“Educational centralization and the rise of the legislative state: school governance in Tasmanian and New South Wales, 1830-1885”

by

Stuart Braun B.A. (Hons.)

Submitted in fulfillment of the requirements for the Degree of Doctor of Philosophy

University of Tasmania August 2000
This thesis contains no material which has been accepted for a degree or diploma by the University or any other Institution, except by way of background information and duly acknowledged in the thesis, and to the best of the candidates knowledge and belief no material previously published or written by another person except where due acknowledgment is made in the text of the thesis.

This thesis may be made available for loan and limited copying in accordance with the Copyright Act 1968.
Acknowledgments

There are so many people I have to thank, particularly those who have been very close to me throughout periods of the writing of this thesis and who provided such enduring encouragement and support when I most needed it. And to all the other people I have lived with, worked with and maintained friendships with throughout this protracted struggle, and who continued to hold great faith in me while often wondering ‘what it was all about?’ – thanks again.

Special thanks goes to my supervisor, David Hogan, whose intellectual inspiration has been immense, and whose enduring passion for the topic carried me through the lean times when I too wondered ‘what it was all about?’

Lastly, I would like to thank my family who have always been there for me and who, after initial regret, encouraged me to drop out of a business degree and pursue my love of history. This is for you.
Table of Contents

1. A critical historiography of nineteenth century educational change in Australia
2. Toward a historical model of centralized educational governance
3. Liberal constitutionalism and the rise of the nineteenth century legislative state
4. Responsible government, education and the discourse of colonial reform
5. The evolution of responsible cabinet government in Tasmania and New South Wales, 1830-1860.
6. The development of centralized educational governance in New South Wales, 1830-1880.
7. The development of centralized educational governance in Tasmania, 1830-1885.
8. Conclusion
Chapter 1

A critical historiography of educational change in nineteenth century Australia

Is it possible for an educational system to be conducted by a national state and yet the full social ends of the educative process not be restricted, constrained, and corrupted? John Dewey, *Democracy & Education* (1916).1

1. Introduction

The historical problem

This study of the emergence of centralized systems of school governance in nineteenth century Tasmania and New South Wales addresses an age-old question in Australian history writing. The decision to re-enter this debate is guided by a belief that existing histories have not sufficiently accounted for the relationship between educational change and the emergence of the modern Australian state. This failure to explore the state-education nexus in any real depth relates to a broader epistemological limitation within Australian educational history writing. As such, historians of education have tended to sustain their analysis of educational centralization upon a series of familiar ‘exogenous’ social, economic and cultural themes that align the growth of centralized school governance, and the ‘suppression’ of local control, to the exigencies of a developing economy, an isolated and dispersed demography, and, depending on the perspective, the capitalist, patriarchal or hegemonic ethos of an ascendant urban middle class that used the state school both as a vehicle for ‘social control’ and as a training ground for a rapidly industrializing work force. It is argued that these accounts, while important, are bound by a socio-economic determinism that misses the important relationship between educational centralization and the endogenous, constitutional dynamics underpinning the emergence of the Australian state, its laws and systems of governance. In response, this study will juxtapose a narrative of the development of full ministerial

---

authority over schools in the colonies of New South Wales and Tasmania with the constitutional debates that underpinned the emergence of a modernized colonial state apparatus described herein as the ‘legislative state’.

While historians of education have, as an inevitable aspect of the study of mass state schooling, included various levels of analysis of the relationship between the state and educational centralization, none have set out to more fully explore the complex constitutional foundation of state administered schooling in Australia. Thus, by focusing their attention on the machinations of a fluctuating economy or the great socio-political upheavals of a rapidly evolving settler society, historians have tended to make vague, a priori assumptions about the ‘democratic’ or ‘capitalist’ nature of the colonial state. In this vein, the political state that came to control education was described by E. J. Payne as “the corporate will of the people”; while for Hirst, the state which opposed local involvement in schools did so as a corollary of the common assumption that “Parliament was directly responsible for the whole society.” Such efforts to link educational development to the rise of the representative state provide only a superficial understanding of a potent constitutional discourse concerning, among other matters, the question of the relative authority of the state and the individual, the right of state interference versus free trade, of parliamentary versus popular sovereignty, and of the governing authority of the common law versus statutory regulation. It will be shown that these issues of governing power in the liberal state were given important momentum in the colonies through mid nineteenth century debates surrounding responsible self-government. Accordingly, this broader polemic concerning the nature and limits of governing power in the colonial state was extended to debates surrounding the establishment of full ministerial responsibility over schools. Indeed, this latter move was the key platform of education reform discourse, providing the pre-condition for enforcing compulsory, secular and free education. Furthermore, this effort to give the central parliament executive fiat over the ‘independent’ governing claims of the parent, local patron and clergy, continues, in the face of recent efforts to devolve and ‘marketize’ school organisation, to underpin the dynamics of modern school governance. To reiterate our earlier point: this ‘endogenous’ dynamic has not yet been adequately addressed by a historiography which, while having explored the extensive political debates surrounding the ‘education question’ in nineteenth century Australia, have abstracted out Marxist or whig theories of the state onto colonial conditions, and by so doing, have switched their focus to the

---

patterns of interest group conflict between the church and the state, liberals and conservatives and so on. This misses some fertile ground for analysis of a particular, historically circumscribed constitutional discourse which, not only influencing educational change, was felt across the gamut of social governance in colonial Australia.

The primary aim of this chapter is to provide a historiographical critique of existing accounts of educational centralization in nineteenth century Tasmania and New South Wales. By so doing, our own historical model of school governance, developed in chapter two, will be drawn out in the context of the perceived limitation of these accounts, particularly as they relate to the issue of the relationship between education centralization and colonial state formation. It needs to be remembered that this survey is, in accordance with the aims of the thesis, concerned with the issue of how scholars have approached the issue of the centralization of school governance and attendant issues of administrative reform – the development of central boards, the centralization of teacher training, the expansion of the inspectorship, the establishment of a responsible ministerial department of education and so on. While it is interesting to see how constitutional forces influencing these administrative issues impacted at the level of the classroom – indeed, such analysis is an avenue for future research – this study will maintain its focus on the broader constitutional debates that influenced education reform at the policy level. To this end, much important analysis of the pedagogical nuances of educational change undertaken by Australian scholars, while touched on throughout the thesis, will be avoided in an effort to focus our sight on a complex and often contradictory discourse pertaining to the relationship between educational change, liberal constitutionalism and the theory of the state.

As a preface to this historiographical survey, the chapter will also examine contemporary debates surrounding the dynamics of educational governance. While secondary to the historical themes developed in the thesis, it is argued that the ‘constitutional’ model of educational centralization opened up by this study provides an important perspective on contemporary strategies of governance associated with new right and neo-liberal education reform. But before any of this can happen, it will be necessary to provide a brief historical overview of some of the latent constitutional issues that might be looked for when viewing the historiography. It should be noted then that the following account is a general one, and as such, does not engage any of the analytical models that are drawn on, and responded to – including, for instance, the work of Michel Foucault – when developing our own model of educational governance in chapter two.

The constitutional origins of centralized state schooling
Since the late eighteenth and early nineteenth centuries comprehensive systems of public schooling have gained favour in the West as the best means to ready the modern citizen for the workplace, to regulate moral conduct, to define familial roles and responsibilities and to instil a sense of civic obligation. In part, mass state schooling evolved as a response to an unwieldy and expanding industrial population whereby a burgeoning pauper and working class was exposed to unemployment, illiteracy, vice and a vicious cycle of ‘moral contagion’. The problem remained, however, about the need to rationalize and modernize a liberal political tradition that had failed to facilitate the technocratic methods through which industrial populations could be more efficiently governed. Accordingly, the general project of improving the efficiency and capacity of liberal state governance embodied far-reaching constitutional change, particularly in terms of the authority of the central legislature, the civil service and statute law making in general, realms which heretofore had more evenly shared power with local government, the church and common law functionaries such as the magistrate and justice of the peace.

The adoption of responsible self-government in New South Wales and Tasmania during the 1850s was significant, therefore, for initiating a model of collective ministerial responsibility that ensured that a cabinet majority could legitimately guide policy formation and implementation with minimal interference from sectional interests. The latter included the ‘particular’ property interests of the country gentry who dominated the old Legislative Council, and who formed a matrix of administrative power with the local lawyers, clerics and justices of the peace charged with administering property law, criminal law, master and servants legislation, social-welfare and schools. As in Britain, liberals, utilitarians and social democrats alike chastised this group for perpetuating archaic administrative practices based on patronage, sinecure and jobbery. However,

3 In this vein, Pavla Miller argued that nineteenth century “Politicians, reformers, newspaper editors, and state officials began to conceptualize schooling as a universal moralizing and modernizing agent... After there initial distrust of ‘provided’ schooling, labor movements throughout the West similarly began to see schools as purveyors of knowledge and power.” Pavla Miller, Transformations of Patriarchy in the West: 1500-1900 (Bloomington: Indiana University Press, 1998), 200.

4 Such fear of vice and crime was a common justification for the imposition of free and compulsory state schooling. Quoting the seminal English educational bureaucrat, James Kay Shuttleworth, the New South Wales politician and education reformer Richard Jenkins confirmed the idea that “We interfere with the parent's right so far as to say he shall not teach his children to steal, or to trespass on the property of others, or to blaspheme. Why, then, should it be so much worse to require that he shall not allow them to grow up in idleness, filth, and immorality.” R. L. Jenkins, Universal Education (Sydney: H. Bancroft, 1859), 5. 14–15.
while the authority of the ‘squattocracy’ was quickly challenged by the reformist urban middle-
classes, this was not, as is commonly assumed in a historiography dedicated to accounts of interest
group conflict, simply a struggle over land and control of state revenue. The reformist zeal of the
colonial liberals was in many ways a critique of a ‘contractarian’ constitutional model that separated
executive and legislative authority, emphasised ‘individual’ ministerial responsibility, and was
concerned less with social matters such as health and education than issues of territorial sovereignty
and the upholding of the ‘immemorial’ property rights contained in the common law. This tradition
of law and government had failed, as nineteenth century education reformers began to argue, to
sufficiently expand the provision of public instruction to the rising generation of colonial youth. In
response, the adoption of centralized cabinet government allowed the state to impose a series of
legislative controls which would harness its potential to govern schools with efficiency, uniformity
and ‘unity of purpose’, and thus to unseat the desultory and underdeveloped network of the
localised and largely church-based educational establishment. 5

While, in the context of colonial educational development, centralization was an exigency designed
to foster an expanding industrializing economy and a ‘new society’ whose geographically dispersed
population lacked a strong network of local functionaries, central legislative control of the school
must also be understood in relation to a broader shift in the constitutional foundations of the liberal
state. For this reason, the thesis will focus intently on several interrelated constitutional debates,
stretching from the seventeenth to the late nineteenth century, which impacted on the issue of
educational centralization. Here, the discourse of constitutional jurisprudence was pivotal since it
played out the struggle between the common law and the consolidation of a statute-based, codified
system of positive law that would give the legislature enduring control of social governance. This
problematic was inurn linked to discourses of parliamentary reform which signaled a shift away
from the English tradition of minimal, divided and hereditary government, and the adoption of the
idea of a fusion of executive and legislative authority in the cabinet. This latter move was central to
expanding the capacity of the legislature to both make and manage law. Furthermore, it was through
the mechanism of ministerial responsibility that the management of the law could remain under
legislative surveillance while coordinated by accountable, professional and paid civil officers.

5 This latter point intersected with the emergence of legal positivism in nineteenth century jurisprudence, a
theory of law which decreed that public law and policy should be codified, should be implemented with
‘certainty’ as opposed to the arbitrary execution of the common law, and, to alleviate any tendency toward
individual caprice, should be open to an unending process of reform and innovation facilitated through
accountable and ‘responsible’ channels of debate including parliament, select committees, school councils
and so on.
This broader process of constitutional change was directly observable in the process of educational centralization in the colonies of Tasmania and New South Wales. While, since the 1820s, state funding had contributed considerably to the operation of colonial education, it was only in the latter part of the nineteenth century that a central bureaucracy wholly controlled educational content and administration. During the first eighty years of colonial educational endeavor schools were administered by disparate religious, philanthropic, judicial and local government bodies. This changed when, through the 1880 Public Instruction Act in New South Wales, and the 1885 Education Act in Tasmania, all schools were to be subject to central legislation as administered by a responsible department of state. These acts marked the consolidation of a long running struggle to affirm state control over colonial schools. The first efforts to tie educational governance to the central legislature began in the early 1830s when the Governor of New South Wales, Richard Bourke, a liberal who was influenced by the recent nationalisation of education in Ireland, attempted to wrestle control of school administration from the Anglican clergy and place it in a centrally appointed board. Indeed, the Irish National System marked the first experiment in centralized school governance throughout the British Empire.

Inspired by the administrative rationality which, since the late eighteenth century, had defined educational governance in Holland, Prussia, and more recently France, British educators and politicians were privy to the advantages of a unified system. The centralization of curriculum, compulsion, and the systematisation of teaching training and appointments, had allowed continental schools to produce an increasingly literate and skilled population. While not matching England in terms of industrial growth, these countries suffered far less from problems of illiteracy, crime, pauperism and so forth. What was distinctive about the English education system was the lingering and discordant system of local control. Accordingly, this variable was increasingly blamed for England’s comparative failure to educate a large portion of a rapidly expanding industrial populace.

The liberal London newspaper, the Spectator, documented this problem in 1857:

Prussia and several [continental] States have made education an important business of Government. The object of the legislative and executive power appears to be even more directed to the spread of information than to the suppression of crime; and parents are not only compelled to send their children to school, but to do so punctually and regularly. Among the penalties for neglect is imprisonment...In England, until our day the State has upon the whole remained passive, education being left more or less to the parish or to the church. Now the church believes in itself more than the school; and not only has it
subordinated the school-house to the parish-church, but each sect has had schools in which, for many years, the object was rather to see that the poor little pupil had some firm though mechanical hold of the dogma than any real command of the elements of instruction...One of the most remarkable features of the school system in Saxony, Prussia, and many of the neighbouring states, is the independence of any creed, and the universality of any attendance...All teachers, of private as well as public schools, must submit to an examination from the Government Inspector of Schools.  

England's uncoordinated, localised and sectarian school system was transposed, albeit with variations, to the Australian colonies. Like the Spectator, Australia's liberal press, politicians and educators began to demand 'universal' in curriculum and teacher training, a need exacerbated by an underdeveloped local government network, and a geographically dispersed and illiterate convict population.

Calls for a more uniform and comprehensive system continued to be held back, however, by a tradition of local self-government which protected the liberty of the individual from the incursions of central and 'despotical' rule. Ensuring that civil institutions like the school, poorhouse and gaol remained under the jurisdiction of the parish and local magistrate, this constitutional tradition had served to entrench the poor teaching standards, irregular attendance and unsatisfactory accommodation that marred education in both England and the colonies. For this reason, the Spectator agreed that "such compulsions as are available in Germany could not be employed in England; and that consideration reminds us that the experiences of the Continent cannot be more than partial application here." Compulsion, and increased intervention from the state, was anathema to the ancient liberties enshrined in the British constitution. The former measures were, however, seen as an essential means for improving the impoverished standard of education throughout the empire.

This constitutional 'problematization' of liberal governance is the platform from which we shall view the development of centralized state schooling in the colonies. Such an attempt to juxtapose educational development with discourses of governance, constitutionalism and the historical formation of the Australian state is a project which, at face value, mimics attempts by Anthony

---

6Spectator, June 20, 1857; cited in the Empire, September 19, 1857.

7Spectator, June 20, 1857.
Green, Bruce Curtis, Pavla Miller and others to probe the relationship between education and state formation. For Green,

State formation is the historical process by which the modern state has been constructed. This includes not only the construction of the political and administrative apparatus of government and all government-controlled agencies which constitute the ‘public’ realm but also the formation of ideologies and collective beliefs which legitimate state power and underpin concepts of nationhood and national ‘character’.8

While educational historians have inevitably given some attention to the historical development of ‘the state’ and its relationship to educational change, most have, to reiterate our earlier point, subordinated the link between educational change and state theory, constitutionalism and administrative organisation to the causal primacy of social, economic or gendered forces. Consequently, the dominant liberal and revisionist narratives of educational change, which in the former instance describe the triumph of the liberal-democratic state, and in the latter the consolidation of the capitalist and ‘social control’ state, tend to regard educational state formation as the embodiment of interest group conflict, or of ruling class and patriarchal interests. This mode of analysis is related to a tendency within historical and sociological accounts of western-liberal political and educational development to assume a duality between state and society. Civil liberty and property rights, as the primary objects of liberalism, are thereby upheld by the separation of the state from the natural harmony of social and economic interests. For Marxist and revisionist historians, this has allowed economic elites and the imperatives of capital accumulation to define state education; while for liberals, it has prompted the creation of a truly egalitarian and democratic system of public schooling. Contemporary theorists then view the current ‘crises’ in educational reform in light of either the entrenched ‘correspondence’ between education and ‘disorganised’ capitalism; or, in the case of the liberal historiography, the overarching influence of the state in the free market of educational opportunity.

Through an in-depth analysis of broader nineteenth century debates concerning the issue of sovereign power in the liberal state, this thesis will attempt to show how the boundary between state and society became, in a sense, indivisible, and thus in effect allowed the state to perpetuate a kind

---

of invisible' and 'neutral' hold over the school system. This process was a consequence of a ‘logic’ of governmental organisation that asserts the primacy of the central legislature in all matters of the 'national interest'. It is what the orthodox English liberal, Herbert Spencer, indignantly called the "divine right of parliaments", not the interests of capital or the individual, which has constricted any meaningful attempt to devolve authority and increase community input into schools. Accordingly, this dissertation argues that seemingly divergent and contradictory strands of educational governance (i.e. ‘diversity’ vs. ‘uniformity’) have an inner unity that is embodied in the constitutional foundation of the Australian state. The struggle between ‘bureaucracy’ and ‘democracy’ should not be viewed as an indiscretion – expressed historically in terms of geographic and social circumstance, or of capitalist and patriarchal domination – which continues to retard the commonly assumed ideal of a liberal education. Rather, this conflict is ingrained in the constitutional system through which we are governed. Thus, if schools are to embody economic, gender and race equality, to break away from a mechanical and inflexible pedagogy, then they must, in effect, cease to exist.

It would of course be myopic to dismiss the significance of social structure when charting the origins of mass state schooling. As described by Malcolm Vick, the interconnection between class, capital, demography, age, gender and ethnicity provides a potent description of educational development. However, this emphasis on class, gender or market relations has thus far failed to

---


10It is what the influential utilitarian, constitutional theorist, social and education reformer, Jeremy Bentham, referred to as the tension between ‘obedience’ and ‘vigilance’ that is a central dynamic in the operation of the modern liberal state. While individual agency and democratic participation provide the impetus to reform and legislative change, the people transfer their sovereignty to the parliament in the last instance to ensure that legislation can be implemented with maximum precision, efficiency, and most especially, to benefit the ‘universal interest’. Not governed by the ‘natural rights’ of the individual, or the need to balance political power, the universal interest is a notion driven by utility and the weight of circumstance, and therefore does not place limits on state power. These somewhat complex aspects of nineteenth century constitutionalism will be drawn out in depth in chapters three and four of the thesis.

11By emphasising this relationship, this will study also redress deficiencies in the broader historiography of Australian political development: namely, that the growth of ‘colonial socialism’ – a term which referred to the simultaneous expansion of state control over education, health, transport, trade, wages and so on during the late nineteenth century – was simply an expedient designed to cope with a geographically diverse population or an underdeveloped economic infrastructure, and therefore, was a policy which conformed to the main tenants of classical liberalism.

12In Vick’s account of ‘Colonial Society, the State and Education’, he sketched “the forms of colonial
provide a distinct account of the interdependence between education and the constitutional processes underpinning modern state power. This lacunae presents difficulties when attempting to decipher the centrifugal dynamics of contemporary school curriculum and administration policy. This study proposes that the latter project requires a more detailed understanding of the relationship between government, constitutionalism and educational change. This a very complex historical nexus, and as such, will require a large amount of cross-disciplinary research. It will particularly demand that we do not simply theorise power in the state - as Green has done - in terms of bourgeois ideology and the ‘general right to property’. Bruce Curtis’ account of education and state formation in Canada is similarly guilty of such determinism. Curtis argues that public schools, “As sites from which to ‘diffuse useful knowledge’ and ‘sound habits’ throughout society...can be understood as at once elements in attempts by respectable classes to solidify their rule, to mediate class conflict...to colonize civil society” and to enforce the “construction of bourgeois hegemony.” Thus, “respect for private property became respect for teachers in the educational domain”; while curriculum content was “aimed to bolster the authority and property relations congenial to the bourgeoisie and to enlist popular energy in the support of capitalist accumulation.”

Curtis often implies the influence of legislative sovereignty and an increasing body of statutory regulation when describing how, by “defining educational matters as the exclusive preserve of a select group of public officials and by enforcing this definition at law, the central authority appropriated the powers of self-management commonly exerted by school supporters.” Still, Curtis here fails to dissect the constitutional authority of educational bureaucrats, focusing instead on the socialization and subjectivization of techniques of ‘official expertise’. Drawing on Foucauldian and post-structural accounts of the rise of disciplinary technologies of state power – embodied in the ritual and routine of inspection, surveillance and monitoring of performance practiced in the school, hospital, prison and civil service department – Curtis is able to show how school organisation serves to inculcate bourgeois social relations through the ‘learned’ experience of individuals. He does not, however, identify the broader shift in constitutional philosophy, jurisprudence, political economy and systems of social thought that changed the fabric of civil and political organisation in the liberal state, and which consequently allowed centralized techniques of government to overcome a strong tradition of localized governance. Curtis. *Building the Educational State*. 370–71.
‘effects’ of bourgeois and capitalist hegemony failed, however, on their own, to adequately facilitate educational reform until the operation of liberal political institutions were significantly rationalized. While meritocratic or patriarchal social relations influence rationalities and practices of government, the former variables do not adequately explain underlying assumptions about the way power and authority are defined, and in turn dictate the construction of state institutions, laws and regulations.

