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CHURCH AND STATE IN AUSTRALIA:

The Background and Implications of Separation.

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FOREWORD:

My aim is not to watch the gradual breaking down of a tradition - that of an 'established' church - until the Separation of Church and State occurred, but rather to watch the building up in a new and unprecedented type of colony of a form of Church - State relationship which was the practical expression of the political theory and religious thought of the nineteenth century.

The story runs from the earliest settlement and the beginnings of organized religion to the time when the drafting of the Federal Constitution made it necessary to produce a working formula to regulate the relations between Church and State.

In the days of penal colonization Church-State relations underwent a phase which could conveniently be described as quasi-establishment: a relationship dictated more by the needs and circumstances of the penal settlement than by the views and policy of the Colonial Office. This was followed by a phase (covered in the second and third chapters) when several churches received State support, but this was clearly intended to be temporary only, marking an advance towards the goal of Separation and religious freedom. Chapter four analyses the religious and political ideals which, during the third and final phase, were contributing to make Separation a reality.

Lastly, in the fifth chapter, the implications of the formula arrived at in the Constitution will be explored with a view to showing that neither the guarantee of religious freedom nor Separation is absolute.

This thesis covers only one aspect of the subject of Church-State relations in Australia which also involved the theoretical and legal position occupied by churches - as one type of voluntary group - within the general framework of the State.

CHAPTER ONE. THE STARTING POINT (1788-1825)



The original settlement of New South Wales was due chiefly to the urgent need to relieve the overcrowded condition of the English gaols. At the outset civil seems to have been regarded as of less importance than criminal jurisdiction and, to quote Eris O'Brien,

'While it is evident that colonization was contemplated with the unpromising ingredients of convicts and island women, problematical military settlers and others who might later be tempted to try their luck in this distant place, it is clear that the transportation of criminals was the dominant intention. Had there (1) been no criminal problem, there would not have been a settlement.'

As a repository for surplus felons, New South Wales received inadequate and inexpert attention from the British Government, preoccupied as it was with other matters. The French Revolution and Napoleonic Wars coupled with rebellion in Ireland were followed closely by a period of domestic unrest. For the larger part of Lord Liverpool's Ministry the lower strata of English society were in a state of incipient revolution which would every now and then flare up in outbreaks of machine-breaking, bread riots or mass demonstrations such as the March of the Blanketeers and Peterloo.

Certain individuals, it is true, did display some interest in the affairs of the Colony during the earliest period of its existence. Wilberforce, as will be shown, was specifically concerned with the spiritual needs of the population but, by and large, the affairs of the colony were considered chiefly insofar as they related to the good order, usefulness and economy of administration of a penal settlement. Bentham, (2) for instance, at the beginning of the century wrote two letters to Lord Pelham, the then Home Secretary, one comparing the Government's penal policy in New South Wales with that of his own Panopticon and another questioning the constitutional legality of the settlement.<sup>x</sup>

Romilly, also interested in criminal law matters, secured the appointment in 1812 of a Committee on Transportation but its Report received little notice in official circles.

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<sup>x</sup> Bentham had already evinced his interest in colonial policy in his 'Emancipate your Colonies', published in 1793.

It was not only New South Wales that suffered from lack of interest.

In Britain at this time the colonial empire generally was regarded as a somewhat tiresome responsibility that was no longer a profitable economic investment. The Colonial Office did not rank high in administrative importance; and parliament and the public were relatively apathetic towards colonial affairs, unless something was obviously and seriously wrong. It was usually left to Bentham and radicals like Wakefield or Durham to question the prevailing colonial policy. Since this held true for administrative and commercial affairs, it seems not unnatural that the problems of religion overseas should receive scant attention at home, except from the several church and missionary societies.

It was only in the years following the close of the Napoleonic Wars that any real measure of publicity was given to New South Wales when the Liverpool government, prodded by the Whig-Radical opposition, began to awaken to the faults and expense of the administration of the settlement and to its extra-penal possibilities.

Complaints of Macquarie's autocratic policy and a long petition for his recall led to the appointment in January 1819 of a Commission of Enquiry to New South Wales led by John Thomas Bigge.

The following extract from Bathurst's letters of instruction to Bigge shows that the parting of the ways had been reached:-

'You are aware of the causes which led to the formation of settlements in New Holland ... Not having been established with any view to territorial or commercial advantages, they must chiefly be considered as receptacles for offenders, in which crimes may be expiated ... by punishments sufficiently severe to deter others from the commission of crimes and so regulated as to operate the reform of the persons by whom they had been committed. So long as they continue destined by the legislature of the country to these purposes, their growth as colonies must be a secondary consideration.'

But in a further letter of the same date Bathurst writes:-

'I have already had occasion to point out to you those objects of inquiry, on your arrival in New South Wales, which are connected with the administration of the settlements there as

fit receptacles for convicts; but although the Prince Regent considers these to be most important, and therefore the main object of your investigation, yet His Royal Highness is also desirous, that availing himself of your presence in that quarter, in order to obtain a Report upon a variety of topics which have more or less reference to the advancement of those settlements as colonies of the British Empire.

... you will ... turn your attention to the possibility of diffusing throughout the colony adequate means of education and religious instruction; bearing always in mind ... that these two branches ought in all cases to be inseparably connected.<sup>(3)</sup>

I have quoted at length because these words seem to provide an insight into the background against which events in the sphere of Church and State were moving both before and after Bathurst wrote. The development of Church-State relations in Australia only takes distinguishable form when the Colony begins to develop gradually towards the status of a free (i.e. non-penal) British community. (The New South Wales Judicature Act of 1823 which provided for the creation of a Legislative Council was a result of Bigge's report. This Act was hardly more than a gesture - the Governor retained his autocratic power - but it does indicate a new direction of thought.)

From the outset the religious establishment was essentially a part - a legally subordinate part - of the military establishment. Orders in Council and despatches from the Colonial Office to the early Governors show that the first Church of England chaplains were entirely dependent for their appointment, stipends and grants of land upon the authority of the Crown.<sup>(4)</sup>

Given the situation, this subordination of Church to State seems natural. Equally natural does it seem that the State should have assumed that it must make some provision for the Church - the national 'Church of England' - even in so unprecedented a type of colony.

'The English people,' wrote Burke in 1790, 'do not consider their Church as convenient, but as essential to their state: not as a thing heterogeneous and separable, - something added for accommodation, what they may keep up or lay aside according to their temporary ideas of convenience. They consider it as the

(5)

foundation of their whole Constitution, with which, and with every part of which, it holds an indissoluble union. Church and State are ideas inseparable in their minds, and scarcely is the one ever mentioned without mentioning the other.'

This was a time when the Test Acts were still in force; it was also the time of anti-Popery and the Gordon Riots. The Church of England, the 'happy Establishment', pursued its straight and narrow way, still confident in the somewhat somnolent security of its position in the nation's social and political life.

'And it is ... our royal will and pleasure that you do by all proper methods enforce a due observance of religion and good order ... and do take such steps for the due celebration of publick worship as circumstances will permit.'

This passage contained in the instructions issued to Phillip and successive Governors until 1821, together with others issued from time to time, defined the Church's position in the Colony. A Commission, (7) issued by Royal Warrant on 24th October 1876, appointed the Rev. Richard Johnson as Chaplain to accompany the First Fleet with an annual stipend of £180 and thus officially provided for 'publick worship'. The allocation of 400 acres in each township for a church and minister's (8) dwelling was meant to give it a firm material foundation. The Church was also made to serve its purpose as an organ of administration; some clergymen - such as Marsden - were appointed to the civil magistracy; it was their duty also to act as a sort of census agency by registering (9) every birth, baptism, marriage and death which took place in the Colony. Furthermore, convict musters were held in conjunction with compulsory (10) church services each Sunday. - Good order, usefulness and economy.

Considerable attention has been given to the question whether or not the Church of England was by law 'established' with the foundation of the Colony. Judge Burton, in 1840, wrote his 'State of Religion and Education in New South Wales' on the basic assumption that 'not only in law, but also in fact, the Church of England was from the foundation (11) of the Colony, up to [1836] ... the established Church of the colony.'

In the same year Ullathorne, the Roman Catholic Vicar-General, wrote his 'Reply' expressly to refute Burton's arguments for establishment. 'The English church', he wrote, 'has never been in New South

Wales by Act of Parliament established ... No act, even of  
 the local legislature, much less of parliament, ever  
 established the Church of England in this colony on a legal  
 (12)  
 basis ...'

Ullathorne was in fact right. The Courts have subsequently ruled  
 that the introduction of English law into a colony does not carry with  
 (13)  
 it English ecclesiastical law. But ruling to this effect was only  
 given for the first time in 1866 so that, as far as the period we are  
 considering is concerned, it makes little difference: in the 1820's -  
 and for some time after that - the legal question was confused. A  
 recent opinion states all that is necessary for the present purpose:-

'The most the historian can say is that down to about 1836 the  
 Church of England was treated as far away the most favoured  
 church in the colony, and that insofar as the Imperial Government  
 thought about its position there at all it thought of it as the  
 (14)  
 'established' church.'

'Insofar as the Imperial Government thought about its position there  
 at all' - This is the crux of the whole matter. I believe that the  
 Colonial Office did not at this stage have any consistent religious  
 X  
 policy for New South Wales; that such instructions as were sent out to  
 the Governors for dealing with Church matters were given spasmodically  
 and with a view to their practical expediency rather than their implications  
 for the status of the Church of England. The Colonial Office was not  
 unsympathetic to claims which appeared to it reasonable. When other  
 churches began to appear it dealt with them too, as they grew and became  
 vocal, in a spirit of even-handed justice, introducing, cancelling or  
 revising its measures in the light of current circumstances in the colony.

If the situation outlined in the previous paragraphs is fairly  
 described, then the 'establishment' issue can be stated in these terms:  
 Although the Church of England was not by law established in 1788, during  
 the succeeding years the Colonial Secretary would often assume that it  
was and in New South Wales it appeared to be because of its numerical  
 superiority and its place in the penal administration. It seems clear

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X This, it seems, is likewise true of the next stage from 1836 to the  
 granting of self-government. In their office as Colonial Secretary  
 men like Stanley and Grey lacked penetration or else varied their  
 policies according to the mood in the Commons. But in any case  
 after 1836 the establishment issue ceases to be a live one. (cf. W.P.  
 Morrell, 'British Colonial Policy in the Age of Peel & Russell').

that the Imperial Government, having transplanted one seed of religion, had no intention of giving it pride of place, simply and solely because that was what it enjoyed at home. It was really in the nature of an experiment: how would the new garden grow when other plants sprang up?

This thesis can best be illustrated by some consideration of the developments which took place both in England and in New South Wales during the first part of the nineteenth century in the affairs of Church and State. For it must be borne in mind that the religious measures taken in New South Wales up to the grant of self-government in 1850 were the product of two influences. On the one hand, the Colonial Office, which initiated certain of the measures, was swayed by the general trend of political and religious opinion at home. On the other, New South Wales was, for at least four decades, a comparatively unknown quantity. News filtered back slowly; the picture it produced was not always clear, and thus the Government relied to a certain extent upon the initiative taken by those on the spot who alone could gauge the needs and opinion of the colonial population and suggest or request measures accordingly.

The history of the Church of England in New South Wales during the period of its early and somewhat precarious existence is not an edifying one. The transference overseas of the intimate Church-State relationship which existed at home seems to have been taken so much for granted that statesmen apparently failed to work out pragmatically what would be the actual situation in which the Church would find itself in a colony such as New South Wales was designed to be. It was for this reason largely that the intimate relationship produced such poor results for religion and for the - mainly convict - State. Neglect is in fact the prevailing theme.

Wilberforce had strongly urged upon the Pitt administration the importance of appointing a second Chaplain to assist Johnson before (15) Marsden was finally sent out to join him in 1793. Marsden himself, again backed by Wilberforce, had to appeal for more help in his arduous ministration before Cartwright and Cowper were added to the clergy in (16) 1810. Johnson, in 1793, complained that -

'... publick works of different kinds have been, and still continue to be, so urgent that no place of any kind has yet been erected for the purpose of performing Divine Service ... for the same reason

7.

(I mention it with sincere concern) there has been too general  
(17)  
and repeated neglect shewn to publick worship.'

- He had, therefore, to build the Colony's first church of wattle and daub with his own hands and had subsequently to make several requests to Governor Grose and the Home Secretary, Dundas, before he was reimbursed the cost of erecting this humble structure. Governmental neglect was aggravated by the material situation in which the Church found herself.

'All idea of a Supreme Being and respect for everything decent, moral and sacred, seemed totally obliterated. Yet this was no more than might naturally be expected from such a description of mankind when all without exception however infamous and abandoned, were allowed by those in authority to absent themselves (18) from public worship.'

A proportion of the gaol population was inevitably depraved and vicious, but the civil and military janitors were little better. A visiting missionary remarked, 'There are few of the officers who are (18a) not either Atheists or Deists.' These, as well as the convicts, had to be ordered by Governor King to attend Divine Service regularly, (19) the order being enforced, in the case of convicts, by the police.

Even had the ministrations of the Church been widely desired, given the undeveloped and dispersed nature of the settlement they could only be brought to a few at a time and at scattered intervals. The English parochial system, forming a close network over the whole countryside, was manifestly impossible and the situation of Johnson or Marsden could hardly have differed more widely from that of a Parson Woodforde.

'A clergyman in England lives in the very bosom of his friends; his comforts and his conveniences are all within his reach and he has nothing to do but feed his flock. On the contrary I entered the country when it was in a state of nature and was (20) obliged to plant and sow or starve.'

Thus wrote Marsden replying to criticisms which his secular activities as a sheepbreeder and agriculturist had aroused at home.

So much for the treatment received by the 'national' church when it was the only church. What of other churches in the succeeding years?

Transportation of convicts from Ireland had commenced in 1791 and by the 1820s a little over one-third of the total population was Catholic. The application of two Catholic priests for permission voluntarily to go out with the First Fleet had been refused. In 1803 Father Nixon had been granted 'a conditional emancipation, to enable him to exercise his clerical functions as a Roman Catholic priest,' a concession which was withdrawn in the following year. In 1816 the Holy See appointed one Father O'Flynn to be Prefect Apostolic of New Holland. The Colonial Secretary, Earl Bathurst, refused to authorise O'Flynn's mission. So in 1817 he proceeded to the Colony unauthorised. He was greeted coldly by Macquarie who, in the following year, ordered him to depart. This was no act of persecution. O'Flynn himself wrote back to Ireland that 'The Governor Macquarie and his Secretary, Campble [sic] are well disposed' and Bathurst took the view that:-

'as Mr. Flynn went out ... without any permission or recommendation from Her Majesty's Government here, the Governor of New South Wales acted perfectly rightly in directing him to leave the colony forthwith.'

(Be this as it may, Macquarie, the autocrat, was very much alive to the value of the Church of England's monopoly: 'established Uniformity of Worship' he conceived to be 'of the utmost importance to the peace and harmony of the Colony to preserve inviolate'.)

The way in which the O'Flynn episode was used as fodder for the Radical guns is illustrated in a speech by Mr. Bennet, a supporter of Remilly and a pupil of Francis Place and Bentham. Speaking in the House of Commons on the Motion on Transportation which he moved on 18th February, 1819, Bennet said:-

'A Catholic clergyman [O'Flynn] had voluntarily gone from Ireland with the view of instructing convicts of his own persuasion. No objections were made to him on any other ground but that of his being a Catholic; but as a Catholic he was sent away from the settlement. He [Mr. Bennet] was no friend to the Catholic religion and was of opinion that the conversion of Catholics to the Protestant religion would be a very great blessing; but there could be no doubt that good morals under forty religions (26) was better than immorality under one.'

9.

Bennet's was the matter of fact argument for religious toleration. Perhaps it was one in the same tradition as those used some ten years later to justify Catholic emancipation in Great Britain which Newman had seen as a sign of the 'encroachment of philosophism and indifferentism' into religious issues. (27)

In any case Bennet's argument seems to have prevailed and in August of 1819 the British Government gave its sanction to the departure of two Catholic priests, Therry and Conolly, and directed Macquarie to provide them with annual stipends of £100 each so long as they gave no trouble. (28) 'Philosophism and indifferentism' possibly, but it also shows that the British Government did not intend to restrict endowment to one church.

