be restricted for the most part to civil awards of the level of MBE and above. Personal awards conferred by the sovereign, including those of the Royal Victorian Order, and awards made on the recommendation of the British Government will be excluded. The list of exclusions thus extends to military awards, determined according to rank; Companionships of Honour, conferred traditionally by the sovereign on serving or former Prime Ministers; Garters, Thistles, British-conferred

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<sup>16</sup> Who's Who in Australia, 1965, p.29.



peerages, together with lesser awards such as the ISO, BEM and sundry Police and Firemen's Medals and the like. From the point of view of government patronage, the significant awards are those issued at the First Minister's discretion and these are essentially those included in the regular New Year and Birthday lists.

Because of the attitudes of Labor Governments, there were no Commonwealth lists in the years 1930-31 and 1942-49.<sup>17</sup> Because of war-time difficulties, there were no State or Commonwealth lists in 1940. In addition, there were no New South Wales lists for 1927, 1931-32, 1942-43. No knighthoods were included in that State's lists from 1954 to 1965 inclusive. These barren periods aside, the general pattern since 1927 has been one of steady expansion of the awards made in all categories.<sup>18</sup> In 1969, the Commonwealth and New South Wales awards in the various categories were as follows:

|          | <u>Knight-<br/>hoods.</u> | <u>CMG</u> | <u>CBE</u> | <u>OBE</u> | <u>MBE</u> | <u>Total</u> |
|----------|---------------------------|------------|------------|------------|------------|--------------|
| C'wealth | 19                        | 8          | 17         | 46         | 81         | 171          |
| N.S.W.   | 6                         | 2          | 4          | 13         | 26         | 51           |

Source: Prime Minister's Department.

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<sup>17</sup> With the exception of the KCMG awarded to Sir Frederick Shedden in 1943.

<sup>18</sup> Special quotas for such events as the Canberra inauguration in 1927, the Royal couple's Silver Jubilee in 1935 and the Coronation in 1937 did produce some distortions in the general pattern. For a table showing the total numbers of Commonwealth and individual State awards in each category from 1945 to 1965, see C.P.D., H of R, vol.48, 1965, pp.1471-3.

One of the most notable features of the statistical pattern is that the Commonwealth share for each of the awards is virtually identical with the combined total for all of the States. Thus in 1965, the respective Commonwealth and 'all States' totals were as follows:

|          | <u>Knight-<br/>hoods.</u> | <u>CMG</u> | <u>CBE</u> | <u>OBE</u> | <u>MBE</u> | <u>Totals</u> |
|----------|---------------------------|------------|------------|------------|------------|---------------|
| C'wealth | 14                        | 7          | 16         | 42         | 68         | 147           |
| States   | 10                        | 6          | 16         | 43         | 67         | 142           |

Source: C.P.D., H of R, vol.48, 1965, pp.1471-3.

Had New South Wales nominated four knights as Victoria did, the discrepancies would have been reduced to one in each of three categories and in total. In addition to this State/Commonwealth pattern, an examination of individual State figures shows that State shares vary roughly in proportion with their population.

Although the final honours lists are released to the public, the processes of selection and the considerations which lead to the recommendation of particular individuals are shrouded in a veil of secrecy. The mystique of the royal prerogative is allowed to obscure the fact that while the sovereign is the fount of honour, the First Minister mans the pump. In practice, what this means is that those responsible for making awards are able to avoid being called to account for their actions.

The main features of the procedural arrangements, as I have been able to piece them together, are broadly as follows:

- (a) The determination of total Australian quotas for each class of award is a matter for the British authorities and the quotas are normally reviewed on a quinquennial basis.

- (b) While the process of determining individual State quotas is obscure, it is clear that the relationships between the allocations for individual States and the Commonwealth/State breakup is not a statistical accident.
- (c) As the Queen's representatives, the Governor-General and the State Governors act as intermediaries between the Queen and the respective First Ministers. The extent to which individual occupants of the vice-regal offices concern themselves with the qualifications of individuals recommended would no doubt vary widely. However, this seems to be an area where a politically-conscious Governor-General could be expected to play an active role as the guardian of the sovereign's prerogative.
- (d) The right of recommendation is vested solely in the First Minister with the exception of awards conferred on the personal initiative of the sovereign.
- (e) In contrast to the British pattern,<sup>18(a)</sup> there does not seem to be any order in the channels by which suggestions are communicated to the First Minister. While some listing is presumably made by the First Minister's personal and/or Departmental staff, it is open to any individual or organisation to suggest names. As in other fields, more notice would tend to be taken of suggestions from sources close to the First Minister and his party.

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<sup>18(a)</sup> See Richards, op.cit., pp.183-4.

## II

Labor Party attitudes have eliminated the prospect of inter-party comparisons of patterns of nomination at the Federal level. In addition to Labor Governments denying themselves a hand in the distribution of this form of patronage, the Party's members and supporters have been ruled out as major consumers of the fruits from the honours tree.<sup>18(b)</sup> As a consequence of this self-abnegation, the potential dividends capable of being reaped from the honours prerogative by non-Labor Governments have been enhanced considerably. A completely even-handed distribution of honours to all sections of the community would have the effect of making individuals in all walks of life beholden to the non-Labor parties. Not only actual recipients, but those aspiring to later recognition could be expected to pattern their behaviour and attitudes on the knowledge that titles and other official marks of status would be forthcoming from one political direction only. The significance of this factor would be a function of the degree to which individuals value such recognition and their assessment of their own chances of being recognised.

In practice, some groups have been recognised more than others. Patterns have varied over time and according to the personal predilections of First Ministers. My purpose is not to provide a detailed statistical analysis of the lists, but to indicate those features which seem to be most significant from the perspective of political patronage.

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<sup>18(b)</sup> But note the exceptions listed in Playford, op.cit.

Three broad philosophies may be distinguished as underlying the motivations of the guardians of the patronage prerogative, or at least as underlying the public reasons for conferring awards. These philosophies may be characterised as reflecting the belief that honours are the proper reward for:

- (a) those who serve the State and its Government,<sup>19</sup>
- (b) those who devote their time and money to the voluntary service of their fellow citizens, and
- (c) those who have established themselves as leaders in fields considered to be relevant.

Some broad features of the practical application of these philosophies will be noted before a closer examination is made of their operation in practice.

First, there is a complex pattern of interaction between the three philosophies. Thus the fact of being a 'leader' in a particular field, especially if the field is business, is more likely to be acknowledged if the individual concerned has performed direct services for the Government or has devoted some of his resources to improving the lot of those less fortunate than himself. Secondly, a special place has been reserved for those who have assisted in the preservation of the State from threats to its existence. Separate military lists,<sup>20</sup> like decorations for acts of valour, reflect this recognition. It is reflected, too, in the patterns of the lists issued in war-time and the tendency to create new awards at times of crisis. The fact that five

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<sup>19</sup> Personal services to the sovereign are also taken into account, but these are excluded from our consideration.

<sup>20</sup> As noted earlier, military lists are excluded from the discussion.

major figures in the 1955 Petrov Royal Commission (the three Judges, W.F.L. Owen, G.C. Ligertwood, R.F.B. Philp; the senior assisting counsel, W.J.V. Windeyer, QC and the Director-General of Security, Brig.C.C.F. Spry) were knighted within a few years of the inquiry<sup>21</sup> could also be interpreted in this way, although some observers would place them in the next category.

Thirdly, in Australia as in Britain, service to the State has come to be identified to some extent with service to the political parties supporting the Government but particular non-political offices are deemed to carry a conventional right to a knighthood. Fourthly, less emphasis has been placed on the expenditure of money for philanthropic purposes in recent years, although 'good works' have continued to be emphasised. Finally, there has been a long-term broadening out of the fields considered to be relevant to the award of honours.

In the period from 1927 to 1939 inclusive, five occupational groups received the bulk of the knighthoods conferred in the Commonwealth lists. In this period, there were 15 businessmen, 12 'politicians' (i.e. members or former members of Parliament, including Ministers), 12 'public servants' (including holders of offices outside the Public Service Act), 9 members or former members of the judiciary and 9 involved in the practice or teaching of medicine and dentistry. Other

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<sup>21</sup> Spry was not knighted until 1964 but received a CBE in 1956. The other four received their awards in the period from 1956 to 1958.

groups included 5 bankers, 4 academics, and 3 newspaper editors and/or proprietors.<sup>22</sup>

Senior public servants dominated awards of the CMG and CBE, with their lower ranking colleagues receiving a lower but still significant share of the minor awards. A notable feature of the lists in the inter-war period was the extent to which awards, particularly of the MBE and the OBE, were heaped upon voluntary charity and hospital workers, particularly those working for such patriotic causes as the welfare of returned servicemen and their dependants. This is where women came into their own, although one or two did secure higher awards. At the summit of these groups were senior officeholders in the returned servicemen's organisations. These tended to receive CMG's, CBE's and the odd knighthood rather than the lesser awards.

Despite the inflation in the number of awards made, a feature of the post-war lists has been the continued dominance of the same main categories of recipients of knighthoods. Thus one observer<sup>23</sup> has noted that the post-war lists to 1960 were dominated by the politicians,<sup>24</sup> business, the judiciary, the armed services,<sup>25</sup> Commonwealth officials and education, ranked in that order. The same basic pattern has continued to apply in later years.<sup>26</sup> The main change in the general pattern has

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<sup>22</sup> Based on a rough count, these figures should be taken only as an approximate guide. Some individuals would qualify under more than one heading but have been counted only once.

<sup>23</sup> See S. Encel, 'The Honours Inflation', Nation, 16 June 1962, p.9. His survey included State and military lists.

<sup>24</sup> His figures were inflated by the greater share of State awards conferred on politicians.

<sup>25</sup> Not included in my figures.

<sup>26</sup> See D. Aitkin, 'Between the Lines', in Canberra Times, 16 Oct., 1968.

been the wider distribution of favours within each occupational category. There has been some tendency, too, for awards to be made to members of groups previously neglected. This has been made possible by the greater availability of awards.

For awards below the level of knighthoods, there has been some change in the pattern. Civil servants have continued to feature strongly, and so, too, have voluntary workers for charity, with a continuing but reduced emphasis on patriotic work. The inflation of awards at the lower levels has been associated with a tendency for them to be spread across more groups in the community, with sporting heroes and performers and supporters of the 'arts' among the most frequently recognised of the new groups. As Playford notes,<sup>27</sup> a few active or retired Labor parliamentarians have also accepted honours in recent years.

Apart from the fact that there are few significant groups in the community whose contributions have not been recognised in the lists, a feature of the general pattern is that those who have gained the greatest share of knighthoods are drawn from the segments of society most sympathetic to non-Labor views. The same tendency, but somewhat less marked, may be noted in the lower-level awards. The implicit social differentiation on which the structure of awards is based and the antipathetic attitude of the Labor movement to the honours system makes it inevitable that this would be so, and there is little indication that non-Labor Governments would wish it otherwise.

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<sup>27</sup> op.cit.



For two groups whose formal role requires them to be politically neutral, there is an element of ritual inevitability in their place in the honours queue. Since 1963, as I have noted, it has been decided that Justices of the High Court should automatically be appointed as Privy Councillors.<sup>28</sup> Since 1958,<sup>29</sup> too, it has become the practice for them to be awarded knighthoods on appointment to the High Court, independently of the regular lists. Although the pattern is not as rigid for the Commonwealth Public Service as it is for High Court Justices or for the British Civil Service, there is a clear expectation that all permanent heads will sooner or later qualify for awards, with the highest ranking ones qualifying for knighthoods. The senior Second Division officers, too, can look forward to some expectation of recognition, with the OBE as the most probable level of award. The Birthday list of 1953 formed something of a watershed in the development of this pattern. In that list, five of the seven CBEs awarded went to senior permanent heads, one to the Chairman of the Public Service Board (himself formerly a permanent head), the seventh award being conferred on a Judge.

In commenting on this pattern, one recent observer noted that:

...there have been over three hundred honours including twenty-eight knighthoods [conferred on Commonwealth Public Servants] from 1939 to 1965 inclusive, and 1965 was a peak year with three knighthoods, one CMG, six CBE's, fifteen OBE's, twenty-four MBE's, twenty-two ISO's, and nineteen

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<sup>28</sup> The perpetuation of this practice has been somewhat anomalous since appeals to the Privy Council were abolished in 1968.

<sup>29</sup> See S.M.H., 21 Oct., 1958.

BEM's. In the 1966 New Year's honours list the trend was continued with one knighthood, four CBE's, eight OBE's, nine MBE's and four BEM's.<sup>30</sup>

There has been some slackening of the pace in the subsequent period, but the Service has continued to attract a significant share of awards. The cumulative effect of the approach to Public Service awards is well illustrated in the 1968 issue of the Commonwealth Directory. Of the 27 permanent heads listed,<sup>31</sup> only three did not have an honour, and all three were recent appointees. Eight held knighthoods, eleven had CBEs and the remaining five had OBEs. Those included in the lowest category were all relatively recent appointees, one of their number being the permanent head of the Prime Minister's Department. Of the 27 Departments, there were only four whose listed officers below the level of permanent head did not include at least one with an honour. Three of these Departments were numbered among those whose permanent head held only an OBE. In total, listed subordinate officers included one knight, five CBEs, 38 OBEs and 15 MBEs. There would also be some unlisted officers who had received honours.

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<sup>30</sup> G.E. Caiden, The Commonwealth Bureaucracy, op.cit., p.379.

<sup>31</sup> Including the Chairman of the Repatriation Commission, but excluding the Auditor-General and the Chairman of the Public Service Board.

A similar pattern of awards applies to those holding the major posts in the wider Commonwealth 'bureaucracy', but I have not undertaken the task of examining the pattern in detail. The main point to emerge from this discussion is that, under non-Labor Governments, those engaged in providing the administrative services of the State can look forward to recognition<sup>32</sup> in the lists if they manage to reach the top positions.

Moving from the general to the particular, attention will now be focussed on awards having a more direct political significance. The problem of identifying awards for political services is more severe than in Britain because the listing of reasons is more perfunctory in general, and in particular, the category of 'political and public services' is cited very rarely. Often no mention is made in the lists of the fact that a particular recipient is or has been a member of Parliament. Nevertheless, it is possible to identify many cases where individuals honoured have had clear political affiliations of one kind or another. Two major categories of recipients may be identified here, those with parliamentary experience and those holding party office or otherwise closely linked with a party.

While many awards have been made to individuals with extensive parliamentary and ministerial experience, individual Ministries have not been overloaded with knights. Thus there are no knights in the present Cabinet, although the Deputy Prime Minister, M. McEwen, has a CH<sup>33</sup> while he, the Prime Minister and the Treasurer are all Privy Councillors. The only other members of this Ministry to

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<sup>32</sup> Some are content to remain unrecognised in this way. Thus H.C. Coombs is widely believed to have declined an honour and his absence from the lists is hardly explicable otherwise.

<sup>33</sup> Awarded in January 1969, presumably in recognition of his brief term as Prime Minister.

be honoured are Dame Annabelle Rankin, CBE, and R.W. Swartz, MBE.<sup>34</sup> A similar pattern has applied for most of the history of the Commonwealth Parliament. The first Federal Ministry had four knights out of a membership of nine and the score for the second was four out of eight. All of the five individuals concerned, however, were former State Premiers and had received the accolade prior to the commencement of their Commonwealth careers. For all of the 38 Ministries in the first 69 years of Federation, only 24 Ministers have held knighthoods while still in the Ministry.<sup>35</sup> These included the five former State Premiers mentioned earlier, three who had military awards, one other whose award had preceded his entry into Parliament, one whose award was in the personal gift of the sovereign and one whose award preceded his elevation to the Ministry.