By emphasising the interrelation between legislative state formation and the ascent of mass compulsory schooling, we can begin to comprehend many of the seeming ‘contradictions’ which have plagued liberal, revisionist and post-structuralist accounts of Australian educational change. Reflecting the contemporary incongruity between curriculum and administrative reform, historians have long been confused by the disparity between the early influence of a social-psychological pedagogy stressing individual agency and ‘self-government’, and the implementation of a highly uniform curriculum and system of central inspection. As described by Clifford Turney, these conflicting modes of education reform were most evident in the work of William Wilkins, the first Inspector of National Schools in New South Wales:

On the one hand Wilkins, the colonial advocate of Pestalozzianism, stressed that teachers should employ methods which promoted understanding and thinking by pupils. On the other hand Wilkins, the author of the Standards of Proficiency, emphasised the importance of strictly following these requirements which had the indirect effect of encouraging rote learning and the use of mechanical modes of instruction. The significance Wilkins attached to these seemingly conflicting aspects is illustrated by the special objectives which he regarded should be accomplished through school inspection. While emphasising that it was the task of the inspector ‘to ascertain if the cultivation of the mental faculties receives due attention from the teachers’, he stresses that an equally important role of the inspector was ‘to test the accuracy of the school work, and the fidelity with which the instruction has been made to accord with the prescribed guides.\footnote{Report of the Council of Education upon the Condition of the Public Schools for 1868, 26–7; in C. Turney, “William Wilkins – Australia’s Kay-Shuttleworth” in C. Turney (ed.) Pioneers of Australian Education (Sydney: Sydney University Press, 1969), 230.}

This apparent irregularity was in fact an expression of a state social economy which, while adopting the social-psychological delicacies of Pestalozzi, Locke, Rousseau and so on, was determined to
remove school governance from the arbitrariness of local control and make education a fundamental technology of the legislative state. Thus, the integration of state and civil society was less a compromise than an acknowledgment of the need to better govern, police and educate an expanding industrial population. Yet, this was not a coercive governing dynamic and depended on the democratic and active will of the individual. Individual will would, however, tend to ‘irrationality’ and self-interest unless it remained within the surveillance of the centralized cabinet. Thus, in describing central control as a “pedagogical straight-jacket”, Turney misses the fact that the liberal conception of sovereignty and political power had shifted from the ‘liberty of the subject’ associated with classical liberalism to the higher rationality of a responsible, unified and expert legislative apparatus. Turney thus considered it an anomaly when a school inspector of the Sydney district complained that “Certain well-known text-books are slavishly followed; teachers exhibit little resource or originality; the lessons appear stereotyped in form, are given in a constrained mechanical manner, and lack life and interest. As a means of mental training they are of little use, and the amount of information they afford is not great. It is hoped that during the next year better results will be realised.” In response, Turney proposed that the “good intent” of enlightened reformers such as Wilkins was repressed by “serious flaws” such as “the rise of the system’s bureaucracy which had a growing complacency and resistance to change among the inbred administrative officers.” Without acknowledging the constitutional shift away from the negative liberal state this resistance is anomalous; it is a glitch in Wilkins’ liberal and progressive hegemony over colonial education. More recent Marxist and post-structuralist studies of educational change have, in similar ways, presented curriculum standardisation as a contradictory force which has compromised the progressive, social-democratic ends of public schooling. However, as this work will illustrate, the evolution of the educational state was founded on such a compromise.

Through an overview of the historiography, this chapter will critique past efforts at describing the origins of mass compulsory schooling in Australia for failing to adequately address the shifting discourses of liberal constitutionalism. In addition, it will contextualize the link between the historical evolution of mass state schooling and the ‘contradictions’ surrounding contemporary educational change. The following chapter will then fully elaborate our own distinctive model of the dynamics of centralized educational governance. This will provide the theoretical framework for the latter investigation of the development of state administered educational systems in Tasmania and New South Wales during the mid to late nineteenth century.

Centralism vs. Localism

One of the enduring aspects of education reform debate in Australia is the tension between a perceived need to provide community, local and parental ‘choice’ and control over schooling and the rigidity and inflexibility of an overly centralized and regularised state school system. Thus, while the co-dependence between education and the state has long revered as a symbol of Australia’s egalitarian provision of ‘free, compulsory and secular’ schooling, the attempt to position a highly statist education system alongside the ascendency of a liberal, democratic and laissez-faire political culture has raised questions about the contrasting imperatives free-market liberalism and the tendency towards what observers in the late nineteenth and early twentieth century termed ‘state socialism’. Accordingly, it has often been argued that centralized control of the school has forfeited notions of individuality and self-expression, and that these traits are best nurtured through community teaching methods unrestrained by standardised curriculum, examination and central inspection. In this vein, D.H. Lawrence, writing in 1915, meditated on the state school through the eyes of a young ‘assistant teacher’:

It was always a prison to her, the s
herself up to the activity of teaching, to turn her energy, that longed for the country and the joy of early summer, into the dominating of fifty children and the transferring to them some morsels of arithmetic.

When carrying out her teaching duties, the assistant

saw no children, only the task that was to be done. And keeping her eyes there, on the task, and not on the child, she was impersonal enough to punish where she could have otherwise only have sympathized, understood and condoned, to approve where she would have been merely uninterested before.

This mechanical, impersonal pedagogy was maintained through the teacher’s conception of her place within a system of governance:

Now, the ‘Board of Education’ was a phrase that rang significant to her, and she felt Whitehall far beyond her as her ultimate home. In the government, she knew which minister had supreme control over education and it seemed to her that, in some way, he was connected with her, as her father was connected with her.

To this, Lawrence replied, writing in his essay *Education of the People*: “Don’t set up standards and regulation patterns for people. Don’t have criteria. Let every individual be single and self-expressive.” Here, Lawrence, while referring to the British educational experience, alluded to one the dominant motifs in Australian educational history: namely, the tension between local and central control of the school system.

This centralizing tendency was picked up in detail in a seminal comparative study of the Australian education system taken out in 1955 by the American educator, R. Freeman Butts. Sponsored by the Australian Council for Educational Research, Butts, upon conducting a general survey of Australian schools, alerted the educational community to the strict administrative uniformity which, compared to the relatively localised nature of school governance in the US, had constrained the need for reform and flexibility within school curriculum and organisation. For Butts, the “two basic assumptions” underlying the operation of public education in Australia were, firstly, that “a uniform policy for all schools in a state is a good thing”, and secondly, that “a uniform policy can be achieved only when the basic decisions are made by a relatively few people.” Moreover, this

Uniform policy seems to apply to school buildings and facilities, to educational expenditures, to subjects in the curriculum, to teaching methods, to standards of achievement for students, to classification, appointment, promotion, and salary schedules for teachers, and to the preparation of teachers. I think I find a suspicion, or at least a feeling of discomfort in the fact of variety, difference, flexibility, and change.

---


The ability to centralize decision-making in the ‘hands of a few’ was underpinned by the constitutional idea “that the management of schools is basically the responsibility of Cabinet and especially the responsibility of the minister of education.” Butts noted that the theory of collective ministerial responsibility central to the administration of public education in Australia warned against “the delegation of too much authority to lower officers.” Constitutional convention dictated that decentralization would not only compromise the accountability function of cabinet government, but, by dispersing administrative authority, and by severing the close link between policy initiation and implementation, would “lead to a decay in the quality of education, a falling off of standards, and indifference to education.” This engendered the view that local school communities were unable to manage “such really important matters as financial support, curriculum development, or appointment, promotion, and payment of teachers.” While Butts could appreciate that “the tradition of local government in Australia has not had the vitality which has long been displayed England and the United States”, he advised that “some attention should be given to a division of labour that would lessen the burden of administration at the top.” To this end he proposed a balancing of the “values to be achieved for the common welfare through centralized authority and the values of local initiative, flexibility and vitality to be achieved by decentralized management.”

In recent years devolutionary reform initiatives continue to be constrained by the systemic centralization identified by Butts. Successive state and federal governments have heeded advice about the need to implement devolution and site-based management of school resources and curriculum. However, while having sporadic success, these attempts at reform have largely failed in the wake of the bureaucratic juggernaut which, since its emergence in the late nineteenth century, has maintained executive fiat in the management of public education. Dr Terry Metherhill, the then NSW Minister for Education, in 1989 trumpeted the coming “reformation and renewal of our schools”, particularly in light of a report, authored by Dr Brian Scott, which recommended decentralized management of regional schools; a smaller central authority; appointment of school executives through appointment rather than seniority; and greater involvement by industry and community. Scott’s management review of the Departments of Education and TAFE was, for Metherhill, a far-reaching prescription for reform, ushering in “a fundamental change in the culture, character and quality of schools into the next century.” Quoting Scott, who said that “the school, not

---


the bureaucracy, is the key element to providing quality education”, Metherhill expatiated on the need for a more devolved system of school administration:

Every school is different and has different needs. The individual school community will usually be the best judge of those needs, subject to an overall accountability both as to quality and efficiency. Under a restructured Department of Education, schools will be able to manage themselves to meet these needs. This will mean a devolution of responsibility to, and active decision-making on educational and managerial matters at the school. The decade ahead will be a time of gradual devolution and transfer of resources and responsibilities to where they can be most effectively used and managed. Broad strategic direction, budgetary control and quality assurance will continue to be provided by regional central executives and the government.20

Metherhill and his fellow cabinet ministers moved quickly to legislate this blueprint for decentralization, enshrining the principles of the Scott Report in the 1990 Education Reform Act. Critics, however, have suggested that the legislation has failed to facilitate greater local community involvement in schools. Smith, for instance, writing soon after the implementation of the Act, argued that the Act has served to perpetuate centralised influence, particularly at the curriculum level.21 While regional school councils were given increased control over resource and budgetary management, the underlying motivation for the Act was, according to Smith, to “increase the control of the Minister and central authority over the curriculum studied by students in schools and to restrict the choice students have in choosing patterns of study.”22 “Rather than the R in ERB standing for ‘reform’, ‘reactionary’, ‘reductionist’, recentralization’, and ‘regrettable’.”23 The use of centrally developed rules and procedures rather than site-based curriculum initiatives was apparent in the legislation of ‘key learning areas’ and ‘minimum requirements’ for the School Certificate and Higher School Certificate. More generally, the Act provided significant ministerial authority to specify other curriculum requirements; approve or refuse to approve syllabus; control the method of assessment; and to conduct tests of basic skills. While some effort, however specious, was being made to decentralise the administration of schools,

21 Indeed, Metherell seemed caught in a semantic twist, asserting that “Choice and diversity is central.”
Smith argued that the “heart of education”, curriculum and assessment, were being centralised in the “hands of a non-educator politician.” The political executive increased their jurisdiction over school curriculum by replacing the incumbent Directorate of Studies, a non-political authority consisting of professional educators and curriculum developers, with a Board of Studies dominated by the Minister, political appointees and peak organisations. The Board of Studies has gained monolithic control over curriculum, developing syllabuses for key learning areas (K-12), conducting examinations, and accrediting all non-government schools. This administrative framework has been replicated at the federal level through the Australian Education Council (AEC), which since the mid-1980s has facilitated a ‘corporate federalist’ approach to curriculum and school management. Comprised of the commonwealth minister and the various state ministers and civil service heads, the AEC has been able to nationalise key aspects of curriculum development, and most importantly, have shielded policy development from educators and local constituents.

Legislated in October 1990, the Education Reform Act remains the guiding light of devolution in New South Wales. Its apparent failure dates back to earlier attempts at decentralization. In 1971, for example, the NSW Education Department released the findings of a working party set up to advise on the “restructuring of the administration of educational services in NSW.” Titled A Strategy For Schooling, the report invoked the shibboleth of “community involvement and participation in schooling matters”, and thus encapsulated the liberal and progressive reform movement which infiltrated educational policy channels in the 1970s. The provision of a “school system unified in diversity” was to be achieved by “forming a confederation of quasi-independent education authorities co-ordinated by a central body”; by devolving authority to 15 responsible ‘Education Authorities’; and by establishing local administrative units, or ‘School Districts’, within these authorities, who “would be established on a small-scale enough to entertain the organisational and curricular particularism necessary to suit community needs.” In evaluating the performance of the current departmental framework, the working party revealed that, “within the bounds of existing management mechanisms, further devolutions aimed at improving the effectiveness and efficiency can be only minor and may not be expected to do more than postpone the demise of a system neither designed nor equipped to cope with current, not-to-mention future demands on it.” Noting

---

26 The AEC have instituted a national standard for ‘minimum competency testing’.
that the system is “static in design and built upon a restrictive powerbase”, and that, as a corollary, “staff and student morale is low, and public confidence is waning”, the working party was “faced with [the] complex issue” of juggling “freedom of participation, and efficiency, the respective essences of democracy and bureaucracy.” Thus, “The bureaucratisation of schooling, which by its very nature has undermined the decision-making privileges of individuals, is in need of strengthening because democratically formulated wishes can only be fulfilled in modern society through the utilisation of bureaucratic structures. One approach to the task is to design democratic controls for bureaucracy.”\(^\text{28}\) After the election of the Whitlam led Labor Government in 1972, decentralization and site-based curriculum development were seen as a way to deliver a more egalitarian, diverse and expansive public education system. Leo Bartlett notes that through federal schemes such as the Innovations Program and the Disadvantaged Schools Program, “the Commonwealth sought to change the curriculum in schools by diverting extra funds from state channels directly to the schools.” It was through the establishment, in 1975, of the Curriculum Development Centre that funds were redirected to encourage local school-based assessment and curriculum, and to allow for the development of the first community, non-government ‘alternative’ schools.\(^\text{29}\)

**Economic Rationalism, Neo-liberalism & Education Reform**

The reform movement of the 1970s succeeded in consolidating both school-based control over curriculum and a ‘three-tiered’ administrative system which shared authority between state, regional and local bodies.\(^\text{30}\) However, by the mid to late 1980s the onset of high unemployment and economic recession saw the emergence of economic rationalism in educational policy debate, and the subsequent re-centralization of school curriculum and administration.\(^\text{31}\) As described by

\(^{28}\text{NSW Department of Education, A Strategy For Schooling, 2–1.}\)


\(^{30}\text{Bezzina & Koop, “The Mismatch Between Curriculum and Administrative Reform in New South Wales”, 28.}\)

\(^{31}\text{Marginson defines economic rationalism as the “form of political rationality in which (paradoxically) the market economy is substituted for democratic politics and public planning as the system of production and coordination and the origin of social ethics.” S. Marginson, Education and Public Policy in Australia (Cambridge: Cambridge Uni Press, 1993), 56.}\)
Prideaux, the influence of SBCD in the 1970s “did not last long”, and was subordinated to a centralised curriculum model which heralded a “corporate or management approach to education.”

While, according to Kennedy, the 1970s sought “curriculum solutions [which] were seen to be local in nature and best addressed by professionals and their school communities”, by the 1980s the “age of the technocrats had arrived.” Kennedy noted that the “most interesting feature of the current economic debate for educators is the extent to which it links the needs of the economy to the performance of the education system.”

Such policy was typified by the 1989 report, released by the NSW Education Department, titled *Excellence and Equity*—*a White Paper on Curriculum Reform in NSW Schools*. The latter linked education reform to a human capital theory of education that assumes, in the words of Marginson, “that investment in education directly produces increases productivity of educated labour.”

Focusing on such themes as ‘Schooling, the Economy and the World of Work’, *Excellence and Equity* typified the integration of schools into state and federal strategies for job creation and fiscal growth. “The curriculum of schools was being asked to play a central role”, explains Kennedy, “in

---


34S. Marginson, “Subjects and Subjugation: the economics of education as power-knowledge” *Discourse* 18:2, 1997, 216. Marginson cites Mark Blaug, a leader in human capital theory since the 1960s, who by 1988 concluded the “field has failed to deliver the goods. We are certain that education contributes to economic growth but then so does health care, housing, roads, capital markets, *et cetera*, and in any case we cannot quantify the growth-enhancing effects of education under different circumstances and we cannot even describe these effects except in the most general terms. We can measure private and social returns to education investment but since we cannot specify, much less measure, the externalities generated by educated individuals, not to mention the consumption benefits of education, the ‘social’ rate of return is a bogus label.” M. Blaug, “Review of ‘Economics & Education: Research & Statistics’” *The Journal of Human Resources*, 24:2, 331–335.

35Within ‘Schooling, the Economy and the World of Work’ a disclaimer is inserted: “A narrow, instrumentalist or economic view of schooling would be an unacceptable and counter-productive distortion of the essential purpose of school education.” This is a dubious claim since the Carrick Report (1988), which was written in conjunction with E&E, asserts that “in many ways all aspects of education are vocational and any distinction between ‘vocational’ and ‘general’ is probably a false one.” Further, “formal education is
the social and economic policy objectives of government”, causing control of the curriculum to be further subsumed within the cabinet, the primary forum for policy development.\textsuperscript{36} \textit{Excellence and Equity} made a special effort, therefore, to discredit past attempts at devolution:

As a fundamental point, the Government accepts responsibility for ensuring that all students in our schools have access to a balanced and relevant core curriculum. It rejects the extreme and largely unguided devolution to schools of responsibility for structure, content and coherence of curriculum that has characterised recent educational experimentation in some Australian states.\textsuperscript{37}

Such was illustrated by the creation of political and non-professional extra-cabinet administrative units such as the NSW Board of Studies. Centralization also occurred at the federal level when the Curriculum Development Centre was integrated, in 1987, with the recently created mega bureaucracy, the Department of Education and Training.

For Marginson, the education reform agenda in the decade between 1985-95 was driven by the attempt to create the ‘economic citizen’.\textsuperscript{38} As noted above, this was historically circumscribed by a collapse in the youth labour market, a problem exacerbated by the technical demands which globalisation and increasing international competition placed on education, training and research.

With ‘full education’ replacing ‘full employment’ as the Holy Grail of policy formation, high participation rates became imperative. This expansion of educational capacity did not, however, follow the formula of the 1960s and early 1970s. Firstly, educational institutions were to be part financed by the ‘user’ in government controlled markets; and secondly, curriculum was to have a decidedly vocational emphasis.\textsuperscript{39} In this way, the goal of producing the economic citizen combined “market principles with central control”, meaning that “Schooling should become a parent-based market within a standardised national curriculum.” A seemingly contradictory market/government model was thus established in which “Market competition, devolution and parent choice, and

\footnotesize{seen...as a vital instrument in the service of economic goals.” \textit{Excellence \\& Equity, 10. Report on the Committee of New South Wales Schools (Carrick Report), 40, 21.}
\textsuperscript{37}Excellence and Equity, 13; in Bezzina & Koop, “The Mismatch Between Curriculum and Administrative Reform” , 28.
\textsuperscript{39}Marginson, \textit{Educating Australia}, 147
standardised testing, together promised to answer the needs for standards, autonomy, comparative information, accountability, hierarchy and control.\footnote{Marginson, \textit{Educating Australia}, 144.}

Marginson tends to attribute these policies to a ruling social hierarchy which, through the ‘vertical segmentation’ of educational markets, conspired to weaken state schools and entrench the cultural practices of private school elites. However, while the liberal government intended that education develop in an “anti-statist and pro-market direction”, the New Right were paradoxically fearful of the ill-uniformity stemming from devolution and school-based curriculum. Citing Greg Sheridan, a media commentator and apostle of the New Right agenda, Marginson noted Sheridan’s concern about the influence of “minority groups” in a decentralized system. Consequently, Sheridan demanded that “The Parliament, the Ministers, the Education Ministers...regain central control over education.”\footnote{G. Sheridan. Comments during the ABC program “Education Now”, Feb. 21, 1985; in Marginson, \textit{Educating Australia}, 141. More recently, unions and teachers called for self governing schools to be discontinued after it was learned that the Derrimut Heath primary school in Victorian pressured parents to pay school fees. See \textit{The Age}, July 22, 1999.} For Marginson, “All strands of the New Right agreed on the need to strengthen systemwide examinations and introduce standardised testing in government schooling...even if reformed along market lines, the ambit of choice was to be severely restrained.” Such policy also proved popular in the U.S., and in both cases was used to quantify outputs, monitor performance, allocate tertiary places, decide budgetary policy and increase central authority by “weakening the power of local boards and educational professionals.” Reiterating critics such as Welch, Kennedy, Meredith and Tyler, Marginson argues that the market/government policy model has covertly undermined “diversity” by contriving “a means of standardising curricula and regulating educational choices without using direct intervention.”\footnote{Marginson, \textit{Educating Australia}, 141–43.} Thus, the net effect of what Lingard, O’Brien and Knight describe as a “conjunction of corporate federalism, microeconomic reform, human capital theory, economic rationalism and corporate managerialism” has been to neutralize substantive efforts at decentralization.\footnote{Lingard, \textit{et al.}, “Strengthening Australia’s Schools through Corporate Federalism”, 232. See also N. Marshall, & C. Walsh (eds.), \textit{Federalism and Public Policy: The Governance of Funding of Higher Education} (Canberra: Federalism Research Centre. 1992), 40–41; L. W. Louden, & R. K. Browne. “Developments in Education Policy in Australia” in H. Beare & W. L. Boyd, \textit{Restructuring Schools} (Washington: Falmer Press, 1993); W. L. Boyd. & J. D. Chapman. “State-Wide Educational Reform and Administrative Reorganisation” in W. L. Boyd & D. Smart. \textit{Educational Policy in Australia and America} (New York: Falmer Press, 1987).} Bezzina and Koop agree that “by focusing on the shape
of curriculum, and in particular the vehicles of assessment, and allocating responsibility for the management of fixed quantities of resources to schools, the central system can, in effect, both control the curriculum and appear to be a rational and efficient resource manager. Similarly, Meredyth and Tyler argue that recent educational reform programs have employed “a newly familiar double strategy: one that combines the devolution of decision-making with increasingly centralized control of funding and monitoring of performance.” They continue that, in reference to the imposition of minimum competency standards for literacy and numeracy, “the effort to formulate a set of key competencies” is the “epitome of all that is wrong with the logic of reform” since it negates the “potential of the community to realise equality while recognising difference.”

The end result of this central/local dichotomy has been what Tripp described as the “reassertion of control over schools through the simple corporate method of devolving the means of production, but controlling the nature and quality of what is produced.”

More recently, the relationship between government and education reform is increasingly circumscribed by a neo-liberal policy agenda which, while focused more on processes of marketization and globalization than corporate managerialism, continues to exhibit this twin capacity for devolution and government regulation. While advocates, and indeed progenitors, of this approach including Brian Caldwell argue that these reforms provide a “better balance of enduring values such as liberty (choice), equality (equity), fraternity (access), efficiency (resources) and

265.

44A. Welch, Australian Education: Reform or Crises (Sydney: Allen & Unwin, 1996), xii. In 1980, a school-based competency survey, commissioned by the Australian Council for Educational Research (ACER), and known as the Australian Studies in Student Performance (ASSP), typified the vocational transformation of schools into what critics called ‘skill factories’. While the election of a Labor Government at the Federal level, and in Victoria and New South Wales, saw the later rejection of the ASSP, the spectre of mandatory competency testing would, by the late 1980s, loom large throughout the state education systems. A. Parkin, “‘Back to Basics’ and the Politics of Education: Competency Testing in Australia and the United States” Politics 4, 1984, 60. See also J. D. Chapman & J. F. Dunstan, Democracy and Bureaucracy: Tensions in Public Schooling (Hampshire: Falmer, 1990), especially H. Beare, “Democracy and Bureaucracy in the Organisation of School Systems in Australia: A Synoptic View.”