When, in the 1820s, the colonial Government's policy tended to make conditions more favourable for free settlers, among the emigrants who began to arrive was a considerable number of Presbyterians, chiefly farmers and mechanics. In response to a request for assistance, the British Government agreed to contribute one-third towards the cost of erecting a Presbyterian chapel, this being subsequently transmuted into an annual stipend of £300 for John Dunmore Lang, the first Scots Minister. (29)

It is interesting to note that the Presbyterians argued that if the Church of England was indeed 'established' then so, by virtue of the Constitution of the United Kingdom, was the Church of Scotland. (30) <sup>x</sup>

Here then were the three denominations all receiving State aid. The sums of £200 and £300 paid annually out of the Colonial Revenue in stipends to the Roman Catholics and Presbyterians respectively were of small account as compared with the £2032.10. 0 paid out to Anglican Chaplains and Catechists. (31) The Church of England was foremost in numbers and in official favour but it must also have been a considerable financial liability.

The first really important religious measure initiated by the Colonial Office has been taken as clear evidence that the government planned to 'establish' the Church of England, but it can also be linked in a more practical way with colonial finance. On 1st January, 1825 Bathurst sent to Governor Brisbane a draft of the British Government's plan for incorporating a body of trustees to manage the 'Clergy and school lands in

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<sup>x</sup> Appendix A.

(32)

the colony of New South Wales.' In July of the following year Governor Darling was instructed to affix his seal to the Letters Patent which actually created the Corporation of the Trustees of Church and School Lands, vesting it with the right to lands comprising one-seventh in extent and value of all the lands in each county of New South Wales. By its Charter, the Public Treasurer was made at the same time Treasurer of the Corporation and instructed to open a separate account on its behalf. The annual nett balance of this account was to cover the cost of the building and upkeep of churches and schools and to pay stipends to the Anglican clergy and salaries to schoolmasters, who were placed under the authority of the Bishop or Archdeacon. The final passage in the Draft Charter runs as follows:-

'And We do further Will and ordain That, when and so soon as the several purposes and objects aforesaid shall have been fully and effectually performed and carried into execution, and when provision shall have been made for the religious instruction and education in the Principles of the Church of England of the whole of the inhabitants of the ... Colony, it shall and may be lawful for us, our heirs and successors, to direct and provide for the manner in which the several uses and purposes, upon ... which such part of the lands so to be granted to the said Corporation, shall be held and applied; as may not be wanting to carry into effect the several purposes before mentioned.'

The significance of this passage increases when it is read in conjunction with another in a letter from Bathurst to Governor Brisbane, written before the Corporation had been conceived, in which the Colonial Secretary gives instructions regarding the normal reservations for church and school purposes in each township, already mentioned.

'It is perfectly clear that ... the proceeds from the rent of these lands will not be sufficient to remove the expense of clergymen, or of schools, from the general Colonial funds; but in proportion as the country becomes civilized and populous, these lands will increase in value and ultimately prove adequate, or more than adequate, to the purpose.'

(33)

Surely we have here a suggestion that, even though the Church was assumed to be the 'establishment', - it is frequently referred to in

despatches from Whitehall in these terms - the home authorities had no desire to afford it State support indefinitely and were anxious to shoulder off the financial responsibility as soon as was expedient. The very fact that the Corporation's funds were separated from the general revenue seems to indicate that the way was being paved for that time when the Church, having been initially endowed with vast tracts of land, should have become self-sufficient, whereupon the financial relationship between Church and State would simply and easily come to an end.

The Church of England was the chief moralising and educational influence in the Colony in 1825. Presbyterians had only recently arrived and the Catholics were still more or less on sufferance. The Colonial Office must have been aware that not 'the whole of the inhabitants' subscribed to Anglican principles but, if it had given any detailed thought at all to the full implications of the Corporation, the urgent need for those churches and schools which the Church of England alone was in a position to provide on a large enough scale was probably the operative consideration.

(34)

It has been pointed out that the grant of a stipend to J. D. Lang and a draft of the Corporation's charter were despatched within a month of one another. This surely leads one to believe that the measures under review were indeed improvised haphazard to meet situations as they arose. The Corporation was not the project of 'an ascendancy party in

England and New South Wales which planned to make Australia an exclusively

(35)

Protestant realm.' It seems much more likely that it was merely an act of political economy.

CHAPTER TWO. THE HALFWAY HOUSE (1836)

The Corporation failed to achieve the purpose for which it had been created and was therefore dissolved. Its dissolution put it beyond doubt that the British Government no longer entertained the idea of an exclusive alliance between the State and the Church of England in the colonies. (In Canada events pursued an almost identical course: the institution of clergy reserves, their abandonment and the equitable distribution of the funds and lands for religious and educational purposes.) From that time onwards the two powers began to grow very slowly, but nevertheless perceptibly, apart as religion and politics in the Colony started on their fitful progress towards the ultimate separation of Church and State. Financially and otherwise, the Corporation was not a success. For one thing it did not get off to a good start: allocations of land were slow in being made and, when made, they were often undeveloped tracts. Considerable sums had sometimes to be advanced from the Colonial Treasury to the Corporation's account; some requests for advances were only partly met and some were refused altogether.

The financial failure of the experiment is clearly reflected in certain passages of the despatch - dated 25th May, 1829 - in which the Colonial Secretary, Sir George Murray, notified Governor Darling of the impending dissolution of the Corporation. Archdeacon Scott and Darling had both transmitted to the Colonial Office schemes for increasing the stipends of the Anglican clergy. In reply Murray writes:-

'The objection which I entertain to the Archdeacon's scheme ... equally applies to that which you have submitted, the result of both of them being to cause a very heavy annual charge, in addition to that already incurred by the Government, for the support of the Ecclesiastical Establishment in New South Wales; and, although it may be said in answer to any objection of this nature, that the revenues to be derived from the lands which have been set apart for the maintenance of the Church, will be adequate to bear all such expenses, yet it is but too evident, from the information which has been received upon this subject, that the funds required for purposes of this nature, must for the present (indeed for a long time to come) be supplied out of the Colonial

Revenues, although nominally they may be charged to a separate account ... So long therefore as the Church funds continue inadequate to support the whole expense of the Establishment, and also to provide for the additional charge which the augmentation proposed to the Stipends of the Clergy would occasion, I fear no increase can be made to their present Incomes, etc. ... In consequence of the claims, which have been advanced by the Corporation ... I have ... thought it right to counsel His Majesty to revoke His Letters Patent by which the Corporation (2) has been erected in the ... Colony.'

The Corporation was informed of Murray's decision in December of the same year but, owing to an informality in the instrument prepared in England for giving effect to the decision, the dissolution was not (3) gazetted in New South Wales until 2nd September, 1833.

Not only was the Corporation a failure financially, it also incurred considerable public hostility. The hostility was aroused chiefly by the injustice of a system which smacked of privilege in a country that was feeling the first stirrings of democratic sentiment.

J. D. Lang and Father Therry both complained that schools for Presbyterian and Catholic children could well have been provided from the Corporation's revenues. Lang summed the situation up in characteristic manner:-

'The Corporation has evinced itself inefficient in its character, expensive in its management and prejudicial in its tendency both (4) to the Episcopal Church and the Colony at large.'

But the really significant protest came from a public meeting convened to draw up a petition to the Governor against the Corporation. The chief speaker at the meeting, which took place on 11th July, 1833, (two months before the dissolution officially took place) was W. C. Wentworth whose views on religion appear entirely consistent with the movement he was leading for democratic and representative government in New South Wales. Wentworth began by pointing out the actual discrepancies in the allocation of public funds to religion; then he continued:-

'Can it be contended that Catholics, Presbyterians and Independents have not an equal right to the funds ... I for one protest against

the public being taxed to pay the Clergy, it should be between the conscience and its pastor; every man should pay his own pastor not by compulsion but by voluntary compact, the same as any other thing in civil life, if wanted, and pay for it the same as any other assistance that may be required. I say there are no established Clergy in this Colony ... A census should be taken of the different denominations in the Colony, and distribution of these sums made according to their numbers; (5) any other distribution of the funds is iniquitous.'

This was probably the first time that a public protest, not specifically denominational, had been made not merely against the privilege and exclusiveness involved in establishment but against the whole principle of State aid to religion. Here we have the unconditional advocacy of Voluntaryism as the proper policy to be pursued in a democratic setting. The equitable distribution of the Corporation's funds seems to have been contemplated as a winding-up measure preparatory to the introduction of Voluntaryism.

In the Petition itself, however, it seems to have been realised that perhaps the separation of Church and State would have to take place by gradual stages.

'Your Petitioners, whilst they protest against the principle of being compelled to support Clergy out of the Colonial Revenue, respectfully contend, so long as any portion of it is so applied, that all sects have a right to an equal participation in it, (6) according to their respective numbers.'

How were the liberal sentiments of this meeting translated into official action? The Corporation was about to disappear finally from the scene and the time was ripe for a change of policy.

It must be remembered here that, although New South Wales was still a convict settlement and the Colonial Office was not, therefore, disposed to grant it a representative legislature, the home authorities wished to dictate on local matters as little as possible. In 1835 the Colonial Secretary was writing with reference to religion and education in the Colony:

'A general principle to which I am anxious to adhere on this as on other matters affecting the internal interests of the Colony, is

that the details of the measures to be adopted should be left to the decision of that Body, to which, by the existing Constitution, Legislative powers have been entrusted, and which must be supposed to be best informed as to the wants of the Population, and the most efficient and satisfactory means of supplying them.'

If the Government was thus willing to abdicate control over a problem colony that was beginning to grow up and to leave the conduct of its affairs to local initiative, obviously much depended on the character of the Governor for the time being.

In 1831 began the Governorship of Sir Richard Bourke whose political principles were much the same as those held by Wentworth at this time. Bourke was the man on the spot who had the vision and the power to link the liberal democratic sentiment of the Colony with the older but parallel current of political and religious thought which was running in Britain herself, her other colonies and America. From the two he started a stream that was in time to carry Church and State in Australia out of the crossed and conflicting currents of traditional ideas and new national aspirations to move along freely with these other countries on the same tide of ideas and events.

A measure such as Bourke introduced could only have been a response to local ideas. The distant Colonial Office could hardly have drafted so realistic a Bill. Rather, it had, by dissolving the Corporation, removed that which was preventing the construction of a religious policy suited to the time and place.

If we turn now to the important despatch which Bourke addressed to the Colonial Secretary, Lord Stanley, almost immediately after the Corporation had been wound up it will be seen how clearly Bourke had divined both the current trend of politico-religious thought and the desires of the progressives under his rule.

Bourke starts by referring to the recent dissolution of the Corporation and then goes on to describe the state of religion in the Colony, the proportions of the population belonging to the three principal denominations, the amount of government support each denomination received and the church buildings erected in each case. Then he continues:-

'A distribution of support from the Government of so unequal an amount as that, which I have just described, cannot be supposed to be generally acceptable to the Colonists, who provide the funds from which this distribution is made. Accordingly the magnitude of the sums annually granted for the support of the Church of England in New South Wales is very generally complained of, and a Petition to the Governor and Legislative Council has been lately prepared at a Public meeting and very numerously signed praying for a reduction of this Expenditure.<sup>x</sup>

If the complaint be well founded, as I confess I consider it to be, the recent dissolution of the Church Corporation affords an opportunity for placing upon an equitable footing the support, which the principal Christian Churches in the Colony may for the present claim from the Public Purse. I would therefore earnestly recommend to His Majesty's Government to take the whole case into their early consideration, and to adopt such an arrangement as may be expected to give general satisfaction to the Colonists. I would observe that, in a New Country to which Persons of all religious persuasions are invited to resort, it will be impossible to establish a dominant and endowed Church without much hostility and great improbability of its becoming permanent. The inclination of these Colonists, which keeps pace with the Spirit of the Age, is decidedly adverse to such an Institution; and I fear the interests of Religion would be prejudiced by its Establishment. If, on the contrary, support were given as required to every one of the three grand Divisions of Christians indifferently, and the management of the temporalities of their Churches left to themselves, I conceive that the Public Treasury might in time be relieved of a considerable charge, and, what is of much greater importance, the people would become more attached to their respective Churches and be more willing to listen to and obey the voice of their several Pastors.

... I cannot conclude this subject without expressing a hope amounting to some degree of confidence, that in laying the foundations of the Christian Religion in this young and rising Colony by equal encouragement held out to its professors in their several Churches,

<sup>x</sup> This appears to be the public meeting referred to above.

the people of these different persuasions will be united together in one bond of peace and taught to look up to the Government as their common protector and friend, and that thus there will be secured to the State good subjects and to Society good men.<sup>(8)</sup>

All this by way of introduction to the practical proposals he then made to give effect to his liberal views both on the need for religious equality and also on the desirability of diminishing - and ultimately eliminating - the cost to the Government of supporting religion. These proposals subsequently became embodied in the Act of 1836, "An Act to promote the building of Churches and Chapels and to provide for the maintenance of Ministers of Religion in New South Wales" which provided for State aid on a pound for pound basis towards church buildings and the payment by the State of clerical stipends up to a maximum of £200 according to the size of the adult population of the area in each case. This support was to be extended to the Church of England, Presbyterians and Roman Catholics initially and any other denomination which might attain the proportions prescribed.

The comment on Bourke's Act which goes closest to the mark seems to be one made by Burton in the work already referred to:-

'It is remarkable' he writes, 'that the Governor Bourke ... proceeds on the assumption that, even the foundations of the Christian religion were still to be laid, and that it rested with himself and the Secretary of State to establish it in any way or every way at will.'<sup>(10)</sup>

Although this remark is made in the spirit of bias which pervades all that Burton wrote, is it not largely true? In his reply, already quoted, to Bourke's despatch Stanley's successor at the Colonial Office, Lord Glenelg, had observed of the plans there proposed:-

'In the general principle upon which that plan is founded ... His Majesty's Government entirely concur ... In dealing with this subject, in a case so new as that of the Australian Colonies, few analogies can be drawn from the Institutions of the Parent state to our assistance. In those Communities, formed and rapidly multiplying under most peculiar circumstances, and comprising great numbers of Presbyterians and Roman Catholics, as well as

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<sup>x</sup> See p.14 above.

Members of the Church of England, it is evident that the attempt to select any one Church as the exclusive object of Public Endowment, even if it were advisable in every other respect, would not long be tolerated.'

Glenelg does not, like Burton, assume that New South Wales had inherited the English system of Church-State relations. Both he and Bourke regard a system of some sort as something yet to be constructed on lines appropriate.

It is not apparent in the passage quoted from Bourke's despatch what were the personal beliefs underlying his religious policy. It does, however, contain one possible suggestion that it may have been inner conviction as well as wise statesmanship that inclined Bourke towards Voluntaryism as the ideal polity - 'the people' he believes, 'would become more attached to their respective Churches and be more willing to listen to and obey the voice of their several Pastors.' This suggestion is strengthened and borne out by outside evidence. Many years later J. D. Lang recounted how

'His mother had called upon Sir Richard Bourke when His Excellency was on a visit to the Hunter and in the course of conversation Sir Richard had told her that he was entirely of opinion that the ministers of religion would be better off if thrown entirely upon the resources of their respective adherents; but that the circumstances of the colony would not as yet permit this  
(11)  
to be done.'

Lang was probably relying on the account of this conversation when he wrote thus of the 1836 Act in his history of the Colony:-

'At present ... having fairly and we confess somewhat unexpectedly reached the 'half-way house' on the high road to the voluntary  
(12)  
principle, we must just rest and be thankful.'

Further evidence that Bourke was preparing for Voluntaryism is provided from quite another source. In his 'Autobiography', written towards the end of the century, the Catholic, Ullathorne, recalls:-

'Sir Richard had privately expressed his opinion that the result of this scheme would be to provide the Colony with all the clergy required, after which the Government, supported by public opinion, would cease to give its support to any religious denomination, and

thus the several communions would support their own churches.

To use his own phrase 'they would roll off State support like  
(13)  
saturated leeches.'

The importance of Bourke's Act, however, lies less in its antecedents than in its import for the future. It was indeed a 'half-way house'; the initial steps had been taken, but from this stage onwards new forces combined with those which had produced Bourke's decision and the journey towards separation of Church and State was completed under circumstances and for reasons some of which could hardly be foreseen in 1836.