Knights have also been in relatively short supply on the back benches. The current House of Representatives can boast only of Sir John Cramer, a former Minister compensated shortly after the loss of his portfolio, Sir William Haworth, knighted in 1969, and Sir Wilfrid Kent Hughes, knighted on the recommendation of the Victorian Government for his services to the 1956 Olympic Games. Current back-bench holders of lesser awards are L.H. Irwin (MBE awarded before he entered Parliament), W.G. Turnbull, the Country Party Whip (CBE awarded in 1968). The pattern in the Senate is similar. The only non-Ministerial senator with a knighthood is the President (Sir Alister McMullin), while Dame Ivy Wedgwood has a DBE. The only senator with a lesser award is T.C.Bull (OBE awarded before he entered the Senate).

<sup>34</sup> Mr Swartz's was a military award received prior to his entry to Parliament.

<sup>35</sup> Including Dame Annabelle Rankin, DBE. Technically, a 'Dame' is not a 'Knight', but is the female equivalent of one and those holding such awards are listed officially under the 'knightage'.

To facilitate the further discussion of these issues, the names and political backgrounds of individuals awarded knighthoods or other honours in Commonwealth civil lists from 1927 to 1969 are listed in Tables 6 and 7 below. Table 6 lists those awarded knighthoods; Table 7 lists those receiving lesser honours. The individuals listed are those with Ministerial or Parliamentary experience together with those with other direct party affiliations. The coverage of the former category is, so far as I have been able to establish, exhaustive, but the latter group is limited to those whose affiliations I could establish readily.

TABLE 6

COMMONWEALTH AWARDS OF 'POLITICAL' KNIGHTHOODS, 1927-69.

| <u>Year</u> | <u>Award</u> | <u>Name</u>    | <u>Political Background</u> <sup>x</sup>         |
|-------------|--------------|----------------|--|
| 1927        | KCMG         | J. Newlands    | President of Senate                              |
| 1928        | KMG          | Isaac Isaacs   | Former Minister                                  |
| 1933        | KMG          | H.S. Gullett   | Minister   |
|             | KCMG         | W.Massy-Greene | Assistant Minister and former Minister           |
| 1935        | Kt           | W.Kingsmill    | Former President of Senate                       |
|             | GCMG         | J.G.Latham     | Former Minister                                  |
|             | Kt           | F.H. Stewart   | Minister   |
|             | Kt           | F.H.Tout       | MLC in <u>NSW</u>                                |
| 1936        | KCMG         | R.A.Parkhill   | Minister   |
| 1937        | GCB          | Isaac Isaacs   | Former Governor-General<br>(see above)           |
|             | GBE          | Enid Lyons     | Wife of Prime Minister                           |
| 1938        | GCMG         | Earle Page     | Minister   |
| 1939        | KBE          | G.S.Beeby      | Former State Minister                            |
| 1941        | KCMG         | G.J.Bell       | Former Speaker                                   |
| 1951        | KCMG         | A.W.Fadden     | Deputy PM and former PM                          |
|             | Kt           | T.M.Ritchie    | Federal President Liberal Party                  |
|             | KBE          | E.A.McTiernan  | Former <u>Labor</u> MHR and <u>NSW</u> Minister. |
| 1952        | KBE          | T.W.White      | Former Minister                                  |
|             | KBE          | P.C.Spender    | Former Minister                                  |

| <u>Year</u> | <u>Award</u> | <u>Name</u>              | <u>Political Background</u>                         |
|-------------|--------------|--------------------------|---|
| 1953        | KCMG         | P.A. McBride             | Minister  |
|             | KBE          | C.A. Sinclair            | Former <u>NSW</u> Minister                          |
|             | Kt           | T.C. Manifold            | Former <u>Victorian</u> Minister                    |
| 1954        | GBE          | Pattie Menzies           | Wife of Prime Minister                              |
| 1957        | Kt           | Jos. Francis             | Former Minister                                     |
|             | KCMG         | A.H. McMullin            | President of Senate                                 |
|             | DBE          | Annabelle Rankin         | Govt Whip in Senate                                 |
| 1958        | GCMG         | A.W. Fadden              | Deputy Prime Minister<br>(as above)                 |
| 1959        | KBE          | N. O'Sullivan            | Minister  |
|             | Kt           | W.J. Cooper              | Minister  |
| 1960        | Kt           | A.W. Coles               | Former Independent MHR                              |
| 1961        | Kt           | Brig. D.M. Cleland       | Former Party Official and<br>Unsuccessful Candidate |
|             | KBE          | Howard Beale             | Former Minister                                     |
| 1962        | KCMG         | E.J. Harrison            | Former Minister                                     |
|             | KCMG         | J. McLeay                | Speaker   |
|             | KBE          | Lt. Col. M.F.<br>Bruxner | MLA and former Deputy<br>Premier, NSW               |
| 1963        | KCMG         | W.H. Spooner             | Minister  |
|             | Kt           | J.A. Spicer              | Former Minister                                     |
| 1964        | Kt           | J.O. Cramer              | Former Minister                                     |
|             | KBE          | C.W. Davidson            | Former Minister                                     |
| 1965        | GCMG         | G.E.J. Barwick*          | Former Minister                                     |
|             | KBE          | A.R. Downer              | Former Minister                                     |
|             | Kt           | W.H. Anderson            | Former Federal President,<br>Liberal Party.         |
| 1966        | Kt           | K.C. Wilson              | MHR and former Senator                              |
|             | KBE          | S.D. Paltridge           | Minister  |
|             | DBE          | Ann McEwen               | Wife of Deputy Prime Minister                       |
| 1967        | DBE          | Ivy Wedgwood             | Senator   |
| 1968        | KCMG         | K. Morris                | Senator and former<br>Queensland Deputy Premier     |
|             | KCMG         | G.F.R. Nicklin           | Former Queensland Premier                           |
|             | KBE          | N.H.D. Henty             | Former Minister                                     |
|             | DBE          | Zara Holt                | Widow of late Prime Minister                        |
|             | DBE          | Dorothy Tangney          | <u>Labor Party</u> Senator                          |
|             | Kt           | H.F. Opperman            | Former Minister                                     |
| 1969        | Kt           | W.C. Haworth             | MHR   |

x Many of those listed received their knighthoods after extensive periods serving in non-parliamentary capacities.

\* Became Kt in 1953 before entering Parliament.

Note: In addition to those listed, W.J. McKell, a former NSW Labor Premier, and then Governor-General, was knighted in 1951, and P.M. Hasluck was knighted in 1969 on his translation from the Ministry to the Governor-Generalship. These awards, both KCMGs, were made outside the regular lists.

TABIE 7COMMONWEALTH 'POLITICAL' AWARDS BELOW THE LEVEL OF  
KNIGHTHOOD S, 1927-69.

| <u>Year</u> | <u>Award</u> | <u>Name</u>            | <u>Political Background</u> <sup>x</sup>               |
|-------------|--------------|------------------------|--|
| 1935        | CBE          | Pattie Deakin*         | Widow of former Prime Minister                         |
| 1941        | OBE          | J.W.Fletcher           | Former Queensland MP                                   |
|             | CMG          | J.Hume-Cook            | Former MHR and Honorary<br>Minister                    |
| 1950        | CBE          | W.H.Anderson           | Later Federal President of<br>Liberal Party            |
| 1951        | OBE          | J.P.Abbott             | Former Minister  |
|             | OBE          | H.W.Heskett            | Treasurer, <u>NSW</u> Liberal Party                    |
| 1953        | OBE          | H.F.Opperman           | MHR  |
| 1954        | CBE          | L.H. Moore             | President, <u>NSW</u> Liberal Party                    |
| 1955        | CMG          | Brig.A.S.<br>Blackburn | Former South Aus. MP                                   |
|             | OBE          | J.M.Carter             | <u>NSW</u> MIC   |
| 1957        | OBE          | J.R.Willoughby         | Federal Director, Liberal<br>Party                     |
|             | CMG          | F.A.Bland              | MHR  |
| 1960        | OBE          | L.B.Saddington         | <u>NSW</u> MLC   |
| 1965        | CBE          | W.L.Moss               | Federal Chairman, Country<br>Party                     |
|             | CBE          | J.R.Willoughby         | Federal Director, Liberal<br>Party (see above)         |
| 1966        | CBE          | E.D. Mackinnon         | MHR  |
|             | OBE          | F.J.Davis              | MHR  |
| 1967        | CBE          | W.J.Brimblecomb        | MHR  |
|             | CBE          | C.W.J.Falkinder        | MHR  |
| 1968        | CBE          | W.J.F.Riordan          | Former <u>Labour</u> Minister.                         |
|             | CMG          | P.E.Joske              | Former MHR   |
| 1968        | CMG          | R.C.Townley            | Former Tas. Leader of<br>Opposition                    |
|             | CBE          | R.L.Dean               | Former MHR   |
| 1969        | CBE          | C.Chambers             | Former <u>Labor</u> Minister                           |
|             | CBE          | J.A.Guy                | Former Minister  |
| 1969        | CBE          | W.G.Turnbull           | Country Party Whip                                     |
|             | OBE          | W.M.Jack               | Former MHR   |
| 1969        | CMG          | Brig.J.E.Pagan         | Federal President, Liberal<br>Party                    |
|             | CBE          | Miss I.M.Hyde          | Chairman, Liberal Party's<br>Federal Women's Committee |
|             | OBE          | G.R.Lempriere          | Tas.President Liberal Party                            |
|             | OBE          | J.V.McConnell          | Secretary Vic.Liberal Party                            |

x Several of those listed received their awards after extensive periods serving in non-parliamentary capacities.

\* Awarded posthumously.

Since 1927, on my count, 24 Federal non-Labor Ministers or ex-Ministers have been knighted in the regular lists.<sup>36</sup> Of these, only ten were still Ministers at the date of their elevation. Five of this latter group were not knighted until they were on the verge of retirement. Amongst those who left the Ministry before being knighted, ten had been translated into offices which could be regarded as meriting the awards in their own right. Three (Isaacs, Spicer and Barwick)<sup>37</sup> held judicial offices, the others holding overseas posts<sup>38</sup> (White, Spender, Francis, Beale, Harrison, Downer and Opperman). In effect then, only about half of the Ministerial or ex-Ministerial knights could be regarded as having received their awards in direct recognition of their political services, and most were not rewarded until their political race had virtually been run.

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<sup>36</sup> Excluding Lord Bruce, Lord Casey and Sir Robert Menzies whose awards derived directly from the sovereign or on the recommendation of the British Government. The lists also exclude Sir Paul Hasluck, as well as PC's and CH's. The award to former Labor MHR and State Attorney-General, E.A. McTiernan, was conferred in recognition of his service (then 20 years) as a Justice of the High Court.

<sup>37</sup> Latham was marking time between the Ministry and the High Court when he was knighted. Isaacs' awards could hardly be regarded as having any party political significance at the times they were made.

<sup>38</sup> A feature of public service awards has been the relatively large share granted to diplomats, presumably as a bolster to their status in the course of their overseas duties.



Part of the explanation for the apparent reluctance to confer knighthoods on Ministers in their political prime is a conventional, if irrational, belief that acceptance of a title sounds the death knell to leadership aspirations.<sup>39</sup> It also seems to owe something to a fear that a knighthood would be an electoral handicap in supposedly egalitarian Australia. Sir Robert Menzies does not seem to have suffered in this latter respect, nor do those of his colleagues who have carried their chivalrous standards into the electoral battlefield. In any event, others like Sir Garfield Barwick have brought knighthoods into Parliament with them. Sir Earle Page actually became Prime Minister temporarily after being knighted,<sup>40</sup> and others have managed to climb a few rungs up the Ministerial ladder while bearing the same burden.

While the accolade is sometimes slow in arriving, there is, as in the case of senior public servants, a certain inevitability about it. Of the nineteen members of the first post-war Menzies Ministry of 1949, only Mr Harold Holt, Senator G. McLeay, and Mr H.L. Anthony failed to be included in the Commonwealth or British honours lists. All three died in office and Holt was a Privy Councillor. His widow was awarded a DBE shortly after his death, presumably as a mark of recognition of the late Prime Minister. The members of later Ministries have not fared quite so well, but, for those

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<sup>39</sup> See e.g. S. Encel, op.cit.; see also S.M.H., 6 April 1954 and 'Onlooker' in Sun-Herald, 5 Jan., 1964.

<sup>40</sup> It is conceded that he was already Leader of the Country Party, the role which brought him the Prime Ministership.

who are still alive, the book cannot be regarded as closed yet. The pattern in the post-war period owes a lot to the perpetuation of 'one-party' rule which has allowed the honours stream to continue to flow in the same direction.

Lesser awards have also been conferred on some former Ministers. These included J.P. Abbott and J.A. Guy, but the most notable ones were the two former Labor Ministers, W.J.F. Riordan and C. Chambers. Riordan had had an unusually lengthy career in Parliament, while the award to Chambers appears to have been based on his administrative services to non-Labor Governments after his parliamentary career had ended.

Several individuals whose political experience has not extended to Ministerial office have also been recognised in the honours lists, again usually towards or after the end of their parliamentary careers. In the period since 1927, those knighted have included three Presidents of the Senate and two Speakers. Dame Annabelle Rankin, later a Minister, was Government Whip in the Senate when awarded the DBE, and she was joined ten years later by a back bench Senate colleague. In 1968, Dorothy Tangney of the ALP, the first woman to be elected to the Senate, also became a DBE shortly before the end of her final term. Male knights of the back bench, apart from demoted senators, have also numbered three.

The award to A.W. Coles appears to have been based primarily on his extra-parliamentary activities. In fact, it is likely that his political activities delayed rather than accelerated his award. Although the fourth of the

Coles brothers to be knighted, his career was slanted more directly towards the service of the State than theirs. One observer has suggested that the delay in his case was occasioned by the attitude of Sir Arthur Fadden, whose 1941 Government Coles had been instrumental in turning out of office.<sup>41</sup>

Quite a number of serving or former back-benchers have also accepted lesser awards, that to R.C. Dean to some extent marking recognition of his extra-parliamentary activities. F.A. Bland's presumably was in recognition of his service as Chairman of the Joint Committee of Public Accounts.

Other awards of political significance include those to wives or widows of Ministers. Dame Zara Holt has already been mentioned in another context. Dame Enid Lyons, the wife of the then Prime Minister, was awarded a GBE in 1937, and Dame Pattie Menzies was similarly rewarded in 1954. In 1966, the wife of the Deputy Prime Minister received a DBE.

Party officials also have featured in the lists in recent years. All of the Federal Presidents of the Liberal Party (T.M. Ritchie, R.G. Casey, W.H. Anderson, L.H. Moore and P.A.M. McBride) have appeared in addition to the six other party officials included in Table 7<sup>42</sup>. Some of the latter have rendered their services in the State sphere, and the Commonwealth lists have sometimes catered for individuals who might normally have been expected to be included in

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<sup>41</sup> See K. Perkins, Menzies, Last of the Queen's Men, Rigby, Adelaide, 1968, pp.255-6.

<sup>42</sup> I do not claim this list to be exhaustive, and I have not attempted to track down party officials awarded honours in the pre-war period.

State lists. This has applied particularly to New South Wales in periods of Labor Government in that State. Thus two State Governors (Sir John Northcott in 1950 and Sir Eric Woodward in 1958) and one Chief Justice (Sir Kenneth Street in 1956) were knighted. Of the State politicians included in Commonwealth lists, the most notable were M.F. Bruxner, Parliamentary leader of the New South Wales Country Party for most of its existence, and G.F.R. Nicklin, former Premier of Queensland.

In many cases, it would be possible to argue that the non-political offices held or services performed would provide sufficient justification for the awards made, independently of the party affiliations of the recipient. Affiliation with the Government parties, however, has clearly not been a disqualification. Despite the few awards made to Labor members, the balance of awards with a political favour has been overwhelmingly in favour of the non-Labor parties. Apart from the awards to Senator Tangney and Mr Chambers, the 1968 lists were notable for the unusually high number of 'political' honours. Four Knights, two Dames, one CMG, four CBEs and one OBE are included in this category.