So the paradox remains. Why has the ascendancy of market liberalism and decentralization in education policy debate failed to delimit the power and scope of the central authority? In New South Wales, for instance, the Scott Report was adamant that "The school, not the system, is the key organisational element providing teaching and learning", yet this long-held view has not manifested at the policy level. Accordingly, Don Smart, writing in the late 1980s, wondered, "in the context of the almost revolutionary change of attitude in Australia on educational governance in recent years", whether “schools [can] be self-governing?” For Smart, the answer, in short, is that “Australia’s entrenched pattern of centralized governance of education poses considerable problems for those desiring serious decentralization.” Furthermore, “active State discouragement of local involvement in educational policy is a legacy of community and parental inexperience and feelings of
inadequacy.” 51 This subjugation of local and individual initiative in the management of public schooling can, continues Smart, be traced back to the Education Acts established in the period 1872 – 1895, which imposed “a fairly rigid pyramidal structure for State control of education through civil service departments of education in each state.” Henceforth, a “remarkably enduring and uniform pattern emerged in which the State Parliament had ultimate control of education exercised through a Minister of Education.”52 Before attempting to explore the emergence of this ‘enduring and uniform pattern’ of centralized school governance in Australia, we need to consider existing attempts to explain the origins and dynamics of mass compulsory schooling in both Australia and abroad.

3. A critical Historiography of centralized school governance

By way of prefacing our analysis of the historiography of Australian education, it might be germane to view some comparative studies of centralized state education, particular within Western-democratic countries such as Britain and North America. It should be remembered that these accounts are cursory at best, and, falling short of any significant detail, will be used to provide a minimal, but useful, level of comparative insight into how educational historians throughout the West have described the relationship between mass schooling and the state.

A brief historiography of educational development in the US, Britain & Canada

Earlier we elucidated the views of the American educator Freeman Butts, who along with E. P. Cubberly, Bernard Bailyn, Merle Curti and a litany of ‘liberal’ educational historians, represented the traditionalist view of American educational development. As such, the common school system was established by enlightened educational pioneers such as Horace Mann to ensure that education served as the ‘great equalizer’ and a democratic vehicle for individual progress and salvation.53 This positivist view of educational reform conformed to a constitutional tradition that believed, in the words of Ralph GabrieL that the framers of the American constitution “established their

51D. Smart, “Reversing Patterns of Control in Australia: Can Schools be Self-Governing?” Education Research and Perspectives 15:2, December 1988, 8.
52Smart, “Reversing Patterns of Control in Australia”, 8.
government in grand Lockean style upon the consent of the governed.”

This did not change with the coming of state controlled schooling in the nineteenth century. America’s most prominent liberal educator, John Dewey, in his *Democracy and Education*, argued that “enlightened and progressive” education could be organised by the state because it “required definite organisation for its realization.” Accordingly, the “movement for the democratic idea” in the nineteenth century inevitable became a “movement for publicly conducted and administered schools.” This was in contrast to European systems of state education in which education was not a function of the individual but “became a civic function” that “identified with the realisation of the nation-state.” Prussian leaders therefore attempted to regulate the fractured nation-state system by promoting ‘social efficiency’ through a comprehensive system of state-funded education. The meant that the “state furnished not only the instrumentalities of public education but also its goal.” Dewey attributed this to the theory of the “organic” state in which the “individual in his isolation is nothing; only in and through an absorption of the aims and meaning of organized institutions does he attain true personality.” Inspired by the romantic nationalism of Hegel and Fichte, this view contrasted with Kant’s individualistic cosmopolitanism, a notion which stressed that the “full development of private personality is identified with the aims of humanity as a whole and with the idea of progress.” While Germany was the first country to establish universal, compulsory state education, “and to submit to jealous state regulation and supervision of all private educational enterprises”, America had gone some way to retaining individualism within its public school system.

Revisionist and Marxist scholars such as Katz, Tyack, Spring, Bowles and Gintis later rejected this liberal account of American educational development. In general terms, the revisionists proposed that while the state was fundamental to the evolution of mass state schooling in America, that this state was representative of, and responding to, various exogenous social and economic forces including industrialization, urbanisation and the expansion of capital in the nineteenth century. Samuel Bowles and Herbert Gintis, for instance, linked the rise of mass compulsory schooling to the “reproduction of the power relations of economic life”, arguing that the primary function of the common school system is to “produce a labour force whose capacities, credentials, and consciousness are dictated in substantial measure by the requirements of profitable employment in

---

the capitalist economy." Taking their cue from the neo-Marxist theories of cultural reproduction, Bowles and Gintis asserted that the "essential structural characteristic of U.S. education is what we have called the correspondence between the social organisation of schooling and that of work." The public school system was thus created to entrench a technocratic-meritocratic ideology that structures social relations in line with a hierarchical division of labour. It was through the overarching nature of bureaucratic authority within systems of educational administration that this hierarchical relationship was further reproduced.

The historical 'correspondence' between schooling and economic life has not, however, been characterised by uniformity and consensus. Rather, Bowles and Gintis describe this process as "a jarring and conflict-ridden course of struggle and accommodation." The fact that the "apparently smoothly functioning conveyor belt which carries young people from birth to adult work - the family, school, workplace machine - has faltered and then been readjusted" has opened "the opportunity for radical change" in American education. Carnoy and Levin agreed that while schools prepare youth for capitalist culture they do so imperfectly, reflecting the perpetual tension and contradiction between 'equality of opportunity' and competitive individualism. This contradiction was inherent in the historic formation of public schools as both a means to social mobility and a developer of democratic ideals.

Revisionist histories of American education have tended to locate the origins of mass compulsory schooling in the expansion of capital in the ante-bellum period. Describing a fourfold increase in the number of wage workers between 1795 & 1855, and a corresponding decrease in the family as the dominant unit of production, Bowles and Gintis note the emergence of a capitalist class which "came to dominate the political, legal, and cultural superstructure of society." Ultimately, the "needs of this class were to profoundly shape the evolution of the education system." Similarly,

---


58 Bowles & Gintis, *Schooling in Capitalist America*, 152.


60 Bowles & Gintis, *Schooling in Capitalist America*, 159.
Camoy and Levin argued that the relationship between work and public schooling was consolidated when, by the late nineteenth and early twentieth century, businessmen represented 80% of school board committees. As a result, professional educators began to standardise curriculum according to the vocational needs of modern business. This process contained class and racial conflict as the school became a site for the struggle between the union movement and big business.

These somewhat deterministic accounts of American educational change are limited by their inability to explain the uneven relationship between the rise of mass public schooling and capitalist expansion across the industrialized world. In England, for instance, where educational centralization lagged considerably behind the initial phase of capital expansion, Bowles and Gintis explain that “An effective stalemate among the pro-educational strategies of capitalist employers, the powerful and more conservative Church of England, and land-owning interests postponed the implementation of public education on a national scale until the 1870s.” Alternatively, in areas such as Prussia and Scotland, mass education was implemented before the onset of capitalist expansion since “military or religious purposes dominated educational policy.” The authors maintain that apart from these “important variations reflecting differing economic, political, and cultural conditions”, there was a “similar response to the expansion of capitalist production.” The brief attention given to this inconsistency, and the continuing claims that the expansion of public education reflected “an increasing concern with production and the condition of labour”, was mimicked by other revisionists such as Katznelson and Weir. When emphasising the consolidation of capital alongside urban school development, the latter note that this relationship had been “uneven from one American city to another, and even more so from one European and North American country to another.” Nonetheless, they assert that “the existence of this relationship is not in doubt.”

Other revisionists such as Michael Katz have linked the growth of bureaucratised modes of school governance in America loosely to processes of state building via the democratising currents of political culture in the early nineteenth century. Katz identified four historical stages in the evolution of public school administration, ranging from paternalistic voluntarism through corporate voluntarism, democratic localism and ‘incipient bureaucracy’. Of these, democratic localism, by giving educational control to localised state boards, importantly implicated the school in the routines of democratically elected government. This trend was helped by the deficiencies of the

---

61 Bowles & Gintis, Schooling in Capitalist America, 160.
voluntarist and ‘private’ school monopoly, which, by focusing primarily on educating the poor, had failed to extend the provision of education to the working and middle classes. The ultimate downfall of democratic localism, and its replacement with an incipient bureaucracy, was explained by Katz in terms of the perceived need to professionalize and standardize schools operating under a heterogeneous system of local boards. An important means to this end was centralization. Local school boards could not ensure the uniform, and indeed egalitarian supervision of schools which the new bureaucrats were increasingly demanding. This bureaucratic process, as Joel Spring has also argued, mimicked the corporate business structure that underlay industrial capitalism.

Accounts of the ascendancy of ‘administrative rationalisation’ in American schools have commonly been associated with urbanization, industrialization and the pressures of rapid urban population growth in the mid nineteenth century. David Tyack’s description of the development of the ‘One Best System’ argued that the growth of centrally coordinated public schools was an outgrowth of urbanisation and a secular culture that had sublimated the “old pattern of Protestant socialization.” As such, religious and localized educators could no longer cope with the “conflicting values” generated by the “congested, heterogeneous cities.” The latter required a more uniform and standardised education system which could “centralize the nerve centres of information.” This shift from the “village” school to the “urban” system encompassed the rationalisation of pupil classification, meaning that the old “heterogeneous grouping of students” was replaced with a “systematic plan of gradation” based on the Prussian model. In addition, teaching standards were to be regulated through greater specialization and division of labor. Finally, schools were to be standardised through a “uniform course of study and standard examination.” This bureaucratic precision would better regulate the social melee created by urbanisation: “Through an elaborate system of gradation, programmed curriculum, examinations, and rules for ‘deportment’...the pupil learned the meaning of obedience, regularity, and precision.” This application of a specialized and rationalised education system was, however, held back by local boards unwilling to relinquish their hold on executive, legislative and judicial power. Tyack cited William H. Maxwell, a Brooklyn superintendent, who complained that “the board of education serves several purposes and none of them well.” Maxwell’s remedy was to commit administration “to a superintendent selected because

67 Tyack, *The One Best System*, 44–45.
of his known ability, not merely to 'run schools', but to devise, organize, direct, and make
successful a rational system of instruction.' Such a system demanded 'responsible' and accountable
administrative procedures. Consequently, Maxwell insisted that "performance without
responsibility is not equal to performance with responsibility." Similarly, it was Nicholas Murray
Butler, speaking to the Merchants Club of Chicago, who asserted that "Democracy is a principle of
government. the schools belong to the administration; and a democracy is as much entitled as a
monarchy to have its business well done." For Tyack, the demand for "efficient, nonpolitical,
rational bureaucracies" was an outgrowth of the pressures of urbanisation. Thus, "poverty, faulty
ideologies, crime, social splintering, and class conflict" motivated the move toward a more uniform
and bureaucratized common school system.68

Theories of urbanisation, like the problem identified with Bowles and Gintis' correspondence
time theory, are limited in terms of their ability to explain the uneven timing of industrialization,
capitalism and the rise of mass schooling, particularly in England. Katz himself responded to this
dilemma when in 1976 he argued that urbanisation was not a pre-condition for industrial capitalism.
Rather, the consolidation of industrial capital relied on a system of wage labour, and it was the
absence of this variable that delayed the expansion of free and compulsory schooling in England.69
Marxist social historians have well documented the separation of the workplace from the home, the
division of labour and the individuation of the wage which accompanied industrialization and
which inculcated corporate and hierarchical modes of social organisation. For critical educational
theorists such as Giroux and Apple, education reproduced this division of labour through a process
of cultural and ideological hegemony. This, however, is a contested domain, with Giroux's notion
of 'border pedagogy' describing the way teachers imbibe curriculum along with marginal and
oppositional interests.70

68 Tyack, The One Best System, 76–77. Joel Spring and Kaestle and has charted similar territory, with Spring
relating this shift to a wider political conflict between the democrats and the Whigs. J. Spring, The American
School 1642–1985 (New York: Longman, 1986); C. Kaestle, Pillars of the Republic: Common Schools and
381 –408.
70 On ideology and cultural hegemony see H. Giroux. Ideology, Culture & the Process of Schooling
Education (Boston: Beacon Press, 1982); S. Aronowitz & H. Giroux. Postmodern Education: Politics,
While these accounts focused on an educational state which, in general terms, is viewed as a effect of various economic forces, by the late 1970s and 1980s American educational historians including David Hogan, Carl Kaestle and David Labaree began to look the specific historical way in which ruling elites — industrial capitalists, corporate liberals — worked through the democratic political process to gain both economic and political influence and thus influence the direction of public education. But this approach was further revised by Katznelson and Weir, who expanding these revisionist accounts to include the story of ethnicity, territoriality and working class resistance, attempted to include the “intentional actor” in progressive and revisionist histories which contained only “the reformers’ motives, objectives, ideologies and successes.” In this way, as ethnic and working communities increasingly defined the policies of urban school boards, they began to influence the way the capitalist elite could prescribe the structure of public schooling.

The establishment of a public school system in America pre-empted other state controlled social services by over 50 years. It was not, as earlier research by Ira Katznelson has shown, until the New Deal that the U.S. government invested significantly in health and social welfare. Still, compared with other OECD countries, expenditure on social services remains minimal, with government unwilling to intervene in the free play of the market. Interestingly, however, education remains a largely localized institution. Katznelson and Weir argue that this is not surprising since the development of state education throughout other Western democracies has “been an aspect of a larger process by which nation-states became differentiated and autonomous and in which the state eliminated competitors in a number of spheres.” Drawing on theories of the ‘autonomous’ state derived from Theda Skocpol and others, the authors assert that “This process of state formation, one of the chief hallmarks of modernity in the West, has been one of the erection of increasingly sharp boundaries between the state and civil society, and of the heightened capacity of government in the areas over which it claims jurisdiction.” The paradox here is that state-funded public schooling developed in the U.S. alongside a relatively minimal state apparatus. Schools remain under local

---


72 Katznelson & Weir, Schooling for All, 15.

73 Katznelson & Weir, Schooling for All, 11-12.

jurisdiction, are funded at the state level, and have never, unlike in Australia or Britain, come under any overarching federal legislation. In the words of Katzenelson and Weir, “the expansion of public education was a repetitive process, with each instance of state schooling disconnected from every other instance.” The other exceptional factor in the development of free, compulsory education in the U.S. was that the ruling and working classes easily accepted it. The opposition to state interference which marked the politics of education reform in other western countries contrasted with the “broad acceptance” experienced in America.

Admitting that the “genesis of public education have remained puzzling”, Katzenelson and Weir attempt to bridge these anomalies by emphasising the ‘peculiarities’ of American state building. It is the “combination of federalism and voting rights for white male citizens” which the authors claim “created special structural conditions that facilitated the early and enthusiastic support of public education.” With the franchise, schools were to promote “civic responsibility among the working class in the name of republic virtue.” Citing the influential educational historian, Lawrence Cremin, who defined education as “the deliberate, systematic, and sustained effort to transmit, evoke or acquire knowledge, values, attitudes, skills, or sensibilities”, Katzenelson and Weir argue that public schooling must be contextualized within the broader process of state formation. Thus, “Public schooling as an aspect of state-building demanded, above all, that government assert its legitimate and authoritative claims to make educational policy and control institutions that were independent of the church.” The substitution of government controlled schools for family, community and church run forms of education was endemic in the cross-class consolidation of democratic political culture in the post-revolutionary and ante-bellum period. The incorporation of the citizenry into the public and political sphere legitimised the regularisation and standardization of curriculum, pedagogy, school design and teacher training between 1850 and 1870.

As noted earlier, this point relates to the revisionist thesis that school bureaucracies were modelled on the hierarchical corporate business structure. Schools became factories with a strict management hierarchy. Ministers and chief executives occupy the top level, followed by principals and school administrators in middle-management, and at the bottom teachers, librarians, support staff and so forth. As Joel Spring concluded, “American schools [turned] into a central social institution for the production of men and women who conformed to the needs and expectations of the corporate and


This was a world separate from civil society and served to entrench the school in the routines of the corporate state. However, while large-scale capitalism demanded functional specialization, a division of labour and a corporate educational structure, American historians have too often relied on these social and economic descriptions of educational change. Consequently, the relationship between the state and educational change has not been examined in isolation, and remains causally determined by corporatism and working class formations. While Katnelson and Weir juxtapose free and compulsory education with democratisation and the high level of civic participation in American political culture, they focus on the economic, racial and gendered inequalities which ultimately guide educational change.

While the American historiography presents a complex array of exogenous socio-economic forces to underlay the link between the rise mass compulsory schooling and state formation, the British historian Andy Green argued that “the nature of the state and the process of state formation” were integral to the story of modern educational change. For Green, “Mass schooling did not rise spontaneously from popular demand or from the action of market forces alone. It was to a large degree organised above by the state.” In a comparative analysis which stretched from England through France, Prussia, and the United States, Green reworked conventional revisionist accounts of the origins of mass compulsory schooling. Making a particular effort to avoid the economic determinism of structure-functionalism and correspondence theory. Green’s liberal educational state was established as a means to “cement the ideological hegemony of the dominant classes.”

Accordingly, the middle class, which by the early nineteenth century “saw itself as the rising hegemonic class, the bearer of a new set of universal values”, set out to educate, not just their own children, but also the labouring population by reforming the “political and economic structure in line with its own beliefs.” This has had a profound impact on contemporary education reform: “If the past has any lessons it is that the mechanisms of the market and the ideology of laissez-faire serve education very ill indeed... It remains to be seen whether, in the name of market liberalism, England again becomes the ‘worst educated country in Europe’.” While Green circumscribes many of the nineteenth century debates about the functions and limits of the liberal state he reduces “the ambivalences and contradictions of state and society” to the victory of a redeployed political individualism. The middle-class may have precipitated an interventionist educational state,

---

77 Spring, Education and the Rise of the Corporate State, 52.
79 Green, Education and State Formation, 246, 316.
however, this was more “bureaucracy by stealth” than an enduring shift in Whig constitutionalism.  

In comparing the slow development of state education in England with the relatively early bureaucratisation of schooling on the continent, Green argues that the “so-called religious difficulty” does not fully explain the problem. Citing the historian Derek Fraser, who said that “The rivalry for state religious control has in both cases been used a explanation for the barriers to centralization”, Green claims that this antagonism was never resolved. The move toward centralization “Rather...had to do with changing attitudes towards the state and the belated realization that the voluntarist ideal was an impossible one.” Green also shows how historians have described the problem in terms of class conflict. This was aligned with religious control since Anglicanism was the faith of the establishment or the landowning class while the urban middle class were usually associated with the dissenting faith’s. The establishment was able to retain Anglican control of schools since they dominated parliament and cabinets until the end of the century.

Margaret Archer argued that the middle-class, by being politically subordinate to the landowning gentry, came to control education through a policy of ‘substitution’ rather than state action. Appropriating Weberian social conflict theory, Archer attempted to avoid what she termed the “facile epiphenomenalism” of functionalism, structuralism, pluralism and social control theory. She then explored the way educational interest groups have influenced the ‘structure’ of state education systems relative to their link with the state apparatus. In France and Russia, for example, the professional and commercial bourgeoisie had sufficient political influence to ‘restrict’ competing groups like the church from influencing the development of public education. This link between the state and the dominant interest groups meant that structural elaboration would be centrifugal, or centralized. Alternatively, England has experienced a centripetal or decentralised process of educational state formation since the industrial middle class gained influence outside the political state. For Green, this fact was explained by the bourgeoisie and Whig view of the state as an institution opposed to laissez-faire individualism. With the exception of a few radical Whigs

---

80 Green, Education and State Formation, 268.
83 Green, Education and State Formation, 74.
and Benthamites, the middle class did not, therefore, even if they could have gained control of the state apparatus, want to aggrandize the power of the central government. Consequently, the “peculiarities of English education clearly owe as much to the political profile of the middle-class as to the gentry and the establishment.” This point is used to emphasise the triumph of bourgeoisie social and economic relations in the operation of modern education. Thus, for Green, “The key to understanding the particular characteristics of English educational development must also be sought, therefore, in the name of the British state as it emerged from the settlement of 1688 and in the relations of class power on which it rested.”

It was in the Canadian context that Bruce Curtis further tested the waters of education and state formation, arguing that educational development in Upper Canada was imbricated in the “political conflicts” surrounding the “nature of the colonial state itself”, particularly the mid-nineteenth century debates accompanying the growth of representative government. This conflict included the struggle between town and country and the issue of local autonomy versus centralized control; the alliance formed by agrarian radicals, artisans and members of the professional classes to create a democratic republic in Canada; and the social and economic conflict between men and women. Curtis argues that the educational state was not only “constructed” out of these conflicts but “also mediated them.” Drawing on several strands of social theory from Marx through Weber and Foucault, Curtis describes the way political conflict was neutralised within the educational state through the reformation of political subjectivity and modern social identity. Schools then served to reorder the spatial, temporal and discursive realms of the ‘social’ domain by allowing “participants in the educational state – students, teachers, trustees, electors and parents – to internalize and embody principles of social tolerance, respect for legitimate authority, and for standards of a collective morality.” Thus, “Education was in large part about the making of political selves; about the construction of forms of character and types of moral regulation where loyalty would be firmly anchored in feeling and belief.” This ‘internalisation’ of state forms allowed the school to contain class division and the ‘social subordination of women’. It was a process consolidated via an ever-expanding array of “institutions, devices, practices and techniques of power which solidified the educational domain.” Accordingly, the formation of the educational state was a contrived attempt, not to simply improve literacy and numeracy standards, but to morally regulate the citizenry. Rather

84Green, Education and State Formation, 213.
86Curtis, Building the Educational State, 43.
87Curtis, Building the Educational State, 13–14.
than emphasise the conflict and opposition to state education detailed by revisionist and critical historians - as seen in the activities of public 'associations' including trade unions, parent groups, religious and charitable organisations - Curtis wants to understand how state schooling ‘changed the form of conflict and resistance’ by invoking a “practical struggle over involvement in and management of the dominant form.” This ‘practical struggle’ resulted in the systemization of education as part of “conscious central state policy.” As such, “Good governance was held to involve the political socialization of the population by the state.”

In time, local communities were unable to directly influence educational practice because they became enamoured in the “developmental logics” of central administration. Bureaucratic techniques of school administration – inspection, minimum teaching standards, centralized curriculum – became “self-referencing” as the individual’s relationship with the educational state became a measure of “self-improvement.” The establishment of a class/age hierarchy that equated academic failure with “individual social failure” illustrated this point. In this way, the “dynamic of educational administration was itself a process of state-building, insofar as it produced a technology of power”, and an arsenal of instruments of educational governance.”