CHAPTER 3. THE END IN SIGHT

The reactions of the various religious bodies to Bourke's Act are significant, none more so than those of the Church of England.

Before continuing the narrative of the general progress during the next half-century or so towards Separation, mention must be made of the effect of 1836 upon the Anglican body in the colony. This is by no means irrelevant, as will appear when, in the second part, the question arises of non-established churches and their legal relations with the State. At this early stage that was the very problem that the Church of England had to think out for itself, alone and for the first time. The matters which had to be considered - church property, internal discipline, the delimitation of jurisdiction between Church and State and the like - are universal and all-important in any study of Church-State relations. The problem was a complex one; it had two aspects: first of all the relations of the Church with the State in Australia and then, secondly, its relations with the English State and with the Church of England in England.

In the first place, 1836 provided conclusive evidence of what the dissolution of the Corporation had already indicated: that the Church of England could no longer hope to be distinguished by any sort of privilege from the other churches in the colony. The Act reduced the Church to the level of a voluntary society, like the other churches in the colony.

Immediately after its passage Bishop Broughton was observing in a letter to Joshua Watson, a close friend and treasurer of the S.P.C.K.: -

'We are even now very much under the voluntary system, and, unless a total change of measures shall ensue, must in a few years be entirely so. (1),'

Bourke apparently sent Broughton an outline of his Bill before it was introduced in the Legislature. Thanking him for this draft, Broughton writes to Bourke:-

'The apprehensions with which this fills me arise not so much on account of the Church as of the Government which is going to

involve itself in a labyrinth out of which it cannot be extricated except by renouncing, at no distant date, all concern about and connection with, the interests and affairs of religion; and obliging, I fear, all sincerely Christian men to look upon the Government as less and less the friend of the cause of truth. These evils may probably not manifest themselves fully in your Excellency's time, or mine; and therefore I feel less delicacy in speaking my sentiments. But I feel quite assured that if we have the taste only of the first fruits, our successors will have the full harvest'. (2)

Broughton's apprehensions were well-founded and he was (x) sizing up the future accurately. The only fact which he seems not to have grasped fully was that Bourke was deliberately committing his successors to a policy whereby the State would extricate itself from church affairs. The prospect was perturbing since the Church of England had never, since the Tudor church settlements, been without favour and exclusive support from the State; nor, therefore had it hitherto been obliged to devise for itself a basis for temporal existence apart from the State.

For other denominations the apparent trend of events was little real cause for concern. The Dissenting sects, (of which the Methodists were the only one to have reached calculable proportions at this time) and the Presbyterians had been born and bred in the tradition of religious autonomy and were thus self-reliant by instinct and organization.

'A church', Locke had written, 'I take to be a voluntary society of men, forming themselves together of their own accord... But since the joining together of several members into this church society ... is absolutely free and spontaneous, it necessarily follows that the right of making its laws can belong to none but the society itself; or, at least, to those whom the society by common consent has authorised thereunto.' (3)

This was the general attitude of the 'free' churches towards the State. The original Scottish settlers in New South Wales, were, it is true, members of the State Church in Scotland, but, as a national religion, Presbyterianism had been imposed upon, rather than

(x) Appendix A.A.

by, the State, and Presbyterians, therefore, attached greater importance to the preservation of their spiritual independence - even when in alliance with the State - than the established Church in England. Lang, as we have seen, could 'rejoice and be thankful' for the Church Act which contained no hint of State interference with church affairs and held the promise of a future severance. After 1843 and the Scottish Disruption, spiritual independence seemed to a number of Australian Presbyterians an issue of even more importance than before.

The Catholic view of the future is more difficult to define. It can, however, be said with certainty that Separation would not necessitate a reorganization in church government because the Catholic Church is supranational and its organization is unaffected by local or peculiar circumstances. During the early and difficult years of the Australian colonies when it was virtually impossible for the Catholics - or any other denomination - to provide enough churches and schools for the scattered population, they were as pleased as most other religious bodies to accept State aid. They do not at first seem even to have objected to the mingling of truth with error entailed by a system of concurrent endowment, although the Anglicans and Presbyterians protested at this from the start. Ullathorne remarked of the Act:-

'I could only express my gratitude for a scheme so well calculated to meet all requirements, whilst it left ecclesiastical authority in such perfect freedom.'<sup>(4)</sup>

(Furthermore, for Catholics especially, the Act had relieved the colony from the threat of Anglican domination: whatever its practical consequences, Separation was preferable to this).

Although some Anglican churchmen would, within a few decades, begin likewise to stress the value and desirability of spiritual independence, it seems small wonder that Broughton's immediate reaction in 1836 was a certain sense of insecurity and administrative puzzlement.

In the remainder of his letter to Watson, already quoted, Broughton goes on to outline the practical measures he was taking to meet his first and local problem:-

'I am anxious to make my machinery as perfect as I can for introducing under another name the English parochial system. A parson of the parish or a corporation of any kind will not be heard of here and therefore I have been driven to employ the best substitutes in my power to obtain the thing aimed at as nearly as may be practical without giving rise to jealousies on the part of those who could negative the whole scheme if they should suspect what my object is. To be sure our Bill has not yet passed the Council; but from all that has been said I am greatly in hopes it will be allowed to do so. If I should be able to send it to you in its present shape I hope you will give me credit for my ingenuity in enabling my Trustees to hold property and to have a perpetual succession without becoming a Corporation: and in giving the clergyman a secure right of possession of the church and parsonage while the property in them is vested in others.' (5)

The Bishop probably exaggerated his 'ingenuity'; his plan was that adopted by most non-established churches in England and elsewhere to regulate their temporal affairs vis à vis the State. Nevertheless his Church of England Temporalities Act 1837 (8 Wm. IV c.5) - which is what he was scheming - did, to a certain extent, set his church on its own feet.

In correspondence and personal discussions with Bourke, the Bishop had objected to the Church of England being, as he put it, 'mixed with all the conceivable modes of religious opinion' and had suggested a separate Act for his church - and Acts for other churches too if they were desired. When the Governor did not take up this suggestion Broughton proceeded in 1837 to act upon it himself. Working in close collaboration with Bourke, he drew up his own Bill providing for the appointment of trustees and churchwardens in each case where a church was erected under the Act of the previous year. This did not mean that the Church of England intended immediately to separate itself from the State. Although it irked Broughton sorely that the Catholics were entitled to the same support from the State as his own Church, he had no intention of taking an independent

stand on the temporal issue of finance. After the passing of Bourke's 1836 Act he wrote:-

'... it is our wisdom to avail ourselves of the assistance so preferred, without too minutely scrutinising motives.' (6)

A settlement of the Church's externalities was, nevertheless, only an essential first step towards a settlement of its more vital second problem, the regulation of its internal affairs in some way that would balance the necessary local autonomy with loyalty to the Crown and the Church of England in England.

It was becoming increasingly apparent just how ambiguous was the legal status of the Church of England in Australia. The ecclesiastical law of the mother country was believed to forbid the exercise of independent authority by the clergy without the assent of the Crown,<sup>(7)</sup> thus preventing that reorganization of the Anglican body in the colony along the lines of a voluntary church which Broughton, after 1836, saw to be necessary.

An article in the 'Colonial Church Chronicle' summed up the situation as follows:-

[The Church is] 'in the unhappy condition of possessing neither the substantial advantages of an established, nor the compensating freedom of a voluntary church. It is ... fettered and crippled. It has all the encumbrances of an establishment with none of its benefits. It has thrust upon it the self-dependence of an English dissenting body, without its freedom of action.' (8)

Broughton could do little whilst he was playing a lone hand. The more so as the colonial population was growing and his sphere of authority becoming wider and more dispersed. Within ten years of his property Act, however, four new bishoprics, Tasmania, Adelaide, Melbourne and Newcastle, had been created and endowed from the Colonial Bishoprics Fund and Broughton himself had become Metropolitan of Australia.

During the same decade New South Wales attained representative government (1842) and the Patriotic Association began to campaign further for responsibility and local independence. In 1851 Victoria



was separated from New South Wales and by 1856 these two colonies, together with South Australia and Tasmania, had achieved responsible government. In 1851 too came the discovery of gold in New South Wales and Victoria. It became imperative for the Church to organize itself if it was to keep some hold upon a population preoccupied with worldly affairs such as these. Furthermore, while democratic sentiment was running strong, the Bishop's jurisdiction, depending as it did upon Letters Patent,<sup>x</sup> issued by a Crown whose authority in the colonies was being whittled away, might well seem despotic and an anachronism.

In 1850 the five Australian bishops and Bishop Selwyn of New Zealand met in Sydney to confer on the constitutional problem. The most important of the resolutions passed at this conference was one recommending the inauguration of synodal government for the church. The reaction of the Archbishop of Canterbury to a report of these proceedings was disheartening. He believed himself unable to issue a synodical mandate without infringing the Royal Supremacy.

Broughton, therefore, in 1852 called a meeting of the clergy of his own diocese to draw up a petition to the Queen herself. In his address to this meeting the Bishop shows how, although reluctant to modify his Erastian principles, he nevertheless realised fully that he lived in changing times.

'If the system of royal supremacy should fail in operation here ... the only resource remaining to the Church would be to return as nearly as possible to the primitive rule in matters ecclesiastical ... As the authority of the State took up and exercised many of those functions which had heretofore

<sup>x</sup> Until 1866 the Crown granted Letters Patent creating dioceses and appointing bishops but after this the practice ceased. In 'Long v. Bishop of Capetown' (1863) the Privy Council ruled that any Letters Patent issued after the establishment of a colonial legislature were 'ineffectual to create any jurisdiction ecclesiastical or civil with the colony'. After this, issue was discontinued for colonies possessing civil self-government.

been diligently exercised by the Church itself, so now I believe will it be a matter of more than expediency that the Church should with all humility petition that liberty may be granted her to exert her inherent powers in those particulars wherein the state now ceases and declines to act.

... I have always been of opinion that, even setting aside all consideration of the Sovereign's title to ecclesiastical authority by virtue of any prerogative attached to the Kingly office, the office itself afforded so convenient and unexceptionable a mode of exercising the proper control of the laity over and within the Church, that the last of my thoughts and wishes would have been to desire the abolition of that prerogative. But I perceive, I must admit, I cannot but be sensible, however my inclinations would lead me another way, that the Crown, as respects the colonies, has abdicated to a great extent its acknowledged supremacy in ecclesiastical matters.<sup>1</sup> (9)

The liberty which Broughton and his colleagues sought was not granted. In 1853 Archbishop Sumner introduced a Bill designed to enable the colonial Church to regulate its own affairs. The Bill was passed by the Lords but rejected by the Commons.<sup>x</sup> Not to be deterred in so important an action, the bishops went ahead in their various dioceses, fortified by an opinion from the law officers of the Crown, obtained by Short of Adelaide, to the effect that it would be legal to make diocesan regulations so long as these did not contravene the civil law of the colony or the ecclesiastical law of England.

The details of the subsequent constitution-making have been fully described elsewhere; here it will suffice to point out what was the leading issue as far as Church-State relations went.

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Its rejection was due partly to an idea that such legislation might seem unduly to favour the Church but chiefly, it seems, to a feeling in the Commons that this was a matter for local legislation and one in which the British legislature should not intervene.

Opinion varied between the six bishops over the degree of relationship desirable between the Church and the civil government. There were, on the one hand, those who, like Perry of Melbourne, thought that the Church's constitution should be expressly recognised in some way by the State - 'we can do nothing without the assistance of the legislature'. (Call this, if you will, the Establishmentarian view modified.) On the other hand there were those who, like Bishop Short, held this to be possibly undesirable and certainly unnecessary and thought that the legal status of the Church should in no respect differ from that of any other voluntary society. It was Short who most clearly described the 'crucial experiment to be undertaken by the disestablished Church' :-

'Whatever might have been the possibility in the early stages of colonial history for the Imperial Parliament to have legislated for the portions of the National Established Church transplanted to the colonies, the difficulties became insuperable when self-government and constitutional charters were conceded to each dependency of the British Empire. The *lex loci* would then to a great degree supersede the action of the Imperial Legislature, and among other topics the relations of the Church of England to the colonial Governments would become matter for local, rather than Imperial, legislation. Under these circumstances three courses alone remained - either the bishop would have to administer the diocese and exercise discipline on the absolute authority granted by his letters patent; or seek legal authority over his clergy by ordinance of the local legislature; or by mutual compact between the bishop, clergy, and laity, establish a system of self-regulation to which the civil law would so far give effect as to uphold the agreements fairly made between the respective parties and fairly carried out according to its provisions.' (10)

The first course, as already indicated, had become unsuitable under colonial conditions. The second course - legislative enactment - was taken by Victoria (1854), Tasmania (1858) and New South Wales (1866); while the third - consensual compact - was taken by Adelaide (1855), New Zealand (1857), Queensland (1868) and Perth (1872).

But whatever the course adopted, it must be understood that in each case the Church was standing apart from the State as a voluntary society, even when - as in New South Wales - the Legislature actually passed an Act giving legal force to the Church constitution. The rules were not binding for any other reason than because the church members themselves had agreed to abide by them, so that there was no question of their being a part of the law of the land and enforceable as such by the State after the manner of an established church.

Although the Church in Australia was taking steps to become self-governing, it had no desire to sever all connexion with the Church in England. Each constitution, no matter the particular form, contains an acknowledgement, either expressly or by implication, that in doctrine, ritual and formularies, the colonial Church is at one with the parent body.

The constitution-making process has been sketched in only the barest outline but the details will become more distinct when, later on, we are concerned with the practical results of the policies pursued upon the present relationship of Church and State.

CHAPTER 4. THE CONCLUDING YEARS (c 1850-1900)

'The arrangement was entered into merely as a temporary one, the state under the peculiar circumstances of the colony had decided to extend State-aid to religion in 1836. ... it was never contemplated that the small amount then granted should continue for ever. Its sole object was to aid in the establishment of the Christian religion in Australia, and, that object having been accomplished, the functions of the Act might be considered as having terminated and consequently the time had arrived when the system should be formally abolished ... In the colonies ... a state church was impossible as the population was composed of persons from different nations and different religions, all being under one set of laws and possessing equal liberty. Such being the case, a state church in the colony would be utterly inconsistent (1) with the spirit and genius of their institutions.'

These words were spoken in 1860 during the course of the debate in the Queensland Legislature on the abolition of State Aid to religion.

An anonymous letter to the 'Courier' on the same subject condemned the system thus:-

'State-aid is contrary to the spirit of the age and country we live in, opposed to reason, condemned by experience, and injurious to (2) the spread of true religion.'

It is clear that later generations regarded Bourke's 1836 Church Act in the same light as he himself had regarded it: as a temporary measure and a compromise; the 'halfway house' on the road to Separation.

The 'spirit of the age' - a phrase used by Bourke himself - is the prevailing theme in much of the controversy over matters concerning Church and State in the years following 1836. In order to watch the working out in nineteenth century Australia of a Church-State relationship influenced by the ideas current during that period it seems essential to suggest what were those elements in the 'spirit of the age' which made the notion of a state church or State-aid to religion so unwelcome.

The 'spirit' of the nineteenth century which was everywhere making for separation of Church and State was a synthesis of religious ideals, political principles and new modes of thought, sometimes closely allied,

sometimes distinct, but all moving towards the voluntary system as an ultimate goal.

The central fact about Separation is that it was generally regarded as the best means of ensuring that there should be no interference by the State with the inner convictions of any of its members and that no distinctions of any sort should be made between individuals or groups on account of such convictions. This was the common factor in the synthesis.

It is the religious argument for Separation that goes deepest and seems to reappear, with variations, time and time again; it is the argument of religious individualism which, so clearly expressed by Locke, has been the unchanging principle of Nonconformity since the seventeenth century. In Locke's 'Letter concerning Toleration', written in 1667, this passage occurs:-

'It is the duty of the civil magistrate, by the impartial administration of just laws, to secure unto all ... the just possession of ... things belonging to this life ... Now ... the whole jurisdiction of the civil magistrate reaches only to these civil concernments, and ... all civil power ... is bounded and confined to the only care of promoting these things; and ... it neither can nor ought in any manner to be extended to the salvation of souls.'

... The care of souls cannot belong to the civil magistrate, because his power consists only in outward force; but true and saving religion consists in the inward persuasion of the mind ... And such is the nature of the understanding, that it cannot be compelled to the belief of anything by outward force.