The general pattern of awards made to politicians and party affiliates is consistent with the assumption that they are seen basically as rewards for service, although the timing of the award to Sir John Cramer suggests that that one at least was intended partly as compensation for losing his place in the Ministry. Non-Labor Prime Ministers can look to the sovereign with reasonable expectation of an award appropriate to their political stature. Those non-Labor Ministers who live long enough or retire early enough can entertain reasonable hopes of their leader or one of his successors

ensuring that they in their turn are able to bask in the sun of the Royal favour. If the reward comes more surely to those who leave the Parliament for terms on the judicial bench or in far off lands, these chores have attractions of their own which make the waiting period endurable.

### III

In discussing post-war patterns, S. Encel noted that State politicians had featured in the lists up to 1960 much more than their Federal counterparts. This may be true of the States as a whole, but our concern is with the New South Wales lists. For all of Encel's period, no knighthoods were awarded, because Labor was in office, although as we have noted, some New South Wales politicians had been included in Commonwealth lists.

The paucity of knights in New South Wales Ministries has been even more marked than in Commonwealth ones. Of the 38 separate Ministries since March 1889, only six have included any knights and the total number of individuals concerned is seven. One of these, Sir Daniel Levy, received his award as Speaker and held ministerial office for only one month before returning to the Speaker's Chair. The highest number of titled Ministers in any one Ministry was three out of eleven in Fuller's seven-hour Ministry of 1921. The same three individuals were featured in Fuller's second Ministry. The other four Ministries in our short list had only one knight each. In his four years of office so far, Premier R.W. Askin has resisted the temptation to elevate any of his colleagues, and he himself remains unrecognised.

The total number of 'political' knights included in New South Wales lists remains small. Apart from the Labor-induced drought for most of the period during and since the Second World War, the total quotas available to New South Wales Governments have not allowed much scope for matching the Commonwealth. For the lists from 1927 to 1969 inclusive, I have only identified eleven political knighthoods,<sup>43</sup> out of a total of 52 knighthoods awarded. Brief details are set out in Table 8 below.

TABLE 8

NEW SOUTH WALES AWARDS OF 'POLITICAL' KNIGHTHOODS, 1927-69.

| <u>Year</u> | <u>Award</u> | <u>Name</u>       | <u>Political Background</u>                                   |
|-------------|--------------|-------------------|---|
| 1929        | Kt           | D. Levy           | Speaker   |
| 1930        | KCMG         | Prof.J.B.Peden    | President of Legislative Council                              |
| 1933        | Kt           | S.Walder          | MLC and former Lord Mayor of Sydney                           |
|             | KCMG         | T.R.Bavin         | Former Premier  |
| 1936        | Kt           | A.K. Trethowan*   | MLC and Chairman of NSW Country Party                         |
|             | Kt           | A.B.Howie         | MLC and Lord Mayor of Sydney                                  |
| 1938        | KBE          | J.M.Dunningham+   | Former Minister   |
| 1939        | KBE          | H.E.Manning       | Attorney-General and Government Leader in Legislative Council |
| 1941        | KCMG         | B.S.B.Stevens     | Former Premier  |
| 1968        | Kt           | Col.H.J.R.Clayton | MLC and former Opposition Leader in Legislative Council       |
| 1969        | KBE          | K.Ellis           | Speaker   |

\* His name, together with that of R.T. Ball, former Minister, had been included in a list proposed by Bavin for January 1931, but prevented from going forward when J.T. Lang replaced Bavin as Premier.

+ Awarded posthumously.

<sup>43</sup> State Ministers have not had access to PC's and CH's as compensation.

Of these eleven knighthoods, two were awarded to former Premiers. The previous non-Labor Premier, Sir George Fuller, had been knighted prior to his accession to the Premiership and the succeeding one, A. Mair, was followed in office by a long succession of Labor Governments. This and the lower total number of awards available provides a large part of the explanation for the contrast with the Commonwealth pattern.

The pattern of awards below the level of knighthoods also provides a contrast with that at the Commonwealth level. The distinctive feature is the fact that Labor Governments have made awards, their share of the 'political' awards I have identified over the period 1927 to 1969 being eight out of fourteen. These fourteen awards are listed in Table 9 below.

TABLE 9

STATE 'POLITICAL' AWARDS BELOW THE LEVEL OF KNIGHTHOODS,  
1927-69

| <u>Year</u> | <u>Award</u> | <u>Name</u>      | <u>Political Background</u>                   |
|-------------|--------------|------------------|---|
| 1929        | CMG          | S.R.Innes-Noad   | MLC   |
| 1935        | MBE          | Mrs.E.W.Laverty  | Deputy President, UAP<br>Women's Club         |
| 1938        | CBE          | E.C.Sommerlad    | MLC   |
|             | OBE          | M.P.Dunlop       | MLC   |
| 1957        | OBE          | D.Clyne*         | Former Speaker                                |
| 1959        | CBE          | F.P.Buckley*     | Former MLC and Assistant<br>Minister          |
|             | MBE          | Mrs E. Mathias*  | Member Women's Organising<br>Committee of ALP |
| 1960        | CBE          | F.J.Finnan*      | Former Minister                               |
| 1961        | MBE          | D.P.McDonald(a)* | Former MLA                                    |
| 1962        | CBE          | W.M.Gollan*      | Former Minister                               |
| 1963        | OBE          | R.Cameron*       | Former MLA                                    |
| 1964        | CBE          | E.P.Kinsella*    | MLA 1930-32. Judge since 1950                 |
| 1966        | CBE          | E.M.Robson       | Former Leader of Opposition                   |
| 1968        | CMG          | A.Landa (b)      | Agent-General and former<br>Minister          |

\* Recommended by Labor Governments.

(a) Elected in 1941 as Independent UAP and in 1944 as Independent.

(b) A Labor Party MLA when appointed as Agent-General by a non-Labor Government and expelled from ALP following appointment.

The precise reasons for the Labor Premier's (J.J.Cahill) decision to start making awards below the level of knighthoods in 1954 are rather obscure. In view of the significance of this event, however, it seems worthy of some discussion. I have heard suggestion that it was put to Mr Cahill that, regardless of the attitude of his party to knighthoods, it was unfortunate that those performing services to the State and the community, particularly in the public service, local government and charitable activities, should go unrecognised. This interpretation seems plausible in the light of developments immediately before the new policy was put into practice, and in relation to the pattern of subsequent Labor-recommended awards.

In reply to a parliamentary question in September 1953, the Premier stated that the Queen's visit would not cause the Government to change its policy regarding titles. 'A man has distinction', he said, 'in being plain Mr... Our experience suggests that frequently, when titles and honours have been harded out, those whose service has been most meritorious did not receive them.'<sup>44</sup> In February 1954, the Queen conferred special awards (in the Royal Victorian Order) on New South Wales officials who had participated in the organisation of the Royal tour. After the Birthday list of 1954 had been released, Mr Cahill reiterated that he would not recommend knighthoods, but noted that some lesser awards had been made for public service.<sup>45</sup> Subsequent Labor Premiers have maintained this position.

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<sup>44</sup> N.S.W. Parl.Debs., Third Series, vol.5, 1953, p.478.

<sup>45</sup> S.M.H., 8 Sept., 1954, p.8.



The Labor Party lists for the first three years were notable for the absence of any political awards. Throughout the ensuing period, awards have been predominantly to public servants, members of local government bodies, hospital administrators and staffs, and voluntary workers for charity. Awards have also been made to some representatives of industry and commerce and other groups in the community. There is, in fact, a fairly close correlation between the Labor and non-Labor patterns apart from the fact that the non-Labor Governments have conferred knighthoods and these have followed a different pattern, with business and the judiciary being the major categories recognised. It appears likely that Mr Cahill had become conscious of the political advantages of a judicious and moderate use of the patronage prerogative. About this time, the criticisms of Labor's approach to appointments had been heavy and persistent, and it was only a few months later that the new approach noted in Chapter 5 was put into effect.

Of the eight Labor nominations listed in Table 9, one was a former Independent, and three would be justifiable in terms of services performed after the individuals concerned had left Parliament.<sup>46</sup> One of the others is reported to have defected subsequently to the Liberal Party.<sup>47</sup> If the Labor Party was seeking to

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<sup>46</sup> Buckley served a long term as Agent-General in London, Finnan had held an administrative post for several years and Kinsella had been a Judge for 14 years having previously been on the Industrial Commission for some years.

<sup>47</sup> W.M.Gollan. See J. Playford, op.cit., p.12.

use the honours list for partisan purposes, the pattern of its selections would surely have been different and the senior members of Labor Ministries would have been included in the list.

The non-Labor Governments have treated their own rather better, but in this respect they suffer by comparison with their Federal colleagues. Mr Askin has shown a rather cautious approach so far. The award to Landa, a former Labor Minister, was somewhat incongruous on the surface but is explicable both in terms of his occupancy of the Agency-Generalship in London and the political circumstances surrounding his appointment to that post. Askin's other three selections are in the orthodox Liberal tradition.

CHAPTER 9ECONOMIC, FINANCIAL AND OTHER FAVOURS

In the previous chapters of Part Two, an attempt has been made to provide a fairly comprehensive account of patronage developments in each of the 'functional' areas examined. This chapter is less ambitious, being restricted to the discussion of some general issues, supplemented by an examination of specific examples which lend support to the broad arguments advanced. The adoption of this approach has been influenced by the wide scope of the field covered and the difficulty of obtaining completely reliable information in relation to it.

While some definitions<sup>1</sup> of patronage specifically refer to the award of contracts and other favours, authors of published works dealing with the subject commonly restrict their attention to appointments. Richards, although he introduced patronage purely as a method<sup>2</sup> of appointment, noted its extensions to other fields<sup>3</sup> and paid attention to the honours system, an important element in the British patronage network. However, he stopped short of discussing the forms of patronage with which this chapter is concerned.

In developing his notion of Australian political parties as the agents for various 'syndicates', J.D.B. Miller asserted that 'Australian politics are, in the

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<sup>1</sup> See, e.g., that of H.A. Bone referred to in page 1 of this thesis.

<sup>2</sup> P.G. Richards, op.cit., chapter 1.

<sup>3</sup> *ibid.*, p.18.

main, economic politics'.<sup>4</sup> While other policy preoccupations, notably defence and foreign affairs, have at times driven economics from the centre of the stage, an important place has continued to be reserved for economic issues at both the Federal and the State level. The hard core of the support for each of the main parties is drawn from distinctive economic and social groups, and the general tenor of each party's broad economic policy tends to be consistent with the interests it represents.

For electoral success, of course, parties need to be able to appeal to a wider public, but this tends to enhance rather than restrict the scope for economic patronage. Thus the need to win support from outside its own ranks will lead a party to develop programmes which will appeal to the community at large or particular sections of it. Part of the Country Party's current dilemma is that its wooing of other sections has created dissatisfaction among its traditional supporters.

The implication of these observations is that 'economic politics' are 'patronage politics' since the adoption of a positive, interventionist, role by governments inevitably requires the favouring of some groups or individuals at the expense of others. While the extent of intervention by colonial, State and Commonwealth governments in the country's early history distinguished Australia from other countries, the

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<sup>4</sup> J.D.B. Miller, Australian Government and Politics, Duckworth, London, 2nd edition, 1959, p.65.

interventionist trend has become a world-wide phenomenon in recent years and extensive scope for economic patronage is necessarily a feature of politics in all countries.

As Miller notes, part of the Australian machinery of state has been adapted to provide what he refers to as 'organs of syndical satisfaction'.<sup>5</sup> While the establishment of such organs is itself an act of patronage, those bodies which have been granted effective autonomy in some matters have been placed to that extent beyond the reach of government patronage in the performance of their functions. For some, autonomy extends only to their right to offer advice, and governments retain the power to make the final, binding, decisions. The fact that the Government has the power to appoint the controllers of these bodies<sup>6</sup> and to determine the resources to be made available to them can also reduce their independence, thereby enhancing the role of government patronage.

Governments have retained important economic patronage prerogatives outside the ambit of these organs. Access to the purse strings of the Treasury, while not without its problems, provides a Ministry with widespread opportunities to 'win friends and influence people' and to take action in the opposite direction as well. This fact is dramatised by the annual Budget, particularly in an election year. The 1961 Federal elections, by the scale of the reaction against the Government's failure to pay closer attention to the patronage implications of a harsh Budget, highlighted the potential political dividends to be earned from a more judicious approach.

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<sup>5</sup> ibid. Notable examples are the arbitral tribunals, the Tariff Board and marketing authorities.

<sup>6</sup> As we have noted in chapter 5, this power is itself an important aspect of the patronage prerogatives of governments.

The 1969 Federal Budget, although commentators have not used the term 'patronage' in assessing it, has been evaluated almost universally on the basis of what are essentially patronage criteria. It has been assumed generally to have been imposed by the Prime Minister on the Treasurer against the latter's judgment and the advice of his Department. Despite strong signs of inflationary pressure on the economy, it is notable for the fact that no taxes were increased and that substantial benefits were conferred on three major groups, the pensioners, the primary producers and those who send their children to non-State schools. In essence, then, it seeks to gain the positive support of these three groups without antagonising the rest of the community. The possibility of an anti-State aid 'backlash', the reaction of the DLP to the reduced Defence vote (and related foreign policy developments), and the development of internal problems for the governing parties under pressure from their syndical supporters, may diminish the political returns which the Government actually receives from its Budget investment. Whatever the electoral outcome, it is clear that the final shape of the Budget owed as much to political calculation as to the condition of the nation's accounts.

In addition to discriminating between sectional groups in the community, Budgets can be used to discriminate between States and regions. There are constitutional barriers<sup>7</sup> to such discrimination in relation to taxation.

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<sup>7</sup> Section 51(ii). Bounties on the production or export of goods are also required to be uniform throughout the Commonwealth (Section 51(iii)).

However, the political gamesmanship inherent in the determination of the allocation of loan revenues and tax reimbursement payments has not been eliminated nor even effectively concealed by the formalisation of the procedures through the Loan Council and the Premiers' Conferences.<sup>8</sup> As well as providing for discrimination between the States, these arrangements allow the Commonwealth to dictate to the States the directions in which a significant share of the money is to be spent. The States in their turn, of course, are able to bring political considerations to bear in the formulation of their own Budgets.

Apart from the disbursement of revenues, Commonwealth and State Governments are able to discriminate between regions in determining the nature, timing and location of works programmes. In the colonial period and in later periods too, the routes of railways as well as appointments to staff the services provided, were frequently determined on the basis of political patronage. In more recent years, irrigation and related works seem to have taken over the mantle from the railways. This has been highlighted by the academic debate about the economic foundations of the 'northern myth' in development planning and the entry into politics of Dr R.A. Patterson, the former Director of the Division of Northern Development in the Commonwealth Department of National Development. His initial decision to stand for Parliament in the Labor interest in 1965 appears to have been motivated by frustration at the

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<sup>8</sup> See, e.g., R.J. May, 'Politics and Gamesmanship in Australian Federal Finance', in Henry Mayer, ed., Australian Politics: a Second Reader, Cheshire, Melbourne, 1969, pp.67-77. See also articles by R.J. May and R.L. Mathews, and discussion thereon, in Public Administration, Sydney, vol.xxviii, 1969, pp.38-96.

Government's apparent reluctance to convert the myth into reality, and his subsequent approach in Parliament has been to squeeze the maximum political advantage from his espousal of the cause.

Within the general context of northern development the timing of announcements about specific projects has sometimes lent support to the view that electoral considerations have been dominant. A notable example was the announcement on 1st November, 1967, that \$48m would be made available for the second stage of the Ord scheme in Western Australia and \$20m for the Emerald irrigation project in Queensland. The Government had recently lost the Capricornia (Queensland) by-election, and a Senate election was due at the end of the month. Although the Government could point to the fact that it had previously refused to finance the Ord project prior to the latest House of Representatives election,<sup>9</sup> there seemed to be some substance in the Opposition's claims that the statement was an electoral gimmick. In support of this case, P. Samuels claimed that the decision on the Ord was broken to the Northern Division by one of the Canberra representatives of the Australian Financial Review, and that the staff of the Bureau of Agricultural Economics were not even aware that it was being considered by Cabinet. He asserted in relation to the Emerald decision that:

...a team of soil analysts was just preparing to visit the area to examine its technical feasibility. There was no economic survey apart from one five years ago which claimed categorically that the scheme could not possibly pay for itself.<sup>10</sup>

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<sup>9</sup> See, e.g. C.P.D., Senate, vol.36, 1967, p.2118. For general discussion of the issue, see also C.P.D., H of R, vol.57, 1967, pp.2767, 2772.