Like Green, Curtis remained faithful to a Marxist theory of the state that conceptualizes governmental power in terms of capitalist social relations and “the general right to property.” While Tories and radical reformers alike agreed that individual interests were the basis of state authority, both differed on how these interests “were best organized through state forms.” Ultimately, it was the urban bourgeois reformers who affirmed that social mobility and the formation of ‘individual character’ required state regulation, and that administration should be taken out of the hands of local ruling elites such as the clergy, justices and magistrates. As the influential reformist movement in mid-nineteenth century Canada, the English Radicals were keen to nurture the “the making of disciplined selves” via uniform and centrally regulated techniques of school governance. Contradicting the push for local-democratic institutions which could manage and develop educational institutions and inculcate “sound techniques of self-government”, radical reformers gave “central state bodies and officials…a strong regulatory function over local organs of government.” Thus, at the school level, “regulatory institutions such as inspection would guarantee that sound character was in fact formed” since they could “check the possible ‘excesses’

---

88 Curtis, Building the Educational State, 43–45.
89 Curtis, Building the Educational State, 374–377.
90 Curtis, Building the Educational State, 367.
91 Curtis, Building the Educational State, 24–25.
of local proprietors.” The attempt to position the school as a vehicle for moral-regulation and the idea that “social order should be regulated in the selves of the individuals” was to be achieved via the “construction of routines and rituals of obedience” which relied on centralised state regulation. In summary, Curtis’ account was significant for showing how state formation evolved as a ‘cultural’ phenomenon. While framed in the context of bourgeois social relations, Curtis illustrates how centralized control of education was achieved through the subjectivization of the institutional routines of state.

Curtis’ account of education and state formation drew in large part from Corrigan and Sayer’s influential analysis of ‘state formation as cultural revolution’. While not focusing particularly on educational development, the latter highlighted the impact of state as a cultural phenomena on the development of civil institutions like the school. Corrigan and Sayer argue that routines, rituals and practices of the modern state have taken on cultural meanings which are reflected in the formation of social identity and subjectivity. Accordingly, the ritual of the examination, or the routine visit of the school inspector, legitimize acceptable images of education as a state institution. Like Green and Curtis, the limitation with this approach is the narrow theorisation of the state in terms of bourgeois property relations. The revolution of 1688 preempted the modernization of the English state since it provided “ ‘liberty’ for men of property” and was the key to “ongoing social and economic transformations.” While admitting, in the context of the localized forces which restrained English state building, that “state forms themselves remained largely ‘unrationalized’”, the point remains that “state activities actively fostered both capitalist enterprise and the consolidation of the bourgeois ruling class.”

This ruling class determinism is representative of the broader historiography of nineteenth century educational change in Britain and North America. Whether framed in terms of democratisation, urbanisation, patriarchy, hegemony or cultural subjectification, these accounts continue to emphasise the ascendancy of bourgeois and capitalist social, political and economic relations. For Michael Katz, writing almost fifteen years after his Irony of Early School Reform, education remained, albeit in a more nuanced way, a function of “the drive toward order, rationality.

---

93 Curtis, Building the Educational State, 25-27.
discipline and specialization inherent in capitalism." However, as Katz himself has noted, emphasis on class and economic structure is open to contradiction, particularly in light of the comparative inconsistencies of educational development across different western capitalist states. Nevertheless, these universalised assumptions continue to deprive educational history of a coherent theory of the rise of mass state schooling. This is a point, as the following section shows, which is reproduced in the Australian historiography.

4. A critical historiography of Australian educational change

The 'liberal consensus'

As in America and Britain, Australian educational history writing was initially dominated by a liberal-Whig narrative that linked the development of centralized schooling to the ascendancy of democratic individualism in the mid-nineteenth century. Focused most often on the enlightened rectitude of educational 'pioneers' such as William Wilkins and Henry Parkes, these men reflected the development of an egalitarian and democratic public sphere. By substituting local and denominational control with a state-administered system, Wilkins and Parkes were able to ensure that each Australian child was given the opportunity to maximize their fundamental 'right' to a public education. Bruce Smith described this emphasis on these 'great men of history', men who had a superior understanding of the possibilities and limitations of Australian education.

Positioned above any vested denominational interest, they saw that the demographic dispersion of the Australian population, the sectarian division between the denominations, and the lack of a cultivated and civic-minded class precluded an effective devolution of educational responsibility to the local level. Only co-ordinated central control of the state could ensure that every child could have access to high quality education. 96

It is what Michael Roe called "an interlocked trinity of Progress, Unity, and Democracy", and Bob Bessant a "never ending litany of progress", which characterise these positivist accounts of educational development. As such, central control was an exigency designed to cope with a scattered population, an undeveloped system of municipal government, and an illiterate and unskilled citizenry who would forthwith rely on the benevolent provision of public instruction by the state. The liberal-democratic state that was conferred to the Australian colonies after the struggle for self-government in the mid nineteenth century would ensure both educational efficiency and 'equality of educational opportunity', factors conspicuously absent from a system ruled haphazardly by local administrators.

Probably the most lasting aspect of the liberal narrative of educational change has been the notion that Australia's sparse and geographically diverse pattern of settlement was unsuited to local control. Consequently, central state control was an expedient designed to broaden the provision of public instruction to the masses. This has been a dominant theme since the 1930s. W. K. Hancock's influential Australia, for instance, resolved the contradiction between Australian individualism and its early dependence on the state through the unique circumstances of Australian settlement. The peculiar demographic and geographic nature of colonization required centralized control of utilities such as transport, water, energy and communications. State directed police, welfare and education was the further and inevitable outgrowth of this environmental determinism. For Hancock, centralisation can only be understood when we "Consider the predicament of the pioneers...each so isolated from his fellows and so engrossed in his struggles that effective local co-operation is impossible." Still, Hancock was adamant that Australians have been able to retain their "sovereign status" while remaining historically dependent on centralised state administration. Australia's unique brand of 'socialism without doctrine' was formed, therefore, as a corollary to the individual rights demanded by squatters, chartists and Irish rebels. The Australian state then acts as 'collective power' serving 'individualistic rights', not as a function of political or class rule, but in light of Australia's environment and tradition.

98Hancock, Australia (Brisbane: Jacaranda Press. 1961).
99Hancock, Australia, 55.
The best remembered interpretation of the ‘environmental’ thesis came from G. V. Portus, who also attempted to resolve the central/liberal paradox by referring to the peculiar nature of Australia’s material and economic history. Accordingly, Portus asked why “overwhelmingly British stock have exhibited a tendency to depend on state action, through a period when its congeners in the North Sea mistrusted the state, cried up laissez faire, preached individualism, and strove to put a hook in the nostrils of Leviathan?” In response, Portus approached the issue of centralization by focusing on the emergence of the educational state, arguing that the “educational system of any country reflects the political and social forces in operation in that country, and these in turn are largely determined by the material and economic backgrounds, and also by traditions.” Educational development is then a mirror of the political and social forces which are determined by the demographic and economic environment. Portus was total in his environmental determinism, rejecting the argument that Australia’s early autocratic government had influenced Australian attitudes to the state (Hancock believed that the early development of a “paternal state” stratified later conceptions of centralisation), and asserting that “...geography has been the master key to the Australian story.” Centralised schooling was then an outgrowth of the “disposition of our country people over wide areas too sparsely populated to make it possible to devolve the supervision of education to local authorities.” In this sense, “It cannot be said that the Australian people ever consciously chose centralisation as an administrative ideal.” Mass state education was not the product of “theoretical point of view” or “the religious question”, but “was determined by geographical, economic and historical factors.” This explains the disparity between educational state formation in Australia and America, since the latter had less sparse settlement patterns and local authorities could more easily administer devolved responsibilities. Like Hancock, Portus is then able to argue that state socialism, while not reflecting typical laissez-faire arrangements, was consistent with liberal-democratic ideology. For Portus, the nineteenth century Australian state was “an agency contrived

---

103 First refuted such claims, arguing that America’s central government fostered local rule in dispersed regions, particularly in the far west: “The spread of local government in the U.S. can give little support to those who argue that specific environmental or geographical factors are necessary for the development of strong local bodies.” J. B. Hirst, *Adelaide and the Country 1870-1917* (Melbourne: Melbourne Uni Press, 1973). 175.
by the community and to be freely used by the community.”104 It was the vanguard then of a “democracy...fallen to our lot and we must adorn it with education.”105

A. G. Austin lent an economic perspective to the environmental thesis, arguing that the gold rush and the subsequent dispersal of population during the 1860s and 1870s through the land acts contributed to the need for centralisation. State intervention was necessary to provide infrastructure for a dispersed yet expanding manufacturing sector, and to ensure an increased food supply for an industrialising Britain. Thus, and as will be detailed in the next chapter, Austin picked up on a common attempt to explain the interventionist nature of the 19th century Australian state as the product of economic and environmental circumstance. Supporting the work of Portus and Hancock, Austin opined that “it has taken years of patent writing by our historians to convince our American critics that the pattern of resources in Australia demanded State intervention if we were to seize our opportunities in the late nineteenth century.”106

It is in this context that Austin was able to argue that state intervention remained faithful to the liberal ideal of a democratic and egalitarian system of public schooling. Centralization was in essence a commitment “to the liberal belief that progress and perfectibility are to be achieved by human endeavour acting under the sanction of legal and parliamentary institutions.” Here, Austin implicitly argued that the ‘responsible’ parliament bequeathed to the colonists in the 1850s embodied the democratic will of free population, and, in the context of Australia’s peculiar economic and demographic circumstance, was able to ‘legitimately’ impose itself on colonial schools. For Austin, the ability of the “liberal, reforming state” to adapt education to local circumstance found expression in the work of Australia’s greatest ‘enlightened’ educational bureaucrat, William Wilkins.107 The first Superintendent of Schools in New South Wales, Wilkins was remembered for having imposed strict uniformity and rigidity on public school administration. Nonetheless, Austin lauded the work of Wilkins since it was “difficult to see how else [he] could have effected any improvement in the chaotic and squalid collection of schools he was called upon to administer.”108 In 1854, as a commissioner for the NSW Select Committee on Education, Wilkins commented on the futility and inefficiency of a divided education system: “There should be but one

105Portus, Free, Compulsory and Secular, 71.
108Austin, Australian Education. 110.
system, especially adapted to the wants of the country, and controlled and administered by one
managing body." For Austin, such monolithic control of schooling was a simple expression of
circumstance and the "urgency of educational reform."109

Such commitment to a centralized but egalitarian system of education became a reality because
"Wilkins created", in the mind of C. C. Linz, "an ideal and imbued a service with the nobility of his
intentions."110 Griffiths perpetuated the myth, and included Parkes in the story of the 'great men' of
Australian education. For Griffiths, Wilkins "influence was great, and was directed towards
efficiency within the schools, as Parkes was towards efficient legislative action. These two men
were, in a very real sense, the founders of the system under which New South Wales children are
educated today."111 This theme has dominated the liberal historiography, as the following passage
from Austin shows:

against the determination of the Churches to retain their traditional control of education,
there can be seen a secular point of view which eventually suborns sufficient of the
Churches to allow the liberal politicians to carry the day with their educational measures.
The greater part of this prolonged campaign was the work of two men, William Wilkins,
the quiet, tenacious pedagogue, and Henry Parkes, the flamboyant, erratic publicist and
politician.112

In similar terms, it was Tumey who argued that "Developments in the school system of New South
Wales during the second half of the nineteenth century centred largely around the indefatigable and
often inspired endeavours of William Wilkins."113 Martin also heaped praise on Henry Parkes,

Austin, Australian Education, 112.
110C. C. Linz, The Establishment of a National System of Education in New South Wales (Melbourne:
111D. C. Griffiths, Documents on the Establishment of Education in New South Wales 1789–1880 (Melbourne:
1957), 83.
112Austin, Australian Education, 113.
113C. Tumey, "William Wilkins – Australia’s Kay-Shuttleworth" in C. Tumey (ed.) Pioneers of Australian
Education (Sydney: Sydney University Press, 1969), 102. Political historians have also lauded the importance
of Wilkins. Brian Dickey, for example, when describing the patronage and corruption that had become
synonymous with public office in New South Wales, argued that Wilkins stood out as a beacon of
"independent action" and expertise "who organised and developed the state education system and saw it
who, within a heavily factional political system, had the political skill to retain the majorities necessary for educational reform. Parkes became, in the words of Martin, “a barometer, not a maker of public opinion.” These men, as ‘liberals’, provided for the creation of an egalitarian Australian state, meaning that the educational provision was expanded to ensure that each Australian could fulfil his or her right to an education.

The deification of William Wilkins was most trenchant in Clifford Tumey’s expository of the man who had “built up an extensive system of elementary schools in his own image”, and more impressively, attracted “educational authorities in other Australian colonies to his ideas and innovations.” Wilkins arrived in the New South Wales in January 1851 and he was soon given the job of headmaster at Fort Street Model School. During his initial years as an educator he reflected much of his British experience and training. Tumey noted his “endeavour to bring school organisation into line with what he had learnt at Battersea; his promotion of and faith in the pupil-teacher system of training; his interest in pedagogical ideas largely as an eclectic; and his zeal and efficiency as an administrator.” The influence of continental theorists such as Pestalozzi on Kay-Shuttleworth and the Battersea College was reflected in Wilkins’ pedagogical approach. Tumey makes much of this point but he fails to draw a connection between continental state theory and Wilkins own political assumptions. The Wilkins story is one of an “enlightened educator”, a “benevolent autocrat” who had the “welfare and advancement of the children genuinely at his heart in all his administrative activities.” It was remarkable for Tumey that “a man so preoccupied with


115 A. W. Martin, “Faction Politics and the Education Question in New South Wales” Melbourne Studies in Education 1960-1961/27. After the 1866 Public Schools Act was passed Parkes retained a steady balance between denominational and secular interests. This tact changed in 1876 when, driven by political expediency, he advocated the disestablishment of the church and set the 1880 Act for complete secular education in motion. Parkes’ achievement lay in his ability to adapt to political circumstance. This had begun through his role as a polemicist and organiser during the ‘democratic’ campaigns of the 1850s. Through his paper, the Empire, and a vast political network, Parkes deftly manipulated electorates which had been created on the principle of aristocratic interests rather than numerical population.

116 Tumey, William Wilkins”, 102.

administration could find time to grapple with... a sound theoretical base for educational practice.” 118

While the work of the Inspectorate and National Board had undoubted influence on educational reform, Turney reduces their collective contribution to one man. The historical record confirms the claim that Wilkins made most of the recommendations and approvals for the board’s policies during his term as superintendent. Through the records of the Board of National Education, Turney gives an extensive survey of Wilkins’ reformist zeal. His innovations included the examination and certification of teachers, the introduction of a pupil-teacher system, and an expansion of curriculum beyond the 3 R’s. These reforms were entrenched through a method of inspection, inspired by Wilkins, and founded with a view to “disseminating enlightened methods of school management and instruction.” 119

The story of an enlightened liberal educator gets very confused in the context of a rapidly bureaucratising educational state. By the end of the nineteenth century the aims and ends of education were monopolised by a central department of public instruction. Turney finds it difficult to explain how educators and bureaucrats could apply rigid and ‘impersonal’ administrative routines to a system founded on individualism. This contradiction began to manifest in the work of Wilkins, who argued that the seeming disregard for liberal pedagogy in colonial schools was a lesser evil than the wretched condition of schools evident in the more localized English education system. Wilkins travelled to England in 1869, and Turney described reports of inadequate teacher training and of “dark and dingy” conditions which contrasted with “the light and cheerful” schools in New South Wales. Wilkins claimed that “In organisation, discipline, and methods of instruction the better class of schools in New South Wales would excel any I have visited here.” 120 Turney argued that these claims were “excessive” and showed a “complacency” which allowed the colonial system to become more “bureaucratic and impersonal.” “Allied with a resistance to change”, Turney remarked that such assumptions “become more definite and comprehensive not only among the systems inbred senior officers but also among the parliamentarians.” 121 So while English education was rightly constrained by the idea of the minimal state, Australian educators were wrongly

---

sanctioning a further bureaucratisation of the system. Why should Wilkins berate the English system since, while it was administratively dysfunctional, it still conformed to the liberal ideal of local self-government? While Wilkins “successfully introduced all the detailed components of the...unified, secular state system of education”, his emphasis on ‘results’ “eroded much of the good” in his “advanced thinking.” This indiscretion, however brief, precipitated the “inertia that the bureaucratic system had developed as it grew in size and complexity.”

The contradictions in the Wilkins story illustrate the deeper constitutional forces which influenced his response to education reform. Turney likes to credit Wilkins with the creation of an Under-Secretary to the Department of Public Instruction in 1880, yet this misses a political debate which transpired more than twenty years earlier. It was in 1856 that the Colonial Secretary, Deas Thomson, first suggested the creation of a Minister of Public Instruction. This was a fairly bold innovation which, while unsuccessful, opened the colonists to the possibilities of bureaucratic control. In 1858 the Premier, Charles Cowper, also proposed an education ministry. Over the next five years Cowper presented several Education Bills in an attempt to rationalise the administrative incoherence of a system controlled by the separate Denominational and National Boards. Both Cowper and Thomson were firstly concerned, not with equality of opportunity, but with aligning education to a process of political modernization. Without an appreciation of this dynamic, Turney, as late as 1992, continued to relate modern educational governance to one man: “During the three decades of work in the Colony, Wilkins built an extensive school system in his own image, not only in terms of its administrative and organisational features, but also in terms of its educational elements.”

Alan Barcan put less emphasis on enlightened administrators such as Wilkins, focusing on the further familiar themes of economic security and the discovery of gold. Thus, like much of the ‘liberal consensus’, Barcan makes little use of the constitutional or political theory, arguing that “while economic, social, political and intellectual developments considerably influence the evolution of formal education, the economic and social influences are predominant.” Such a simplified approach was justified as “a critical reaction against new ideological fashions”, thereby

123 Thompson argued that if the legislature was to continue its “very liberal provision” to education then the “judicious encouragement of an enlightened Minister” was required.
125 A. Barcan, Two Centuries of Education in NSW (Sydney: NSW Uni Press, 1988), 61.
strengthening “the humanist view of the development of education...by increasing the attention
given to the role of individuals”, and resisting “contemporary inclinations towards cultural
relativism.” While Barcan’s book was an update of his *Short History*, written in 1965, the work
continues to assume the inevitability of a liberal-Whig ascendancy in colonial education. It
particularly lacks an account of the process of state formation. Thus, when Wilkins reorganised the
national schools to accommodate simultaneous teaching and introduced a timetable to regulate the
teaching program, it had no wider significance apart from the fact that “a sense of direction begun
to appear in the National system.” For Barcan, the evolution of a national system of education
was the product of “the strength of social and political democracy” in the face of “social changes,
particularly in social class and family life.” The establishment of responsible government in New
South Wales had transcended the schism between liberalism and conservatism, allowing for reform
of education in the context of a major socio-economic “disruption to family life.” The social
dislocation caused by the industrial revolution and the recessionary effects of the post-gold rush
years necessitated the introduction of egalitarian state institutions. Barcan quoted the National
Board of Education, who in 1856 hoped that the question of public education would “be taken up by
the legislature, in an enlightened an conciliatory spirit, and that the present interesting epoch in our
political career may be signalized by the organisation of a liberal, comprehensive and lasting system
of public education.”

The story of the rise of an enlightened secular liberalism dominates accounts of the triumph of the
state over sectarian and religious education. Austin, for example, focused intently on the
church/state conflict in his brief history of Tasmanian education. His argument centred around the
Lieutenant Governor, John Franklin, who was able to establish a non-denominational board due to
the “quality of humanitarianism” which had transformed his “earlier puritanical Evangelicalism into
a broad and tolerant faith.” Imbued with the liberal doctrine of religious equality, Franklin was
ready to end Anglican control and establish a more egalitarian and secular system of educational
governance. Of course Franklin had to suffer consistent attacks from the Anglican clergy, including
the Archdeacon of Tasmania, William Hutchins, and the Bishop of Australia, William Broughton.
Austin explained that when Hutchins threatened to withdraw the church from any connection with

126Barcan, *Two Centuries of Education in NSW*, 7-8.
127Barcan, *Two Centuries of Education in NSW*, 6, 7, 61, 62.
128Barcan, *Two Centuries of Education in NSW*, 6, 7, 61, 62.
129Eighth Report of the Commissioners of National Education in New South Wales for 1855, 3; in Barcan, 75.
130Austin, *Australian Education 1788–1900: Church, State and Public Education in Colonial Australia*
the government schools it was only the “hardening” of Franklin’s liberalism which fortified claims for a general system. In 1838 the Lieutenant Governor established a lay Board of Education which was to administer free day schools under the British and Foreign School system. However, in his own words, Franklin did not pursue this course until “consulting the general interests of the Colony, both in a moral and social point of view, as well as the wishes of a majority of its Inhabitants.” For Austin, this was a measure of Franklin’s liberal approach, one that succeeded in giving the Board a firm footing in educational administration. While in its initial years the Board failed to increase the capacity of public education, Austin attributed this to continuing Anglican opposition. This came largely from the newly inaugurated Bishop of Tasmania, Francis Russell Nixon, who likened Franklin’s scheme to a system controlled by “infidels.” Austin, along with Howell, gives important empirical detail about the church/state imbroglio which dominated education during Franklin’s reign. This forms a neat line of causality since Eardley-Wilmot, Franklin’s “hapless successor”, received the “full weight of the bishop’s attacks” and lost his Lieutenant Governorship in the process. The Anglican establishment was able to exert enough pressure in the Home Office, especially through the Tory Secretary of State, William Gladstone, to have the Board dissolved. This occurred, explains Austin, because Eardley-Wilmot lacked “the administrative experience or strength of character to control events.” His support for a board which Gladstone believed, on the advice of the colonial clergy, to be expensive, inefficient, and irreligious, led to the Lieutenant Governor’s consequent dismissal. It was this set of events which Austin used to explain the downfall of the Education Board. Powell tells a similar story and while his is a more exhaustive survey, both accounts describe this historical juncture in terms of pragmatism and political expediency.

Wilmot’s dismissal was significant in that it prompted Gladstone to appoint William Denison as Governor. A supporter of Anglican control and proponent of local self-government, Denison was described by Austin as a “successful governor” who “served the colony well as it prepared for responsible government” and whose “approach to his educational problems... were based upon a considerable amount of reading, thought and experience.” In this way, Austin was able to infer that

132 *VPLCVDL*, 1840. in Austin, *Australian Education*, 77.
133 Cited in *Launceston Examiner*, November 8, 1843; in Austin, 79.
135 Austin, *Australian Education*, 79.
136 Austin, *Australian Education*, 83.
Denison’s approach to education reform was both liberal and pragmatic. He supported a local rate and opposed funding from the general revenue since “expenditure by the central government would be reduced” and “local interest would be quickened” as parents sought a return for their investment. Austin then argued that “However right in theory Denison might have been about the benefits of decentralization, local support and the payment of fees, events soon proved the impracticability of his ideas in the Van Diemen’s Land of 1848.” When his proposal for a local levy was rejected by the Council, Denison introduced a penny-a-day scheme that drastically reduced teaching salaries. Denison’s attempt to keep state influence to a minimum therefore precipitated a crises in terms of attendance and teacher quality. When he recruited Thomas Arnold, the son of Thomas Arnold of Rugby, as the Inspector of Schools, he was soon informed of the unsatisfactory nature of the penny-a-day system. What followed was a four-year debate which resulted in a Select Committee on Education and the creation of Central non-denominational Board of Education in 1853. Thus Denison, by dint of circumstance, was himself converted to the advantage of a secular and centrally controlled system. The question remains, however, as to the constitutional and theoretical arguments which, beyond the ‘impracticality’ of a localized rate, or the travails of church-state conflict, overturned a strong tradition of local control and justified centralization.