... the care and salvation of men's souls cannot belong to the magistrate; because though the rigour of laws and the force of penalties were capable to convince and change men's minds, yet would that not help at all to the salvation of their souls.

... all the power of civil governments relates only to men's civil interests, is confined to the care of the things of this world, and hath nothing to do with the world to come!'

We have already seen how Locke regarded a church as a 'free and spontaneous', autonomous society; his 'Letter' is, as its title might

<sup>x</sup> See p. 21 above.

imply, an apologia for noncoercion: 'toleration' and religious freedom are synonymous to Locke. If the State confines its control to temporal matters - preservation of the freedom of association is one of them - then at the same time is preserved that other freedom, the freedom to worship at will, which is essential to the spiritual vitality of any religious body.

By the very circumstances of their origin and growth as a religious minority the Nonconformist sects in England were steadfastly opposed to the 'establishment' principle. Their view of Church-State relations underwent no change with the passing of time. It was substantially the same in the nineteenth century as it had been in the seventeenth.

The Church of England view, on the other hand, began to show signs of change. Although wedded by tradition to the notion of a State Church, Anglicans were sometimes seen to be shifting their position as, in the light of contemporary events, the merits of the voluntary system, became more obvious. The Privy Council's decision in the Gorham Case in 1850 was the outstanding example of a tendency - which was manifesting itself in other ways as well - for the State to interfere in matters which could, with reason, be claimed to lie outside the sphere of civil government.

Gladstone seems to have been amongst those who perceived most clearly that the Anglican position needed rethinking. In 1838 he had produced his work, 'The State in its Relation with the Church', in which he had strongly supported the 'establishment' principle and stated his view that if Separation occurred, the State would 'entail upon itself a curse'. But in the same year as this work was published Gladstone was writing to Pusey:-

'I thought my own church and state principles within one stage of  
(4)  
being hopeless as regards success in this generation.'

and thirty years later he was to write:-

'Scarcely had my work issued from the press when I became aware that there was no party, no section of a party, no individual person probably, in the House of Commons, who was prepared to act upon it. I found myself the last man on a sinking ship ... when I bade [the establishment principle] live it was just about to die.'  
(4)

By this time, however, Gladstone had arrived at the opinion that voluntaryism might, after all, be the best system. Looking back, he

admitted that for many years he had been attempting to extricate the Church from her 'entangled relations' with the State 'without shock or violence'. He was even prepared to abandon his political career if it became evident, as he put it, 'that justice cannot, i.e. will not, be done by the state to the church.' Referring to the non-Catholic churches generally, he writes:-

'No portion of this entire group seems to be endowed with greater vigour than this in the United States and the British colonies, which has grown up in new soil, and far from the possibly chilling shadow of national establishments of religion.'

Gladstone did not stand alone. In 1852, for instance, Bishop Perry of Melbourne spoke in the Legislative Council on the introduction of a Bill extending to the newly separated colony of Victoria a system of State-aid similar to that which had been operating in New South Wales since 1836:-

'We ... greatly doubt,' he said, 'the expediency of granting permanent pecuniary support from the Colonial Treasury even towards the maintenance of a pure Christianity; for in our opinion Christian zeal and liberality are provoked into active exercise ... by leaving the temporalities of the Church to depend on the development of these graces. We do not deny that there may be times when assistance may wisely be afforded by Government towards supplying the lack of means, or the lack of Christian liberality, among a people; but we think that such assistance should be temporary only, and that it should never be afforded on terms which violate a principle.'

Taking into account a number of Anglicans whose view on Church-State relations coincided with those of Perry, it can safely be assumed that at the mid-century one-fifth or more of the population of Australia were advocates for Separation strictly as a matter of religious principle.

x In N.S.W., for example, the comparative percentages for 1861-1871 were roughly:-

	1861	1871	
Church of England	45%	45%	(1891 Statistician's Report, pp. 213-19)
Roman Catholics	28%	29%	
Dissenting Churches	21%	21%	

In other states for which figures are available the percentages differ little from these, contributing to produce the average of roughly one-fifth in

At the time of the Puritan Revolution the Nonconformist demand had been for political, as much as for religious, liberty; a demand which was voiced on behalf of individual and group alike. Gradually during the following centuries as its disabilities were removed and some of its ambitions fulfilled, Nonconformity had come to play an influential part in politics where the religious principle found a close counterpart.

'Nonconformity went in general to the support of liberal principles, where individualism was in the ascendant and the two currents, secular and sectarian, could flow together. But the secularization of the State to which principle and interest now directed the Free Churches did not prevent their transferring to politics ... a motivation which was recognizably Christian.'<sup>(8)</sup>

'Liberal principles where individualism was in the ascendant': These principles were the natural affinity which Nonconformity had with nineteenth century political thought.

Cromwell once defended the political and religious demands of the Independents thus:-

'And from brethren in things of the mind we look for no compulsion,  
(9)  
but that of light and reason.'

This was an ideal of individual liberty, similar to Locke's, which Cromwell, as a statesman, was unable to realise. The ideal did not perish for all that.

It is not intended to imply that liberalism in the nineteenth century lay in a direct line of descent from Puritanism in the seventeenth; but rather to show how, having common characteristics, they could combine easily and naturally to work for Separation.<sup>(10)</sup>

'Over himself, over his own body and mind, the individual is sovereign.' wrote John Stuart Mill in 1859 in his essay 'On Liberty'. Mill, taking his text from Von Humboldt, is not defending religious liberty in particular; his theory covers the whole range of personal activities which concern the individual alone and no one else. And this is because Mill, like Von Humboldt, believes in the supreme importance of human self-realization and individual development.

'Human nature,' he writes, 'is a tree which requires to develop itself on all sides, according to the tendency of the inward forces  
(11)  
which make it a living thing.'

T. H. Green repeats and develops the theme. He too stresses the value of human self-realization, but holds a more constructive theory of State action. Green discards the remnant of Utilitarianism which makes up Mill's 'self-protection' maxim.<sup>x</sup> He thinks that 'The effective action of the state ... seems necessarily to be confined to (12) the removal of obstacles.'

The obstacles are those hindrances - such as poverty, ignorance, disease, outmoded legislation and so forth - which prevent all members of the State from having the same chances to realize their capacities to the full. Green's is a theory of political liberalism widely different from that of the period of 'laissez faire' and, furthermore, it is one that persisted for the rest of the century - and beyond.

<sup>xx</sup>  
'Liberalism', said Henry Broadhurst, 'does not seek to make all men equal - nothing can do that. But its object is to remove all obstacles erected by men which prevent all from having (13) equal opportunities.'

There had, during the course of the century, come to be between Tories and Whigs a fairly general acceptance of the 'hindering of hindrances' as a guiding political maxim. Green and Broadhurst were crystallizing in political theory the motives underlying most of the measures of reform and social legislation during the latter half of the century, motives which can also be seen at work in the movement against the Established Church.

The complete dethronement of the Church of England was clearly out of the question, so well built into the social framework had it become. In spite of this, with Liberals and Radicals joining Dissenters in an anti-Establishment movement, the 'secularization of (14) politics' did make distinct progress. The Church and membership thereof came less and less to carry with it special status and opportunities.

<sup>x</sup> '... the sole end for which mankind is warranted ... in interfering with the liberty of action of any of their number is self-protection ... His own good, either physical or moral, is not enough.' ('On Liberty', p. 8)

<sup>xx</sup> Henry Broadhurst was elected Liberal M.P. for Stoke-on-Trent in 1880. Although he had always sympathised with working class demands for political rights and better working conditions, he became estranged from labour at this stage when its demands for 'equality' seemed to flout his own liberal principles.

The anonymous author of a pamphlet entitled, 'Disestablishment and Disendowment. The First Steps towards Revolution', which appeared in London in 1869 wrote thus:-

'The fact is that there are numerous persons in this country, belonging to the so-called Liberal party who, if we are to judge by their words and their acts, appear determined not to rest until they have destroyed the Church of England as a temporal church, or, at least, until by severing its connexion with the State, and stripping it of its possessions entirely, or else by diverting a great portion of them to some secular purpose, they have rendered it to a level with the various dissenting bodies existing in this country.'

It is clear from this that the inequalities and injustices arising from the temporal advantages enjoyed by the Established Church were one source of grievance. A number of measures forming part of the secularization process were aimed at their removal, legislation such as the disestablishment of the Irish Church, the Municipal Reform Act, the abolition of compulsory church rates and the Burials Act.  
 Another group of measures, of which Catholic Emancipation and the Universities Test Act are the best examples, were designed to remove other hindrances to religious equality - or 'toleration' as Locke and Cromwell understood it. The religious and the political implications of these acts are almost inextricable.

English liberalism in its complexity was transplanted to Australia where it received an added characteristic derived from the new surroundings. It is significant, when comparing England in the nineteenth century with Australia at the same period, that in England the large majority of liberal measures affecting either Church or State were measures of reform or reorganization. Nearly always forces had to be faced who wished to maintain the status quo, vested interests had to be taken into consideration, privilege annulled and prejudice overcome. In other words, it was usually a case of gradually adapting already existing institutions rather than, as in Australia when free settlement had begun, laying the foundations and building up thereon the sort of institutions that a 'democracy of fact' demanded. Bourke, it was seen, was regarded as assuming that 'even the foundations of the

Christian religion were still to be laid.' It was never forgotten in Australia, once her political consciousness was quickened, that the country was a new one, relatively untrammelled by privileges and prejudices. Emigrants of the lower and middle classes were determined, as a rule, that there should be no perpetuation of the social system - of which the Establishment formed an integral part - which they had left behind them. They therefore countered the forces of conservatism with the argument that Australia was an entirely new kind of colony, things traditional could have no claims and the institutions that were yet to build would be different - indeed superior - to any in the old world. A faith in the future was combined on many an occasion with a resolve to prevent the importation of old world values.

This liberal nationalism began to evince itself well back in the century but it is only in the latter half of it, when Separation became a lively political issue, that it began to influence public opinion on the Church-State question.

'Australia has no bitter memories of alternating cruel domination, no savage traditions of ineffaceable wrongs. And, once for all,  
(17)  
Australia objects to the imported article.'

ran a leading article in 'The Bulletin', the chief organ of nationalist opinion, referring to an echo of the Anglo-Irish religious and racial feuds then raging in England which had influenced the course of a recent election for the Legislative Assembly. And again in another issue:-

'The sentiment of the people of this country is in the direction  
(18)  
of purely secular politics.'

The Bulletin's anti-Old World attitude was balanced by a certain respect shown for New World institutions in America. If Australians looked upon England as behind the times in retaining her Establishment, they looked upon the United States as a prototype - as the example 'par excellence' - of a colony where progressive ideas had triumphed and Separation (which had taken place over half a century previously) was producing such excellent results for both Church and State. A number of speakers in parliamentary debates quote de Tocqueville on religion in America at great length and seem also to have pursued the



(19)

details of American religious life for themselves. J. D. Lang did propaganda work in this field after his 1840 visit to the United States. A note of emulation is usually apparent:-

'In America religion is less powerful than it has been at certain periods in the history of certain peoples, but its influence is more lasting. It restricts itself to its own resources, but of those none can deprive it; its circle is limited to certain principles, but those principles are entirely its own, and under its undisputed control.'

Australia at that time occupied a mid-way position, but there was no doubt which example she would follow in the end.

'The British Constitution was firm and consistent in its support of religion; but not so democracy - for under a democracy ... State-aid to religion could not be expected.'

And again:-

'... the question in England of the abolition of the state church was encumbered with difficulties and perhaps could not be effected without spoliation and wrong, but in Australia there was no 'establishment' and here in Queensland there was no State pay to religion.'

Queensland is, in fact, one of the illustrations that Australia affords of the Nonconformist viewpoint which often underlay superficially political arguments of this sort in favour of Separation.

Since Queensland was only separated from N.S.W. in 1859, her system of State-aid in 1860, when this became a major political issue, was the same as that in the older colony. The fairly large Dissenting element in the Moreton Bay district was chiefly a result of the introduction by J. D. Lang of some six hundred migrants - 'almost all members of evangelical churches in the Mother Country', as Lang himself put it. They were also members of the lower or middle classes and evidently well-acquainted with English liberal and radical programmes. In any case the Moreton Bay Protestants expressed political views of a decidedly liberal nature on a variety of topics and formed the backbone of the Queensland Liberal Association which came into being in September, 1859.

They gained virtually complete control over the local press. The 'Moreton Bay Courier' together with its rival, 'The Guardian', both

advocated strongly the abolition of State-aid and supported those who were promoting the separating measure in the local legislature. In an editorial the 'Courier' gave its views thus:-

'We object to State-aid in any form ... the whole history of State-churchism plainly tells us ... that a church supported by such means becomes a curse to the country in which it exists by reason of its supineness and lethargy. ... We go upon the broad principle that the state has no right - no business - to interfere with religious matters. The functions of a ruling power cannot justly be so defined as to admit its right to interfere in matters of conscience, and we contend that the State does so (23) interfere when it endows this or that religious body.'

This was the view that prevailed and the Act abolishing State-aid (24) passed its third reading on 24th July, 1860.

Another illustration of the Dissenting impact upon politics when State-aid was a leading issue is furnished by Victoria. In 1855 a Group of Dissenting ministers formed a Society for the Abolition of the 53rd clause of the Victorian Constitution - the clause providing for State-aid. The Society's Minute Book contains no statement of religious convictions on the subject of State-aid, but it does record the Society's political activities, which were many. An election impended, so local boards were formed in different electoral districts and meetings were organized on the goldfields to discuss the Church-State question. Representations were made to various authorities and a petition against the grant to religion was presented to Governor Hotham - and rejected. Propaganda was disseminated and candidates, pledged to vote for the abolition of State-aid, were promoted for both Houses of the legislature. How vital a part these multifarious activities played in the final result it is hard to judge; certainly arguments with a noticeably voluntaryist ring were heard during the debates on the measure when the new Parliament met. Although the abolishing Bill was passed in the Lower House by 32 votes to 20, it was narrowly defeated in the Council. Another fourteen years elapsed before abolition finally became law.

The example which South Australia provides of the part played by Dissent in the movement for Separation and political liberalism is more outstanding than that of either Queensland or Victoria. At a meeting of the colony's promoters held in London in 1843 the following statement was made by the chairman:-

'We do not contemplate anything that can partake of the character of an established church, convinced that what is called the voluntary principle will amply supply a sufficiency of means to give everyone in our colony proper moral and religious instruction.'

(25)

George Fife Angas, one of the South Australian Commissioners and a leader in the colonizing project, expressed his political and religious ideals in words which clearly reflect the resentment felt by many Dissenters at the opportunities possessed by members of the Church of England but denied to them.

'My great object,' he said, 'was in the first instance to provide a place of refuge for pious Dissenters of Great Britain who could in their new home discharge their consciences before God in civil and religious duties without any disabilities.'

(26)

To enable the South Australia Foundation Act to pass through the House of Lords in 1834 a Crown-appointed and State-paid chaplain had to be provided for, but this appointment was discontinued after 1843. Apart from this, there was no State-aid to religion during the colony's early years; the building of churches and stipends for the clergy were left to the voluntary principle which, because of the straightened circumstances which were being experienced at that time, involved most religious bodies in poverty and heavy debts. The possibility of State-aid, therefore, began to appear desirable, even to some confirmed voluntaryists.

In 1846 a Bill was introduced, providing grants-in-aid - up to a maximum of £150 - for all denominations; this was to take effect for three years from April 1848.

(27)

That this measure was seen by many Dissenters as the violation of a principle is clearly shown by their reactions. In some cases where Methodist, Presbyterian or Lutheran ministers, through dire necessity, accepted the grant they lost large numbers of members by secession. The League for the Preservation of Religious Freedom, originally formed in

1841, was revived and redoubled its activities. Its members were pledged 'never to dissolve the League until the foul blot inflicted by an irresponsible legislature on the colonial character has been (28) erased.' A petition to the Queen to remove the cause of their discontent was of no avail; nothing could be done towards re-introducing Separation until State-aid became a lively political issue.

The opportunity for direct political action came with the election campaign of 1850 which centred on the forthcoming Australian Colonies Bill. There was some division within the ranks of the League as to how radical their demands should be, but the majority

'were anxious to see the forces of religious and civil liberty combined in a vigorous protest against the Australian Colonies Bill, especially the suffrage clauses ... Although the militants did not win support from chapel leaders ... the voluntaryists agreed to (29) make State-aid the question of the day at the elections.'