<sup>10</sup> In The Bulletin, 9 Dec., 1967, p.24.



Nearly four months later, the Labor Party cast further doubt on the Government's bona fides when Senator Tangney was able to point to the fact that 'the matter remained in abeyance until last Friday, the eve of the State elections in Western Australia, when another statement was made by the Federal authorities and the State Premier'. Noting that there was no election in sight for at least eighteen months, she asked whether 'action will be taken to get on with the job instead of merely making statements'.<sup>11</sup>

The importance of electoral considerations in determining approaches to northern development can be traced back to the 1961 elections in which the heavy swing against the Government was most marked in Queensland. In the following year, the Australian Financial Review could make pointed reference to a number of specific projects which had been instituted in Queensland with a view to repairing the Government's political fences in that State,<sup>12</sup> and this first phase culminated in the 1963 announcement of the establishment of the Division of Northern Development. This announcement, described in retrospect by its first Director as 'one of the most blatant hypocritical tricks in the history of this Parliament',<sup>13</sup> was itself made shortly before the 1963 election, the first to be held since the 1961 debacle.

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<sup>11</sup> C.P.D., Senate, vol.37, 1968, p.332.

<sup>12</sup> Australian Financial Review, 3 July 1962, p.4.

<sup>13</sup> C.P.D., H of R, vol.57, 1967, p.2524. Dr Patterson was speaking in the course of his attack on the Ord and Emerald announcements.

These examples of the use of economic policy for the service of political ends are only illustrative of the types of political functions which can be served by this form of patronage. Clearly, this is the very stuff of politics and there is an element of wishful thinking in the belief that politics and economics can be separated effectively in these areas.

There are some aspects of government intervention in the economy, however, where there is a widespread belief that political patronage can and should be eliminated. In broad terms, the situations involved here are those where Government decisions directly affect an individual or a single corporate entity. A feature of discussions of patronage in relation to appointments and the award of honours is that they are basically concerned with the granting of favours to particular individuals. Discussion of economic or financial favours conferred on individuals or particular enterprises, and conversely, the denial of such favours to others, can thus proceed on an analogous basis to that in the previous chapters of this thesis.

In this context, some of the main activities which could lend themselves to political patronage include the awarding of contracts and licences, compensation payments of various kinds, fees paid for specific services, the sale of government enterprises, the re-zoning of land and its release for economic exploitation, and the selection of individuals for employment on relief works.<sup>14</sup> The transmission of advance information about impending government activity in some of these fields is also a potential source of patronage.

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<sup>14</sup> This latter category is included here rather than under appointments because the case to be discussed was one in which the intention was clearly to confer economic benefits rather than to ensure that the functions of government were performed.

Apart from the problem of gaining access to authoritative source materials, this is a difficult area to deal with because suggestions of political calculation in these types of activities are prone to develop into, or be interpreted as, charges of corruption. Again the cases discussed should be taken as illustrative rather than comprehensive. Generally speaking, attention has been restricted to those cases which had emerged into the light of day and where it seemed possible to offer meaningful conclusions without taking the risk of having to defend them in a court of law.

Procedures for the awarding of government contracts have been brought under close regulation with the adoption of the tender system, the practice of processing tenders at the administrative level, and the surveillance of government expenditure by the Auditor-General and parliamentary committees. Two avenues by which it is possible for political patronage to enter, however, are by the avoidance of the tender system in some cases or by the use of political influence to secure a favourable decision.

Charges have been made, from time to time, that decisions not to use the system of competitive tendering have arisen from a desire to favour a particular enterprise. A further ingredient in some of these cases is the suggestion that there is a political motivation behind the partiality shown. No direct evidence has come to my notice, however, which would support charges of this nature.

The question of political influence in relation to government contracts has also been raised in connection with Ministerial company directorships, particularly in the case of Federal non-Labor Ministers. A long-standing convention of British Government is that Ministers should divest themselves of any directorships they hold upon accepting Ministerial office. This convention has not been

accepted as binding in Australia, however, and the resultant scope for conflicts of interest has at times been the target for sustained and vigorous Opposition attacks. It was in response to one such series of attacks that a modified version of the British convention came to be applied in the last Lyons Ministry.

The conventions of Cabinet Government do not spring up overnight, and this Australian one was no exception. Parliamentary discussion of the issue can be traced back to a question asked by a Labor MHR Maurice Blackburn, on 29th September 1936. He asked whether any member of Cabinet held a company directorship and sought details of the companies involved. The Prime Minister's response was that 'no reason can be seen why information of this personal character should be supplied...'<sup>15</sup> Ten days later, Blackburn took the issue up on the adjournment, pointing to British practice, noting that Press references had been made to directorships held by a Minister sitting in the Senate, and arguing that the information sought was 'not of a personal character' because 'we live in an age in which government and business are closely associated'.<sup>16</sup>

There were no further parliamentary developments until 1st December 1937, when a Labor Senator, referring to a recent statement on the increasing burdens borne by Federal Ministers, queried whether Ministers 'intend to resign from their various company directorships in order to endure the strain of Ministerial office'.<sup>17</sup> In reply, Senator A.J. McLachlan, Postmaster-General and the Government's Leader in the Senate, noted that it was

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<sup>15</sup> C.P.D., vol.151, 1936, p.637.

<sup>16</sup> ibid., pp.1021-2.

<sup>17</sup> C.P.D., vol.155, 1937, p.19.

'a matter for the individual judgment of each Minister, having in mind the state of his health'.<sup>18</sup> This response drew the interjection from a prescient Labor Senator that 'it will be made a matter of government policy some [sic] of these days'.<sup>19</sup>

Six months later to the day, McLachlan replied to a more specific question<sup>20</sup> from the same source that 'I do not know how many [Ministers] are directors of companies, but, no doubt, some are'.<sup>21</sup> There the matter rested for a further five months, but events swiftly built up to a climax after a series of specific questions about McLachlan's own commercial interests was placed on the notice paper by a Labor MHR. Finally flushed out into the open, the Minister wrote a letter of resignation to the Prime Minister. He acknowledged that he was chairman of directors of a company (Hume Pipe Company of Australia Ltd) which had held contracts with his Department, but denied any personal involvement or knowledge in relation to any of these contracts which were negotiated at the administrative level. Nevertheless, he held that he had no option but to resign in view of 'any insinuation that underlies the question on the notice-paper'.<sup>22</sup> In reading his resignation letter to the Senate he expressed his regret 'that the public life of this democracy has

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18 ibid.

19 ibid.

20 The question asked for details of the number of Ministers involved, their names and the names of their companies.

21 C.P.D., vol.156, 1938, p.1597.

22 C.P.D., vol.157, 1938, p.1189.

sunk so low that it should be for one moment suspected that a man would abuse the trust reposed in him by the Crown'.<sup>23</sup>

In his written reply to the questions on the notice paper, the Prime Minister conceded the general principle that 'every public man should avoid putting himself into a position where his private interest and his public duty may conflict'.<sup>24</sup> He argued, however, that it was up to the individual to make his own judgment in each case and added that:

...the attention of my late colleague...and of myself having been directed to the existence of contracts between Hume Pipe (Australia) Ltd and the Postal Department, my colleague decided to resign forthwith from his office as Postmaster-General.<sup>25</sup>

There was a disingenuous ring to this rider, and the Opposition was not prepared to let the matter rest there. Speaking on the adjournment, the Labor Leader (John Curtin) expressed his wonderment at the extent to which Senator McLachlan appeared to be out of touch with the doings of both his Department and his company. He asserted that there was an important principle at stake and asked for a statement of the Government's intentions.<sup>26</sup>

In his response the Prime Minister pointed to the difficulties arising from the lack of a guiding precedent,

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<sup>23</sup> ibid. See also pp.1251-2 for the Prime Minister's announcement of his acceptance of the resignation.

<sup>24</sup> ibid., p.1322.

<sup>25</sup> ibid.

<sup>26</sup> ibid., pp.1313-5.

although he personally 'had no hesitation in saying that if a director of a company is directly interested in trading with a government, he should not be a member of that government'.<sup>27</sup> He gave an assurance that the Government was attending to the question and expressed the hope that a definite 'precedent' would be laid down. A week later, he made a statement to the House setting out his detailed views on the issue. Unwilling to countenance a blanket ban on the holding of directorships, he held that 'if there is the slightest element of judgment or choice involved in the placing of government business, no Minister should be a director of a company which is the recipient of that business'.<sup>28</sup>

Labor members added a few postscripts to the discussion,<sup>29</sup> but there were no fresh developments until early in the life of the first Menzies Ministry a few months later. In reply to a question by E.J. Ward, Menzies reported that he had relinquished his own directorships months before.<sup>30</sup> A fortnight later, a Minister in the Senate declined to provide answers to a question on notice seeking details of Ministers who

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<sup>27</sup> ibid., p.1315.

<sup>28</sup> ibid., p.1374. This qualification was aimed at excluding, e.g., the placing of election advertisements in all major newspapers.

<sup>29</sup> ibid., pp.1374, 1437, 1479.

<sup>30</sup> C.P.D., vol.159, 1939, p.37. See also his reply to Ward in November 1938, C.P.D., vol.157, 1938, p.1374.

retained directorships, arguing as before that 'no reason can be seen why information of this personal character should be supplied'.<sup>31</sup>

The issue then lay quiescent until May 1941 when a sustained Opposition attack was mounted against the Minister for the Interior, Senator Foll, who was a director of Mt Isa Mines Ltd.<sup>32</sup> Labor speakers emphasised the implications of the export of zinc concentrates and lead to Japan. The question of directorships in companies supplying raw materials to the Government was also raised, and the argument was finally resolved by Foll's relinquishment of his directorships. In a subsequent Press conference, the Prime Minister stressed that he adhered to the policy previously laid down by Lyons.<sup>33</sup> Menzies continued to hold to the principle that conflict between private interests and public duty should be avoided in this area, a notable instance of his rigid adherence to the principle being the tabling of his correspondence in 1958 with Sir Percy Spender (then a Justice of the International Court) regarding a company directorship held by the latter.<sup>34</sup>

The position of Sir Robert's successors seems to be somewhat more ambiguous. In recent years, the prevalence of the practice of former Ministers accepting directorships

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<sup>31</sup> C.P.D., vol.159, 1938, p.483.

<sup>32</sup> C.P.D., vol.167, 1941, pp.28, 38, 65, 223-6, 252, 669, 671.

<sup>33</sup> S.M.H., 4 July, 1941, p.7.

<sup>34</sup> See C.P.D., H of R, vol.21, 1958, pp.1022,1125.  
See also S.M.H., 12 Sept., 1958, p.10.



on their retirement from politics, and of public servants resigning to accept directorships or administrative positions has aroused widespread criticism.<sup>35</sup> In reply to a wide-ranging question in March 1967, the late Harold Holt, as Prime Minister, gave little indication that he saw the issue in the same way as his former leader. He observed that he had:

...yet to learn that possession of a directorship by a Minister has given rise to a conflict of duty or to a failure on his part to give objective advice. In my experience, when any question arises in Cabinet and a Minister has a shareholding in a company which could be involved, the practice is for the Minister to declare that to be the case and for the Prime Minister then to be invited to decide whether the shareholding is so substantial or of such a relevant nature that the Minister should withdraw from the discussion.<sup>36</sup>

In reply to a supplementary question by one of his own party's backbenchers, he rejected as an infringement of personal liberty the notion that former Ministers or public servants should be required to wait two years after retirement before accepting a directorship with a company doing business with the Government.<sup>37</sup>

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<sup>35</sup> See John Playford, Neo-Capitalism in Australia, Arena Publications, Melbourne, 1969, chapter 3, for a recent critical account. See also Don Aitkin, 'Between the Lines' in Canberra Times, 26 March 1969.

<sup>36</sup> C.P.D., H of R, vol.54, 1967, pp.593-4. See also p.374 for an earlier question.

<sup>37</sup> ibid., p.597. Britain has a rule along these general lines.

In May 1969, Mr Gorton stated in answer to a question that none of his Ministers held directorships at the time except in private pastoral companies or small businesses, none of which had dealings with Government authorities. He refrained from answering the part of the question which asked whether he observed the convention that Ministers should not hold directorships. It remains to be seen, therefore, whether the issue of Ministerial directorships has been finally resolved.

The question of Ministerial directorships does not appear to have become a major issue in New South Wales, although in Opposition, P.H. Morton lost the support of his party and the leadership over claims that he was only a 'part-time politician'.<sup>38</sup> In Victoria, some developments associated with Sir Arthur Warner and Mr A.G. Rylah indicate clearly that not even lip-service is paid to the Lyons/Menzies convention in that State.

Despite the attention paid to Ministers' directorships at the Commonwealth level, I have not seen any clear evidence that either Commonwealth or New South Wales Ministers have sought to use their influence to gain privileged access to Government business on behalf of their companies. The parliamentary discussions were conducted essentially in the spirit of ensuring that tendering justice was seen to be done. The same broad approach has been strongly in evidence in relation to directorships held by former Ministers and public servants.

This approach to the question also appears to have been dominant in what has come to be known as the case of

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<sup>38</sup> K. West, op.cit., pp.165-6.

'Mr Lawson's horse'. As Minister for Customs in the first Menzies Government, J.N. Lawson had been responsible for a 1939 Bill to provide bounties for the Australian manufacture of motor vehicle engines. This legislation had developed from desultory efforts over the previous three years to establish the production of motor vehicle engines and chassis in Australia. With the growing likelihood of war, the Government had decided to take more positive steps to induce an Australian manufacturer to commence production and the Motor Vehicle Engines Bounty Bill was formulated after negotiations between Lawson and W.J. Smith, the managing director of Australian Consolidated Industries Ltd (ACI). Shortly after the outbreak of war, Lawson, on behalf of the Government, negotiated an agreement with Smith granting a five year monopoly in the manufacture of engines to ACI. Before legislation could be brought down to ratify this agreement, however, there had been dramatic developments regarding Lawson's non-official relationships with Smith. Press disclosures that Lawson had leased a racehorse from Smith led to widespread criticism, including a public reprimand by the Prime Minister (R.G. Menzies), and Lawson ultimately resigned his portfolio on 23rd February 1940.<sup>39</sup>

A few days before Lawson's resignation, A.G. Cameron, as leader of the Country Party, which was then outside the

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<sup>39</sup> For a summary of these developments and details of correspondence exchanged between Menzies and Lawson, see S.M.H., 24 February, 1940, p.17. Parliament was in recess between 8th December 1939 and 17th April 1940.

Government as a result of the Page-Menzies dispute, called for a Royal Commission into the racehorse transaction.<sup>40</sup> He reiterated his call after the resignation was announced.<sup>41</sup> When a coalition was formed in March 1940, however, he settled for an undertaking that the Country Party Ministers should be free to vote against the legislation validating the monopoly agreement.<sup>42</sup> When Parliament dealt with the legislation, the Government accepted an Opposition amendment that the monopoly element be removed by extending the same conditions to any other Australian-owned company prepared to accept the same conditions.<sup>43</sup> Smith subsequently accepted the position of Director of Gun Ammunition Production for the Government and his company shelved its plans for car production.<sup>44</sup> When the manufacture of an 'Australian car' was finally established, the running was made by a different company.

No public inquiry was ever held into this incident and in the absence of any evidence to the contrary, it must be assumed that the leasing of the racehorse was an innocent, if ill-considered, transaction.<sup>45</sup>

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<sup>40</sup> S.M.H., 20 Feb., 1940, p.13.

<sup>41</sup> S.M.H., 24 Feb., 1940, p.17.

<sup>42</sup> See Colin A. Hughes and B.D. Graham, op.cit., p.23.

<sup>43</sup> See C.P.D., vol.163, 1940, pp.10-11, 29, 113, 1087, 1127-36, 1468-1506, 1508-12, 1570, 1620-58, 1743-80.