Such debates are missing from most historical accounts of the period due to a tendency to focus attention on the relative influence of individuals such as Denison and Arnold when describing the establishment of a secular Board of Education in Tasmania. For Macpherson, Arnold’s contribution to education reform was immanent in the struggle between church and state. Arnold had to reconcile his High-Anglican spirituality with a middle-class ideology that had a “radically altered perception about the rightful boundaries of church and state.” This tension therefore limited his influence over reform. In contrast to the views of Reeve and Howell, Macpherson argued that it was not Arnold but Governor Denison who consolidated the development of national education in Tasmania. This assumption is based on Arnold’s “congested and spasmodic” approach to the inspection of schools. While Reeves claimed that Arnold’s first report was a thorough investigation of the public school’s, Macpherson asserts that it contained nothing that Denison did not already know.

137 Austin, Australian Education. 87.
138 In 1983 Macpherson noted that “Few historian’s have interested themselves in this period of Van Diemen’s Land’s educational history and their analyses are inadequate in terms of the portrayal of Thomas Arnold’s contribution to educational reform.” C. Macpherson, “Thomas Arnold the Younger: Some Common Misconceptions Redressed” History of Education Review 12:1 1983. 29.
139 C. Reeves, A History of Tasmanian Education (Melbourne: Melbourne University Press. 1935), 42.
Arnold recommended that inadequate school buildings be financed through the public revenue and that a central board of education be established to avoid sectarian disputes. Yet Macpherson is sure that Denison found nothing original in these proposals. It was in 1853 that the Legislative Council voted, on the recommendation of a Select Committee of Education, to establish a Board of Education, to abolish the penny-a-day system, to renounce aid to denominational schools, and invest all public funds in a general system. Macpherson disagreed with the conventional opinion, as expressed by Reeves, Howell, Axon and Bertram, that Arnold was the catalyst to these reforms. For her, it was Denison who responded most effectively to the changing educational needs of the colony. The fact that Bishop Nixon and the episcopacy were becoming politically divided, that the Secretary of State Earl Grey was less amenable to the Establishment cause than Gladstone, and that the cost of maintaining independent schools had become prohibitive, points to the fact that the church schools atrophied through circumstance and not some “anti-Anglican plot” perpetrated by Arnold. It was Denison’s controversial transportation policy, and not Arnold’s vision as an inspector, which, argues Macpherson, more likely precipitated the establishment of a central board.

In 1852 Denison had forwarded an Education Bill which included his earlier proposals for a local levy. Macpherson believes that it was rejected, and a centrally funded system put in its place, because Denison’s pro-transportation stance made education “the public beating stick” through which the vigilant anti-transportation lobby could deride the Governor. It was only out of spite that the anti-transportation lobby in the Council came “up with a viable scheme of its own.” However, while Macpherson clears up some points about the relative influence of Denison and Arnold, she provides no detail about the political and constitutional debates which precipitated the sanctioning of a central board. We are told that the wish to improve teachers salaries and to certify and standardise teacher standards was, while advocated by Arnold, commonly demanded by “the liberal core of the community.” The political and constitutional assumptions of these Tasmanian liberals is never described and we are again left to explain educational change in light of the deeds of Denison or Arnold.

141Macpherson, “Thomas Arnold the Younger”, 37.
142Macpherson, “Thomas Arnold the Younger”, 34.
In New South Wales, the progress of national education in the 1840s was less trammelled by clerical opposition and, therefore, was more easily and more quickly established. After the Constitution Act of 1842 increased the autonomy of the Legislative Council, the Anglican hierarchy were conspicuously absent from the reformed legislature. Historians have seized upon this fact to explain the success of the national system, with Foster arguing that the political demise of the Bishop of Sydney, William Broughton, was pivotal to the move to centralization. The creation of a national education system was thus the virtue of the weakening political influence of the clergy. Similarly, Ruth Knight’s depiction of Robert Lowe’s attempt to establish a national system of education in the mid-1840s focused on Anglican and Catholic resistance and Governor Gipps’ willingness to cede to denominational interests. The long-range success of the national system was, therefore, a result of Lowe’s manipulation of sectarian arguments. During the 1844 Select Committee on Education, the ‘illiberal liberal’ “manoeuvred witnesses who favoured sectarian religious instruction into the admission that, non the less, a general system was the only one suited to rural areas.” As the inquiry continued it was clear that Anglican opposition, as expressed by Bishop Broughton, would be uncompromising. Broughton not only refused to yield on “religious principle” but “refused to consider any innovations at all.” While recognising that Broughton was “not alone in condemning as a gross infringement of personal liberty any effort on the part of the State to force parents to send their children to school”. Knight does not expand on this point and reverts back to the religious dimensions of the debate.

A National Board was finally established along with a Denominational Board in 1848. This did little to enhance efficiency and uniformity in school administration. The ‘failure’ of the dual system has been consistently chronicled by historians. Most often, they have described the schisms within the denominations and between church and state to understand the problem. Wendy Relton partly revised the orthodox account of the church/state conflict which ultimately led to establishment of a single and secular Council of Education through the New South Wales Public Schools Act of 1868. While the struggle between the boards encompassed the usual dichotomies – “denominational education against secular education, ecclesiastical control against State control, sectarianism against unity, tradition against liberalism” – on closer investigation Relton is forced to concede that “beneath this acrimony and prejudice there were genuine education beliefs, expounded by the

144 Supplement to the SMH, September 9, 1844.
supporters of both systems, and it would be wrong to assess the rivalry as merely the outcome of a struggle for power.” 146 Turning then to the dominant social and political themes used to define educational debate, Relton observed the influence of “an overseas belief that the State was the ‘nation in its collective and corporate character’.”147 This was “in part a reflection of the nascent Australian political and social democracy which predicated that the State was best served when all its members were able to play an equal and responsible part in its affairs.” Egalitarianism was then a “social bias”, an ideological tool that “strengthened the belief that the State should provide education, because it was both the organisation with the most adequate resources and the body which represented the people collectively.” Somehow, out of the peculiarities of colonial political culture, this “belief had grown steadily in the colony, and by mid-century was accepted without question.” 148

The ‘collective liberalism’ which legitimated secular and centralized forms of educational governance was of course linked to the development of a system of responsible government in the mid-nineteenth century. Few historians have contemplated this relationship in any depth, and, as noted elsewhere, have, in the case of the liberal consensus, made vague assumptions about a social and egalitarian democracy. In this vein, Hyams and Bessant argued that Australian education, in contrast to the English system, was soon controlled by a popular and democratic legislature in colonies which “acquired features of parliamentary democracy far in advance of other parts of the world.” Thus, the “belief in equality of opportunity” allowed the liberals who defeated the squatters in the battle for political power to “respond to the aspiration of the enfranchised masses that every man should be given a fair chance in life.” It was this hybrid colonial liberalism which “recruited the state as an active agent to assist the individual in pursuit of a fair chance to make good.” Hyams and Bessant use this framework to describe the broader process of state formation, including the development of state railways and the adoption of tariffs by an increasingly protectionist state.149

The impermeability of central state power over education was further entrenched through a cultural “acceptance of the belief that in a centralized system any change in one school must be applied uniformly throughout the state.”150

146 Relton, “The Failure of the Dual System of Control of Education in New South Wales”, 133.
134.
150 Hyams & Bessant, Schools for the People?, 188.
Historians of educational administration such as E.J. Payne have more fully contextualized the administrative and constitutional changes precipitating educational reform. Payne argued that “it was the nature, rather than the absence of local interest in education, which ultimately deprived communities of executive responsibility in its provision.” He explains the demise of localism in light of the failure to transplant conceptions of school governance inherent in British practice, particularly the English county school system which maintained a link between school and community through local patrons or managers. The comparative experiences of educational change in England, Ireland, and New South Wales indicate the contrasting processes of state formation which influenced education reform. Payne rightly observed the ability for Prussian models of centralized school governance to be applied in colonial states like Ireland and Australia. However, while relating educational development to comparative experiences in state building, Payne remains committed to the ‘liberal consensus’ by perpetuating the view that administrators like Wilkins, Rusden and Arnold were integral to the triumph and nature of state education in Australia. While Payne was critical of Wilkins, who “merely devoted himself to a stubborn and inflexible administration of the Irish rules in spirit of competition with the denominational system”, he emphasized Wilkins’ role in ensuring centralization in the absence of “those possessive and clerical Patrons who limited the growth of central administrative power in England.” Yet, can the influence of individuals like Wilkins adequately explain why the role of community Patrons waned, leaving inspectors to administer rules in the spirit of neutrality, standardization, efficiency and economy?

While Payne never explains this development he unconsciously illustrates a shift from traditional Whig constitutionalism toward a unified legislative state: “Paradoxically, it became evident that as the state instrumentality replaced local management, it could not be criticized by those it protected, or challenged successfully at law” because the “competitive, liberal, laissez-faire spirit which underlay British education” was never developed. This “breach of sacred principles” was justified by colonial legislatures through reference to the developmental needs of the colony. Like the push for nationalized railways, the overarching reach of the paternal state was seen as a legitimate means to ensure economic and social stability. Thus, the imposition of state education was not an attempt at social control, or the result of the imperious machinations of bureaucrats and legislators.

---


Payne is adamant about the democratic intentions of Parkes, Rusden and the like, believing that centralization was not adequately ‘checked’ because the colony “had not experienced the worst aspects of the factory system and the class struggles of the old world.” The school reformer believed that “Education for everyone would ensure that the state was democratically steered to safe shores, for the state was the corporate will of the people it had educated and would act benevolently to benefit, succour and teach those who followed its dictates.” Central-bureaucratic control of curriculum, teacher appointments, finance, and school governance was therefore an expression of a self-governing constitution which promoted equality of opportunity via the bureaucratic state. It was thus that “Local institutions, local control and delegated authority, tended to be avoided since they might weaken the ‘benevolent’ authority of Mr. Wilkins and threaten the cherished equality.”

Payne comes close to theorising the educational state as a corporate body which had discarded laissez-faire constitutionalism. This would explain how, in Payne’s words, “Intuitively the population learned in its schools to obey the official and to accept the doctrine of the munificent state.” As such, “the magistrate, policeman, school inspector and teacher became the state’s local agents.” Payne further explains how “any application of individuality, innovation and variation became ‘illegal’ until sanctioned for general application by the central office.”

Ultimately, however, Payne offers little more than expediency and the efforts of ‘enlightened’ administrators to explain the means through which the colonial state gained status as the vanguard of educational opportunity and general economic and social stability. This lack of any robust analysis of the state is replete in other accounts of the period that attempt to detail the interrelation between centralized schooling and political development. Lawry’s dissertation concerning the ‘perpetual struggle’ over education control in nineteenth century Victoria, for instance, gives important empirical detail about the influential introduction of political select committees on education – as evidenced by Lowe’s 1844 committee – and the consolidation of these committees and commissions after responsible government into an overarching inspectorate and central board. For Lawry, the influence of centralized political mechanisms on the development of the school system was coterminous with shifting social ‘ideals’ that re-defined “society’s educational needs and expectations.” Thus, “the evolvement of educational administration from localism to monolithic bureaucracy exemplifies the manner in which ideals may be transmitted, put into effect

---

and modified over a period of several generations.” While Lawry never gives precise analytical
detail about these shifting ideals, he attempts to illustrate how Australia’s evolving political culture
legitimated parliamentary efforts to “bypass” local control of education and to “concentrate power
in a central administration under the control of a Minister for public instruction.” Furthermore, these
“endeavours were aided by inspectors who sought more power and teachers who were dissatisfied
with local authorities and desired to be placed under government control.”

The fact that parliamentarians wanted to aggrandize central authority, and that teachers were
dissatisfied with local administration, was compounded by the influence of developments in
centralized educational governance overseas, particularly in Ireland, Prussia, England and Canada.
This was evident in the secular administrative board advocated initially by Governor Bourke,
which, modelled on the on the Irish National Board, was ultimately realised through the efforts of
Robert Lowe and the 1844 Select Committee. While some remnant of local control was contained
in the dual system, particularly through the supervisory function of boards of local patrons, the
geographic and economic constraints of a “pioneering society” often “precluded active
participation” from these boards. This was compounded by the fact that while the national board
relied on local patrons to establish schools, local opinion was ignored thereafter.

While, in some instances, local patrons opposed government intervention and spoke of the “baneful
influence of centralization”, it was the melding of political theory and local circumstance which
cleared the way for state control. Lawry argues that the broader “ideological arguments surrounding
the issue of State versus local control of education” was ultimately influenced by political and
community resistance to proposals that schools be controlled by district councils and funded by a
local rate. Accordingly, the Colonial Secretary of New South Wales, Deas Thomson, insisted, in
the words of Lawry, that “it was unsafe to leave education to local bodies on the grounds of
possible mercenary attitudes.” The need to provide a more uniform provision of education in the
scattered communities forced Thomson to argue that it was a “peculiar province of the Government
and the Legislature to watch over...education.” Along with notables such as Robert Lowe and
Charles Cowper, Thomson had opposed district councils and municipal forms of government in

158 Lawry, “A Perpetual Struggle for Power”, 49.
159 Thomson, 26-31, in British Parliamentary Papers, Colonies Australia, 6:15, in Lawry, “A Perpetual
Struggle for Power”. 50.
Australia. In this way, it was Councillor George Allen, who, during the 1844 Select committee, argued that executive government should supervise schools since “we do not know who may be elected in the Municipal Councils, there may in those councils be very proper men for some purposes, but they may or may not be qualified for educational purposes.” In all this, Lawry never arrives at a coherent theory of educational state development. The atrophy of local control and the triumph of centralization occurred through a random series of historical events including the “gold rushes, a stream of failed education bills, ineffectual boards. religious bickering, rising teaching militancy, a Select Committee of Inquiry in 1852, a Royal Commission in 1867 and the gradual expansion of the inspectorate.” Lawry then presents us with a discursive and heterogeneous ‘struggle for power’ when describing the ultimate triumph of secular, free and compulsory schooling through the 1872 Victorian Act.

The ‘revised’ consensus

Since the late 1960s revisionist historians have critiqued the focus on democracy, demography and interest group conflict that defined the ‘liberal consensus’ by describing the influence of class, capital and gender on the development of state education. Such analysis inverts the liberal narrative of educational change, and in the words of Smith, “educational history-writing had been transformed from a paean of praise for centralised education to a source of consistent criticism.” While the early and more radical revisionist histories borrowed from British and American social control theorists such as Philip McCann, the class struggle surrounding urbanisation and

---

160 Cowper had postponed the second reading of the 1844 district council bill by arguing that local government was “totally unsuited to the circumstances of the colony.” *NSWLC, Votes & Proceedings*, 1844, 83. in Lawry, “A Perpetual Struggle for Power”, 55.

161 1844 NSW Education Select Committee, 8; in Lawry, “A Perpetual Struggle for Power”, 57.

162 Lawry, “A Perpetual Struggle for Power”, vi.


164 B. Smith “William Wilkins Saddle-Bags: State Education & Local Control”, 67
industrialization had less resonance in Australia. By the 1980s, Australian scholars were appropriating Marxist feminism and Gramscian notions of hegemony and ideology to explain the rise of mass state schooling in a primarily agricultural settlement. While Bob Bessant challenged the “main assumptions of the ‘traditional’ historians of education”, arguing that the establishment of the bureaucratic educational state was an imposition by the “ruling classes on a discursive and inefficient labour force”, scholars such as Miller, Cook, Vick and Davey proposed that educational development was not solely hinged on the dictates of the ruling class but embodied the ‘contradictions’ of capitalism and a wider struggle within class, gender, age and race relations. Ultimately, the strong focus on these socio-economic and gender themes, while of great importance, did little to contextualize the link between educational centralization and the endogenous constitutional and governing dynamics of the colonial state. Cook, Davey and Vick’s paper on “Capitalism and working class schooling”, for instance, followed up the work of Bowles and Gintis by arguing that compulsory state schooling was demanded as a function of class conflict and working-class opposition. Pavla Miller took a similar position in an article written in 1984, arguing that the move to centralisation was a “tumultuous process”, and that “the structures which mediate class and gender conflict in everyday life were themselves forged and reproduced in the course of such conflict.” In this vein, Beasley proposed that “Public schooling did not simply represent the development of a system of class hegemony but also a system of patriarchal hegemony.”


166 B. Bessant, *Schooling in the Colony and State of Victoria* (Melbourne: La Trobe University, 1983), ii.


While most of the revisionist corpus was lodged in social history, Ely gave some indication of the relationship between education and a distinctive political culture that did not inherit the localising routines of English common law governance. Notably lacking an established gentry class, contemporary educators, including George Rusden, the Inspector of schools in Victoria, were arguing that centralization was preferable in the face of the fact that “ancient British municipal principle of good government” did not travel well to colonies.\textsuperscript{170} In the words of Ely:

> Australian frontier settlements and English or Irish Villages had little in common. Australian frontiersman, the landowners and leaseholders of the 1840s and 1850s were generally enthusiastic advocates of political independence, but they had little desire to achieve this in the British or American ‘municipal tradition’. Colonial men of property in both city and country sought rather to control the distant government in the colonial capital and to have the general revenue at their disposal.\textsuperscript{171}

This rejection of municipal institutions allowed a hierarchical state based on bureaucratic and representative systems of government to replace traditional class distinctions as the foundation of colonial politics. For Ely, there was “evidence that the tightly knit British patronage system, based on social distinctions, had been ‘advanced’ to a new patronage system exhibited within the hierarchy of the educational administration itself – one based on merit, hard work, and ‘respectable’ behaviour patterns.”\textsuperscript{172} Here, Ely provides insight into the failure of British constitutional and governmental conventions in the colonies. The tradition of local-self government which had been borne of British political antiquity would never take hold in the colony. Accordingly, the “Colonial liberals were soon disabused of the illusion that their national system could depend upon British-type municipal institutions ‘in the stage to which they have been brought by the labour and experience of centuries’.”\textsuperscript{173} However, while Ely deftly acknowledges the point, she fails to describe this rejection in light of broader developments in liberal constitutionalism, and more particularly, the impact of responsible cabinet government. The idea seems borrowed largely from Larcombe’s history of local government in New South Wales and is limited to a brief account of


\textsuperscript{171}For this insight Ely credits A. C. V. Melbourne, *Early Constitutional Development in Australia* (Brisbane: 1863), 319.

\textsuperscript{172}Ely, “The Institutionalization of an Ideal”, 227.

the paucity of “sturdy, independent yeoman of British stock”, or the “non-existent”, “weak” and “dependent” state of municipal government. Mimicking the focus on the ‘peculiarities’ of Australian social, economic and geographic circumstance evident in the liberal histories of Austin, Portus and others, Ely argued that the inadequacies of local organisation meant the latter could not “finance, maintain, and control their own schools.”

The further problem with Ely’s account is the attempt to describe the modern bureaucratic educational governance as a redeployed system of patronage. In this way, it was the “necessities of colonial life” which forced liberal institutions to appropriate traditional patronage networks in an attempt to hierarchalize administration through regimes of “respectability.” Ely argues that by the 1870s political liberalism was pervaded by a meritocratic ‘social advancement ideal’. National administrators were able to promote ‘social advancement’ through a system of centralized inspection which would “replace uninterested, illiterate, or antagonized local patrons.” To support her assertion. Ely referred to William Wilkins, who was forced to compromise his Pestalozzian ideas in order to ensure that untrained and inexperienced teachers conformed to more uniform patterns of instruction. This is the point where the contradiction in the history of liberal education is justified. It was due to a shift in the ideological foundations of colonial liberalism that the telos of education reform was transformed from individual progress to a broader notion of institutional perfectibility. Ely attributes this ideological transition to social and class influences on moral and institutional practices. ‘Respectability’ implied a “behavioural conformity” to the “various reference groups in colonial society” and it was in this context that “social, administrative, and political” organisation was maintained. Breaking these groups between the governor, country gentry, and urban middle class. Ely argued that respect for this “social fluidity” was the “key to upward social mobility.” Thus the “schools of New South Wales were closely related to the demands of the society which built and subsidized them.” Wilkins wanted to replicate in the schools “the behavioural habits which were normally expected in a prospective colonial clientele.”

Unencumbered by a static British class system, colonial government was soon defined by a distinctive mode of bureaucratic patronage. This was helped by the failure of the existing landed gentry who lacked “both the leisure and the inclination” to supervise public education. In this

---

context, William Wilkins insisted that the central authority take responsibility for education so that school administration reflected the peculiar social and economic organisation of the colony.”

As teachers and local patrons became enamoured in this system of bureaucratic patronage they began to actively accept centralized administration. Ely describes how in 1862 the local patrons of a private school in Balmain resigned because they were “under the impression that the new school would be under the direct management and supervision of the National Board officials – and that the Central Board will provide the requisite apparatus. The local patrons think that Government supervision is more likely to be efficacious than anything they may give.” For Ely, it is important to realise that “sometimes, increased centralisation was wanted by many local patrons.”

In a later paper, Ely looked expanded on her analysis of ‘social mobility and statism’, arguing that the conventions of ‘ministerial responsibility’ had facilitated the expansion of centralized control in a liberal political culture that has “consistently decreed the evils of centralization.” Ely noted that through “trial and error” teachers, parents, inspectors and politicians alike agreed that central provision would have to be “legalized” via the ambit of the a responsible ministry. Accordingly, “Political control was more easily organised through ministerial departments whose functionaries were efficient operators.” Here Ely argues that the historiographical focus on the ‘free, compulsory secular’ clauses “concealed the startling administrative similarities”, especially the “incipient, hierarchical, centralized organisations” which were “extended upwards to include a minister who was technically responsible to parliament for the efficient and economic administration of non-denominational, compulsory, primary education.” This is a crucial point, and partly aligns with our own analysis of the constitutional construction of the educational state. The problem again involves a tendency to avoid the enduring theoretical and constitutional foundation of this argument and to refocus on social and political circumstances which, in this case, caused disgruntled parents and educators to ‘demand’ this administrative hierarchy.

Paul Northcott, while offering a fairly exiguous account of the debates surrounding the compulsory education question in Tasmania in the 1860s, nonetheless provided rare analysis of the “of the debate concerning the State’s right to interfere in education.” While Northcott took the revisionist

178Ely, Reality & Rhetoric, 29.
179SMH. October 18, 1866; in Ely, Reality & Rhetoric. 32.
line that the state was able to justify its role in public schooling in accordance with the “gentling of the masses” and the “police function of schooling”, he also tackled the “philosophical, administrative, political, and sociological concomitants that resulted from the politicians acknowledgment of the rights of the State to interfere.” The question of compulsion was a sensitive one because it clashed with the voluntarist, free market ideals inherent in liberalism. As Northcott argued, “Compulsion apparently militated against civil liberties.”