Angas made State-aid one of the chief topics in his election addresses and embodied his views in a declaration which he wished entered upon the minutes of the House:-

'That all mankind have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; ... that no human authority can, in any case whatever, control or interfere with the rights of conscience; that no preference shall ever be given by law to any religious establishment or modes of worship; that no part of the revenue of the colony of South Australia ... can be made applicable to the support of ministers or teachers of any religion or to the erection or repairing of (30) any place of worship.'

In 1851 in the newly-elected Legislature State-aid was the first issue debated and a Bill to renew the 1846 grant did not even pass its first reading. (Eleven out of the sixteen members of the Lower House were voluntaryists.) Voluntaryism was restored and, under the new Constitution, the colony was believed to have advanced a little further towards its founders' ideals of political and religious liberty.

separation of Church and State. As we have seen, the principle of establishment was assailed because religious belief, it was thought, could not properly be a matter for State regulation, and secondly because it made differences in religious belief one cause of inequalities and disabilities in civil life. The important point is that neither line of assault was specifically directed against the actual content of any belief. Both were confined to external conditions and outward consequences of religion, whether free or State-supported.

The anti-Establishment movement in England and the abolition of State-aid in Australia were not attempts to destroy belief, but there was another manifestation of nineteenth century liberalism which did sometimes represent such an attempt. Traditional opinions and prejudices were attacked, just as were privilege and outworn institutions, because the former, like the latter, were reactionary and out of keeping with the spirit of the age. The attacking force was rationalism - or free thought - which is not, however, necessarily destructive of religious belief. It must depend a great deal upon the circumstances how a leavening of free-thought will affect a whole community's outlook and politico-religious arrangements.

In England neither the new criticism nor the whole school of scientific secularism which rose and flourished in Darwin's generation could produce any argument powerful enough by itself to modify the existing Church-State relationship. Secular and rational associations there might be, but their political influence was negligible. Rationalism did not, as it did in France, lead to anti-clericalism and to the choice between Reason and the (Catholic) Church; it changed and weakened religious belief in itself but the Anglican ideal of comprehensiveness, combined with the diversity to be found among non-Anglican churches, softened its impact and dispersed its effects upon religion in general and the State church in particular. There was a certain decline in the power of religion over the minds of individuals and the nation at large; Churchmanship counted for less in the life of the nation: Church and State were no longer, as in Burke's day, thought of as one and the same thing. (There are, of course, other things, such as the fact that as religious differences came to mean less in the political life of the nation, so the Church of England was growing to be less the

national church to account for these last facts.) There spring to mind at the same time various reactions against this tendency; pictures of the Victorian sabbath and family prayers or the religious zeal, at opposite ends of the scale, of Evangelicals and Ritualists. But for all this it remains true that there was an undercurrent of sceptical criticism - even sometimes sheer disbelief - which contributed to the process of decline and thus assisted the case for Separation.

It was chiefly to combat the forces of this sort of liberalism by strengthening the Church of England's spiritual defences that the Oxford Movement came into being in 1833. As Newman had written, 'all parties seem to acknowledge that the stream of opinion is setting (31) against the church.' Rationalism flowed along with this stream and the later influx of science certainly did nothing to stem its flow, but the stream was never strong enough to carry the nation with it to the parting of Church and State.

It cannot be said that rationalism or secularism were important influences in Australia either. Indeed, the free-thought movement did not reach its height until the '70s and '80s when Separation was nearly everywhere an accomplished fact. It seems that the new strains of thought only served further to lessen the power of religious belief which, in many Australians, was already weak. The majority of settlers in this period were little given to serious thought and discussion on religious or intellectual subjects; there were more important worldly matters to occupy their attentions. Thus, encountering few firmly founded convictions, new ideas more easily gained a hold.

Perhaps it could be said that the secular associations which sprang up in most large towns and mining centres in the last quarter of the X century were merely the culmination and concrete expression of something which had been in existence for several decades already: an outlook which had been unfavourable to the continuance of the temporary alliance between Church and State.

This anti-religious tendency must not be overrated. Though prolific in speech and writing, free thinkers like H. K. Rusden in Melbourne

had their opposite numbers in firm believers such as the Anglican Bishop Moorhouse or Methodist leaders like Butters and Draper. Rationalism had only a small share in the shaping of public opinion on the part religion should play in Australia's national life. Its place in the present outlook on religion and the general trend of religious life in the twentieth century, with separation of Church and State written into the Constitution, the following chapter will indicate.

When the time came to give a positive and permanent definition of the State's attitude and policy towards religion it seems natural that the various streams of thought which have been seen converging towards Separation should emerge to flow openly through the debates on the Commonwealth Constitution. The Dissenting ideal of toleration and freedom in spiritual things: political liberalism: nationalist sentiment: rational secularism. These several ways of thinking in all their permutations and combinations were evident in the discussions over Australia's religious past and future which took place in the 'nineties.

At the time when the Commonwealth Constitution was being framed, when Separation was the arrangement which had been adopted in each of the six colonies, <sup>x</sup> the leader of the Federal Convention, Barton, expressed his views on Church-State relations thus:-

'The whole mode of government, the whole province of the State, is secular. The whole business that is transacted by any community - however deeply Christian, unless it has an established church, unless religion is interwoven expressly and professedly with all its actions - is secular business as distinguished from religious business. The whole duty is to render unto Caesar the things that are Caesar's and unto God the things that are God's. That is the line of division maintained in every State in which there is not a predominant church government which dictates to all civil institutions. In these Colonies where State aid to religion has long been abolished, the line of demarcation is most definitely observed.'

Barton's statement is important partly because it comes from the leading figure in the movement towards Federation, but its chief importance lies in the suggestion which it contains that Church and State

<sup>x</sup> The dates at which State-aid to religion was abolished are:-

South Australia 1851 (Ord. No. 10 of 1847 had provided for State-aid for 3 years only from 1848 - in 1851 this grant was discontinued by a vote of the majority in the Legislative Council.)

Queensland 1860 (24 Vic. No. 3)

New South Wales 1862 (26 Vic. No. 19)

Tasmania 1868 (32 Vic. No. 30)

Victoria 1871 (34 Vic. No. 391)

West Australia 1895 (59 Vic. No. 25)

are confined within their own separate spheres of activity, the religious and the secular. His reasons for suggesting that so rigid a 'line of division' exists are clear: he dreaded lest the Constitution - making process and the course of politics thereafter should be impeded by sectarianism and also lest the Convention delegates themselves should be accused of denominational partisanship.

The statement is, however, too extreme and will not stand up to examination in the light of political experience. Although Barton, for his own reasons, chose not to soften the distinction, there are two facts which make the complete Separation which he postulates an impossibility. In the first place, churches cannot exist on a temporal basis without the protection afforded by the State's legal system and secondly the fact that Australia is - as Barton himself remarks - a 'Christian community' is bound to assert itself. This was illustrated in the 'nineties when, Barton notwithstanding, the community itself insisted that the State bear the imprint of religion. As Pius XII has stated it:-

'The separation between religion and life, between the Church  
(2)  
and the world, is contrary to the Christian ... idea.'

What will be considered here is not the general interaction between religion and politics but rather how the State's attitude towards religion became written into the Constitution. Then further, how the religious clause has subsequently been interpreted in relation to the Constitution as a whole and finally the religious policy adopted by the State within the framework which the Constitution provides.

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The first session of the Federal Convention was held at Adelaide in March, 1897. The draft Constitution prepared at this stage contained no mention of God, the only reference to religion being a clause (109) guaranteeing freedom of worship.

On the last day but one of the session Mr. Glynn, a Catholic delegate from South Australia, moved that the preamble to the Constitution be amended by inserting into it recognition of the 'Divine Providence'.

The amendment was, however, withdrawn after a strong speech by Barton

which seems - temporarily at least - to have convinced Mr. Glynn,

that any such action would be unwise. Barton concluded:-

'The best plan which can be adopted as to a proposal of this

kind which is so likely to create dissension foreign to the

objects of any church, or any Christian community, is that

secular expressions should be left to secular matters while

(3)

prayer should be left to its proper place.'

(4)

At this same session thirty-nine petitions were received praying

for some recognition of God in the Constitution. This indication

that its omission was felt in some quarters to be wrongful was borne

out by subsequent events. When the Draft Constitution was referred

back to the various State legislatures for their consideration all

of them (with the exception of the Legislative Council in Tasmania)

x

moved that Divine guidance be invoked in some way. Omission also

called forth indignation from a few individuals in sermons, public

addresses and letters to the press. The general theme of such

protests was that secularism was being pushed too far; that Australia

was about to start out on her career as a united nation and should not,

through fear of political repercussions, fail to seek inspiration for

(5)

this great enterprise.

On the other side there were those who felt that the liberal principle behind Separation might be weakened if the preamble were amended: religion, being a private affair, was best left out of public documents. As one newspaper correspondent observed:-

'... it would be much better to allow the Church to attend to

its own specific work and the State to devote itself solely and

exclusively to its own legitimate functions ... The great and

at one time burning question of 'Church and State' has long

since been threshed out and settled ... Let us not again open

(6)

up the terrible conflict.'

x The various debates on the preamble contain few individual statements of principle upon recognising God. The chief argument advanced is that insertion of some suitable phrase will meet the expressed wish of a majority of electors.

And another, alluding to the Convention delegates, wrote:-

' ... as they would guard the right of every man to give free expression to any speculative opinion he may hold on religious subjects, may they reject the prayer of the Church petitioners for recognition of God ... and thus earn the everlasting gratitude of every liberal-minded Australian.'

(7)

All this must not be taken to indicate that the subject of the preamble was a centre of widespread controversy. Indeed, apart from the protests referred to (most of them from Churchmen) and the opposing demands that God should not be mentioned, these debates occupied public attention very little in comparison with the many seemingly weightier problems that Constitution-making involved.

The subject was not raised at all at the second session of the Convention in Sydney, but at the third and final meeting in Melbourne during January 1898 the preamble assumed its present form in which it contains the words, 'humbly relying upon the blessing of Almighty God.'

The proceedings in the varicus legislatures and the number of suggestions there made provided the excuse for Mr. Glynn to move a second time for the recognition of Divine Providence and probably also tipped the balance in favour of the amendment which was agreed to. This means that in the Constitution Australia was officially declared to be a 'Christian' State in words which, being 'simple and unsectarian', Mr. Glynn believed, would be 'the pledge of religious toleration'.<sup>x</sup>

(8)

Even during the course of the debate on the preamble delegates were being reminded about 'religious toleration'. This, as shown in the previous chapter, is the idea at the root of Separation, which is believed to ensure the non-interference by the State with personal beliefs and also the eradication of civil distinctions based upon religious differences.

Mr. Higgins, a Victorian delegate, voiced the suspicion that the preamble was undermining the principle of toleration when he said:-

'I say frankly that I should have no objection to the insertion of words of this kind in the preamble, if I felt that in the Constitution we had a sufficient safeguard against the passing of religious laws by the Commonwealth.'

(9)

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<sup>x</sup> Even though there is a non-Christian minority in the population, it seems fair to describe Australia in this way. In Spain and Italy, for instance, which are described as Catholic countries, there are non-Catholic minorities.

and later he added - in the Lockian tradition:-

'I am one of those who think the religious observance of no value unless it is the outcome of a man's own character, and  
(10) the outcome of a man's own belief.'

The one hundred and sixteenth clause of the Constitution runs as follows:-

'The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.'

(Originally it had simply read:-

'A state shall not make any law prohibiting the free exercise of any religion.')

Its present comprehensiveness is, it seems, due to Mr. Higgins' reiterated insistence that the new preamble was dangerous. Wherein this danger was believed to lie it is hard to understand. Since the Commonwealth had not been given the power to legislate concerning religion, there was no need to deny it this power. The strongest argument was from American precedent. Although the Constitution of the United States contained no mention of God, in 1892 the Supreme Court had decided, by reference to various historical documents, that America was a Christian country: six months later Congress had enforced observance of the Sabbath by enacting that a Chicago exhibition should  
xx be closed on Sundays. This last piece of legislation was seen by some of the Convention delegates as the thin end of the wedge. It was apparently felt that in years to come, despite Separation, Congress might draw upon this precedent for the passage of laws more directly injurious to religious liberty.

If this could happen in America, then why not in Australia too? Already, before a formal acknowledgment of the Deity had been made in the Constitution, and without any legal opinion having been delivered, the State, it was felt, could not be viewed as any less Christian - taking Separation into account - than the Mother Country.

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x The specific reference to the State imposing 'any religious observance' seems to be an effect of the American incident referred to below.

Despite Barton's strongly expressed view that it was scarcely possible in Australia

'That the insertion of a provision in the preamble acknowledging the existence of the power of the Deity could ever induce the

High Court or the Court of Appeal in the old country to hold

(11)

that that imported a power to make laws regarding religion,'

there was apparently an idea current that a hidden motive lay behind the phrase in question. Another delegate, Mr. Wise, said:-

'... the period during which we have enjoyed religious liberty is not long enough for us to be able to say with confidence that there will be no swinging back of the pendulum to the spirit of the times from which we have only just emerged. Consequently there is some reason for the alarms expressed by a very large body of people ... who ... believe that the agitation for the insertion in the preamble of the words we have inserted today is sufficient to cause alarm among citizens of certain ways of thinking, and that there is an ulterior design ... to give the Commonwealth power to interfere

(12)

with religious observances.'

After three debates on the problem of providing an 'antidote' to the preamble agreement was finally reached and Section 116 assumed its present form in which it embodies the safeguards for which different delegates had been pressing. In the first place, the prohibition upon the establishment of any religion provides a guarantee that the separation of Church and State shall be permanent. Furthermore, the fact that the Commonwealth must refrain from enforcing religious observances, as well as from preventing them, ensures religious toleration: a freedom of conscience for all, whether this directs the individual towards or away from religion. In addition to this, toleration, besides being religious, becomes political and civil too when public service is made equally accessible to citizens of all shades of belief - or non-belief.

<sup>x</sup> Quick & Garran make this comment: 'By the establishment of religion is meant the erection and recognition of a State Church or the concession of special favours, titles, or advantages to one church which are denied to others.' The commentators do not take into account the historical fact that in Australia, for the past half-century religious equality of this sort had not been incompatible with State endowment of religion - all religions - which, in England, was one strong characteristic of establishment. For a number of years before Separation took place in Australia no one church had enjoyed special favours, titles or advantages. Surely a law 'for the establishment of any religion' was meant to include legislation which might restore the financial nexus between Church and State. (cf. Quick and Garran, 'The Annotated Constitution of the Australian Commonwealth'. pp. 287 et seq.)

It is not proposed, in what follows, to attempt a summary of the development of Church-State relations in the period following the adoption of the Commonwealth Constitution. My purpose is rather to call attention to certain matters which bring out the practical significance of Section 116 which is, after all, little more than a legal formula within which Church and State must develop a working relationship. As a matter of convenience Section 116 is said to establish the principle of Separation. It will, however, appear that in its practical application this principle is substantially modified; it in no way inhibits, for instance, co-operation between the separated powers and the encouragement offered to the various religious bodies by the State. Furthermore, even on the purely legal plane, Separation is not, and cannot be, complete.

Barton, as we have seen, clung to the notion that 'religious business' and 'secular business' could be clearly divided between Church and State respectively. But, in effect, Section 116 does not establish any such distinction; in practice it simply ensures that the State will not show undue favour to any denomination and guarantees churches a certain freedom from State interference with their affairs.

The first point to be noted is that Section 116 does not give an unconditional guarantee of religious toleration. The possibility that it might, on occasion, become necessary to condition it seems to have been mentioned only once at the Convention. Mr. Symon, a South Australian delegate, said:-

'I think we are giving a sufficient assertion in the Constitution to the principle that religion or no religion is not to be a bar in any way to the full rights of citizenship, and that everybody is to be free to profess and hold any faith he likes; but the Commonwealth must be the judges of when it is proper to interfere with its open exercise'. (13)

During the Second World War the Commonwealth Attorney-General, acting under the authority conferred upon him by the National Security

(Subversive Associations) Regulations, ordered the seizure of the property of the Adelaide Company of Jehovah's Witnesses. The practical justification for this action was that the continued existence of this body was prejudicial to the defence of the Commonwealth. Jehovah's Witnesses, believing that the British Empire and other organized political bodies are works of Satan, stand aloof from political affairs, including international wars. They hold that in case of conflict between the law of God and civil law the former should always be preferred; God's law being that which is taught by Jehovah's Witnesses. Teaching of this sort was held to be subversive in that it was militating against the national war effort - as, for instance, recruitment for the armed forces.