<sup>44</sup> S.M.H., 28 June 1940, p.6.

<sup>45</sup> See K. Perkins, op.cit., pp.93-4, for a version which emphasises the lack of connection between the two transactions.

Two Federal Labor Ministers have been stood down from Cabinet for a period because of allegations of their misuse of their position for personal gain. The Treasurer, E.G. Theodore, resigned in July 1930, when allegations were made by a Queensland Royal Commission regarding his conduct as State Premier. Although these charges and their aftermath drove Mr Theodore out of politics and had a serious effect on the stocks of the Labor Party, they are outside our terms of reference and are mentioned here only to illustrate the importance attached to Ministerial probity in these matters. In the other case, the Minister for External Territories, E.J. Ward, resigned from the Ministry pending a Royal Commission to hear charges that he was implicated in a fraudulent transaction involving timber leases in New Guinea. Although the principal in the transaction, J.S. Garden, had been closely associated with Ward, the Minister was completely exonerated.<sup>46</sup>

One of the features of J.T. Lang's later years in the New South Wales Parliament was his penchant for accusing non-Labor Ministers of using their economic patronage resources to further the interests of their friends and political supporters. As a result, Royal Commissions were constituted in the 1930s to investigate several of these charges. Briefly stated, the specific allegations he made were as follows:

- (a) The Department of Lands had 'squeezed' an original settler off his land in order that it might be transferred on favourable terms to a non-Labor MLA, P.F. Loughlin.<sup>47</sup>

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<sup>46</sup> Report of Royal Commission on Timber Rights in the Territory of Papua-New Guinea, 24 June 1949.

<sup>47</sup> NSW Parl.Debs., 2nd series, vol.142, 1935, pp.5180-85.

- (b) The State Monier Pipe Works had been disposed of fraudulently to a company in which Sir Sydney Snow, the General President of the UAP, was the principal director.<sup>48</sup>
- (c) Corruption in the sale of the State Brickworks and the State Metal Quarries. He made similar charges regarding decisions on the operations of the State Insurance Office.<sup>49</sup>

The reports of the Royal Commissioners failed to find any substance in Lang's allegations,<sup>50</sup> although he continued to reiterate them from time to time in the course of his subsequent speeches. On the Labor side, however, there seems to have been more substantial cause for concern regarding the actions of some Ministers. Two Royal Commissions, one in 1932 and the other in 1953, revealed some startling transactions.

From the patronage point of view, the 1932 Royal Commission<sup>51</sup> is the more significant of the two.

Established by the Stevens Government to investigate the granting of licences for the operation of 'tin hare' greyhound courses and the illegal operation of 'fruit machines' in hotels, the Commissioner's main findings were:

- (a) Coursing applications in which an individual by the name of Swindell had an interest were invariably accepted.

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<sup>48</sup> NSW Parl.Debs., 2nd series, vol.152, 1937, pp.1941-73. See also vol.153, 1937, p.2436.

<sup>49</sup> NSW Parl.Debs., 2nd series, vol.153, 1937, pp.2436-2492.

<sup>50</sup> See Reports of: Royal Commission into Certain Land Transactions affecting the Western Lands Commission and the Department of Lands, March 1936; Royal Commission into Sale of Assets of Certain State Industrial Undertakings, March 1938.

<sup>51</sup> Royal Commission on Greyhound Racing and Fruit Machines, November 1932.

- (b) Swindell had paid substantial amounts into the Labor Party's advertising account and was in close touch with some members of the Cabinet throughout the period. A large sum of the money paid to him for his services to the companies sponsoring the applications remained unaccounted for.
- (c) The relevant Department was not normally consulted regarding the allocation of licences.
- (d) One company's applications were discriminated against. The Commission declined to accept the Colonial Secretary's explanation that this was due to the fact that Colonel Eric Campbell, the leader of the 'New Guard' was believed to hold a large parcel of shares in the company, preferring to see it as a manifestation of Swindell's influence.<sup>52</sup>
- (e) In relation to the fruit machines, the Commissioner found that, while there was no real evidence of Ministers being directly involved, the circumstances in which the machines were allowed to continue to operate suggested that payments into party funds had played a significant role.

The second Royal Commission<sup>53</sup> revealed an extraordinary and confused pattern of relationships between the Minister for Mines (J.G. Arthur) and a financial operator of doubtful reputation (R.A. Doyle) who had been convicted of illegally importing American cars and had misappropriated the proceeds of the sale of a car belonging to a company with which Arthur was associated. Arthur was absolved of

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<sup>52</sup> ibid., pp.23-24.

<sup>53</sup> Royal Commission into Matters Relating to Joshua George Arthur and Reginald Aubrey Doyle, August, 1953.

corrupt or improper practices regarding contracts between the company and the Joint Coal Board, but he was expelled from the Labor Party and although he was subsequently re-admitted, he was refused continuity of membership.<sup>54</sup>

A few years later, another Royal Commission<sup>55</sup> investigated claims by the Auditor-General that conflict of interest on the part of the Minister for Housing (A. Landa) had led him to act improperly in withholding progress payments from a building firm. A company, which was a long-standing client of Landa's legal firm, was a creditor of the building firm and Landa's action was interpreted by the Auditor-General as directed to secure an advantage for his client over other creditors. The Royal Commissioner rejected the Auditor-General's assessment, but did suggest that it would have been more prudent for the Minister to avoid any grounds for suspicion.

Apart from these cases where Royal Commissions had thrown light on Ministerial/business relationships, there have been other cases where there is some evidence of political factors intruding. In 1932, Lang, as Premier, is reported as having directed the Railways Department to cease using the legal services of the KC who had been chief counsel for the leader of the New Guard (E. Campbell) on a charge of using insulting words against the Premier.<sup>56</sup>

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<sup>54</sup> See S.M.H., 18 June 1957, 15 June, 1959.

<sup>55</sup> Royal Commission into Statements made by the Auditor-General in his Annual Report for the Year ended 30th June 1958, concerning the Minister for Housing, the Honourable Abram Landa, November 1958. See also Report of Auditor-General for the year ended 30th June 1958, pp.113-115.

<sup>56</sup> S.M.H., 5 Feb., 1932, p.9.



There is more solid evidence of Lang's proclivities in this direction in parliamentary discussion of his attitudes to newspaper advertising. In reply to a question on notice in February 1927, he revealed that the amount paid for advertisements to the Labor Daily, a paper controlled by Lang, had increased from £359.17.0 in 1924-25 to £1,995.10.6 in 1925-26.<sup>57</sup> In 1931, his approach took on a new dimension when he gave his explanation of the reasons for a Government instruction that advertisements regarding tenders for Government works would no longer be lodged with the Sydney Morning Herald. An added ingredient was that the Government had recently commissioned the Advertising Manager for Associated Newspapers to report on Government advertising. The Premier, however, absolved him from responsibility for the new policy. Lang's initial version, in response to a series of questions, developed on these lines:

It is the Government's policy, or a start of it, as far as the Sydney Morning Herald is concerned, and anybody who has read the continual attacks on the best interests of this State and its institutions by the Sydney Morning Herald will agree with the policy of the Government... The action was brought about by the disgust which I felt when I read certain articles in the Herald trying to pull down the best institutions of this State. When I read those articles I decided that the Herald had gone too far, and that it was not going to get the people's money to try to injure the State.

...it was the abominable article with regard to the State Government Savings Bank, when it was at its most critical stage... I take full responsibility for it, and the action is long overdue.<sup>58</sup>

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<sup>57</sup> NSW Parl.Debs., 2nd series, vol.110, 1927, pp.1100,1102.

<sup>58</sup> NSW Parl.Debs., 2nd series, vol.130, 1931, pp.6380-1.

Predictably, the Opposition was not impressed with this new principle of Government contracting. In a motion on the adjournment in the Legislative Council, Opposition speakers took the line that this was an attack on the right of free criticism. The S.M.H. had been freer in its criticism than most, and as Lang's spokesman in the Council pointed out, this action was unlikely to contribute to a lessening of its criticism in the future. Nevertheless, the Government had no effective counter to the argument that:

If the Government intends to withdraw its advertising from every newspaper which publishes articles that are objectionable to it, its action will mean that it will finally wind up with a monopoly of the Government advertising falling into the lap of the Labor Daily.<sup>59</sup>

There was a sequel to this skirmish in 1934. As in so many other patronage arguments, Stevens had the last effective word. When a Labor member pointed out that the Herald was the only paper currently holding an advertising contract<sup>60</sup> with the Government and queried why information about call-ups for the unemployed, results of lotteries and other Government advertising were not placed with the Labor Daily, the Premier replied tartly that he was 'not prepared to subsidise political journals corruptly and irregularly at public expense'.<sup>61</sup>

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<sup>59</sup> ibid., p.6422. For full debate, see pp.6419-27.

<sup>60</sup> Advertisements were placed with other papers, but on a casual basis.

<sup>61</sup> NSW Parl.Debs., 2nd series, vol.139, 1934, p.399.

In a related field, one Commonwealth non-Labor Minister was reported to have applied sanctions against an unwelcome critic. In 1938, the trade union radio station 2KY was cut off the air at short notice and its licence revoked on the basis that its news commentaries included personal attacks on Ministers and others not allowed the right of reply.<sup>62</sup>

In the cases we have discussed to this stage, different variants of the relationship between Government and elements in the business world have been considered. Governments also have economic or financial relations with other sections of the community. During the Depression of the 1930s, relief payments to the unemployed were an important feature of Government activity at both the State and the Federal level. The Lang Government, as was noted in chapter 4, came under fire for its appointments of dole inspectors and others concerned with the administration of relief measures. Only a few months earlier, the 'Lang Group' in Federal Parliament had applied the coup de grace to the tottering Scullin Government on the issue of political patronage in the distribution of work to the unemployed.

In late October 1931, the Prime Minister had announced a proposal to make a special appropriation of £250,000 to finance Government relief works whose precise form had not yet been worked out.<sup>63</sup> Designed with the twin purposes of giving a lead to private industry and a Christmas box to some of the unemployed, it took on the earmarks of a

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<sup>62</sup> S.M.H., 22 Nov., 1938, p.11.

<sup>63</sup> C.P.D., vol.132, 1931, pp.1188-9, 1358-70.

'Pandora's box' for the Government. The intention was that most of the money should be used for wages, that the programme should be initiated before Christmas and that those selected should be engaged for a minimum of two weeks and a maximum of four. Although reservations were expressed about the vagueness of the proposals, the limited impact on the general problem and some other aspects, the appropriation was approved.<sup>64</sup>

It was not long, however, before allegations were being aired both inside and outside Parliament to the effect that Labor organisers in New South Wales were compiling lists on the basis of declared support for the Treasurer (E.G. Theodore, by then re-instated in Cabinet) and taking advantage of prior knowledge of the prescribed procedures to secure preferred treatment for those listed.<sup>65</sup> Ultimately, J.A. Beasley, a member of the dissident Labor faction, moved the formal motion for the adjournment to discuss the issue. With the unanimous support of the Opposition parties, the motion was passed and Scullin procured a dissolution.<sup>66</sup> At the following election the Labor Party was routed, those losing their seats including Theodore himself and the two future Prime Ministers, John Curtin and J.B. Chifley.

While the Government's answers to the Opposition charges leave some scope for legitimate doubts about the basis for the distribution of relief, the issue was really only incidental to the fundamental dispute between the Labor factions, with the official Opposition poised to strike at the opportune moment. In reporting the result of

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<sup>64</sup> ibid., pp.1358-70, 1394-1400.

<sup>65</sup> ibid., pp.1605-6, 1644-50, 1669-86, 1807-13. An important element in the proposals was a special allocation of £5,000 for the Cockatoo Island Dockyard which was located in Theodore's own electorate of Dalley.

<sup>66</sup> ibid., pp.1888-1906, 1932-5.

Beasley's motion, the S.M.H. noted that 'although the defeat of the Government was brought about on the question of the allocation of unemployment relief funds, it is not expected that this will be a vital issue in the election campaign',<sup>67</sup> and this assessment was duly borne out.

In recent years, two other forms of economic patronage have exercised the minds of critics of the Federal Government. While the Government's attitudes to the operations of Sir Reginald Ansett's business enterprises does not have a specifically party-political origin, it remains true that this economic complex owes a great part of its success to the fact that the continued viability of its airline operations is a policy imperative of the non-Labor parties.<sup>68</sup>

The Minister for Trade and Industry, J. McEwen, has also come under Opposition fire in connection with the financing of the recently-erected Federal headquarters of the Country Party, officially named 'John McEwen House'. The original fund for the building was raised by private subscription, and one Labor questioner implied that some of the major contributors included individuals whose businesses had profited from the tariff policies of the Government.<sup>69</sup> In addition, it was noted that a Government Department, through the agency of the Department of the Interior (itself under a Country Party Minister), was leasing space in the building, thereby improving the financial viability of the project.<sup>70</sup>

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<sup>67</sup> S.M.H., 26 November 1931, p.9. See also Warren Denning, op.cit., for a sympathetic account of the Government's difficulties over this period.

<sup>68</sup> See, e.g. Australian Financial Review, 1 March 1965, p.2. for an assessment of the advantages to Ansett's other operations of the 'Two Airline' policy.

<sup>69</sup> C.P.D., H of R, vol.54, 1967, pp.596, 661.

<sup>70</sup> C.P.D., H of R, Nov., 1968, pp.1618, 1624, 1756.

In addition to specifically economic and financial favours, Governments have access to other forms of patronage which have not been discussed in the previous chapters. For Ministerial and back-bench members of the Government parties in Parliament, marks of favour include selection for overseas visits and nomination for parliamentary committees. Although the patronage possibilities have declined somewhat since the sustained attack in 1967 on the lack of control over their use, the right to travel on the Government's 'VIP' planes also is significant in this context.<sup>71</sup> These are positive applications of the patronage power, but negative applications are also available. Apart from the denial of favours which could be conferred, control of the machinery of government can have a solid impact on those whose activities it does not like. Without exploring the situation in detail, it may be noted that the operation of the Crimes Act, the Public Service Regulations and the control of the Security Service offer wide scope for the promotion of the political aims of the Government. In general terms, the major recent contribution from the interaction of these factors has been the application of sanctions against known opponents of the Government's foreign policy, particularly those who are critical of the Australian role in Vietnam.

The Crimes Act and Public Service Regulations have also provided the Government with the means for registering its disapproval of some phases of the activities of the Canberra publisher, Maxwell Newton. The culmination

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<sup>71</sup> See C.P.D., Senate, vol.36, 1967, pp.1191-1266, 1836-54. See also the numerous other C.P.D. entries in 1966-68 under the index heading 'Defence (Air) - VIP Aircraft'.

of a long-standing feud<sup>72</sup> between Newton and the Minister for Trade and Industry, J. McEwen, was a raid by Commonwealth Police on the former's home with a view to establishing the source of Newton's access to a confidential Government cable whose contents he had published. The warrants authorising the search were ultimately declared invalid and charges against a public servant alleged to have communicated information to Newton were dismissed. The public servant involved, however, resigned from the Service, partly because of economic pressures during the period of his suspension from duty while the charges were being investigated. Another public servant was fined by his permanent head for writing material for Newton contrary to the Public Service Regulations, and there have been suggestions that information obtained from Newton's bank accounts in the course of the investigation has been used to the disadvantage of other individuals who had done work for him.<sup>73</sup>

The list of non-economic favours and sanctions at the disposal of Governments could be extended, but for the most part, the favours available for distribution by Government are reducible to the three main categories we have concentrated upon, viz: appointments, honours and economic or financial favours.

The survey of the scope and exercise of the patronage prerogative in individual 'functional' areas concludes at this point, and the final part of this thesis is devoted to drawing the various threads together to permit of a general assessment of the performance of Governments in this area.

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<sup>72</sup> This feud appears to have been a major factor in McEwen's attitude to the Treasurer, W. McMahon. See A. Reid, The Power Struggle, op.cit., pp.52-79.