The voluntarist lobby in Tasmania was headed by the editor of the Mercury newspaper, James Allen, who insisted that state control would be “totally inoperative, or an engine of torture...What the government are advised to abstain from are administering local bodies and individuals...It would be tolerated in no country not prepared to submit to centralisation in its worst and most degrading forms.” This view was echoed by the Examiner, who described compulsion as “un-British.” Furthermore, “Governments [were] bad educators and in England everybody now sees the thing has been overdone. The cost has become an incubus on the State.” Such contention justified a Royal Commission which, as our own analysis will also show, refuted Allen’s arguments about the right of the state to interfere and discouraged any voluntary provision of schools. The Commissioners considered in detail the “questions of the abstract right and practical expediency of State interference in the matter of education”, proposing, in light of John Stuart Mill’s assertion that the central government had a ‘duty’ to provide free education to the poorer classes, that state control was justified on both accounts.

But the commissioners were not total in their support for centralization, expressing the anxiety that many felt in regards the cessation of local educational governance: “When the people know that they have even more interest in the education of their children than their rulers have, they will more and more take charge of it. But education is the indispensable preliminary condition.” Again, the state was considered to represent a historical necessity. It was the only remaining legitimate social, political and economic institution which could uphold the “principle of the general good”, thus justifying “the imposition of the State to provide education for the children of the paupers.”

While Northcott draws our attention to some important debates concerning the constitutional limits

---

180 P. Northcott, The Tasmanian Compulsory Education Question, 1.
181 Mercury, 17th June 1867. in Northcott, 4.
182 Examiner, Launceston 2 June, 1867 editorial. 2: in Northcott, 5.
of the educational state, he provides a limited analytical framework from which to contextualize such debates. While recognising the tensions between free trade and centralization, Northcott only briefly alludes to the wider project of ‘policing’ the population when explaining why compulsion was pursued and how it ultimately prevailed.

Michael Sprod’s contribution to the revisionist historiography of Tasmanian educational development displayed a more focused use of functionalist and Gramscian analysis. For Sprod, educational centralization, and the concomitant disciplining of the working classes, was a corollary of the broad cultural process of “bourgeois hegemony.” Sprod gives less credence to such ‘defining’ legislation as the Education Act of 1885, arguing that this was “not the landmark of Tasmanian education in anything but an ‘administrative’ sense.” While establishing “centralised control of staffing, funding and policy making, and...direct political input into policy making”, the act “brought little change to educational practices in the schools themselves.” Thus the principles of educational governance laid by Franklin in 1839 “remained largely unaltered until 1904.” Sprod’s account is more ethnological than historical and attempted to understand why the compulsory measures contained in the 1868 Public Schools Act, its 1873 amendment, and the 1885 Act, did not substantially increase attendance levels. Further, he asks for whom the system was designed, and the purpose of schooling these children? Created largely for the poor and working class children, Sprod showed that the government schools were rarely patronised by the middle and upper classes. Failing attendance was the fault of the ‘indifference’ of lower class parents who often preferred that their children work.

Sprod claimed that attendance became a problem because it limited the means for capital to control the labour force. Describing the history of nineteenth century curriculum as one “of increasingly prescriptive and centralized control, a policy adopted in order to overcome the inadequacies of poorly trained or untrained teachers”, Sprod noted that this was part of the “disciplining of the working classes, to reduce crime against property and to form a disciplined body of waged labourers.” Curriculum reform was thus devoted to ‘training’ rather than ‘education’, and government schools were contrived by the “respectable bourgeoisie” to improve the vice and “moral failings” of a labouring population which had “little conception of the economic and social

185Sprod, “‘The Old Education Question’, 34.
pressures operating amongst the working class; to them it was possible for anyone to attempt to raise themselves out of their degraded state by a positive moral effort.” It was then this process of “cultural hegemony” which informed attempts to impose state education on working class communities in Tasmania. 188

Sprod’s invocation of the link between hegemony and the development of centralized schooling intersected with an earlier attempt by Helen Bannister to adopt “a theoretically grounded history of public education in Australia working with a Gramscian problematic” that attempts “to reveal the class character of the Australian state.” 189 The call for such analysis was the outgrowth of Bannister’s a historiographical critique of geographic determinism in Australian educational history. Arguing that these ‘Whiggish’ accounts of centralization were conspicuous for asserting the norm of a laissez-faire non-interventionist state, Bannister noted that the selection of centralisation as a historical problem...[has been largely] predicated on liberal assumptions about the nature of the state. The inadequacy of the historians’ view of the state calls into question the whole centralisation problematic within which they are writing...The empirical methodology of Hancock, Portus, Austin, and Hirst has prevented them from developing a theory of the state and so they have implicitly or explicitly accepted liberal representations of the state. 190

Conceptions of state in the educational history of Portus, Hancock and Austin imply that nineteenth century laissez-faire state is “separate in its operation from the social and economic activity of society”, and “is an impartial body guarding the rights and interests of all individuals.” 191 Centralization was thus adopted by a state that acted as a passive medium for geographic and economic forces. Like Smith, who questioned the “fallacy that demographic dispersion negates the possibility of local participation in schooling”, or Grundy, who argued that “Centralisation was not an unconscious response to unsettling colonial conditions, but was deliberately planned as an administrative expedient”, Bannister proposed a Marxist theory of the state which challenges liberal assumptions about the ‘inevitability’ of centralization. 192 The “state became interventionist”,

188Sprod, “‘The Old Education Question’”, 30–31.
reasoned Bannister, “to become a significant and regulatory force. The state attempted to alleviate social problems arising from the growth of an urban-based industrialized capitalism and to provide a stable base for the long-term securing of capital.”

To support this conclusion, Bannister critiqued Hirst’s ‘revision’ of the centralization problematic for his continued acceptance of “the problem of centralisation in education as a valid historical problem”, and for not questioning “the terms in which the problem has been defined.” Hirst made two criticisms of the Portus thesis. Firstly, “Australia was in the 1870s one of the most highly urbanised countries in the world, the great majority of her citizens was not scattered at all.” Secondly, in the context of developed local council representation in South Australian schools, Hirst asserted that “there was enough local interest to belie the assumption that local administration was impossible in the Australia of the 1870’s.” Centralization was then an administrative expedient designed to promote uniformity and efficiency and thus to conform to the emerging belief that “Parliament was directly responsible for the whole society.” Resolving centralization within the realities of Australia’s evolving system of responsible government, Hirst argued that “responsible led readily to others, so the government assumed powers and functions not usually regarded – at least then – as the province of a central government in a free society.” Hirst later gave a more detailed account of the decline of localism, noting how the state shifted its concern from ‘particular’ to ‘general’ interests, a fact which explained why “Country members were...willing to assign responsibilities to the central government.” While “The means to local control of education, police and poor relief already existed in the form of district councils...South Australians chose not to use them.” It was in the “debates on education” that South Australians expressed “the almost universal assumption” that society “could be treated as one community.”

For Bannister, Hirst’s ‘multi-causal’ explanation for centralization continues to work within the confines of liberal state theory. By linking “interventionism to the advanced nature of Australian democracy”, Hirst proposed, in Bannister’s words, that by “standing apart from particular interests”. the state “is able to express the general interest and to protect individual rights and property.” In response to this “Whiggish celebration of Australian democracy”. Bannister argued that the “assumption of the existence of an advanced democratic state ignores the exclusivist nature of

---

Australian democracy in the nineteenth century, with the exclusion of suffrage of aborigines, non-white aliens and women, the rural gerrymander, and the property qualifications for voting and membership of the squatter dominated upper-houses. Ultimately, Bannister suggests that the state should not be simply viewed as the vehicle for the dominant class, but, in line with Gramscian theory, must also “be shown to have ruled in the long-term interests of the prevailing economic structure which sometimes necessitated the state going against the short-term interests of the dominant classes and satisfying the interests of the subordinate classes.”

These initial forays into alternative or revisionist accounts of educational development were later expanded to include analysis of gender and patriarchy. Ian Davey’s historiographical account of ‘capitalism, patriarchy and the origins of mass schooling’ typified what he called a “retreat from grand theory” and a “disenchantment with the explanatory power [and] efficacy of theories of social control and class domination associated with earlier revisionist and neo-Marxist social histories.”

While Davey’s analysis stayed faithful to the “material reality of the transformation of social relations associated with the rise of capitalism and the crisis in patriarchy”, he remained cautious about “class and gender blinkers”, keeping sight of the “complexity of forces at work in the formation of mass schooling.” One of the main foibles of functionalism, Marxist reproduction theory and the industrial capitalism thesis has been the issue of timing. The inconsistency, for instance, between the early rise of industrial capitalism in England, and the late development of compulsory schooling was, as noted earlier, acknowledged by Bowles and Gintis, and in this vein Davey proposed that scholars acquire a more “comprehensive understanding of the rise of capitalism.” He then describes Curtis’ attempt to avoid base/superstructure analysis by focusing on comparative formations of the nation-state. Accordingly, the “relative independence of the colonial state” in Ireland and Upper Canada allowed for the ‘pre-industrial’ development of

---

201 As quoted in our earlier analysis, Bowles & Gintis explained this inconsistency in terms of “An effective stalemate among the pro educational strategies of capitalist employers, the powerful and more conservative Church of England, and landowning interests [which] postponed the implementation of public education on a national scale until the 1870s.” Bowles & Gintis. *Schooling*. 159–60; in Davey, “Capitalism, Patriarchy and the Origins of Mass Schooling”, 5.
schooling, while, in Davey’s words, “class struggles and sectarian division blocked...educational reform in England.”\(^{202}\)

While not saying much about the relationship between educational change and the state or liberal systems of governance, Davey goes on to link the development of mass schooling to nineteenth century emergence of ‘patriarchalism’ in the guise of the ‘working class family’ headed by the male bread-winner. Both the middle-class and working-class family unit became, in Levine’s words, the “locus of production and consumption”, thus cementing what Davey termed a “redefinition of the age and the sexual division of labour.”\(^{203}\) From this, Davey is able to assert that the “construction of the breadwinner’s wage form and its accompanying domestic ideology arose from patriarchal rather than capitalist imperatives.” Remaining cautious about the tendency to “collapse” this argument into a focus on gender relations, Davey emphasises an important shift in age relations that involved the separation of the adult and child and a “campaign against juvenile labour as well as women’s waged work.”\(^{204}\) This was an important pre-condition of setting up systems of mass schooling, particularly in terms of the modern class/age hierarchy. For Davey, such an insight leads to an analysis of ‘power’ which transcends class or gender relations, and which is closer to “Foucauldian analysis of the power relations inherent in schooling.” While giving little detail about this relationship, Davey proposed that analyses of the origins of state schooling moves “beyond a theory of power to a theory of the state which incorporates this broader conceptualization of patriarchal relations”, and that takes into account Marxist and feminist theories which “emphasise contradiction, contestation and human agency.”\(^{205}\)

Davey’s broad historiographical analysis of capitalism, patriarchy and schooling was given empirical grounding in Malcolm Vick’s study of the 1851 Education Act in South Australia. Vick


\(^{204}\)For Australian feminist accounts see P. Miller, *Long Division*; A. Mackinnon, *One foot on the Ladder: Origins and Outcomes of girls’ secondary schooling in South Australia* (Brisbane: 1984); Theobold, “Women’s Teaching Labour”.

\(^{205}\)Davey provides only a cursory link between the proletarianization of the family and the development of disciplinary modes of schooling described by Foucault. See M. Foucault, *Discipline and Punish* (London, 1977); Davey, “Capitalism, Patriarchy and the Origins of Mass Schooling”, 9-10.
sunnised that such legislation “articulated patriarchal and capitalist values” by helping to “secure both the foundations of both the family, with its sexual division of labour and norms of adult male authority over women and children, and the capitalist economy as the bases of colonial social order.”\textsuperscript{206} Accordingly, male bourgeois and business elites were able to colonize the Board of Education established under the 1851 Act, and it was this that facilitated an overarching system of state control. Vick begins his analysis by showing how the aims and scope of the new education board were limited by theoretical perceptions of the role and jurisdiction of the liberal state. While the shift from community control to state intervention was initially delayed due to the “colonial bourgeoisie’s concern for cheap government which would conserve state revenues for the development of economic infrastructure and avoid the elaboration of wasteful civil service positions”, the board of education established under the Act was to avoid “vexatious interference’ from the parliament because of a dominant “liberal ideology” which “represented the state as politically neutral.” This liberal conception of state organisation argued that the parliament was a medium for interest group conflict, and that administrative boards should act objectively and independently outside of this realm. This allowed the bourgeoisie to “wrest control over the state from what they regarded as an irresponsible and autocratic government.”\textsuperscript{207}

While the establishment of responsible government in 1857, with its widened franchise, gave the middle class men who came to control parliament greater influence over “legislation and fiscal policy”, the “parliament resisted the development of direct control over government departments.” The perceived neutrality of the central board allowed the bourgeois and administrative class to contain social division. It did this by defining the “individual and the family” as the “constituent units of society”, thus ensuring that the broad population would come under the board’s jurisdiction. This meant that schools would no longer be devoted to the working and pauper classes, as was the case with church and charity schools, and could incorporate middle class interests. The board would ensure this egalitarian provision of education by centralising curriculum standards, regulating teacher training, and grading classes according to age and competence. Curriculum texts were a means to inculcate “moral values such as discipline, industry, subordination and regulation”, and more especially, to entrench “the patriarchal family and its sexual division of labour as the norm of social organisation.” The board delegated supervisory authority to local functionaries such as magistrates, district councils and men of “social and economic position.” This served to shore up

\textsuperscript{206}M. Vick, “Class, Gender & Administration: the 1851 Education Act in South Australia”, \textit{History of Education Review} 17:1. 27.

\textsuperscript{207}Vick, “Class, Gender & Administration”. 30.
the influence of these “men of substance” over “women generally, and over male workers and small freehold or tenant farmers.”

The capacity of the local board was gradually weakened, however, due to a dearth of suitably qualified local leaders. Vick thus reiterates the argument, presented by liberals and revisionists alike, which relegates centralization to the “undeveloped nature of colonial society.” Furthermore, teachers complained of “inefficient” and “outmoded” curricula, local delegates were accused of corruption, and the economic downturn following the gold rush reduced attendance levels since parents could no longer pay fees. This was compounded by the early entry of children from poorer families into the workforce. Still, the board managed to adhere to the policy of “limited, regulatory, supportive intervention” embodied in the Act. While ‘social concerns’ demanded funding for education, the needs of a capitalist economy, combined with the “economic interests of those who dominated the legislature”, meant that state revenue would be siphoned away from education and into economic infrastructure. In addition, the boards preference for proficient and efficient curricula and teaching staff was often compromised. This related to a policy in which the board employed untrained and unskilled teachers in areas where children were not in reach of a licensed school. Consequently, poorer working-class and rural children were marginalised from state schools, leaving the city schools in particular to “become the exclusive preserve of the children of shopkeepers and tradesmen.” Ultimately, the board atrophied because it could not control funding, and because political opponents demanded that the system of shared authority be replaced with a centralised government body.

While the board’s allies argued that state schools should be restricted to poorer pupils and funded from voluntary sources, a “political coup” led to the sacking of the board. Nonetheless, Vick argued that the existence of the board served to incorporate “education firmly in the public sphere”, and by so doing, establish education as an “instrument for the extension of male, bourgeois power.” The defining legacy of the board, however, was the introduction of centralized administrative “structures and procedures” such as standardised curriculum, grading and teacher training. As Vick concluded:

While the social relations of class and gender are crucial for understanding state intervention in a general way, the precise form this took, and consequently the outcomes which resulted, cannot be adequately appreciated without close attention to those structures

---

208 Vick. “Class, Gender & Administration”, 32–34.
209 Vick. “Class, Gender & Administration”. 38.
and procedures by which the provisions of the Act were transformed into a complex body of practices.\textsuperscript{210}

Here, Vick gives some insight into Foucauldian ideas about techniques and practices of ‘discipline’ and government which subsequently influenced historians of education including Ian Hunter and Pavla Miller.

In a later paper, Vick argued that centralized schooling was not simply imposed from above but relied on a ‘local social structure’ which, in the words of Bruce Curtis, facilitated “the construction of new subjectivities in working-class children.” The dominant classes relied on local communities when promoting “a quite different form of schooling for the working class.” This aided in the transformation of “popular consciousness and behaviour by undercutting the reproduction of working class culture.”\textsuperscript{211} As state control increased local actors remained, in Vick’s words, “highly active in educational affairs and this, rather than their apathy, was important in the development of centrist policies and procedures...they helped both to shape the development of local society and to further the growth of the central state.”\textsuperscript{212} Vick’s research into 19th century local school governance in South Australia showed active participation in the central board from working class and lower middle-class groups. Parents and local committees voiced similar concerns to the Central Board in regard the efficiency of teachers and the quality of education: “Many middle-class observers, as well as working and farming people themselves. asserted that there was a keen popular appreciation of education and scholarship.”\textsuperscript{213}

While parents praised teachers who they found competent and under whose tuition their children progressed, they criticized, withdrew support from, or dismissed those they considered to be inferior. Local communities made active and informed decisions about schooling in the context of their particular concerns and circumstance. Accordingly, Vick argues that “conflict over the provision of education was concerned with the form of education and their social implications rather than simply the battle between the enlightened and progressive supporters of education per se and the ‘defective, intellectual, moral and religious condition of the adult population.’”\textsuperscript{214}

\textsuperscript{210}Vick, “Class, Gender & Administration”, 39.

\textsuperscript{211}M. Vick. “Community, State and the Provision of Schools in Mid-Nineteenth Century South Australia” Australian Historical Studies 25 Apr–Oct 1993, 54.

\textsuperscript{212}M. Vick. “Community, State and the Provision of Schools”, 54.

\textsuperscript{213}Vick, “Community, State and the Provision of Schools”. 69.

\textsuperscript{214}Vick. “Community, State and the Provision of Schools”, 70.
represents an effort to avoid the reductionist accounts of state power since local complicity in the Central Board meant that the state relied on cultural ‘subjectification’ of state authority. Ultimately, however, Vick’s account of the complicity between “local society and the growth of the central state” merely confirms his earlier analysis of an education system which “favoured men against women” and which “favoured the already better off.” In this way, Vick makes little of the connection between a decrease in local involvement and broader shifts in constitutional foundation of the colonial state.

This lacunae was later addressed by Vick in his doctoral thesis when he figured the state into his account of ‘colonial society, the state, and education.’ For Vick, the modern state emerged as a regulator of labour, property and the family. In his words, the state “provided both a legal and police system to enforce adherence to the laws regulating society, while the precise forms for the administration of the law almost necessarily favoured the wealthy against the poor, men against women, adults against children...and British settlers against those of other origins, especially Aborigines and Chinese.” Avoiding an overly functionalist account of the state and its relationship to civil society, Vick argued that “Despite its importance, the boundaries between the institutions of the state and those of ‘society’ were not clearly defined.” This very general account fails, however, to explain the anomaly regarding the power of non-state actors like the local magistrate and the general opposition to “all but the most limited devolution of power to municipal or district councils.” Vick avoids the constitutional debate surrounding local-self government by focusing on the “ideological representations” which were central to the evolution of the colonial state. This state was “commonly represented as the embodiment and guarantor of the unity and well-being of the people as a whole, and institution standing over and above sectional interests, balancing and mediating between them in pursuit of the common interest.” As the view, dominant in England and Europe, that “schools had a central role to play in the governance of society” became accepted in the press and the churches, state controlled education became integral to the project of “civilizing the population at large.” Here Vick’s offers a fairly standard revisionist analysis of the state, arguing that the central government was conspicuous for regulating “relations between capital and labour” in ways “favourable to employees” and the “profitable investment of private capital.”

Post-structural theories of Australian educational change

---

The revisionist's limited analytical focus on the relationship between education, the state and constitutional systems of governance has been partly addressed in recent scholarship that puts less faith in the causal primacy of industrialization, capital expansion, class rule and cultural hegemony, and draws instead on post-structural and largely Foucauldian insights into ‘disciplinary power’, ‘governmentality’ and the practices and techniques of liberal governance. Ian Hunter, for instance, proposes that “Foucault’s stress on the ‘productivity’ of disciplinary power in augmenting human attributes; and his account of the ‘technical’ character of government as an ensemble of technologies and aims” is “irreducible to the ‘logic’ of capital or the ‘will’ of the state.” While acknowledging that Foucault does not provide a “theory of the formation of the subject comparable with those found in psychoanalysis, phenomenology or semiotics”, Hunter still wants to use Foucault’s work to “reopen the question of whether the school is in fact an apparatus for the social domination of subjectivity.”

Hunter’s critique of the historiography of popular education argues “that the notion that educational systems are founded on more general processes of cultural development are misleading. and that, as a consequence, we must reconsider the ethical and political teleology of most histories of culture and education.” Foucault’s insight into the relationship between power and knowledge has been used, therefore, in critical pedagogy and educational history to deconstruct cultural “ideologies” such as capitalism or patriarchy. In response, Hunter rightly identifies the correlation between liberal and Marxian ideals of the free, self-developing individual. Accordingly, both approaches share a teleological view of the education process as “a means for realizing the principles of equality, liberty and rationality.” While liberals “opt for a notion of individual development through political participation, Marxists pin their faith in a notion of collective development through socio-historical participation.” Education systems are then criticized for failing to realize this common ideal of ‘self-development’.

But for Hunter, such “hypercritical and prophetic intellectual fundamentalism” wrongly assumes that equality, difference and self-realization are the true basis of the modern school. It is precisely Foucault’s rejection of a ‘principled’ developmental logic, and his focus on the practices and ‘habits’ of the school system, which opens analysis to “contingent assemblages put together under ‘blind’ historical circumstance.” Hunter refers to the “built-environment”, meaning the architectural

217 Hunter, “Assembling the School”, 164.
division of time and space, pedagogical relationships, surveillance, supervision and so on, to describe what Giddens similarly referred to as ‘power containers’ and ‘sites’ for social domination. Accordingly, the formation of modern subjectivity is not held within cultural meaning and educational principles, but is contained within “the actual historical assemblage of the school as a moral and physical milieu dedicated to the mass training of children.”

Rather than focusing on the emergence of capital or bourgeois social relations, Hunter draws on Foucault’s account of the rationalisation of governing arrangements during the emergence of the early-modern administrative state in Europe. This was a process which, for the first time, was aimed at securing the prosperity of the state in its own right. Termed the ‘reason of state’, this rationalisation of government grew out of the need to establish the military and taxing power of emerging nation-states such as Prussia and Austria. Mass schooling would then become a means through which the populace could be morally regulated to promote state building. The practices and ‘techniques’ of government used to efficiently administer the populace were initially borrowed from a Christian pastorate which had already established schools as a means to ‘Christianize’ the population. Hunter proposes that these incipient bureaucratic developments have important consequences for a re-theorization of modern education development:

The school system, I suggest, is not bureaucratic and disciplinary by default, having betrayed its mission of human self-realization to a repressive State or rapacious economy. It is positively and irrevocably bureaucratic and disciplinary, emerging as it does from the exigencies of social governance and from the pastoral disciplines with which the administrative State attempted to meet these exigencies. This does not mean that the school system has been inimical to the goal of self-realization. On the contrary, one of the most distinctive characteristics of the modern ‘popular’ school – the one that makes it so difficult for its critical theorists to understand – is that, in adapting the milieu of pastoral guidance to its own uses, State schooling made self-realization into a central disciplinary objective.