During the hearing of this case, which came before the High Court in 1943, one principle received strong affirmation: religious toleration can never be an absolute.

At the beginning of his judgment Latham C.J. gives his interpretations of Section 116:-

'The prohibition in s.116 operates not only to protect the freedom of religion, but also to protect the right of man to have no religion. No Federal law can impose any religious observance .... Section 116 proclaims not only the principle of toleration of all religions, but also the principle of the toleration of absence of religion .... it is required to protect the religion (or absence of religion) of minorities, and, in particular, of unpopular minorities.'

The section refers in express terms to the exercise of religion, and therefore it is intended to protect from the operation of any Commonwealth law acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion.'<sup>(14)</sup>

and again:-

'Section 116 ... is based upon the principle that religion should, for all political purposes be regarded as irrelevant. It assumes that citizens of all religions can be good citizens, and

that accordingly there is no justification in the interests of the community for prohibiting the free exercise of any religion.' (15)

Then comes the crucial question:-

'Does s. 116 protect any religious belief or any religious practice irrespective of the political or social effect of that belief or practice?' (16)

The answer to this question involved a decision whether the Commonwealth's action in confiscating the Jehovah's Witnesses' property in Adelaide should be regarded as a measure designed for the protection of the community or as one 'for prohibiting the free exercise of any religion'. The opinion on this arrived at by the whole Court was

'that s. 116 of the Constitution does not prevent the Commonwealth Parliament from making laws prohibiting the advocacy of doctrines which, though advocated in pursuance of religious convictions, are prejudicial to the prosecution of a war in which the Commonwealth is engaged.' (17)

This despite Latham's opinion that it was not intended in section 116 to draw a distinction between the inward exercise of religion and the overt acts to which this may lead. Latham, together with the other judges, made it clear that they thought it absurd to regard one provision of the Constitution protecting religious freedom as sacrosanct and to allow it to override the main body of the law.

Granted that law regulates and protects various 'freedoms', 'an obligation to obey the laws which apply generally to the community is not regarded as inconsistent with freedom.' (18)

'I think it must be conceded,' said Latham, 'that the protection of any form of liberty as a social right within a society necessarily involves the continued existence of that society as a society. Otherwise the protection of liberty would be meaningless and ineffective.' (19)

Starke J. put the Court's decision in its proper Constitutional perspective in words resembling closely those used by a number of judges in the Supreme Court of the United States in similar cases (20)

where religious toleration and the public interest had been two different things.

'The liberty and freedom predicated in s.116 of the Constitution is liberty and freedom in a community organized under the Constitution. The constitutional provision does not protect unsocial actions or actions subversive of the community itself. Consequently the liberty and freedom of religion guaranteed and protected by the Constitution is subject to limitations which it is the function and the duty of the courts of law to expound.' (21)

'A community organized under the Constitution'. 'Limitations which it is the function and the duty of the courts of law to expound'. These phrases indicate another important respect in which the principle of Separation has come into conflict with other legal principles and been modified in the process. No religious body can have a continuous existence without property and the means to make it secure. As Maitland has explained in his introduction to Gierke's 'Political Theories of the Middle Age' and in various of his legal essays, (22) non-established churches in England have generally adopted the device of the trust as a means of safeguarding their property in perpetuity and churches in Australia, as in the other British Dominions, have followed the English practice. The dissenting sects chose the trust device because it seemed at that time the best means of obtaining the separation of Church from State. The alternative was incorporation and, in the seventeenth century when the dissenting sects were gradually gaining toleration, incorporation was a privilege conceded with considerable reluctance by the State; it was also a privilege which entailed corresponding obligations and a certain amount of supervision by the executive power.

In 1904, however, the Free Church of Scotland case (23) demonstrated that the trust was by no means as important or valuable a device as had been believed for giving churches a secure temporal basis

and at the same time preserving the spiritual freedom which it was hoped would ensue from Separation.<sup>x</sup>

Briefly, the Free Church Case showed that English lawyers would construe the terms of a religious trust so narrowly that a church which modified its doctrinal standards, thereby departing - even slightly - from the terms of the original trust deed, would risk forfeiting its property. The case showed further that, by its very operation, the law of trusts may, in certain circumstances, oblige civil lawyers to interfere with things spiritual by pronouncing on doctrinal issue.

<sup>(24)</sup> 'Wylde v. Attorney-General of N.S.W.' - the Bathurst, or Red Book, Case - has recently shown that Australian courts will follow the precedent set by the Privy Council in the Scottish case. In this case the High Court refused to allow the appeal of the Bishop of Bathurst against injunctions granted against him by the Supreme Court of New South Wales. It was held there that certain ceremonies which he had introduced were breaches of the trusts upon which property of the Church of England in New South Wales was held for the Church of England in England. In this case too the civil lawyers had been obliged to intervene in doctrinal and liturgical matters possibly outside their sphere of knowledge even while disclaiming any desire to do so.<sup>(25)</sup>

To the extent that religious bodies avail themselves of the law of trusts - and in Australia all religious bodies do avail themselves of it - they limit their freedom to make doctrinal changes and concede to civil courts the right to determine such doctrinal issues as may arise in actions for breach of trust.

In all three of the cases just mentioned the reason for the abridgment of religious freedom by the State was fundamentally the same.

In return for the rights guaranteed to them under the Constitution and also

<sup>x</sup> For Maitland's comment on the Free Church Case see his 'Collected Papers' ed.H.A.L.Fisher (Camb.1911) p.319 cf also J.N.Figgis 'Churches in the Modern State' pp.21 f.

by virtue of those accruing to them naturally as part of the State's legal system, churches incur the obligation to conform in the same manner as any other individual or body of persons to the rules designed by the State to preserve the safety, well-being and good order of the whole community.

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The most important modifications of the principle of Separation arise in the field of education, where, in all western countries, the working relationship between Church and State has, for at least a century been developing most markedly. In this sphere both Church and State have vital and parallel interests which must be reconciled.

In most countries where Separation prevails there is found a situation in which churches and the State run parallel educational systems. Although this is the situation in Australia, as in the United States of America, this does not mean that the educational activities of church and State are kept rigidly separate. The State has always recognized the importance of the religious element in education as was shown, for example, in the following passage from the N.S.W. Public Instruction Act of 1880:

'In all Schools under this Act the teaching shall be strictly non-sectarian, but the words 'secular instruction' shall be held to include general religious teaching as distinct from dogmatic and polemical theology'.  
(26)

The churches, on the other hand, conform to educational standards set by the State; for purposes of inspection and public examination, denominational and State schools form part of a system which covers the whole community. In New South Wales, State-aid to denominational schools was abandoned partly because the denominational system was not meeting the educational needs of the colony, partly because no basis of allocating grants could be found which did not involve the State in sectarian strife, and partly because of those general forces (cf. Chapter Four) making for the separation of Church and State. Besides the underlying idea that it was illogical for the State to continue supporting church schools when it had ceased to support the churches themselves, there was - as in the

drawing up of the Constitution - a strong desire on the part of the State to eliminate all possible sources of inequality, injustice, and sectarian ill-feeling at a vital stage in the nation's development.

As J.W.Stephen, the Attorney-General, rather too optimistically put it during a debate on the Victorian Education Bill in 1872:-

'I cannot but hope that when those causes which tend to the encouragement of denominational feeling are done away with the denominational feeling will die out, and thus, when a new generation of inhabitants arise, who have not been brought up, as some of us have, in certain forms of religion, I trust they will be able, if not altogether to abandon ... the forms and traditions of their particular denomination, to pull together in every good work; that they will be able to pull together in all the essentials of religion, and possibly to agree in some common form of worship'.

At the present time the idea of Separation is expressed in the fact that no teacher receiving State pay may impart denominational religious instruction.<sup>x</sup> This provision is dictated not so much by a conviction that Separation means that in education Church and State must keep strictly to their separate spheres of action as it is by the desire of the State to pursue a policy of neutrality towards the competing claims of the various denominations. But neutrality is not the same as secularism or indifference; there does seem to be growing a realization on the part of the State that education should have a Christian basis. (Under the various Education Acts, for example, all teachers are required or permitted to give religious instruction of a general nature). If this is so, then there is some ground for saying that in education there

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The dates on which the States ceased to support denominational schools are as follows:-  
 South Australia 1851 (Ord. No.20)  
 Victoria 1872 (34 Vic.No.391)  
 New South Wales 1880 (43 Vic.No.23)  
 Queensland 1875 (38 Vic.No.11) (State aid was finally wound up in 1880)  
 Tasmania 1885 (48 Vic.No.15)  
 West Australia 1895 (58 Vic.No.27)

is emerging the idea that, Separation notwithstanding, Australia is a Christian State.

This, the idea of the Christian State, is expressed in the varying provisions which allow authorised clergy of the different denominations to attend State schools at certain stipulated periods to give instruction in their own particular beliefs. (Attendance at these classes is, however, entirely optional, depending on the will of the parents in each case.)

It would appear that the State's policy is tending, if anywhere, towards a slightly modified form of Separation in education. Various amending Acts have in recent years injected rather more religion into the curriculum. In South Australia, for instance, no denominational teaching was allowed in State schools until 1941, when not more than half an hour each week was set aside for the purpose. Later, in 1947, a further amendment made it possible for State teachers to give the religious instruction themselves during the statutory period, provided the particular Church agreed and the teacher was willing.<sup>(28)</sup> In Victoria, before 1950, denominational teaching did not appear on the timetable; it had to be given outside of regular school hours.

By the Act<sup>(29)</sup> of that year authorised clergy were permitted to teach 'on the basis of the normal class organization of the school'.

On the other hand, it seems clear that, excepting the substantial Roman Catholic minority, the churches are unwilling to let this tendency develop so far that separation of Church and State in education is in danger of becoming a dead letter. To take a recent instance: A suggestion was made by the Education Minister in Queensland that in that State church schools should receive some assistance from the Government.<sup>x</sup> This called forth an indignant protest from the

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<sup>x</sup> For pupils in State schools in Queensland the transition from primary to secondary education is not automatic: each pupil has to pass a test on the results of which, if satisfactory, a scholarship is awarded. This scholarship may be taken up at any secondary school of the pupil's choice, whether it is subsidised by the State or by a religious body. Without church schools there would not be enough secondary schools to accommodate all the pupils who are granted scholarships and it was time, the Minister said, that the Government 'paid some cognizance' to the part played by church schools in developing Queensland's secondary education.

Moderator-General of the Presbyterian Church in Australia.

'We assert', he said, 'that the granting of a subsidy would be unjust to churches that have no schools, unjust to people who have no church, impious for the State to aid from the common purse a religion that by its own confession requires the condemnation of every other ... In Queensland the State is cordial to the Church and the two are co-operating in more than one undertaking - in the care of aboriginal people and of orphan and deserted children.'

'In these the Church acts for the State and therefore has every right to expect financial aid.'

'But in the establishment of schools the Church is not agent for the State in any sense.' (30)

A statement such as this shows that there is still religious support for the principle of Separation. It shows also that a more direct relationship between Church and State in education than at present exists would, owing to the discrepancies in the comparative numbers of denominational schools,<sup>x</sup> tend to increase interdenominational rivalries.

In America there have been numerous cases of litigation (31) arising from disputes over the meaning of the Separation principle as applied to education. The use of free public transport by non-State school pupils, a system of lending textbooks free to all elementary school pupils, compulsory saluting of the flag and many other issues have been raised in the courts. In Australia there is a marked absence of such litigation.

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The following figures, taken from a recent survey, show the comparative totals for the Commonwealth of denominational schools:-

Roman Catholic	..	..	..	1,422
Church of England	..	..	..	124
Presbyterian	..	..	..	41
Methodist	..	..	..	15
Methodist and Presbyterian	..	..	..	6
Seventh Day Adventist	..	..	..	27
Christian Science	..	..	..	1
Lutheran	..	..	..	28
Baptist	..	..	..	3
Congregational	..	..	..	2
Hebrew	..	..	..	2
Society of Friends	..	..	..	1

This might be explained by the fact that - as was found when the Constitution was being debated - religion is not, relatively a matter of such vital interest that public opinion will agitate itself over the finer implications of the relationship between Church and State in education any more than in daily life. It is true that there is amongst Roman Catholics widespread and outspoken dissatisfaction with a dual system which means that those who cannot conscientiously send their children to State schools are obliged to pay taxes in support of an educational system which violates the fundamentals of their religious belief but, although this is an economic, religious or political grievance, it is hardly one that raises legal issues or leads to litigation.<sup>x</sup>

In the field of education it can be seen that the State is tacitly assuming that Australia is a Christian community and it acts in conformity with this assumption in encouraging the churches to provide religious instruction in State schools.

Another sphere in which the Separation principle is modified is that of broadcasting. In this sphere the 'Christian country' notion has been made explicit. The first report, made in 1943, by the Parliamentary Standing Committee which was set up by the Broadcasting Act 1942<sup>(32)</sup> considered, among other things, the policy which the national service should adopt in regard to religious programmes. On this matter the Committee reported as follows:-

'Before considering the extent to which the national service should be used for religious broadcasts on Sundays, it is necessary to agree or disagree with the Commission's [i.e. the A.B.C.'s] attitude as to the place which religion holds or should hold in the life of the nation. Should it be given pride of place? Or should it be put on the same plane as the activities of 'privately organized cultural, educational or even political bodies?

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For a recent statement on the Catholic view of the Australian education system see the Social Justice Statement for 1949 entitled 'Christian Education in a Democratic Community'.

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'Whatever differences of opinion there may have been on this question before the war, it is undeniable that in Australia and other Allied countries, the world conflagration has awakened a wider recognition of the need for more extensive education in spiritual values.

As a Christian country, Australia has not been lacking in its recognition of the supreme importance of spiritual values. Parliament itself is sensible of the obligation of leadership in putting first things first ... With such examples on the part of constituted authority ... it seems to us logical to expect that those in control of the national broadcasting service should also give primary place to the principle involved ... By vocation and training the church authorities are the logical exponents of Christian ideals, and if the principle of pre-eminence for spiritual values is accepted, then it becomes illogical to classify church services in the same category of importance as those other activities with which the Commission has drawn a comparison'. (33)

In practice the national service does allot a considerable amount of time to religion. Several religious sessions are broadcast each day of the week as well as on Sundays. There are also special programmes of talks, sacred music, and occasionally plays, in addition to relays of normal church services.

Under the Broadcasting Act of 1950 the view put forward by the Committee in 1943 is given legislative expression in the requirement that on commercial stations 'divine worship or other matter of a religious nature is broadcast for adequate periods and at appropriate times'. (34) In order to satisfy this requirement, whilst at the same time remaining impartial, a system has been adopted (on the national as well as the commercial service) whereby the various denominations are allotted times in accordance with their numerical proportions as shown in the census. No commercial station may charge for time so allotted. (Should extra time be desired, this may be charged for, but this too is often provided free.) There exists as well a prohibition on the broadcasting of unsuitable advertisements on a Sunday.

The majority of commercial stations comply with the requirements.

Failure to do so is not due so much to unwillingness to propagate religion as to reluctance on the part of some station licensees to sacrifice commercial profit. Other difficulties encountered are occasional inter-denominational squabbles over the allocation of time and, in some localities, the impossibility of broadcasting church services that would reach a sufficiently high standard. These, however, do not denote any conflict between Church and State and the various reports that are made from time to time make special reference to the co-operative attitude of the churches and their gratitude for the encouragement and facilities with which the State provides them for spreading their influence far wider than would otherwise be possible. Some denominations - especially the Methodists - make the utmost use of the opportunity and pride themselves on maintaining a consistently high standard in broadcasting.

Some indication of the public reaction to the State's policy in religious broadcasting is provided by the results of a survey made in Melbourne in 1950, of the audience for Sunday religious programmes. (35)

One of the conclusions reached was that 'in no period did the religious programmes produce a high or even moderate rating'; they could not compete with those with entertainment value. Just under half of the radio homes listened to one religious programme or more each Sunday.