<sup>73</sup> For an assessment of these developments, see Alan Reid, 'How Not to Use the Crimes Act', in The Bulletin, 16 Aug., 1969, p.19.

PART THREE

GENERAL PATTERNS AND CONCLUSIONS

Chapter 10: Patronage, Party, and the Level  
of Government.

Chapter 11: Government Patronage in Australia:  
General Conclusions.



CHAPTER 10  
PATRONAGE, PARTY, AND THE LEVEL OF GOVERNMENT

In each of the chapters in Part Two, stress was placed on distinctive elements in party patterns and on differences between the two levels of government. This chapter seeks to provide a broader perspective by dealing with both of these important aspects on a more general basis.

In his outline of patronage in British Government,<sup>1</sup> P.G. Richards paid scant attention to party factors. Occasional comments were passed on aspects where the Labor and Conservative Parties had different approaches<sup>2</sup> and he dealt in detail with the efforts to establish a party balance on the advisory committees for the selection of Justices of the Peace.<sup>3</sup> He also noted that the Liberals had been excluded from a significant share in the available patronage for the previous forty years,<sup>4</sup> but he gave little indication that he regarded the interrelationship between patronage and party as worthy of more than passing interest.<sup>5</sup>

The approach adopted in the previous chapters of this thesis has been conditioned by my belief that distinctive party attitudes and performance play a central role in the exercise of the patronage prerogative by Australian Governments. This belief

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<sup>1</sup> Peter G. Richards, op.cit.

<sup>2</sup> e.g. in selection for political office and the distribution of honours.

<sup>3</sup> op.cit., pp.158-177.

<sup>4</sup> ibid., p.247.

<sup>5</sup> The British parties are in fact much closer together in some major aspects, e.g. Ministerial appointments and honours.

also provides the basic justification for devoting a separate chapter substantially to issues arising from this source.

One special problem in analysing party attitudes at the Federal level is that information on the Labor Party is somewhat dated as a result of the monopoly of the Commonwealth Government by the non-Labor coalition for the past twenty years. Whether the general assessments offered would apply to a present or future Commonwealth Labor Government is thus open to considerable doubt, particularly in the light of the changes which have been made in society and the Party itself over that period.

A regular reader of the Sydney Morning Herald over much of the period with which this thesis is concerned could be pardoned for believing that political patronage is a Labor Party disease to which other Australian parties are immune.<sup>6</sup> There are a number of factors which appear to have contributed to the Herald's approach. Firstly, in keeping with most other observers, it has had a fairly restrictive view of what constitutes patronage, its attention being concentrated on appointments and, within this area, to appointments conferred on politicians or those with formal party affiliations. Within this narrow frame of reference, the Labor Party has, in fact, been more active than its opponents, particularly in New South Wales. Secondly, the wholesale removal of the appointees of Labor Governments has been regarded as falling outside the definition because they are seen as attempts to cure the disease or at least to mitigate its effects.

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<sup>6</sup> This comment has relevance to New South Wales for virtually the whole of the period, but is less applicable to the Herald's treatment of Commonwealth developments in recent years.

Removals from office, of course, are just as much acts of patronage as appointments are, and more obviously political in motivation. Thirdly, where the casual observer might be inclined to believe that particular non-Labor appointments had some political significance, he would be assured that appearances were misleading. The editorial comments on Latham's and Bavin's judicial appointments are classic examples of this process in action.<sup>7</sup> Underlying all of these tendencies was the general conservative orientation of the Herald's ownership, and in the earlier period, a specific antipathy to Lang and all that he represented.

This general view of the nature of party performance is grossly misleading when due allowance is made for all of the forms of patronage discussed in this thesis and for the fact that there is more to political patronage than appointing to administrative positions those formally affiliated with the governing party. Even within this narrower conception of the term, it is clear that the non-Labor parties have made considerable use of the opportunities offering. To a large extent, the problems of being able to establish precise political motivations in particular cases has led me to place emphasis, perhaps an undue emphasis, on formal affiliations. In the various tables and textual comments, therefore, the impression is likely to be conveyed that a formal political affiliation is regarded as proof of political motivation in the distribution of patronage, and that the lack of such affiliation is proof of its absence. The bias arising from this source is directed, like that of the Herald, against the Labor Party because of the nature and openness of its organisational arrangements.<sup>8</sup>

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<sup>7</sup> See above, pp.140, 155.

<sup>8</sup> An important factor here is the relationship with the affiliated unions.

While the concentration on formal affiliations does produce some distortion, one feature which cannot fail to impress is the extent to which those appointees (or recipients of other favours) with formal affiliations are aligned with the party in power at the time. A significant proportion of the exceptions to this pattern are explicable in partisan terms. If the S.M.H. could draw conclusions from the fact that Dr Evatt found his paragons of conciliatory virtues predominantly from the ranks of his own party's supporters in 1947,<sup>9</sup> we are forced inevitably to draw similar inferences regarding non-Labor governments' appointments to overseas and judicial offices, not to mention their recommendations for the award of honours.

In chapter 5, it was noted<sup>10</sup> that the three major parties have adopted distinctive approaches to the filling of administrative and advisory bodies outside the career Public Service. Distinctive features of party performance in other fields have also been highlighted in other chapters. Before discussing these aspects in detail, some more general issues will be introduced.

One important point which may be noted at the outset is that there are differences in the extent to which the individual parties use different forms of patronage. The Labor Party as we have seen, virtually shuns the honours system at the Federal level and makes limited use of it at the State level. New South Wales Labor Governments which have recommended the award of honours have adopted a very moderate approach in terms of the political impact of their awards.

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<sup>9</sup> See above, pp.148-151.

<sup>10</sup> See above, pp.125-9.

Because of the system of Caucus election of Ministers, Labor First Ministers have generally been denied access to one of the most important elements of the patronage available to their non-Labor counterparts. While Labor Governments do exercise the right to appoint to judicial offices, the political dividends they have been able to reap from this source are limited by the special problems they face in finding individuals with the correct blend of technical and political qualifications. When the search has been successful, the reactions of their political opponents, and sometimes their own internal problems, have taken the bloom off their success. On the positive side, the Labor Party has made wide use of administrative posts, overseas offices and the lower-level quasi-judicial offices. It has also sought to advance the interests of the groups supporting it through the medium of the Budget, supported by social and industrial legislation.

The Country Party, in keeping with its sectional aims and limited basis of support, has restricted its attention to a narrow range of patronage fields. To this stage, H.S. Robertson remains the only Country Party politician to have been appointed to a diplomatic post and even the minor overseas posts have eluded the Party.<sup>11</sup> A similar pattern applies in relation to judicial and quasi-judicial posts. Although the recent appointment of A.I. Allan to the Commonwealth War Graves Commission is a departure from the regular pattern,<sup>12</sup> the Country Party's access to administrative boards is normally restricted to

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<sup>11</sup> Those Country Party members who are 'working' farmers or graziers would be unlikely to be interested in an overseas posting.

<sup>12</sup> See above, p.125.

those with direct relevance to rural interests and the emphasis is on the appointment of rural 'experts' rather than politicians or members of the Party. While Country Party Prime Ministers, in their limited terms, have not been able to make recommendations for honours in their own right, the Party's supporters have been catered for by their non-rural colleagues. It is in the fields of Ministerial office and the establishment and manning of commodity boards, however, that the Country Party has left its distinctive mark. In both of these areas and in some aspects of economic policy (notably subsidising in direct and indirect ways of production and subsidising of rural services and utilities), it has found patronage to be a valuable means of advancing its general and specific aims.

For the Liberal Party and its ideological antecedents, the whole range of patronage resources is available, although the minor quasi-judicial offices provide comparable problems to those encountered by the Labor Party in filling the higher judicial posts. While the Liberal Party is able to secure its aims and the interests of its syndical supporters without widespread recourse to the appointment of 'card-carrying' party members to administrative and advisory bodies, it has not completely neglected opportunities in this area. In addition, its appointments to overseas and judicial offices have included large numbers of former Ministers and members of Parliament drawn from the ranks of its own Party. The honours lists, too, have been notable for the proportion of political knights whose services have been devoted to the Liberal cause. Liberal First Ministers, too, are able to select for political office on a patronage basis.

It is from outside the ranks of its formal affiliates, however, that the Liberal Party draws much of its support and it is to this wider section of the community that it distributes much of its patronage. This shows out particularly in its distribution of honours and its appointments to administrative and advisory bodies. These two forms of patronage are often linked, in that service in an administrative or advisory capacity is treated as a qualification for the award of an honour, and the standing of a committee of inquiry or an administrative board, as for a company board, is often enhanced if its membership includes a knight or two. Because of the Labor Party's attitude to honours, the potential Liberal Party dividends from possession of the honours prerogative are inflated by the fact that the distribution of patronage outside the ranks of its regular supporters can serve a positive party-political purpose.

Against this general background, we are better able to place in perspective the party patterns revealed in the earlier chapters. In terms of patronage conferred on individuals with formal affiliations, the most significant aspects of the party patterns are briefly as follows:

(a) Non-Labor First Ministers, despite the handicaps deriving from the coalition situation, have much greater scope for personal choice in their selections for the Ministry. Individual Prime Ministers have taken advantage of this situation to reinforce their own position. The Country Party Leader, when the coalition is in office, is able to exercise effective control over the choices for portfolios of most direct interest to his party.

(b) Although the Labor Party initiated the pattern of selecting Australian Governors-General and was also the first to nominate an individual from its own Party, it was a Liberal Prime Minister who first chose a former Federal Minister from his own Party. It was a Liberal Prime Minister, too, who first translated to that office a leadership rival directly from the ranks of his own Ministry.

(c) So far as political offices are concerned, the one area where Labor has been able to match the non-Labor parties in its exercise of the patronage prerogative is in selections for the New South Wales Legislative Council.

(d) Apart from Lang's appointments to temporary offices and his opponents' subsequent removals, there do not appear to have been any major party differences in relation to Public Service appointments.

(e) New South Wales Labor Governments have had much greater recourse to appointments of their own supporters to administrative boards and advisory bodies than Federal Labor or Federal and State non-Labor Governments. The appointment of A.D. Kay<sup>13</sup> to the Meat Board by Lang, is, in addition, an obvious case of patronage used for reasons other than the promotion of administrative efficiency or a distribution of the fruits of office to the party faithful. The State non-Labor parties, on the other hand, used their patronage prerogative on several occasions to remove

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<sup>13</sup> See above, p.107



their opponents' nominees. The treatment of E.G. Theodore in 1940<sup>14</sup> by the Federal non-Labor Government also fits into this pattern. Lang, too, had made several removals from office, a pattern which was not repeated by other Labor Governments either at State or Federal level.

(f) In the judicial and quasi-judicial areas, the balance of advantage has been strongly in favour of the non-Labor parties, particularly in regard to the higher offices. This has been so in those areas - the High Court and arbitral jurisdictions, - where judicial decisions have political as well as legal implications. The imbalance is offset to some extent in the arbitral and industrial area by Labor advantages in relation to the quasi-judicial offices. That there was some political motivation in the appointment of Evatt and McTiernan to the High Court in 1930<sup>15</sup> could hardly be doubted, and Hughes' motivation in his 1913 selection of Piddington has been made explicit.<sup>16</sup> Similar assessments could be offered in regard to the appointments of Owen and Windeyer by non-Labor Governments,<sup>17</sup> and of Piddington, Weir, Evatt and Begg by New South Wales Labor Governments.<sup>18</sup> For the bulk of non-Labor judicial appointments, there is not much evidence of direct political factors, but the fact of party

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<sup>14</sup> See above, pp.118-9.

<sup>15</sup> See above, pp.138-9.

<sup>16</sup> See above, p.137.

<sup>17</sup> See above, p.141.

<sup>18</sup> See above, pp.151-2, 154, 156-7.

affiliation is at least likely to have reassured the appointing Governments of the soundness of their choices. (g) The pattern of development of Australia's overseas representation has made this a more fertile field for non-Labor Commonwealth Governments because of their monopoly of power in the years of really significant expansion of the Diplomatic Service. In the formative years of the Service, Labor Governments did have considerable scope for patronage appointments because of the lack of suitable career officers. Labor's use of these opportunities followed a relatively straightforward pattern of pensioning-off senior Ministers, rewarding loyal supporters or compensating those who had fallen by the political wayside. For the Liberals, however, this form of patronage was used to serve a much wider range of political purposes. The Labor pattern was followed for a high proportion of appointments, but there is at least strong ground for suspicion that several appointments were made with an eye to the advantages of removing the individuals from the Ministry. In terms of the categories introduced in Chapter 1, overseas appointments have been a useful outlet for those being kicked upstairs or sideways, as well as for the more conventional provision of 'jobs for the boys'.<sup>19</sup> A notable feature of diplomatic appointments has been that every one of the 30 non-career diplomats with political affiliations was appointed by a Government which shared his political orientation.

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<sup>19</sup> See above, pp.13-14.

One non-Labor Government, in addition, deprived one Labor appointee of his office.<sup>20</sup> At the State level, the limited political opportunities have also been availed of by both Labor and non-Labor Governments and both sides have seized occasions to shorten the overseas careers of appointees of their predecessors in office.<sup>21</sup> It is at the State level, too, that the one case of an overseas appointment of an erstwhile political opponent has been made, with a strong hint of electoral calculation as a major reason for the choice.<sup>22</sup>

(h) The one-sided nature of the distribution of political honours has been sufficiently stressed. The Federal Labor awards of Privy Councillorships are basically acknowledgements of status in the Commonwealth Ministry. On the evidence of the New South Wales lists of other honours, those Labor members looking for recognition from their own party would be well advised to seek to serve the State in a non-Parliamentary capacity. Those aspiring to knighthoods, like other sections of the community with like aspirations, must look to the non-Labor parties for recognition of their talents. Again, a period of service to the Government outside the parliamentary arena is normally a prerequisite.<sup>23</sup>

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<sup>20</sup> See above, p.175.

<sup>21</sup> See above, p.189.

<sup>22</sup> See above, p.190.

<sup>23</sup> The award to Dorothy Tangney in 1968 and the lesser award to W.J.F. Riordan in 1967 run counter to this general pattern. See above, p.217.

(i) The distribution of economic and financial favours does not fit neatly into the frame of reference we have adopted for this summary. For all three major parties, this form of patronage is used predominantly to appeal to groups outside the ranks of those formally affiliated with the party. Even in those cases where favours to particular individuals were exchanged for services to the party, the recipients of the favours have not themselves generally been party members.

To this stage, we have noted some significant differences between the parties in the forms of patronage availed of, in the patterns of patronage distribution and in the political functions served. Differences may be observed in other aspects too.

While constitutional niceties require Prime Ministers to exercise the formal patronage prerogative in some instances and for other specific Ministers to exercise it in other cases, there are some variations between the Labor and non-Labor approaches at times. For non-Labor, Prime Ministers guard their prerogatives closely and in normal circumstances the notion of individual Ministerial responsibility is taken seriously too. In New South Wales, there is a provision that full-time appointments be approved by Cabinet and some part-time appointments may also require Cabinet approval, but the initiative lies with the responsible Minister. At the Federal level, more freedom is left to the individual Minister in that he is expected to exercise his discretion about whether a particular appointment requires raising in Cabinet. The normal expectation is that Cabinet will be advised of the decision taken rather than be asked to make a choice itself.

Modifications of this pattern would apply in areas of particular interest to the Prime Minister. Examples which spring to mind in this context are judicial appointments in the Menzies era, and overseas appointments at any time.

The distinctive element in the Labor approach is the involvement of Caucus in the selection process on occasions<sup>24</sup> and a greater tendency towards a collective decision by Cabinet or some senior Ministers. Where Caucus and/or Cabinet have not been involved in the initial selection, it is frequently the case that decisions will be canvassed in either or both arenas. The selection of the Duke of Gloucester as Governor-General in 1945 is a case in point.<sup>25</sup> Particularly at the State level, the arguments will sometimes be taken up by the extra-parliamentary bodies, too.<sup>26</sup> The general import of these party discussions is to stress the need to appoint Labor men or those favourable to the Labor cause.