Hunter put in another way in an earlier paper, noting the “pastoral school’s capacity to join things that modern theory likes to segregate: surveillance and self-activity, obedience and spontaneity, the middle class desire for a governable population and the radical wish for a self-governing one.”

This theory of pastoral governance allows Hunter to reject what he calls the ‘dialectical antagonism’

---

219 I. Hunter, Rethinking the School (Sydney: Allen & Unwin, 1994), xxii.
between the “organic conservatism of the Romantics” and the “philosophical radicalism of the utilitarians” so evident in liberal and revisionist history. This effort to expose the simplified division between the ‘ethical’ and ‘bureaucratic’, or ‘child-centred’ and ‘utilitarian’ is, for Hunter, an important means to address the “relation between reciprocating tactics within a single pedagogical strategy.” In many ways, this is an approach that aligns with our own attempt to seek a form of constitutional and state analysis that denies any supposed ‘contradiction’ between the imperatives of bureaucracy and self-governing schools.

Hunter invocation of pastoral power allows him to show how education reform debate in the mid-nineteenth century was directed through governmental technologies such as the ‘great’ parliamentary select committee. This was evident in Australian education reform, with the select committee forming an instrument “through which the British government had brought to bear the technical expertise and political force that made the education of the population thinkable as a State objective.” Similarly, Ross Jones has argued that Royal Commissions into education, as evidenced by two commissions appointed in to look into the consequences of the 1872 Victorian Education Act, represented “an early manifestation of the belief that the use of scientific methodology was needed to more efficiently organise social conditions.” This early use of “public and social policy analysis” was intended to develop public institutions for the “purpose of normalising the educational experience of the citizen and state.”

Pavla Miller is another Australian scholar who has recently linked educational development to Foucauldian notions of ‘pastoral’ governance. In a work titled Transforms of Patriarchy in the West, Miller “reopens debate about the social forces that produced state school systems in western societies. and about the way schools altered society” by “linking schooling, state building, and transformations of patriarchal forms of [self] governance.” Rejecting earlier revisionist accounts

221As the following chapter will illustrate, Hunter’s use of pastoral governance has important implications for the wider development of liberal state education systems, however, it lacks the historical specificity to comprehensively explain educational development in the Australian context.
222Hunter, “Assembling the School”, 150.
224Pavla Miller, Transformations of Patriarchy in the West: 1500–1900 (Bloomington: Indiana University Press, 1998). xii. It should be noted that Transformations evolved initially as a work co-authored by Miller and Ian Davey, and accordingly, much of the analysis of patriarchy echoes the views of Davey. See P. Miller
of urbanization, industrialization, social control, and the ‘reworked’ neo-Marxist account linking educational development to the ‘reproduction’ of capitalist social relations, Miller notes the neglect “of the dynamics of state and patriarchy”, particularly the “changing and historically specific nature of social categories concerning age, gender, and class relations and state formation.”

Miller’s analysis of the educational state draws on other post-structuralist accounts such as that of Curtis. Arguing that the state should not be viewed as an “fixed, unchanging entity”, Curtis described the state “as a process of rule in and though which the activities of classes and groups lead to the creation solidification and normalisation of political forms and practices in the largest sense.” Miller approaches this process of normalisation through her analysis of the ‘reconstruction of patriarchy’ within the post-reformation absolutist states of continental Europe. Accordingly, a ‘pastoral’ form of patriarchal authority evolved in response to the separation of home and work, the individuation of the wage and the subsequent breakdown of authoritarian modes of patriarchal rule. This pastoral form of governance embodied the notion that “peace, order, and prosperity could be secured if subjects as well as masters internalized a rigorous government of the self.” Similarly, Curtis was able to describe how British, American and continental pedagogues and educational reformers, including America’s Horace Mann and Britain’s Kay Shuttleworth, were of the opinion that ‘teachers should reach their students’ conscience and rule their charges through love, pleasurable mental activity, and ‘agreeable excitement’ rather than force.” Likewise, Miller refers to Ian Hunter’s account of a ‘pastoral bureaucracy’ that wanted to promote individual subjectivity and the “self-realising personality” of school children. Hunter observed that this project

---


223 Miller. Transformations of Patriarchy, xii-xiii.

224 B. Curtis, Building the Educational State, 315; Miller, Transformations of Patriarchy, 222. David Hogan also noted the link between what he called “affective individualism” and pedagogical reform in nineteenth century America. Accordingly, the ‘New England pedagogues’ organized “pedagogical practices around the interests and pleasures of children, the substitution of affectionate authority for corporal punishment and fear, and the instrumental use of education to promote usefulness, happiness, and virtue of American children.”

Citing Lyman Cobb’s The Evil Tendencies of Corporal Punishment as a Means of Moral Discipline in Families and Schools (1847), Hogan showed how the new pedagogy insisted that teachers and parents must first “secure the LOVE and AFFECTION of his children and pupils” before they can secure “an unlimited control over their minds and conduct.” D. Hogan, “Modes of Discipline: Affective Individualism and Pedagogical Reform in New England, 1820–1850”, American Journal of Education, November 1990, 38. 42.
was to be achieved via a “pastoral teacher, who incites and observes, and guides by a moral rather than physical influence.”

To further emphasise her analysis of state power as ‘un-fixed’ and subjective, Miller draws on Foucault’s account of governmentality. For Miller, governmentality refers to the way state authority was historically transformed from earlier concerns with territorial governance to focus on population, surveillance and ‘practices’ of government which were “underpinned by a range of security apparatuses.” The apparatuses of surveillance and inspection which evolved in the eighteenth and nineteenth century unseated a fragile patriarchalist social order whose reliance on the absolute authority of the household head failed to adapt to the military technologies, national taxation systems and civil regulation which, in Miller’s words, “increased governmentality, and with it the capacity of state bureaucracies to expand the realm of direct rule.” While governmentality fails to address “how the earlier patriarchal forms [of governance] survive and are re-created in the modern era”, Miller appropriates this schema to “chart the erosion of patriarchalist powers by new state capacities, and the emergence of differently gendered knowledges and institutions.”

Here Miller attempts to correct the lack of attention given to gender in accounts of bureaucracy and Weberian notions of ‘legal-rational’ authority. Appropriating Curtis’ account of the ‘building of the educational state’ in Canada-West, Miller then goes on to show how the panoptisation of modern governance was further characterised by the ‘engendering’ of bureaucracy.

While the state established “intermediate institutions” such as school committees and municipal bodies as a means to link the locality with central government, and to inculcate notions of order, regularity and political responsibility, Miller argues that the regimes of inspection, statistical classification and financial accounting which have informed ‘modern systems of governance’ exposed the continuing patriarchal nature of social organisation. Resembling a “process of

---

227 Hunter, Rethinking the School, 103, xxi.
228 Miller, Transformations of Patriarchy, xvii, xiv.
229 Miller made note of Curtis’ citation of J.S. Mill when illustrating the importance of these ‘intermediate’ institutions. For Mill, elected municipal government was “not only the grand instrument of honest local management, but the great ‘normal school’ to fit a people for responsible government.” While Miller rightly identifies this as the first attempt by the state to gain “systematic glimpses of local populations”, she fails to position this development in the context of the broader constitutional struggle surrounding liberal state theory. While Miller and Curtis show that, as the states ‘detailed local knowledge’ increased, local organs of inspection were professionalised and stripped of their autonomy, they do not relate this to Mill’s, or indeed
mutual colonization”, the ‘building’ of the bureaucratic educational state represented, in the
Weberian sense, the “construction of a particular kind of masculinity based on the exclusion of the
personal, the sexual, and the feminine from any definition of ‘rationality’.”230 Referring to the
establishment of the South Australian Education Department after the 1872 Schools Act, Miller
notes that while the department was “keen to acquire the accumulated expertise, goodwill and
building stock; the bureaucracy it constructed was modelled in part on authority patterns in family-
run schools where women and young people of both sexes labored under the inspection of a
judicious master.” Such inspection was typified by the examination, a method which administrators
argued “would make the presence of central power felt everywhere.” As an inspector noted in 1898,
“The only way in which a large department can make its wishes known is by examination.”231

Malcom Vick, in more recent work, has similarly searched out a Foucauldian and post-structuralist
bent to the story of Australian educational development. Departing from his emphasis on class,
gender and ethnicity in previous works, Vick uses Foucault’s theory of “normalisation” to explain
the shift from an “extremely diverse” school system to one ruled by “an articulated body of
prescriptive and descriptive norms.” He argues that the “formative and regulative administrative
practices” that replaced an anarchic and informal school system correlated with what Foucault
described as the “construction of norms, not as moral imperatives, but as descriptions of both
individuals and society – the product of ‘knowable man’.”232 Thus, in the case of a desultory and

---

1 S. Mill (1833) quoted in B. Curtis, True Government by Choice Men: Inspection, Education and
State Formation in Canada West (Toronto: University of Toronto Press, 192), 30; in Miller,
Transformations of Patriarchy, 204.

230 Miller garnered much of her account of the ‘engendered’ bureaucracy from Rosemary Pringle,
Secretaries Talk: Sexuality, Power and Work (Sydney: Allen & Unwin, 1988), 88; Miller,
Transformations of Patriarchy, 211.

231 South Australia Parliamentary Papers (SAPP), 1882, no. 27, 203; SAPP, 1898-98, no. 44, 15; in Miller,
Transformations of Patriarchy, 215.

Discipline & Punish, 305. Normalisation is expressed in terms of ‘discourses’ which exercise power through
the “production of ‘truth’ and ‘knowledge’.” Thus, discourses are “practices that systematically form the
objects of which they speak...discourses are not about objects; they do not identify objects, they constitute
them and in the practice of doing so conceal their own invention.” M. Foucault, The Archeology of
Knowledge (London: Tavistock, 1977), 49. For an earlier Foucauldian account see B. Smith, “Deserts and
Oases: History Writing and State Education”. Australia and New Zealand History of Education Society (17th
localised school system, Vick proposes that the “unsystematic curriculum, the informal hours of opening [and] the lack of class textbooks” was explained by school reformers in terms of the lack of a “single, universally accepted set of norms defining what constituted a good school.” These norms were instituted via “normalising techniques”; or “fiscal and inspectorial regimes”, such as inspection, examination and documentation. School children therefore became the objects of ‘specialised knowledge’ and professional expertise. Furthermore, this knowledge produced texts and discourses that worked on binary oppositions – the “dualisms of body and mind, individual and society, order and freedom, culture and nature” – that identified difference, minorities, irrationalities and immoralities, and thus defined a ‘good’ education as a “distinct conceptualised field.” These oppositions were employed during the struggle between National and Denominational schools over school funds, when small ‘inefficient’ denominational schools were contrasted with larger more ‘efficient’ national institutions. In turn, teachers would internalise and subjectivise these norms, thereby promoting a culture of ‘ethical self-improvement’. At model schools such as the Fort Street School in Sydney, the formal training and codes of regulation through which teaching performance was monitored and regulated included annual reports of the education board, self-improvement groups sponsored by the board, the publishing of teaching journals and hierarchically graded examinations linked to salaries.\textsuperscript{233}

In all this, Vick gives little detail about the precise philosophical and intellectual debates – regarding, for example, constitutional law or the theory of the state – that informed the discourses of normalisation. This relates, in part, to Foucault’s avowed rejection of political theory and constitutional principle and his emphasis on the neutral and technical ‘practices’ of liberal government. Vick thus wants to show how the administrative routines of inspection and performance monitoring “transformed a visibly political project into a neutral, technical one, one which was apparently – visibly – concerned with the question of how to deliver education efficiently, a project whose politics were now transparent – invisible.” Politics in this sense embodied the “norms of everyday life”; it was an attempt to compile detailed knowledge about the social, cultural and economic status of classes and individuals. The increasing power of the central political authority is not overt, but is heightened through discourses which set unrealisable targets and standards, demanding that teachers remain on a “mission of continual self-improvement.” Local communities and parents were also forced to conform to these ‘objective’ norms since local circumstance often lay outside of the limits of the administrative discourses which defined ‘good teaching’ or prescribed the layout and design of school accommodation. Finally, the objectivity of

\textsuperscript{233}Vick, “Normalisation in 19th Century Australian Schooling”, 116–120.
the normalising process was realised through the judgement of the inspector who, unlike the face to face relations that characterised local governance, was presented as “an impersonal officer from an impersonal agency recording by known criteria the performance of a particular teacher.”

Peter Meadmore is another historian who has focused on ‘inspection’ to draw out the analytical significance of disciplinary and governmentalised power in the Australian educational context. Describing how during the inter-war years teaching in the state of Queensland became guided by the “notion of governance” and the “disciplinary practices” central to a “patriarchal state education bureaucracy”, Meadmore made note of an “inspectorial system” that was used “to maintain surveillance and control over all teachers”, especially “in relation to its powerful effect of producing success and/or failure.” Meadmore argued that by 1915, “public schools in all Australian states were administered by highly centralised bureaucracies which controlled every aspect of schooling including teacher recruitment and training, teacher appointments, promotions, transfers, school syllabuses and text books.” These bureaucratic technologies of governance were regulated and enforced through the ritual of the annual inspection. Drawing on Foucault’s defining metaphor for disciplinary power – the ‘all-seeing’ eye of the prison panopticon – Meadmore argued that the inspectorial regime was “likened to the panopticon gaze which afforded ‘hierarchical observation’ and ‘normalizing judgement’ over all parts of the system.” Thus in Queensland, the educational bureaucracy was able to ensure that schooling practices were “regularised, routinised and normalised” through inspectors acting as the “ears and eyes of the department.”

4. Conclusion

The recent proliferation of post-structural accounts of educational change in Australia mark – apart from the intellectual fashion which continues to popularise Foucauldian analysis – an increasing need to provide a more detailed account of the link between state education and liberal systems of governance. From this perspective, educational scholars are starting to grapple with the governing techniques that underlay the continuing intransigence of a bureaucratic monolith. Indeed, the

---

sceptre of central control has not diminished in the light of devolutionary or site-based initiatives, leaving scholars to question the heuristic potential of the structuralist narrative. However, the current move away from theories of social control, industrial capitalism, gender relations or cultural hegemony, and towards a clearer account of the ‘normalising’ techniques of bureaucratic or pastoral power, is still in its incipient phase. Borrowing from theories developed primarily in the European context, the current stock of post-structural analysis has yet to be fully developed in the specific context of the Australian history of education, and indeed the particular formation of the Australian state. Accordingly, this study will attempt to provide a historically grounded account of the relationship between discourses and practices of liberal governance and the evolution of mass centralized schooling in Australia. In pursuing this latter line of analysis, the study will first explore the constitutional ideas and practices that defined the pre-centralized educational state. What were the problems with the long revered tradition of local self-government, how were they resolved, and why has its replacement, what this study terms the ‘legislative state’, been such an enduring constitutional feature of educational governance?
Toward a historical model of educational governance in Australia

The state? What is that? Well then! now open your ears, for now I shall speak to you of the death of peoples. The state is the coldest of all cold monsters. Coldly it lies, to: and that lie creeps from its mouth: 'I, the state, am the people'... Where a people still exists, there the people do not understand the state and hate it as the evil eye and sin against custom and law.1

1. Introduction

The foregoing historiographical survey takes us to a promising point from which to embark on our own analysis of the emergence of state education in Australia, and further, to construct a new, historically informed, model of the dynamics of educational governance. As described in chapter one, a vast corpus of information has been built up describing the economic, social, cultural and ideological orientations of the mass public school. More recently, educational historians have attempted to understand the school, not simply in terms of the 'correspondence' between school and work, or between the market relations of schooling and economic life, but as a mode of disciplinary power that silently observes, classifies and examines populations under the 'gaze of a permanent corpus of knowledge'. This analysis has been extended, if only in a limited way, to embrace the Foucauldian theme of governmentality. The latter aligns the modern school with a shift in rationalities of liberal governance, occurring during the late eighteenth and nineteenth centuries. From 'legal-totalising' systems of state power to a diffuse network of 'bio-political' governance aimed, not at upholding the sovereign and territorial jurisdiction of the state, but the life-conduct of individuals who comprise a manageable 'population'. Governmentality has become a popular analytical tool for critical theorists, sociologists, political scientists and historians alike who, in a diffuse, globalised information age, want to understand how power is exercised outside formal

It might be interesting then to juxtapose the historical evolution of governmentality with the emergence of state controlled schooling in Australia. An account of the ‘lineage’ of bio-political strategies of liberal government might, therefore, provide insight into the endogenous mechanisms of centralized educational governance without reverting to the socio-economic reductionism of whiggish and Marxist history. Analysis of the moment when populations, rather than capital formation or class rule, became the object of the art of liberal government, may help explain why local, community and church controlled education systems, which had little interest in the technical ‘optimization of the life of the population’, were subsumed by uniform and bureaucratized modes of school administration designed to classify, examine and organise a complex social body. Capital formation, market relations and class structure might be seen as an effect of this strategy of governance — indeed, disciplinary practices embody technologies that ‘silently’ optimize economic or market forces. However, these strategies have an internal logic that is firstly concerned with the humble and mundane mechanisms of efficient, rational and scientific government. This thesis does not reject much of the important work identifying the relationship between class formation, market relations and the development of mass schooling, however. Rather, it argues that this causal route has too often missed the question of how strategies of governance provided the organisational and institutional conditions through which the school has been able to maximize the economic capacity of the individual.

“‘This Slender Technique’: Examining Assessment Policy”, in O’Farrell, *Foucault: The Legacy*, 620–630; Barbara Grant, “Disciplining Students: The Construction of Student Subjectivities”, in O’Farrell, *Foucault The Legacy*, 620–630. Governmentality has also been of increased relevance in the American case of a highly decentralised and marketised educational system. Hennon, for example, applies governmentality to the discourse of school design in the nineteenth century, arguing that “the discursive domain of the school has been and continues to be a political reflection on how to enclose a specific age segment of the population and to physically order and relate members of the population in an educative way.” L. Hennon, “School architecture, curriculum and pedagogy: shifts in the discursive spaces of the ‘school’ as forms of governmentality.” Paper presented at the American Educational Research Association, Montreal, Canada, April, 1999. Similar studies have been applied to the construction of pedagogical practices in the Australian context, with Jennifer Gore examining “the minute practices of classrooms” and the “bodily effects of power in pedagogy.” J. M. Gore, “Power relations in pedagogy: an empirical study based on Foucauldian thought”. in O’Farrell, *Foucault The Legacy*, 653.

While such a project picks up on the work of Hunter, Miller, Meredeth, Meadmore and others, these accounts have not, for our own purposes, provided adequate analysis of the way liberal rationalities of government developed in the Australian historical context. Studies in governmentality have tended, therefore, to abstract stock aspects of the Foucauldian typology and apply them a priori to the Australian experience. This lack of historical rigour can be explained in two ways. First, these studies are typically shaped by ‘presentist’ concerns about a shifting locus of social and political power embodied in the ubiquitous strategies of neo-liberal governance; and second, such analysis is informed by Foucault’s own epistemological ambivalence to causality and historical agency.

Underpinning these accounts is a schematic historical treatment of shifting liberal political rationalities in late eighteenth century political theory – evident largely in the writings of Adam Smith – that opened the way for a new ‘microphysics’ of social and economic regulation; and of the way such rationality was embodied in Foucault’s defining metaphor for disciplinary power, the prison panopticon. Incorporating, not only a new strategy for governing a ‘system of natural liberty’, but emerging disciplinary knowledges – criminology, psychiatry, anthropology, biology – which during the nineteenth century objectified and isolated the individual and created ‘calculable’ man. But, as Burchell notes, though Foucault’s later work “stressed the emergence of ‘the

---

6For Martin Bunzl, Foucault’s “explicit disavowal of the importance of causal determination in general and agency in particular” informs a “presentist”, “anti-realist” and “anti-essentialist” epistemology. It was initially in his Archeology of Knowledge that Foucault emphasised acausal and genealogical method, arguing that knowledge is relative and that language must be understood in non-referential terms. M. Bunzl, Real History: Reflections on Historical Practice (London: Routledge, 1997), 57-64. See M. Foucault, The Archeology of Knowledge (New York: Pantheon, 1972).

7This approach is emblematic throughout the emerging corpus of studies in governmentality that focus on ‘contemporary rationalities of government’. Dean, for instance, when explaining biopolitics “as a politics concerning the administration of life, particularly as it appears at the level of populations”, refers very generally to a ‘genealogy of liberalism’ which, emerging between the sixteenth and nineteenth centuries, embodied a shift in the way “governing is conceived” in terms of “sovereignty”, “discipline” and “government”. Thus, sovereignty moved from its earlier “juridical form” to become “democratized and anchored in the rights of the legal and political subject”; discipline moved from the “practical techniques of training the body” to become a “generalized regulatory mechanism for the production of docile and useful subjects”; while government moves from eighteenth century concerns with police and ‘reason of state’ to become “a government of the process of life and labour found at the level of populations and in which the subject is revealed in its social, biological and economic form.” As we shall argue later in the chapter, this is a very broad formulation that fails to account for the contradictions and inconsistencies observed within English and colonial processes of state and government formation. M. Dean, Governmentality: power and rule in modern society (London: Sage. 1999). 83. See also Dean & Hindess, Governing Australia: A. Barry, T.
disciplines' in the eighteenth century as the source of modern social discipline...he again had little or no interest in the prehistory of this story. Historical sociology, among other strains of analysis, has in recent years tended to embrace a more relational and historical approach to accounts of western state formation, but the same cannot be said of a Foucauldian project that remains somewhat thin in terms of empirical specificity. As the following discussion will illustrate, Foucauldian thought, under its present framework, does not as yet offer a historically grounded account of the 'governmentalization of the state' in Australia.

The following discussion presents its own cut on the Foucauldian schema by arguing that biopolitical power is predicated on constitutional and juridical conditions which Foucault ascribed to more formal, and increasingly irrelevant modes of political government. For Foucault, the emergence of disciplinary power in the nineteenth century was anathema to the idea of sovereignty that underpinned eighteenth century 'reason of state':

[T]he problems to which the theory of sovereignty were addressed were in effect confined to the general mechanisms of power, to the way in...which its forms of existence at the higher level of society influenced its exercise at the lowest levels.. In effect, the mode in which power was...exercised could be defined in its essentials in terms of the relationship sovereign-subject. But...we have the...emergence or rather the invention...of a new mechanism of power possessed of a highly specific procedural techniques...which is also, I believe, absolutely incompatible with the...relations of sovereignty...It is a type of power which is constantly exercised by means of surveillance rather than in a discontinuous manner.