As the report remarks, 'this cannot be considered a very high proportion but it is certainly well above the category of a small minority'.

The matters of education and broadcasting show clearly how impossible it is in practice strictly to adhere to the principle of Separation; despite Barton's views no clear line of division can be maintained between religious and secular business when the influences and interests of Church and State co-exist, overlap and sometimes conflict, as they do.

The results of the broadcasting survey seem to point the distinctions which T.S.Eliot draws between the two elements comprising the 'Christian Society': the 'Christian Community' which without considering it deeply or even making any display of religion, as a matter of habit

and tradition has a code of social behaviour determined by Christian principles and the 'Community of Christians', that nucleus to whom religion is of highest importance. In Australia the State may be regarded as the legal and administrative expression of a Christian Community in Eliot's sense of that term, even though it is clear that the 'Community of Christians' exists only as a minority.

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CONCLUSION:

Since the Reformation Church-State relations have assumed three main forms. First, in point of time, was the confessional State, formed upon the principle of 'cuius regio eius religio', in which it was thought necessary for political as well as for religious reasons that ruler and subjects should profess the same belief and minority churches existed, if at all, on sufferance. When the confessional State was Protestant the relationship between the ruler and the national church was even closer than it was in the case of a Catholic State.

Then, during the seventeenth century, the ideas of freedom of conscience and individual liberty began to gain ground, finding expression in such writers as Milton and Locke, or in the Revolution Settlement of 1688, and resulted in the tolerant State which, although it might still grant special privileges to one church, recognised at the same time the existence and rights of minority churches.

Finally (but not universally) over the past century and a half, in America, part of Britain's overseas empire and in some European countries, the tolerant State has been superseded by the neutral one: all churches are voluntary bodies in the eyes of the law and religious liberty prevails insofar as the State does not patronise or make laws affecting the worship and belief of any church.

Sometimes where there has been transition from stage to stage in Church-State relations this has not taken place without bitter struggle or national upheaval, as for instance in eighteenth century France or seventeenth century England. In Australia, however, where the experience of three centuries elsewhere has been concentrated into less than one,

there has been a certain amount of controversy, but no bitter struggle.

The working out of the present relationship has been little more than a passage - remarkably smooth and swift - through the earlier stages until Separation was achieved.

Under these circumstances there is more likely to be an harmonious working together. Indeed, the doctrine contained, by implication, in the Commonwealth Constitution has, we have seen, appeared as not incompatible with that comprehended in the Gelasian concept of the two swords: society has a dual nature, spiritual and temporal, and is under the dual authority of Church and State. It was, however, realised, even at time when Gelasius I formulated his concept that, although in theory the two powers were distinct, on some occasions an adjustment of rights and co-operation would be required.

'Christiani imperatores pro aeterna vita pontificibus indigerent,  
et pontifices pro temporalium cursu rerum imperialibus dispositionibus  
uterentur'. (36)

The Church looks to the State for certain civil safeguards which it alone can provide and, on the other side, as the Constitution's preamble might suggest, the State feels the need for some unifying force more effective than the liberal-democratic ideology. Whether the churches are in practice able to provide this is perhaps doubtful. But the fact remains that the State's felt need for some religious dynamic is one strong factor modifying the separation of Church and State.

Appendix A:'Establishment'

This sentence and some other parts of this chapter seem rather to beg the question unless it is clear what is meant by an 'established' church. It has been pointed out that the term, 'establishment', has changed its meaning since the seventeenth century. The Tudor church settlements did in fact settle or 'establish' by law what were to be the doctrine and forms of worship of the Church of England, just as a fact becomes established after an authoritative statement. At first establishment was not meant to denote exclusiveness or privilege.

This connotation only came when the growth of Dissenting sects led to the passing of the Toleration Act (the title in itself is significant) and to the distinction between the Church, sanctioned and supported by the State, and non-established churches beyond its pale.

This definition hardly clarifies the position of the Church of England in N.S.W. because when the Colonial Office, in the early period, referred to it as the 'Establishment' it was not considering the proper implications of the term any more than it was thinking of the implications of its policy towards religion as a whole.

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x J. N. Figgis, 'Churches in the Modern State', p. 9.

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Appendix A.A:

Broughton's relations with the Roman Catholic Church.

The fact that Broughton saw the inevitability of voluntaryism has been somewhat obscured by a series of episodes in which he sought, though ineffectually, to resist what he regarded as unconstitutional and illegal actions by the Roman Church in New South Wales. In interpreting these episodes one should bear in mind Broughton's personality and the presence in certain quarters in England and Australia of strong anti-Roman Catholic feeling.

In 1843, for instance, after the establishment of the hierarchy in Australia, Broughton, together with the clergy of his Diocese, forwarded to the Colonial Office a protest<sup>(1)</sup> against this alleged assumption of jurisdiction in New South Wales by the Papacy. The protest was grounded on the contention that the 'erecting and conferring of ecclesiastical dignities by the Pope' in effect made it impossible for the clergy to continue taking or administering the Oath of Supremacy which all clergy at that time took at their ordination. The relevant passage of this Oath declared:-

'that no foreign prince, person, prelate, state or potentate hath or ought to have any jurisdiction, power, superiority or pre-eminence or authority, ecclesiastical or spiritual, within this realm.'

The only reply which Broughton received to his protest was the following statement from Lord Stanley, the Colonial Secretary:-

'I must decline a discussion of the question which it raises'.<sup>(2)</sup>

The reason why Stanley thus declines to take legal action as Broughton had invited him to do was probably the same one as Russell gave after he had discussed the question of the English hierarchy with his legal advisers:-

'After due consultation with the law officers of the Crown, we came to the conclusion that it would not be wise for Her Majesty's Government to institute any legal proceedings against

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(1) H.R.A. I. Vol.22, p.597.

(2) H.R.A. I. Vol.22, p.125.



the agents of the Pope for the assumption of ecclesiastical titles, because if we had it would have been based upon ancient and obsolete statutes, which it is always unpleasant and disagreeable to the people of this country to invoke; and the issue would be doubtful; the jury would probably give no verdict.' (3)

The question which arises is whether or not Broughton's protest must be taken as evidence that he regarded the Anglican Church in Australia as 'established'. To put it another way, was the erection of the hierarchy and the conferring of ecclesiastical dignities by the Pope either in Australia or in England, seen as a challenge to the principle of establishment?

Prima facie the issues raised by the institution of the Roman Catholic hierarchy in New South Wales were unconnected with the legal status of the Church of England in the colony. Attached as he was to the principles of the English Reformation, Broughton would have made his protest whatever his views may have been on the establishment question. Moreover, it is relevant to recall that when, in 1850, the Roman Catholic hierarchy was restored in England, the protests did not come solely, or even mainly, from Anglicans. Although it was chiefly Protestant feeling that was aroused by the supposed threat of Papal aggression, protests came also from persons of no religious convictions and even from a section of English Catholicism.<sup>(4)</sup> In essence, perhaps, the feeling against the institution of the hierarchy was as much the product of nationalism as of religious feeling: the point was - or so it seemed to the objectors - that the Papacy, by claiming spiritual and ecclesiastical jurisdiction in Her Majesty's realms, was trenching upon the sovereignty of the Crown.

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(3) Hansard, Vol. cxvi. 805.

(4) cf. D. Mathew, 'Catholicism in England', (London 1948), p. 199.

In addition, the Oath of Supremacy upon which Broughton bases his protest was not, in Australia, essentially involved with the establishment of the Anglican Church. In 1851 the New South Wales Legislature passed a Bill 'to simplify the Oaths of Qualification for Office'<sup>(5)</sup> which formally abolished the Oath of Supremacy. Presumably this Act referred specifically to civil officers of the Crown. One would, nevertheless, have expected it to have led also to the discontinuance of the Oath for clergy. Diocesan records reveal that the Oath of Supremacy - in substantially the same form as that taken by Broughton's clergy - continued to be taken as late as 1904. This despite the fact that long before this date every possible suggestion that the Church of England in the colonies might be established had been removed by the Privy Council's judgment of 1863 in 'Long v. The Bishop of Capetown'<sup>(6)</sup> in which it was stated that 'in the case of a settled Colony the Ecclesiastical Law of England cannot ..... be treated as part of the law which the settlers carried with them from the mother country.'

This means that the clergy who took the Oath after 1863 must have been aware - if they gave the matter much thought - that the Church of England enjoyed no superiority in Australia. Failure to discontinue the practice may well have been due to the unsystematic way in which the ordination ceremony appears to be revised and regulated.

Broughton does in his protest write of himself 'and all other bishops of the Established Church', but too much importance should not be attached to this phrase. It should be remembered that Broughton had become Bishop by virtue of Letters Patent issued by the Crown and he certainly regarded himself as belonging to 'the establishment'. But this was not the same thing as assuming the Church of England to be the established church in New South Wales.

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(5) 20 Vict. No.9

(6) 1 Moore's F.C. Cases, N.S. 411.

It should also be borne in mind that Broughton was by nature a stubborn, contentious man, quick to resent anything that seemed to lessen his own prestige or that of his church. During his Australian career he several times importuned the Colonial Office concerning episodes which, in his view, weakened his position as compared with that of the head of the Roman Catholic Church in the colony. In 1839, for instance, he had protested that on two separate occasions Polding had appeared in what he (Broughton) alleged to be 'habiliments appropriate to a Bishop of Rome'. To this Russell's only reaction was to instruct the Governor 'to take no further notice of so frivolous a complaint.'<sup>(7)</sup>

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(7) H.R.A.I.Vol.20,p.435

Nineteenth Century Secularism in Australia

The secular associations referred to appear to have been fairly active and to have recruited their members from among the working classes and a small section of the intelligentsia. A means often employed to arouse interest in their activities was the staging of light entertainment on Sunday evenings to which admission was free. Addresses delivered at meetings were on varied topics, spiritualism being a favourite. Melbourne was the most active centre of rationalism where well-known figures such as E. W. Cole, 'The radical book-seller', and H. K. Rusden wrote and spoke frequently on 'tough morsels of <sup>x</sup> theology', and where there existed an Eclectic Association and a Sunday Free Discussion Society. The former ran a lending library containing a wide selection of works ranging from Locke to Darwin and Huxley. Indeed, there seems to have been an abundance of such literature - or of pamphlets of an anti-religious nature - in circulation, some of it native and some of it imported from England.

There was close liaison between secular societies in different places and also with the secular movement in England. The Melbourne freethought party negotiated for a visit by Bradlaugh and Mrs. Bessant which did not, however, come off and the Adelaide Secular and Free Discussion Society, following closely the fortunes of freethought in England, expressed its sympathy with these two when they were prosecuted in 1877 for publishing a pamphlet advocating birth control.

The prospectus of the Australasian Secular Society contains an adequate statement of the aims of rationalism which puts it in its place in the wider liberal movement.

'Human improvement and happiness,' it states, 'cannot effectually be promoted without civil and religious liberty; and ... therefore it is the duty of every individual to actively attack all barriers to religious freedom of thought for all upon political, theological and social subjects.'

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<sup>x</sup> The phrase is actually the title of a pamphlet, written by Rusden under the pseudonym of 'Iconoclastes', published in 1868, which, like so many others, questions the truth of some of the primary Christian principles.



APPENDIX C:Separation in the U.S.A.

The case which produced the Supreme Court decision was 'Church of Holy Trinity v United States' (143 U.S., p. 457) which concerned an invitation from an American church to an English pastor to enter into its service. The district court decided that this action contravened a statute prohibiting the importation of alien labour. This decision was taken on appeal to the Supreme Court where opinion was delivered that the statute related only to cheap, manual labour - 'no purpose of action against religion can be imputed to any legislation, state or national; because, this is a religious people.'<sup>x</sup> There followed then references to Columbus, Sir Walter Raleigh etc.

This case and the Act relating to the Chicago exhibition do not appear even to have stood in the relation of cause and effect. It seems that the Holy Trinity affair was not mentioned and the religious aspect of the provision against the exhibition opening on Sundays passed unnoticed when the Bill came before Congress. It was only afterwards that the validity of the legislation was questioned in the courts where it was ruled that Congress did have such an inferential power.

It is worthwhile here to compare the religious clauses of the American and Australian Constitutions. Article VI s. 3 of the former states that '... no religious test shall ever be required as a qualification to any office or public trust under the United States.' and the First Amendment runs as follows:-

'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.'

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<sup>x</sup> Quick and Garran 'Annotated Constitution ...' p. 289.

1. E. O'Brien, 'The Foundation of Australia', p. 137; App. F., p. 292.
2. J. Bentham. 'Letter to Lord Pelham giving a comparative view of the system of penal colonization in N.S.W. and the home penitentiary system ...' (1802), and 'A plea for the Constitution: showing the enormities committed ... in and by the design ... of the penal colony of N.S.W.' (1803).
3. Report of the Commission of Enquiry into the State of the Colony of N.S.W. (1822).
4. H. L. Clarke, 'Constitutional Church Government', pp. 77-78; H.R.N.S.W., *passim*.
5. E. Burke, 'Reflections on the Revolution in France', pp. 362-3.
6. H.R.N.S.W., I, Vol. 1, pt. 2, p. 90.
7. *Ibid.*, p. 27.
8. *Ibid.*, p. 259.
9. Registration Act 1826 (6 Geo. IV No. 21).
10. H.R.N.S.W., I, Vol. I, pt. 2, p. 437.
11. W. W. Burton, 'The State of Religion and Education in New South Wales', pp. 43 f.
12. W. B. Ullathorne, 'Reply to Judge Burton', p. 57.
13. Halsbury's Laws of England, Vol. II, p. 575 cites 'Re Natal (Lord Bishop)' (1865), 3 Moo. P.C.C. (N.S.) 115, at p. 152. Cf. also 'Wylde v. Attorney General', (1948) C.L.R., 262, 276.
14. J. S. Gregory, 'Church and State in Victoria (1851-1872)', App. A.
15. H.R.N.S.W., I, Vol. I, pt. 2, p. 634.
16. J. R. Elder, 'Letters and Journals of Samuel Marsden', p. 37.
17. Bonwick, *op. cit.*, p. 206.
18. H.R.N.S.W., I, Vol. 3, p. 441.
- 18a. *Ibid.*, p. 714.
19. H.R.N.S.W., I, Vol. 5, p. 315.
20. Elder, *op. cit.*, p. 34, Extract from a pamphlet by Marsden published in London in 1826, 'An Answer to Certain Calumnies', etc.
21. H.R.N.S.W., I, Vol. I, pt. 2, p. 120.
22. Cardinal P. F. Moran, 'History of the Catholic Church in Australasia', p. 38.
23. *Ibid.*, p. 61.
24. *Ibid.*
25. H.R.A., I, Vol. 8, pp. 336-37.
26. Hansard, Vol. XXXIX, p. 474.
27. W. P. Ward, 'Life of Cardinal Newman', Vol. I, p. 44.
28. H.R.A., I, Vol. 10, pp. 200, 204.