The distinctiveness of the general approaches of the parties can be explained in terms of interaction

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<sup>24</sup> The most notable example at the Federal level was Evatt's appointment to the High Court in 1930, and at the State level, his appointment as Chief Justice in 1960. See above, pp.138-9, 156-7.

<sup>25</sup> See S.M.H., 16, 17 Nov., 1963.

<sup>26</sup> See, e.g., S.M.H., 18 Feb., 1932, p.9; 18 Feb., 1933; 26 Feb., 1957, pp.1, 2, 4.

between three factors, party ideology, the organisational philosophy of the individual parties, and the fact that the parties each represent distinctive interests or 'syndicates'.

Thus for the Liberals, the conservative strand in their party ideology supports a hierarchical view of society, the composition of the upper groups being partly determined by the nature of the interest groups supporting the party. This conception is reflected in the notion of honours as a mark of status as well as a reward for service. It is also reflected in the types of appointments made to administrative and overseas posts. The same factors combine with the organisational philosophy of the party to strengthen the role of the party leader and the Ministry. Another strand of party ideology, that stressing the liberal notion of individualism, supports the concept of Ministers exercising individual responsibility in their own bailiwicks. Support for individual responsibility is also emphasised by the fact that the political conservatives and Empire loyalists in the party tend to take British political conventions seriously.

For the Labor Party, party ideology and organisational philosophy both stress the subservience of Cabinet to Caucus and of Caucus to the outside organisation. This places strong pressure on Governments to show that they are serving direct Labor purposes in appointments as well as in policies. This leads to the previously-mentioned emphasis on appointing persons likely to be favourably inclined to party aims and rewarding members who have provided good service and/or have fallen on 'hard times'. Federal Labor's activities in this latter direction in 1946 led to the use of the phrases 'prizes for losers' and 'spoils to the vanquished'.

to describe the practice.<sup>27</sup>

It also explains the efforts to bring the parliamentary party to account to the wider membership and the tendency for Cabinet and Caucus to seek to control or influence the patronage performances of individual Ministers. In the case of the Evatt and McTiernan appointments, Cabinet, under pressure from Caucus, went further and took patronage right out of the hands of the Attorney-General. As a corollary, there is less whole-hearted support of individual and collective Ministerial responsibility. Labor's abhorrence of the honours system stems partly from egalitarian notions and partly from the anti-imperialist strand in party ideology. These factors also help to explain the tentative approach of the New South Wales Labor Governments to the award of political honours. A more practical consideration is that, particularly in times of a tight labour market, Labor supporters are much more likely to look to their party for employment opportunities, and a title or other award is cold comfort for the individual seeking to make a living.

The Country Party, in patronage as in other phases of its operations, falls somewhere between the positions of the other two parties. They are more direct than the Liberals in their pressure for appointing supporters of the general country and specific Country Party interest. As the representatives of the upper classes of rural society, they also value the honours system as a basis for acknowledging the contributions and social status of the 'squirearchy'.

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<sup>27</sup> See S.M.H., 29 Nov., 1946, p.2; 16 Dec., 1946, p.2; 21 Jan, 1947, p.2.

Practical considerations do soften the impact of these differences to some extent. The need to avoid the breakdown of administration and to ensure that the party's programme is carried out effectively places a premium on selecting those supporters with the most relevant qualifications or on looking beyond the party ranks altogether. Obvious corruption or even highly unsuitable appointments will be seized upon by the Opposition and other critics and will tend to weaken the credit of the party. Another cautionary factor for the party leaders is that the institution of a spoils system or blatant use of the patronage prerogative for short-term party advantage is likely to be followed by retaliation. To some extent, the concept of Parliament as a 'club' or 'masonic' community cuts across the party battle. Thus Ministers and politicians of all parties tend to see merits in parliamentarians as such and therefore are inclined to see some merit in appointing former opponents who are down on their luck. Examples were the appointment of C. Chambers to an overseas post in 1959 and, outside the appointments area, the award of the DBE to Senator Tangney.<sup>28</sup> There could also be an element of thinking of their own future here. The power accruing to the leader of a Government tends to reduce the practical difference between Labor and non-Labor First Ministers, and the gap is further narrowed by the fact that under both the elective and appointive systems, the leading lights of the party in power will find their way into the Ministry. The sense of responsibility of Ministers, even if this is partly motivated by the desire to

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<sup>28</sup> See above, pp. 184-5, 217.



escape retribution, will also tend to inhibit the use of the patronage prerogative as an 'ultimate weapon'. Finally, there are some constitutional and statutory limitations on the power to confer favours, and the statutory or conventional specification of prerequisite technical qualifications also plays a part.

Partly as a result of the impact of these factors, and partly because of the large number of posts to be filled, the differences between the parties are to some extent only marginal differences of emphasis and many appointments or other forms of award do not have any direct party-political significance at all. Those distributing the patronage, of course, will assert that the fact of party affiliation is purely coincidental. This theme runs strongly through defences of particular Labor appointments. In reporting J.J. Cahill's defence of J.A. Ferguson's appointment to the Milk Board on the grounds that 'men would not be barred from important posts merely because they belonged to the Labor or trade union movement', 'Granny' of the Herald commented tartly that 'We've had some pretty convincing evidence of that'.<sup>29</sup> As an example of a Labor Prime Minister's reaction to criticism in the opposite direction, one observer reports:

When, a few months after the 1946 general elections, a member of Caucus, with vocal support, protested at his recent fierce electoral opponent being appointed by Cabinet to an important Government post, the Prime Minister, [J.B. Chifley] in the words of the Caucus minutes,

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<sup>29</sup>

S.M.H., 24 April, 1952.

'stated that he had no objection to the appointment as no person's political views ought to matter in his appointment to a departmental job. The Government wants efficiency and it must select the right type of man for the work'.<sup>30</sup>

In the context of Labor's wartime appointments, the same Prime Minister is quoted by the same writer as stating that 'the policy of the Labor Government was to select the best men for every job in the interests of the community'.<sup>31</sup> More so than in times of peace, this laudable commitment to bipartisanship in appointments was put into practice during the war, not only by the Labor Government, but by the previous non-Labor Government as well. Even in that period, however, there were strong pressures against an ever-readiness to find merit in the ranks of the political enemy. The fate of Theodore at the hands of the non-Labor parties has already been noted,<sup>32</sup> as has the pressure on the Labor side for the recall of B.S.B. Stevens.<sup>33</sup>

In addition to the pressures on governments to deny the fruits of office to their opponents, there are dangers for those who accept the largess of the enemy. A. Landa felt the full weight of the wrath

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<sup>30</sup> L.F. Crisp, Ben Chifley, Longmans, Melbourne, 1961, p.236. The appointee referred to was Warren (later Sir Warren) McDonald. See also S.M.H., 16 May, 1947.

<sup>31</sup> ibid., p.254. The precise source of this quotation is not cited.

<sup>32</sup> See above, pp.118-9.

<sup>33</sup> See above, pp.181-2.

of his former colleagues,<sup>34</sup> and similar, if less extreme reactions have been reported in relation to non-Labor members accepting Labor appointments.<sup>35</sup>

On the other hand, two Labor politicians appointed by the Menzies Governments to the post of Administrator of the Northern Territory were subsequently able to contest political office in the Labor interest. F.J.S. Wise returned to Western Australian politics in 1956 as a member of the Legislative Council, becoming Leader of the Opposition in the Council in 1963. R.B. Nott in 1969 unsuccessfully contested a Federal by-election for the Gwydir seat.<sup>36</sup>

Chifley himself is reported as having been very circumspect in his own acceptance of appointments from non-Labor Governments. In reporting to his State Executive in 1935 that he had accepted appointment to the Royal Commission of Inquiry into Banking, he stated that he had done so only 'after ascertaining that it was the policy of the ALP to be represented on this body'.<sup>37</sup> Again, 'still determined to re-enter Parliament, he had made the most extensive and circumspect sounding of Labor leaders before accepting an appointment to the Department of Munitions in 1940'.<sup>38</sup>

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<sup>34</sup> See above, p.190.

<sup>35</sup> See, e.g., K. Perkins, op.cit., pp.158-9.

<sup>36</sup> See above, p.181, regarding their appointments to the Northern Territory.

<sup>37</sup> L.F. Crisp, Ben Chifley, op.cit., p.103

<sup>38</sup> ibid., p.122.

Nevertheless, he 'felt bound, from political considerations, to resign from his Directorship of Labour Supply, as from the Capital Issues Board, before electoral nominations closed early in September, 1940.'<sup>39</sup> Despite his caution, however, in the pre-selection contest, 'Chifley's acceptance of a post with the Munitions Department...was used against him.'<sup>40</sup>

These types of pressures for the restriction of patronage to the supporters of the Government's own party arise only in the exceptional cases where there is an actual or proposed departure from the norm. For the Labor Party, as was suggested earlier in this chapter,<sup>41</sup> the concept of the Parliamentary Party as the parliamentary wing of the labour movement brings with it the expectation that Labor Governments will 'do the right thing' by its supporters.

In the course of an informal interview, one Labor veteran provided a revealing insight into the practical application of this organisational logic. The initial conventional proposition that the party's approach had been to seek the best man for the job was progressively modified in response to queries about individual cases. The first qualification, again in keeping with convention, was that if the best man

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39 ibid., p.123.

40 ibid., p.126.

41 See above, p.269-70.

happened to be a Labor man, this was so much the better. The 'best man' concept, however, ceased to have relevance when there were sound Labor men 'down on their luck'<sup>42</sup> and capable of performing the task. One diplomatic appointment was defended on the specific ground that the post involved could hardly be regarded as requiring more than token representation. Broadly similar arguments were proffered regarding other specific appointments, although different circumstances brought different variations on the main theme.

For the non-Labor parties, the different pattern of organisational relationships means that the partisan nature of patronage distribution is rather less obvious. Sawyer's comment about the social conservatism of the legal fraternity<sup>43</sup> could be extended to a much wider field of those considered to be eligible for high-level appointments or for the award of honours. So, too, could Parker's assertion regarding the pattern of non-Labor appointments to administrative boards.<sup>44</sup> As we have observed, however, the ready supply of successful and qualified individuals whose general

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<sup>42</sup> i.e. defeated politicians.

<sup>43</sup> See above, p.143.

<sup>44</sup> See above, p.117.

dispositions are favourable to the conservative cause, has not inhibited non-Labor Governments from distributing the fruits of office to those with more specific party affiliations. The sources of the pressures to act in this way are little different from those applying to Labor Governments. A contributing factor is the reaction of the non-Labor parties to the traditional pattern of Labor appointments.

In reviewing the general impact of the various influences on party performance, one feature which emerges clearly is that the non-Labor parties enjoy many advantages. They have a wider range of patronage opportunities available to them, and are able to use them to serve a wider range of political functions. In addition, the fact that Labor's approach is more easily documented, combined with the anti-Labor orientation of some of the most influential makers of public opinion, ensures that the Labor Party receives more than its due share of critical attention. In patronage as in other areas, Labor's organisational philosophy has combined with elements of its ideology to inhibit it from taking the maximum advantage from the opportunities available.

## II

Despite the constitutional division of powers, a striking feature of the general pattern is the similarity at the two levels of government in the scope for patronage, the types of favours available and the general form of the arrangements made for the exercise of the patronage prerogative. The major

differences in scope have arisen from variations in the availability of individual forms of patronage. Thus Commonwealth Governments have had more overseas offices at their disposal and have also been able to make more recommendations for honours. For New South Wales, administrative boards and advisory bodies have been more important, while selections for the Upper House have provided opportunities not available to Commonwealth Governments. Within the area of judicial and quasi-judicial offices, the High Court has assumed a special significance for the Commonwealth, whereas New South Wales Governments control a much greater volume of appointments in the other jurisdictions and at the lower levels.

For much of the period covered by this thesis, there were broad similarities, too, in the detailed exercise of the patronage prerogative. In the 1920s and 1930s, however, New South Wales came much closer to the development of a spoils system in appointments than has been the case for Commonwealth or later State Governments. This period in State politics was notable for the extent to which incoming Governments dismissed individuals appointed by their predecessors, or achieved a comparable result by varying the administrative structure.<sup>45</sup> The extent to which the Lang Governments conferred appointments on their own supporters also distinguished this period from others.

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<sup>45</sup> See above, pp.87-8, 95-6, 106-9, 189. For a highly critical contemporary account of these developments, see F.A. Bland, 'The Spoils System in the Public Service', Australian Quarterly, vol.4, 1932, pp.34-43.

While the bulk of the removals were made by the non-Labor Governments, for the most part they chose to appoint 'experts' rather than their own political supporters to the vacancies they created. The development of a genuine spoils system was also inhibited by the fact that much of the task of removal and replacement was sub-contracted to the Public Service Board. In addition, the non-Labor Governments were careful to avoid making removals in either the permanent Public Service or the judiciary, and they restricted their attention substantially to those appointments which were most open to legitimate criticism.

The more extreme approach to patronage in this period is explicable in terms of the congruence of a number of special factors. As we have noted, this was a period of severe political and economic conflict, and the sharpness of the divisions in society was heightened by the difficulties brought by the Depression. An additional ingredient was the rise of the new industrial unions as a threat to the earlier dominance of the labour movement by the Australian Workers' Union.<sup>46</sup> Lang's approach to patronage has generally been interpreted as an important ingredient in his efforts to consolidate his support from the dominant factions. As one writer put it:

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<sup>46</sup> This had taken place before the beginning of our period, but the contest had not been finally resolved, and there was also a struggle between the industrial unions themselves.



From 1925, partly by taking astute advantages of tactical moves in the faction fight, partly by conciliating union leaders and rewarding them with jobs, and partly by winning the support of the rank and file through genuine Labor legislation, J.T. Lang acquired personal domination of all the party institutions, and held it until 1939.<sup>47</sup>

The impact of the factors we have already noted was made more relevant to the development of a spoils system by the frequent rotation in office of the Labor and non-Labor parties. This in itself facilitated the development of the policy of political removals. Another contributing factor was the mutual interaction of the political personalities of Lang and Stevens. Lang's political rhetoric, like his political actions, was calculated to arouse strong reactions from his opponents, and Stevens, apart from having been a witness to Lang's inroads into the political neutrality of the Public Service, had himself felt the weight of Lang's approach.

Although Lang retained control of the State Labor Party until 1939, he remained in Opposition after his dismissal from the Premiership in 1932. By the time Labor was returned to office in 1941, there had been no dismissals for many years. The heat of political controversy had been overtaken by events, with the end of the Depression reducing the intensity of the economic battle and the onset of war increasing the pressures for the various elements in society to reach some accommodation with each other.

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<sup>47</sup> R.S. Parker, op.cit., p.93.

There was also the practical consideration that New South Wales Labor Governments, for the first few years after 1941, faced a hostile Upper House which reduced their freedom to manoeuvre. In subsequent years, the degree of acceptance of the British convention that holders of administrative offices should be removed only for 'cause' has been strong enough to prevent a return to the early pattern.

This earlier pattern offers some support for Encel's assertion that the role of the State in Australia has 'led to the growth of machine politics on the American rather than the British model'.<sup>48</sup> In general, however, the Commonwealth and New South Wales patterns have much closer affinities with British than American practice. The fact of Federation does have some impact in that the exercise of the patronage prerogative is shared between two levels of government and some Federal institutions themselves provide patronage opportunities. The adoption of the 'Westminster model' of government at both levels, however, has had a stronger influence on Australian practice. The only significant form of patronage in Britain which is not available to Australian Governments is the Church patronage,<sup>49</sup> and its political significance in Britain has declined in recent years. The existence of the

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<sup>48</sup> S. Encel, op.cit., p.9.

<sup>49</sup> Australia does not have an 'Established' Church in the sense that Britain has. Any development along these lines is ruled out by Section 116 of the Commonwealth Constitution.

House of Lords and the pattern of recruitment to it does provide a useful means of removing from the Commons those whose services are no longer required. In the virtual absence of this repository for those 'kicked upstairs' by Australian Governments, there has been a greater use of overseas appointments (mainly at the Commonwealth level) and administrative boards (more at the State level) for this purpose. These, however, are only minor differences which serve to emphasise the wide area of common experience.