29. H.R.A., I., Vol. 11, p. 528.
  30. 'Remarks on the Status of the Presbyterian Church in the British Colonies ... by James Thomson' (1835).
  31. H.R.A., I, Vol. 11, p. 250. Civil estimates for 1824.
  32. Ibid., pp. 444-454.
  33. Ibid, p. 139.
  34. Gregory, op. cit., p. 5.
  35. J. G. Murtagh, 'Australia: The Catholic Chapter', p. 29.
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## CHAPTER TWO                  THE HALFWAY HOUSE

1. Governors' despatches and letters from the Colonial Secretary 1821-28, e.g. on 13th June, 1827 £2,000 was advanced to 'defray the salaries of the clergy and provision for the schools' and on 18th June, 1828, £4,175 was transferred from the Colonial Treasury to meet the Corporation's estimated expenditure. On 27th March, 1827 £5,700 was advanced, this being 'part of the money requested'.
  2. H.R.A. I, Vol. 14, pp. 784-92.
  3. 'Sydney Gazette', 5/9/33.
  4. H.R.A., I, Vol. 16, p. 496. Lang to Bourke, 26th December, 1831.
  5. Supplement to 'Sydney Herald', 15/7/33.
  6. Ibid.
  7. H.R.A., I, Vol. 18, pp. 202 et seq. Glenelg to Bourke, 30th November, 1835.
  8. H.R.A., I, Vol. 17, pp. 226-29.
  9. 7 Wm. IV, No. 3.
  10. W. W. Burton. 'The State of Religion and Education in N.S.W.' p. 47.
  11. S.M.H., 18/7/62. Lang is speaking on the State Aid Abolition Bill.
  12. J. D. Lang, 'History of New South Wales', (1837 ed.) Vol. 2, p. 531. (Lang was later to be less 'thankful' and much more critical of the Act.)
  13. W. B. Ullathorne, 'Autobiography', p. 87.
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15. Municipal Corporations Act (5 and 6 Will. IV, c.76). Corporations in 178 towns became representative bodies freely elected by all ratepayers of three years residence. This curtailed Anglican control in municipal politics, indeed Creevy thought it would mean government by Dissenters.
- Compulsory Church Rates Abolition Act (31 and 32 Vict., c.109). Payment of church rates became no longer legally enforceable. Assessments were henceforth to be made by agreement and payments were to be enforceable only upon the parties to the agreement. This removed the grievance of the Dissenters that they had to contribute towards the upkeep of a church of which they were no longer members.
- Burial Laws Amendment Act (43 and 44 Vict., c. 41). This Act removed the obligation for non-members of the Church of England to be buried according to Anglican rites if it were necessary for them to be buried in Church of England grave-yards.
16. A. Brady, 'Democracy in the Dominions', p. 3.
17. The 'Bulletin', 1/1/81.
18. Ibid., 16/12/82.
19. Eg. S.M.H. 18/7/62 and 24/7/62: M.B.C., 12/7/60: Vict. Hansard Vol. II (1857), p. 703 and V.P.D. Vol. VIII (1869), pp. 1780, 1794-5.
20. S.M.H., 17/7/62.
21. Ibid., 18/7/63.
22. M.B.C., 12/7/60.
23. Ibid., 26/6/60.
24. State Aid Discontinuance Act (24 Vict. No. 3).
25. 'The Centenary History of South Australia', p. 290 cites the 'Morning Chronicle', 1/7/34.
26. A. Grenfell Price, 'Founders and Pioneers of South Australia', p. 59.
27. Ord. No. 10 of 1847.
28. Pike M.S.
29. Ibid.
30. E. Hodder, 'George Fife Angas', p. 324.
31. W. P. Ward, 'Life of Cardinal Newman', Vol. i, p. 44.

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CHAPTER FIVE. SEPARATION ACHIEVED

1. Official Report of the National Australasian Convention Debates. Adelaide, 1897, p. 1187.
2. Pius XII, 'Address to Lenten Preachers of Rome', March 18, 1946.
3. C.D. -A, p. 1188.
4. Ibid., p. XIX. With two exceptions, the petitions were all from members of religious bodies. All Christian bodies appear to have been represented in these petitions and the number of signatures varies from nine to four and a half thousand.

5. Eg. The 'Argus' 10/4/97. Letter from Prof.J.L.Rentoul or W.G.Taylor 'Notes of an Address on the National Recognition of God', or A.Harper, 'Australia Without God'. (Both of the latter are addresses delivered by clergymen).
6. S.A.R. 15/4/97.
7. Ibid., 24/3/97.
8. Official Record of the Debates of the Australasian Federal Convention. 3rd Session. Melbourne, 1898. Vol.II, p.1738.
9. Ibid, p.1734.
10. Ibid., p. 1736.
11. Ibid., Vol. I pp.660f.
12. Ibid., Vol. II, p.1773.
13. Ibid., Vol. I, p.660.
14. 67 C.L.R. (1943), pp.123f.
15. Ibid., p.126.
16. Ibid.
17. Ibid., p.116.
18. Ibid., pp. 126f.
19. Ibid., p.131.
20. Eg. 'Reynolds v. United States', (1878) 98 U.S. 145 (25 Law Ed. 244). 'Davis v. Beason', (1890) 133 U.S. 333 (33 Law Ed. 637).
21. 67 C.L.R. (1943), p.155.
22. F.W.Maitland, Collected Papers, Vol.III
23. 'General Assembly of Free Church of Scotland v. Lord Overtoun' (1904) A.C. 515.
24. (1948-49) 78 C.L.R. 224.
25. Ibid. p.297.
26. 43 Vic. No.23.
27. V.P.D., Vol. XV, p.1349.
28. 4 Geo.VI No.38 and 11Geo.VI No.28.
29. 15 Geo VI No.5521.
30. 'Courier Mail' 18/9/53.
31. Eg. 'Everson v. Board of Education', (1947) 330 U.S.1. 'Cochran v. Louisiana Board of Education', (1930) 281 U.S.370. 'Hering v. State Board of Education' (1938) 303 U.S.624.
32. Commonwealth Acts 1901-50, Vol.I

33. First Report of the Parliamentary Standing Committee on Broadcasting 1943.
34. Broadcasting Act 1942-50, s.6K(2)(b)(ii).
35. 'Audience for Sunday Religious Programmes, Melbourne Feb.-March 1950' A survey undertaken by the A.B.C.B.

BIBLIOGRAPHY

Abbreviations: M.L. Mitchell Library, Sydney

P.L.V. Public Library of Victoria.

N.L. National Library, Canberra.

Where abbreviations have been used in the list of references the form chosen is indicated in square brackets after the title of the work as listed in the bibliography.

I. PRIMARY SOURCES

Official Papers, etc.

A Copy of the Instructions given by Earl Bathurst to Mr. Bigge on his proceeding to N.S.W. Ordered to be printed 7 July, 1823. (M.L.)

Historical Records of Australia. [H.R.A.] Series I Vols.8,10,11,14-18,20,22.

Historical Records of New South Wales. [H.R. N.S.W.] Series I Vol.I pt.2,3,5.

Hansard's Parliamentary Debates. [Hansard] XXXIX (1819)CXXVI (1851)

Victorian Hansard 1856-65.

Victorian Parliamentary Debates 1866-72 [V.P.D.]

Commonwealth Acts. 1901-50. Vol.I.

Statutes of the various State Legislatures:

N.S.W.: 7 Wm.IV. No.3 (N.L.)  
26 Vic. No.19  
43 Vic. No.23

Victoria: 34 Vic. No.391  
15 Geo.VI. No.5521

Queensland: 24 Vic. No.3

South Australia: Ord. No.10 of 1847  
4 Geo.VI. No.38  
11 Geo. VI. No.28

Tasmania: 32 Vic. No.30

West Australia: 59 Vic. No.25

Commonwealth Law Reports. [C.L.R.] (1943) 67. (1948-49) 78.

United States Supreme Court Reports. [U.S.]

Official Report of the National Australasian Convention Debates, Adelaide, 1897. [C.D. - A.]

Official Record of the Debates of the Australasian Federal Convention. Third Session. Melbourne, 1898. 2 v. [C.D. - M.]

First Report of the Parliamentary Standing Committee on Broadcasting 1943. Ordered to be printed 9th March, 1943.

Annual Reports of the Australian Broadcasting Control Board.

Newspaper Files.

(Where specific dates are not cited files were used for general reference only.)

Sydney Gazette 5/9/33

Sydney Morning Herald. [S.M.H.] 1833, 1852, 1862-3.

The Bulletin. 1881-2.

The Argus. 10/4/97.

Melbourne Herald.

Moreton Bay Courier (now the 'Courier Mail'). [M.B.C.] 1860, 1953.

South Australian Register. [S.A.R.] 1897.

Manuscripts.

The Bonwick Transcripts - Missionary - Vols. 1, 3, 5, 6. (M.L.) /K

The Hassall Correspondence. Vol.2 (M.L.)

Letters of Bishop Broughton. (M.L.)

Broughton's Letters in the Diocesan Registry, Sydney.

Governors' Despatches 1821-28. Vols. 7-14. (M.L.)  
(For details of the Church and Schools Corporation).

The Minute Book of the Society for the Abolition of the 53rd Clause  
in the Victorian Constitution. (P.L.V.)

Contemporary Histories, Pamphlets, etc.

Burke, E. 'Reflections on the Revolution in France'.

Burton, W.W. 'The State of Religion and Education in New South Wales'.  
London, 1840. (M.L.)

Writings and Speeches of Oliver Cromwell: Ed. W.C. Abbott. 4 v.  
Cambridge (Mass.) 1937-47.

Lang, J.D. 'An Historical and Statistical Account of New South Wales'.  
2 v. (4th ed.) London, 1875.

\_\_\_\_ 'History of New South Wales 2 v. London, 1837.

Tocqueville, A. de 'Democracy in America'. Tr. by H. Reeve 2 v. London, 1889.

'Disestablishment and Disendowment. The First Steps Towards Revolution'  
London, 1869. (P.L.V.)

Harper, A. 'Australia without God'. Melbourne, 1897. (N.L.)

Jeffries, J.J. 'A Free Church in a Free State' Sydney, 1878. (P.L.V.)

Perry, C. 'The Comparative Position of the Church in England and  
in Victoria'. Melbourne, 1854.

Rusden, H.K. 'Essay on Suicide'. Melbourne, 1870. (N.L.)

\_\_\_\_ 'Science and Theology'. Melbourne, 1870. (P.L.V.)

\_\_\_\_ 'Tough Morsels of Theology' Melbourne, 1866. (P.L.V.)  
etc.

Taylor, W.G. 'Notes of an Address on the National Recognition of God'.  
Bathurst, 1897. (M.L.)

Thomson, J. 'Remarks on the Status of the Presbyterian Church in the  
British Colonies ...' Hobart Town, 1835.  
(Assembly Hall Library of the Presbyterian Church of  
Australia in N.S.W.)

Ullathorne, W.B. 'A Reply to Judge Burton'. Sydney, 1840. (N.L.)

'The Apostle' (1889-90) (Published by the Gympie Secular Assn.) (M.L.)

Monthly reviews of the Adelaide Secular and Free Discussion Society.  
1876-79. (M.L.)

The Colonial Church Chronicle. Vol. VI. No.68.

Addresses delivered to the Sunday Free Discussion Society. Melbourne. (N.L.)  
etc.

## II. SECONDARY SOURCES.

### General Histories.

Brady, A. 'Democracy in the Dominions'. Toronto, 1947.

Cambridge History of the British Empire. Vol. VII, Pt. 2.

Halevy, E. 'England in 1815'. (2nd. Ed.) London, 1949.  
\_\_\_\_\_. 'The Age of Peel and Cobden'. London, 1947.

Hancock, W.K. 'Australia'. London, 1930.

Morell, W.P. 'British Colonial Policy in the Age of Peel and Russell'.  
Oxford, 1930.

Murtagh, J.G. 'Australia: The Catholic Chapter'. New York, 1946.

O'Brien, E. 'The Foundation of Australia'. (2nd Ed.) <sup>Sydney</sup> London, 1951.

Phillips, M. 'A Colonial Autocracy. N.S.W. under Governor Macquarie  
1810-1821'. London, 1909.

Royal Geographical Society of Australasia. 'The Centenary History  
of South Australia'. Adelaide, 1936.

Young, G.M. 'Victorian England. Portrait of an Age'. London, 1936.

### Biographies and Autobiographies.

Bonwick, J. 'Australia's First Preacher'. London, 1898.

Churton, E. 'Memoir of Joshua Watson'. 2 v. Oxford, 1861.

Dictionary of National Biography. [D.N.B.]

Elder, J.R. 'Letters and Journals of Samuel Marsden'. Dunedin, 1932.

Gladstone, W.E. 'Gleanings of Past Years 1843-78'. Vol. III.

Goodman, G. 'The Church in Victoria during the Episcopate of the  
Right Reverend Charles Ferry ...'. London, 1892.

Grenfell Price, A. 'Founders and Pioneers of South Australia'. Adelaide,  
1929.

Hodder, E. 'George Fife Angus'. London, 1891.

Melbourne, A.C.V. 'William Charles Wentworth' (John Murtagh Macrossan  
Lecture 1932).

Morley, J. 'Life of William Ewart Gladstone'. 3 v. London, 1911-12.

Symons, J.C. 'Life of the Reverend D.J. Draper'. London, 1870.

Tucker, H.W. 'Memoir of the Life and Episcopate of George Augustus  
Selwyn, D.D.'. 2 v. London, 1879.

- Ullathorne, W.B. Archbishop 'Autobiography'. London, 1889.
- Ward, W.P. 'Life of Cardinal Newman'. 2 v. London, 1912.
- Whittington, F.T. 'Augustus Short, First Bishop of Adelaide'. Adelaide, 1887.
- \_\_\_\_\_  
'William Grant Broughton, Bishop of Australia'  
Sydney, 1936.

Church Histories and Theology.

- Clarke, H.L. 'Constitutional Church Government in the Dominions ..!'  
London, 1924.
- Edwards, M.L. 'Methodism and England'. London, 1943.
- Eliot, T.S. 'The Idea of a Christian Society'. London, 1939.
- Giles, R.A. 'The Constitutional History of the Australian Church'.  
London, 1929.
- Hamilton, R. 'A Jubilee History of the Presbyterian Church of Victoria'.  
Melbourne, 1888.
- Mathew, D. 'Catholicism in England'. London, 1948.
- Micklem, P.A. 'Principles of Church Organization'. London, 1921.
- Moran, P.F. Cardinal. 'History of the Catholic Church in Australasia'.  
Sydney, 1895.
- Powers, F.J. (ed.) 'Papal Pronouncements on the Political Order'.  
Westminster (Maryland), 1950.
- Rommen, H.A. 'The State in Catholic Thought'. St. Louis, 1950.
- Rowland, E.C. 'A Century of the English Church in New South Wales'  
Sydney, 1948.
- Sperry, W.L. 'Religion in America'. Cambridge, 1947.
- White, C.A. 'The Challenge of the Years'. Sydney, 1951.  
Presbyterian Church in N.S.W.
- Woodhouse, A.S.P. 'Puritanism and Liberty'. London, 1950.

Political and Legal Theory.

- R.W.C. Carlyle and A.J. Carlyle. 'A History of Mediaeval Political  
Thought in the West'. 6 v. Edinburgh, 1930-50. Vol.I
- Evatt, H.V. 'Liberalism in Australia'. London, 1918.
- Figgis, J.N. 'Churches in the Modern State'. London, 1914.
- Green, T.H. 'Lectures on the Principles of Political Obligation'.  
(Introd. by Lord Lindsay). London, 1941.
- Harris, H.L. 'The Influence of Chartist in Australia'. Royal Aust.  
Hist. Soc. Journal and Proc. Vol.XI, 1926. pp.351-378)
- Lecky, W.E.H. 'History of the Rise and Influence of the Spirit of  
Rationalism in Europe'. 2 v. London, 1904.
- Maitland, F.W. 'Translator's introduction to Gierhe's Political Theories of  
the Middle Age'. Cambridge, 1938.
- \_\_\_\_\_  
Collected Papers, Vol.III. Cambridge, 1911.

- Mill, J.S. 'On Liberty'. Ed. R.M. McCallum. Oxford, 1946.
- Morrison, A.A. 'Religion and Politics in Queensland (to 1881)' Hist. Soc. of Queensland Journal Vol. IV. No. 4. Dec., 1951.
- Sir J. Quick and Sir R.R. Garan, 'The Annotated Constitution of the Australian Commonwealth'. Sydney, 1901.
- Torpey, W.G. 'Judicial Doctrines of Religious Rights in America' Chapel Hill, 1948.
- Woodhouse, A.S.P. 'Religion and Some Foundations of English Democracy'. Phil. Rev. Vol. LXI, No. 4 Oct., 1952.

Education.

- Australian Council for Educational Research. Annual reviews of Education in Australia.
- Portus, G.V. 'Free, Compulsory and Secular'. London, 1937.
- Radford, W.C. 'The Non-Government Schools of Australia'. Melbourne, 1953.
- Social Justice Statement 1949. Christian Education in a Democratic Community.
- Spaull, G.T. 'The Educational Aims and Work of Sir Henry Parkes'. Sydney, 1920.

Unpublished Theses and MSS.

- Gregory, J.S. 'Church and State in Victoria (1851-72)'. M.A. Thesis, Melbourne, 1951.
- Mansfield, B.E. 'Nationalism in the Australian Labour Movement in the 1880's' M.A. Thesis, Sydney, 1951.
- Pike, D.H. 'Civil and Religious Liberty in the Foundation and Settlement of South Australia from 1830 to 1856'.