CHAPTER 11GOVERNMENT PATRONAGE IN AUSTRALIA:GENERAL CONCLUSIONS

An individual exercise of the patronage prerogative creates a special relationship between two people, the 'patron' bestowing a favour and the recipient. As a modern observer has expressed it, 'the right to make an appointment is an overt demonstration of a patron's authority'.<sup>1</sup> Or, putting it more bluntly, 'patronage is the outward and visible sign of an inward and spiritual grace, and that is Power'.<sup>2</sup> It is this special characteristic of the patronage relationship which gives it its political significance.

Under the unreformed electoral system of eighteenth century Britain, patronage, as we have noted,<sup>3</sup> played the vital political role of securing the election of a compliant Parliament. While electoral reform and the development of disciplined political parties have downgraded its political significance, patronage remains a useful weapon in the party battle. No longer the crucial factor in party formation, it nevertheless provides a means of rewarding those who have served the party cause and, as we have seen, it can serve a wide range of other political functions as well.

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<sup>1</sup> P.G. Richards, op.cit., p.16.

<sup>2</sup> Benjamin Disraeli, quoted in Robert Blake, Disraeli, Eyre and Spottiswoode, London, 1966, p.388.

<sup>3</sup> See above, pp.20-21.

It is difficult to assess the net impact of political patronage on the performance of the tasks of government. The career Public Service, in the main period covered by this thesis, has been only lightly touched and the same could be said for the bulk of the subordinate staffs of the administrative agencies outside the Public Service proper. While outright political appointments to the governing bodies of these agencies have been frequent at both levels of government, there have been no outward signs of administrative breakdown, and there have been many bodies which have been controlled by non-political 'experts', by former public servants, or by permanent public servants serving on a part-time basis. In some cases, however, those appointed have been advanced in years and indifferent in health, and it is questionable whether their commitment to the party's cause has always been sufficient to compensate for these disabilities.

A feature of overseas appointments and appointments to judicial and quasi-judicial offices, particularly in the High Court and arbitral jurisdictions, is the fact that a significant proportion of those appointed have had formal political affiliations, usually with the parties supporting the appointing Government.<sup>4</sup> The overall impact of this pattern is mitigated for overseas offices by the fact that individual political appointees normally serve only one term. Thus, once the career Diplomatic Service became firmly established,

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<sup>4</sup> This is less true of Labor appointments to judicial offices and of lower level quasi-judicial appointments by non-Labor.

the proportion of non-career diplomats serving at any one time was not high, and apart from the London and American posts, they have generally served in centres which have made modest demands on their diplomatic skills. In any event, Australia is not a major force on the international scene and requires less of her diplomats generally than is the case for major world powers.

While a higher level of performance is required in London and Washington, many of those appointed to these posts have been senior Ministers of acknowledged capacity and there are substantial supporting staffs at both centres. The position in London has been less satisfactory in this respect because of the low status of the External Affairs representatives, but the recent change in the level of representation should have a mitigating effect. The impact of political appointments on the morale of the career officers is also likely to have been slight because of the opportunities which have flowed from the continued expansion of Australia's overseas representation. As I have suggested elsewhere,<sup>5</sup> it is also possible to make out a positive case for appointing politicians to diplomatic posts.

While the pattern of appointment to judicial offices has affected the trend of judicial interpretation of the Constitution and has also influenced the terms under which industrial disputes have been settled, the technical qualifications of those appointed have generally been of a high order.

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<sup>5</sup> In Australian Outlook, op.cit., p.136.

The respect which the lawyer-politicians have for the law, and the nature of the judicial process, together with the privileged tenure enjoyed by the judiciary, have protected the legal system from overt and direct influence. These factors have also placed some restraints on the free play of individual prejudices on the part of the Judges themselves.

Patronage appointments to Ministerial office, in conjunction with the use of other forms of patronage, have served to strengthen the personal position of the First Minister, particularly at the Commonwealth level. While it does not seem possible to 'prove' this, there is a widespread belief that the pattern of appointments by R.G. Menzies resulted in the reservation of Ministerial office for many who had few positive qualities to commend them. Certainly the pattern of appointing senior Ministers to overseas or judicial offices resulted, on occasions, in the removal of some of the best talent in the Ministry.<sup>6</sup> On the other hand, these losses have been offset to some extent by the opportunities for removing some who had little further contribution to make and for introducing new blood into the Ministry with a minimum of disturbance.

One disquieting implication of developments in this sphere, however, is the danger that it will come to be accepted that an individual should not be dropped from a Ministry without compensation in the form of an appointment or other favour.<sup>7</sup> The obvious difficulties

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<sup>6</sup> This pattern has not been restricted to the Menzies era.

<sup>7</sup> For a critical assessment, in these terms, of the appointment of J. Francis as Consul-General to New York, see leader 'Resignation Without Tears' in S.M.H., 5 Nov, 1955.

sometimes faced in inducing Ministers to accept appointment and the public speculation that particular Ministers (or public servants) are on the 'short list' for overseas office against their will, are not calculated to enhance public faith in the probity of Governments. These developments, too, have tended to degrade the professional standing of the career diplomats in the eyes of the public.

To the extent that potential recipients value them, the award of honours makes a positive contribution to the performance of the tasks of government. Since honours seem to come more freely to those who serve the Government in direct and indirect ways, the expectation of recognition can be a spur to perform political, administrative or social chores on the Government's behalf. Because of the ritual element in the patterns of awards, in some areas, the incentive may be to secure the qualifying appointment or to be seen to be performing a relevant function rather than to apply a high degree of efficiency to the tasks performed.

In the areas of economic and financial favours, patronage has the effect of distorting the pattern of resource allocation from that dictated by purely rational, economic considerations. On the other side of the coin, it does provide a basis for making decisions where technical considerations alone are incapable of providing a solution.

If it is impossible to arrive at firm conclusions regarding the impact of government patronage on the performance of 'administrative' tasks, there seems to be less ambiguity regarding its impact on the political



system. The expectation of favours to come can encourage greater efforts from those affiliated with both the Government and Opposition parties. Patronage also provides a means of widening the base of a party's support. In circumstances where the pressures on a Government are greater than normal, there is a temptation to adopt a more positive political approach to the distribution of patronage. This shows out particularly in election-year Budgets and in the campaign promises of Governments and Oppositions alike. It was also a major factor in Lloyd George's attempts to substitute the sale of honours for an effective party organisation and in Lang's use of all forms of patronage (except the honours prerogative) to reinforce his position. The reactions of Lang's opponents also are explicable largely in these terms, although to a large extent the emphasis was in depriving Lang's supporters of the favours previously conferred.

We have already noted some elements of the impact of patronage on parliamentary performance.<sup>8</sup> While the hope of Ministerial office can be a spur to individuals to make effective contributions to parliamentary debate and other activities, the patronage power held by a non-Labor First Minister,<sup>9</sup> can be an effective weapon for securing conformity with the Leader's wishes, both within the Ministry itself and in the parliamentary party as a whole.

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<sup>8</sup> Technically our concern was more with the administrative performance of Ministers, but the two aspects are interdependent.

<sup>9</sup> Caucus election reduces the scope for a Labor First Minister.

The most usual pattern is for this to be reflected in the rejection of independent spirits as genuine contenders for Ministerial office, although the conventions of collective responsibility can also be an effective weapon for converting an unruly back-bencher into a sedate member of the Ministerial team.

Apart from enhancing the position of the First Minister, patronage also contributes to the general dominance of Parliament by the Executive. The high proportion of political offices to the total parliamentary membership of the Government parties both ensures that individual members can have reasonable expectations of securing preferment if they 'behave' themselves, and assures the Government of a large bloc of automatic support for its measures. The hope of preferment extends beyond the parliamentary arena and the fact that Governments can confer favours other than political office is an added inducement to conformity.

Despite the impact of patronage on the political system and the obvious dangers that the needs of effective administration will be subordinated to questions of party advantage, there is little evidence that the problem is recognised, let alone that an effective solution is being sought. The major political parties, in Australia as in Britain,<sup>10</sup> have a vested interest in the perpetuation of the system, and in concealing the full ramifications of its operation.

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<sup>10</sup> On this point, see P.G. Richards, op.cit., p.247.

Their mutual interests have been served by the fact that public discussion tends to be limited to individual and special cases. This situation has been contributed to by a narrow interpretation of what constitutes patronage, and the tendency for the debate to be carried on in terms of short-term party advantage.

Given the way in which the Australian system of government works, it is legitimate to question whether there is any practicable basis for guarding against the abuse of the patronage prerogative. There are in fact some safeguards already but these are very uneven in their incidence. Thus, statutory prescriptions, formal procedures and conventional practice limit the extent to which Governments can apply purely political tests in their selections for appointments to the Public Service and the judiciary. Elections provide effective sanctions, at least some of the time, against an indiscriminate use of the power to appoint to political office and to confer economic favours, while procedures of financial control have an inhibiting effect so far as the disbursement of public funds is concerned. In other areas, however, heavy reliance is placed on the sense of responsibility of the Ministers themselves.

On one view, this is as it should be:

There is no case for special institutional arrangements to check the right of Ministers to make administrative appointments....If we accept that Ministers answerable to Parliament are entitled to govern us, we must trust them to select members of public boards.<sup>11</sup>

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<sup>11</sup> P.G. Richards, op.cit., p.103.

This is essentially a counsel of despair. In the absence of any control over the exercise of the patronage prerogative, the temptation to base patronage decisions on political criteria will be strong. In normal circumstances, the sense of responsibility of Ministers may be an adequate safeguard against obviously unsuitable appointments for posts requiring a high degree of technical skill. There is a wide range of posts, however, where this is not the case. Appointments to these positions and recommendations for honours, because of the vagueness of the selection criteria, provide ample scope for Governments to apply a political rather than a 'technical' test. As Herman Finer expressed it,

...though an individual appointment made by personal or party patronage may be individually pleasing...it is a crime against the public weal because it is an arbitrary tax.<sup>12</sup>

Those who levy taxes must expect the taxpayers to be interested in the value they get for their money.

There are special problems in applying this principle to the exercise of the patronage prerogative. Patronage is concerned with people, and it is difficult to find universally acceptable criteria for assessing the relative merits of individuals as well as their performance of administrative or other tasks.

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<sup>12</sup> As quoted by F.A. Bland in 'Overhauling the Machinery of Government' in W.G.K. Duncan (ed.), Trends in Australian Politics, Angus and Robertson, Sydney, 1935, p.170.

Nevertheless, the effort seems worth making since the alternative is to admit that the exercise of the patronage prerogative is a legitimate subject of inquiry only for those in whose keeping it is placed. The logic of responsible government may require that Ministers retain freedom to make final selections in some areas, but this does not mean that the areas involved should be unlimited in scope nor that attempts should not be made to hold them to account for their actions.

In seeking to devise arrangements for exercising some check over the exercise of the patronage prerogative, there are several principles which need to be kept in mind. In the first place, it seems essential that the scope for government patronage should be limited to those areas where political, as distinct from administrative and technical tests, are relevant to the duties to be performed. In this context, the difference in approach to the Public Service as compared with other administrative agencies is difficult to accept. Many areas of the Public Service are concerned with the prosecution of positive policies and many outside administrative agencies are not. The logic of the situation suggests that patronage appointments should be restricted to those areas where there is a significant policy content.

Judicial offices in fields where the political philosophy of the judges is a significant factor pose special problems. In keeping with the principle I have expounded, these would remain a legitimate subject for patronage and Labor Governments in particular could be excused for taking special care in choosing the 'right' men for these posts.

A strong case could be made out for the complete elimination of the honours system. If it is to be retained, however, and if awards are intended to be made for genuine services to the community or the State rather than to the Government parties, there seems no valid reason why the choice should be made at the political level.

The second principle which should be met is that within the area remaining as a legitimate field for patronage, Governments should have adequate facilities for making sound decisions. The current 'grape vine' approach, while it can be politically advantageous, is not very satisfactory in administrative terms. The field of selection is unavoidably limited and the criteria adopted in making choices may not be relevant to the tasks to be performed. The application of this principle envisages a more rational approach to letting it be known that vacancies exist, canvassing the field and matching skills to the technical requirements of positions. As the point was made by a British commentator:

It seems curious that, when the biggest firms rely on management selection teams to advise on the appointment of managing directors, and the Civil Service itself has had an open and well understood selection system for years, the top national jobs are still decided in the obscurity of Prime Ministerial patronage.<sup>13</sup>

Thirdly, I would argue that there should be some means by which Parliament could maintain some check on the Government's exercise of the patronage prerogatives left to it. The public canvassing of the qualifications

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<sup>13</sup> Richard Bourne in The Guardian, 28 Dec., 1957. Both in Australia and Britain, 'top national jobs' filled on a patronage basis include permanent headships, but acceptance of the career service principle reduces the scope for blatantly political appointments.

of individual candidates is not a very edifying process, and qualified candidates are likely to be deterred from standing for office if this is a regular feature of the appointment process. If there were a system of expert selection committees charged with making recommendations, parliamentary scrutiny, in the form either of tabling of the relevant papers or their study by a select committee, could be limited to those cases where the Government rejected a recommendation.

Fourthly, any arrangements made should be directed at eliminating substantial bias either for or against those with political experience, irrespective of the political affiliations of the individuals concerned.

The essence of these arguments is that the scope for political patronage should be restricted to the barest minimum. This approach was espoused strongly by F.A. Bland in his crusade against what he saw as the beginnings of a spoils system in New South Wales in the 1930s.<sup>14</sup> A contrary view has been expressed by one who was much closer to the practical operation of a full-blown patronage system:

The engrossing of a considerable quantity of patronage into one disposing hand has this advantage; that after the administrator shall have satisfied any private ends which he may have at heart with a portion of the patronage, he will dispose of the rest with reference to public interests.<sup>15</sup>

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<sup>14</sup> See e.g., report of an address at Sydney University in S.M.H., 10 May 1932, p.10.

<sup>15</sup> Henry Taylor, The Statesman, Longman, Rees, Orme, Brown, Green and Longman, London, 1836, p.217.

The same observer also argued against the modern notion<sup>16</sup> that a long period of one-party government would lead to a tendency to misuse the patronage prerogative. As he put it:

...the minister who has been long in office will be most likely to dispense his patronage properly; for the circle of his private friends is saturated.<sup>17</sup>

Plausible though these arguments are, they seem more in keeping with prevailing eighteenth century attitudes than those of the present. The contrast seems to be more marked at the theoretical than the practical level. The reluctance of those in power, or even of those only aspiring to it, to shed any of their control over government patronage is a substantial hurdle to the would-be reformer.

If past experience is any guide, a major disturbance of the current pattern is unlikely unless one of the parliamentary parties can see a political advantage in pressing for reform. At the Federal level, intriguing possibilities are opened up by the fact that those who hold the balance of power in the Senate are virtually excluded from any share in the available patronage. In this latter respect the DLP and the Australia Party are in a comparable position to the British Liberal Party, but unlike the British Liberals, they are in a position to do something about it. To achieve a result of course, they would need to have the support of the Labor Party, which has a vested interest, in the long-term, in the retention of the present system.

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<sup>16</sup> See, e.g., P.G. Richards, op.cit., p.257.

<sup>17</sup> Henry Taylor, op.cit., p.218.



Regardless of the practical likelihood of inducing a change of approach, however, the basic conclusion to which this study leads me is that the scope for the unfettered exercise of political patronage by Commonwealth and New South Wales Governments 'has increased, is increasing, and ought to be diminished'.

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LIST OF INDIVIDUALS CONSULTED

Note: As emphasis was placed on published sources, interviews and exchanges of correspondence were limited to ad hoc efforts to clarify uncertainties which had arisen. Emphasis was placed on obtaining information on procedural arrangements and broad aspects of the general pattern. Those named in this list are individuals who expressed no objections to being cited. Apart from those listed, numerous public servants in various Departments and other instrumentalities were consulted, and correspondence was exchanged with a number of administrative agencies.

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