For an account of Foucault's tendency to de-emphasis the role of law, sovereignty and constitutionalism in governmentalised systems of power see Carole Smith, "The sovereign state v Foucault: law and disciplinary power" Sociological Review 2000 48:2, 283–306. In this vein, Dean and Hindess propose, in relation to their recent edition of 'contemporary rationalities of government': that "What is distinctive about the studies presented here, like much of the work influenced by Foucault's lectures on government, is that government is regarded as a complex activity that cannot be viewed as the expression or realisation of political or economic theories." Dean & Hindess, Governing Australia. 7. See also N. Rose, & P. Miller "Political power beyond the state: problematics of government" British Journal of Sociology 43:2 June 1992, 176.
by means of a system of levies or obligations distributed over time...It presupposes a tightly knit grid of material coercions rather than the physical existence of a sovereign...This non-sovereign power, which lies outside the form of sovereignty, is disciplinary power.  

While, in his account of governmentality, Foucault later reconsidered this schematic rejection of sovereignty, Foucauldians continue to avoid the idea of political sovereignty. By contrast, this study argues that the governmentalisation of the educational state depended on the emergence of a new liberal constitutional logic which, while designed to act upon the ‘microphysical’ dimension of civil society, relied, both in theory and in practice, on the absolute sovereignty of parliament. It is true that Bentham, Adam Smith and the pre-eminent thinkers of the Scottish Enlightenment had, as the Foucauldians argue, contrived a modern rationality of liberal governance based on the ‘naturalness’ and self-regulating potential of the population, and by so doing, opened the way for the emerging disciplinary sciences to inform new techniques of bio-political governance. However, this project did not suddenly wipe out all other forms of social regulation. Disciplinary ‘techniques’ such as examination and inspection were part of a series of pedagogical and administrative innovations that had to compete (often unsuccessfully) with a desultory and inefficient tradition of church and community controlled schooling. Furthermore, and most importantly, the latter was deeply enmeshed in an eighteenth century constitutional, political and jurisprudential tradition which, as a close examination of the ‘education question’ in nineteenth century Australia will illustrate, would have to be significantly altered before a centrally co-ordinated routine of bio-political power could be initiated.

Throughout the early to mid-nineteenth century, progressive pedagogical technologies initiated by Joseph Lancaster and his kin were irregularly adopted by a sectarian education system that had done little to combat poor attendance rates and high levels of illiteracy. Thus, schools did not suddenly appropriate the expert knowledges of the disciplinary revolution without first falling under the purview of accountable, professional and systemized ‘bureaus’ which could inspect, regulate and ultimately reconstruct an irregular and sectarian system of school governance.  

---


11 It will be argued that bureaucratisation embodied “forms of political expertise which make use of the knowledge of social life provided by the social, behavioural, and human sciences.” Dean & Hindess, Governing Australia, 7.
this did not happen easily, involving as it did a long-running polemic concerning the basis for sovereign power in the liberal state. When frustrated school reformers turned to the central government, arguing that it was a ‘duty of state’ to bring schooling under the purview of statutory regulation and bureaucratic surveillance, they embarked on a radical new way of thinking about the relationship between the individual and the state. Thus, compulsory attendance, secularization, uniform inspection, the centralization of curriculum and the ‘institutionalization’ of school building and design did not evolve mythically from a new way of thinking about liberal rationalities of governance but relied on a broader project of bureaucratic centralization which, it is argued, embodied a very absolutist model of state power.  

The dimensions of this model of state power, and its ability to fit the Foucauldian formula, will be elaborated as the discussion unfolds. However, before this can happen it will be necessary to illustrate how the governmentalization of the education system was firstly a response to what, in the context of British and colonial political development, was perceived as a highly archaic system of social administration. Whereas continental states such as France and Prussia had, by the early to mid nineteenth century, imposed a central administrative grid over school governance, the situation was far different in Australia, and even more so in Britain, from whom the southern colonies inherited a discursive and dysfunctional system of educational governance administered by the church and local patrons with nominal interference from central government.  

In this way, the thesis attempts to broach an enduring difficulty concerning the relationship between power and subjectivity in Foucaudian scholarship. While governmentality adds individual agency to Foucault’s earlier formulation of a disciplinary power that holds the subject in time and place, and thus can be conjoined in part with the social theory of, among others, Giddens, who stressed that “human agents never passively accept external conditions of action, but more or less continuously reflect upon them and reconstitute them in the light of their particular circumstances”, the question remains about the specific constitutional and political framework through which ‘the disciplines’ could structure individual subjectivity. A. Giddens. Modernity and Self-Identity: Self and Society in the Late Modern Age (Cambridge: Polity Press, 1991), 175  

Sir Joseph Kay – barrister, education reformer, staunch advocate of Prussia’s centralised Ministry of Public Instruction, and brother of James Kay. England’s preeminent nineteenth century educational bureaucrat – in 1850 proposed that “the country can have no security against the negligence or ignorance of local authorities until the government has the surveillance... of all the primary schools in the country, and a veto on the appointment and dismissal of all the teachers in the country... Until government has this direct influence... the education of the country, left in the hands of careless local authorities, all engaged in other affairs, and having little time to look after the schools, will remain what it is at present – defective, unproductive of any satisfactory results, and in so many cases positively hurtful and demoralising.” Joseph Kay, The Social Condition and Education of the People in England and Europe, vol. 11 (London: 1850), 524–25 (italics -
that local control was inadequate in terms of unregulated teacher training, unsuitable school accommodation and outdated pedagogical methods favouring the catechism over vocational instruction, the most immediate problem was the need to expand the capacity of an education system which, by the 1850s, reached barely 50% of the school-aged population. While compulsion, and to a lesser extent, free education, was a means to achieve this end, reformers realized that such changes would firstly depend on the creation of a centralized administrative framework that could regulate, rationalize and bureaucratize school organisation.

Between 1830 and 1880 the attempt to initiate centralized inspection, uniform curriculum and a bureaucratic state department of education was held back, in both Britain and the Australian colonies, for two important reasons. First, the incumbent regime proved extremely resilient to change. And second, both political culture and constitutional convention saw overt state interference in public education as an incursion upon the hallowed ‘liberties of Englishmen’. The inter-denominational rivalry between Anglican, Catholic and Dissenting churches, and the broader discord between church and state which long delayed the establishment of secular, free and compulsory schooling is, as described in the preceding chapter, well documented. It is the second barrier to reform – the localistic and decentralized character of the English state – which is less well understood. Why was the English state, which, since the late medieval and early modern period of monarchical state building, possessed a highly nationalised administrative system in terms of trade, defence and the law, and which helped facilitate the rapid, and heretofore unmatched rise of urbanisation and industrial capitalism, unable to develop a centralized network of school administration?14

This contradiction has long been a source of contention in academic debate. Clues can be found in the fluid relationship between central and localized legal/administrative structures that, as Somers has argued, were fused during the ‘legal revolution’ of the 12th to 14th centuries which saw the Monarchy forge an administrative link between baronial, urban/mercantile and peasant interests. This had the effect of increasing the power of the central authority while maintaining the

jurisdiction of the 'local public sphere'15. Such is one of many attempts to explain the 'peculiarities' of the English state, and the relative influence of localised or centralized forces within English state building remains open to contestation. Rather than enter this debate, this study will identify a dominant normative principle concerning the 'nature and limits of English government' that while often presented in mythical and ahistorical terms greatly influenced the trajectory of education reform during the nineteenth century. Nineteenth century British and colonial political culture continued, therefore, to hold great faith in *laissez-faire*, a strongly individualistic culture of 'saxon self-reliance', natural rights, the social contract, the separation of powers and minimal government. In 1861, Matthew Arnold – poet laureate, educator, Chief Inspector of England’s Committee of the Council of Education and outspoken advocate of France’s highly centralized educational state – attributed the failure to reform an ineffective education system to this 'myth' of English law and government:

---

15 In Somers' words, “The English crown in the 12th century created the institutional outlines of a national public sphere by conjoining a revolutionary new territorial wide public law (common law) with the public (nonfeudal) local governing bodies of the realm. It did so by appropriating from below and extending throughout the land the political and legal conventions of the medieval cities and (to a lesser extent) those of the public villages.” This 'legal revolution' meant that “Remedies of procedural justice (civil citizenship) promising the public liberty of the rule of law coexisted with both substantive national regulatory and redistributive statutes (potential forms of social citizenship) as well as institutions which promised – or demanded – community participation (potential forms of political citizenship) in the administration of law.” M. Somers, “Rights, Relationality, and Membership: Rethinking the Making and Meaning of Citizenship”, *Law and Social Inquiry*, 1994, 73. This intermingling of national and local law and administration was typical, argues Sayer, of a relatively fluid social structure, and was further observable in the historical process of demographic change. Sayer notes that while London was, by 1700, the largest administrative capital in Europe, the rest of England was dominated by towns and parishes and contained no major provincial centres. In addition, and as emphasised by Laslett, the landed nobility and urban merchant classes maintained close commercial ties and commonly intermarried, practices which contrasted with the more feudal and hierarchical social formations evident in continental states such as Holland or Italy. see D. Sayer, “A Notable Administration: English State Formation and the Rise of Capitalism” *American Journal of Sociology* 97:5 March 1992, 1384. P. Laslett, *The World We Have Lost* (London: Methuen, 1971), 49; see also G. E. Aylmer, ‘The Peculiarities of the English State’. *Journal of Historical Sociology*, 1990, 3:2, 91–108. Michael Braddick gives a good account of the interdependency between local and central administration in English state building. M. Braddick, “State Formation and social change in early modern England: a problem stated and approaches suggested” *Social History* 16:1 January 1991. A more in-depth discussion of the issues surrounding the localised English state can be found later in the chapter.
With many Englishmen, perhaps with the majority, it is a maxim that the State, the executive power, ought to be entrusted with no more means of action than those which it is impossible to withhold from it; that it neither would nor could make a safe use of any more extended liberty; would not because it has in itself a natural instinct of despotism, which, if not jealously checked, would become outrageous; could not, because it is, in truth, not at all more enlightened, or fit to assume a lead, than the mass of this enlightened community. According to the long-cherished convictions of a great many, it is for the public interest that Government should be confined, as far as possible, to the bare and indispensable functions of a police officer and revenue collector."\(^\text{16}\)

Arnold believed that such ‘long-cherished conviction’ made English education far inferior to that produced by centralized school systems on the Continent. While the English Constitution had protected the liberty of individuals it had done little to educate them. In this vein, Walter Bagehot, arguably the most influential English constitutional theorist of the nineteenth century, linked a ‘minimalist’ approach to social legislation to the fact that “We have in a great political community like England crowds of people scarcely more civilised than the majority of two thousand years ago...The lower orders, the middle orders, are still...narrow-minded, unintelligent, inquiring.”\(^\text{17}\) The problem of illiteracy reflected the fact that “The old notion that the government is an extrinsic agency still rules our imagination’s.” British faith in uncoordinated and localised systems of public administration had, according to Bagehot, been consolidated during the English Revolution: “In the struggle with the Crown these local centres served as props and fulcrums. In the early Parliaments it was the local bodies who sent members to Parliaments...Afterwards in the civil war, many of the corporations, like that of London, were important bases of resistance...the Corporation of London was for centuries a bulwark of English liberty.” Insisting that modern government should have a “single-determining energy”, Bagehot lamented this fragmented and localized network of governing authority, or in his words, the “innumerable anomalies of our polity.” The fact “that our constitution is full of curious oddities, which are impeding and mischievous, and ought to be struck out” animated Bagehot to make his classic statement about the need to codify English law via statute – thereby limiting the desultory application of judge-made common law – and ensure that administration of this law is carried out by a strong and bureaucratised system of government as facilitated by the fusion of executive and legislative authority in the cabinet.\(^\text{18}\)

\(^{16}\) M. Arnold, Popular Education in France (London: Longman. 1861).


view that the English state was caste in the revolutionary victory of the common law over executive
government. As will be outlined below, this challenge formed part of the emerging jurisprudential
convention of legal positivism which shifted the basis of English law and government from the
'logics' of absolute and natural right to that of augmentation and reform.

Interestingly, Bagehot and his reformist kin hoped that this idea of positive law – as opposed to the
concept of negative power inspired by the Lockean social contract and the separation of powers
doctrine – might be more easily adopted in the colonies. Relatively free from old world
constitutional dogmas founded on the local property rights of the hereditary aristocracy, the
incipient colonial polity might be ripe to advance a more modern and centralized system of
parliamentary government. Bagehot's position is well surmised by Mark Francis:

The colonies were new countries in which one could admire the parliamentary system, and
the absolute sovereignty which it entailed, without this hereditary blemish, and without
recourse to archaic doctrines such as the division of power between an executive and
legislature. In essence, Bagehot's constitutional doctrine was a tribute to bureaucratic
absolutism. An examination of the settler colonies had freed him from the dated
parliamentary machinery of checks and balances. In its place, he substituted the majesty of
the intelligent, impartial, appointed official. 19

To come back to our earlier quandary regarding the resilience of local control over education, it can
now be argued that this 'problematic' was fundamentally tied to the English constitutional
tradition. Bagehot's strictures about the need to condense the 'innumerable anomalies' of the
British polity into a cohesive system of cabinet government was characteristic of a re-invention of
liberal theories of law and government which would subordinate localised systems of public
governance to the vastly centralized and bureaucratised state apparatus which soon controlled
Australian schools. It will be argued that this project, while subject to much conflict and
opposition, had particular success in the southern colonies. Furthermore, this absolutist conception
of parliamentary sovereignty, which blatantly argued that liberty could be sacrificed for the idea of
public utility and 'universal interests', addresses the ongoing question of how *laissez-faire* and
statism are reconciled within liberal political theory, and indeed, how 'colonial socialism' emerged
as the primary logic of Australian state building during the late nineteenth century.

19 M. Francis, *Governors and Settlers: Images of Authority in the British Colonies 1820–60* (London:
While Foucauldian theorists argue that polymorphous, self-regulating mechanisms of bio-political governance emerged out of a liberal view of minimal government, this study argues that the latter belonged to a constitutional tradition which retarded the move to ‘individualizing techniques’ of government, and that the success of the latter project ultimately depended on the absolute sovereignty of a codified and bureaucratised system of parliamentary rule. Foucault emphasised his own position when he inquired how, “In a system anxious to have the respect of legal subjects and to ensure the free enterprise of individuals...can the ‘population’ phenomenon, with its specific effects and problems, be taken into account? On behalf of what, and according to what rules, can it be managed?” This tension has been resolved by Foucauldians via the counter-balancing logics of ‘bio-economic’, ‘bio-sociological’ and ‘bio-political norms’ held within liberal rationalities of government. Thus, for Dean

If it is always necessary to suspect that one is governing too much, this is because the imperatives of bio-political norms that lead to the creation of a coordinated and centralized administration of life need to be weighed against the norms of economic processes and the norms derived from the democratization of sovereign subject of right.

This study will make an important departure from this line of reasoning by arguing that neither minimum government nor the ‘sovereign subject of right’ were ‘contained’ within the logics of the governmentalized state. Historically, minimum government was tied to what will be referred to as a contractarian constitutional model which sought to maintain private property, private rights and the sovereignty of the rule of law by separating power and judiciously defining the limits of political action. As alluded to by Arnold, Bagehot and Shuttleworth, the latter constitutional tradition proved to be the enduring impediment to the success of bio-political power since it believed governmental regulation to be an excrescence of ‘state interference’ in the civil realm. Jeremy Bentham, the intellectual lodestar of the disciplinary revolution, well understood this fact. He did not simply accommodate this conflict but sought to de-construct the constitutional and jurisprudential foundation upon which it rested. In this way, Afleck notes “the authoritarian implications of the Benthamist definition of liberty”, describing how “Bentham’s place as a political philosopher was not primarily in the development of the theory of utility. rather his intent can be viewed as originating from more methodological concerns [and] his complete rejection of the existing English

20 Dean, Governmentality: power and rule in modern society, 84.
21 Dean, Governmentality: power and rule in modern society, 87.
Bentham's sovereign legislature, which accorded supreme authority to representative and 'responsible' ministers who were to bring disciplinary knowledge to the forefront of public policy making, had also to legislate away the 'primeval fictions' of the common law. This law was indeed founded on the 'sovereign subject of right'. and in his Anarchical Fallacies, Bentham asserted that normative ideas about natural rights should not interfere with rational and scientific legislation. Thus, rights should be viewed as a "simple nonsense: natural and imprescriptible rights, rhetorical nonsense, - nonsense upon stilts".

The authority of Bentham's legal and political system conveyed itself, not as Foucault would argue, in terms of coercive power, but as a moral science. Drawing from the radical political economist and social theorist, Cesare Beccaria, Bentham appropriated the idea of 'certain punishment' as a moral technology, not only because it opened the possibility to 'reform' the criminal within the 'observational' space of a penitentiary, but because it would help reinvent the operation of public law. Derived from a rational criminal code, punishment would be held within the sphere of scientific legislation rather than the 'arbitram' of judge made law. Thus, in conjunction with another pioneer of technologies of moral regulation, Edwin Chadwick, Bentham wrote the Constitutional Code in an attempt to reconstruct English law and government, and thus ensure that a science of legislation aimed at the 'optimization' of the life-conduct of population remained the pre- eminent logic of social governance. This heavily codified constitutional and legal framework was designed to ensure that government for the 'universal interest' could not be sacrificed for the 'particular' and short-sighted interests of monarchy and hereditary aristocracy. In this way, political absolutism was a means to nurture economic agency and individual freedom. Rosenblum agrees that Bentham's attempt to contrive a 'social psychology for legislators' relied on an absolutist theory of law and sovereignty:

---

25J. Bentham, Constitutional Code: for the use of All Nations and All Governments Professing Liberal Opinions Vol. I (London: Westminster Review, 1830). But Bentham is not the only significant actor in this story, and it will shown how this project came, by the latter nineteenth century, to permeate the liberal idea of parliamentary government.
Although Bentham clearly opposed the personal character of monarchical absolutism, he was an advocate of absolutism. He rejected any limits to the matters or measures that might come within the rulers' exercise of power, and he recommended the consolidation and centralization of power. For Bentham a new ethical basis provided absolutism with its purpose: a new rationality — utility — stripped of its caprice.

Thus, while Bentham maintained that “until social psychology was understood and adopted by legislators, techniques for arriving at this new public rationality remained primitive”, he also realised that “until the institutions of government were modernized, utility could not be given expression in law.”

In working toward a model of educational state development formed around the constitutional processes underpinning political modernization in the liberal state, it will be necessary to provide detailed analysis of state formation theory and history in and outside Australia. In the colonial context, this discussion will be doubly important since the historiography is dominated by socio-economic themes — an underdeveloped economy, geographic isolation, sectional conflict between the landed gentry and an urban middle class/working class alliance which inspired an egalitarian political culture and a legitimately interventionist representative state — which gives little away about the ambient constitutional, jurisprudential and intellectual discourses underpinning state building. Such omissions are further evident in more general histories and theories of the liberal state. While neo-marxist and post-structuralist theories of the state have recently attempted to ‘bring the state back in’ in the wake of a structure-functionalist narrative which reduced state authority to ruling class power, it will be shown that these efforts continue to rely on social, cultural or ‘disciplinary’ determinants which fail to appreciate the constitutional conditions under which the liberal state exhibits power — both in terms of its overt political authority and its ability to contrive, at a distance, through mundane procedures and practices, a complex ‘technology’ of power.

To summarize, this chapter will embark on four primary strands of analysis:

---

1. The initial goal of this chapter will be to contemplate existing analysis of _state formation in colonial Australia_, and more especially, accounts of the establishment of responsible self-government in the mid-nineteenth century. It will be argued that a grand narrative of ‘utility, pragmatism, and circumstance’ has dominated these accounts. Consequently, the peculiarly interventionist/ _laissez-faire_ state which emerged in the late nineteenth century – as evidenced by the creation of centralized departments of state education, the establishment of a public hospital system, a coordinated welfare state and so on – has typically been portrayed as a by-product of an avowedly pragmatic, practical and ‘acquisitive’ political culture whose dependency on the state was forged in the context of economic hardship and geographic isolation.

2. This tendency to describe state power as a secondary effect of social and economic structure is not particular to Australia and reflects more _general theories of the modern state_. In this way, accounts of early modern state building are primarily concerned with the shift from ‘feudalism to capitalism’, and thus describe the origins of a liberal state designed to protect individual and economic interests. Moreover, the effort to ‘bring the state back in’ through analysis of endogenous state power, whether in the guise of neo-marxist theories of ‘relative’ state autonomy, or historical sociological analysis of moral regulation and ‘state formation as cultural revolution’, continue to rely on variables such as class, culture or disciplinary power which, it is argued, do not address the constitutional shift underpinning the process of political modernization in the liberal state.

3. In response, this study will create a relational theoretical model that tries to understand how economy, political culture and disciplinary practices have been mediated by the constitutional and jurisprudential mechanisms underlying modern state building. While governmentality is an important insight into the dynamics of modern educational governance, the question remains about how the state has, even under a decentralized and bio-political administrative framework, maintained its pre- eminent position as a kind of ‘invisible hand’ guiding curriculum, teacher training and the ‘marketised’ logics of neo-liberal governance. It will be argued that the origins of this enduring interdependency between education and the state can be appreciated through a narrative of the historical interplay between _legal positivism, governmentality and educational state formation_. This attempt to explain how arbitrary, localised and juridical systems of social administration were substituted for a codified, centralized and legislative logic of liberal government is hinged on an absolutist concept of state sovereignty which contradicts Foucault’s tendency to eschew the totalising logics of political sovereignty. However, it will be argued that such an approach is consistent with the Foucauldian schema since absolutism was a means to
ensure, via a cabinet system of public policy formation supervised by accountable, professional and expert public bureaus, that bio-political governance could be harnessed without the constraints of faction, sedition, self-interest, patronage, corruption, archaic judicial precedent and so on. This is not to revert to the notion of 'social control', but to argue that a 'micro-physics' of state power is not only acted out via discursive practices but through a constitutional architecture, and concept of sovereignty, that has facilitated an indivisible relationship between the individual and the state – both in theory, and in practice.

4. Finally, the chapter will focus on the historical polemic concerning the limits of the English state and the problematization of liberal government which, it is argued, precipitated a positive relationship between civil society and political government. A debate that stretched throughout the Empire, it had a significant influence on the move to educational centralization in both Britain and the colonies, particularly the issue of compulsory attendance and the later push to establish ministerial departments of education. The historical dispute concerning the 'right of the state' to interfere in the 'liberty of the subject' was the dialectic that provided the normative underpinning for a shift from a 'peculiarly' localized and inefficient English state to an avowedly centralized and bureaucratised model of government. While political and administrative historians such as Halévy, Parris and MacDonough have addressed the debates surrounding this 'administrative revolution', Foucauldians have, for reasons discussed above, relied on a more schematic and ahistorical 'genealogy of liberalism'. For our purposes, a relatively full treatment of this 'problematization' is fundamental to understanding the historical emergence of governmentality in the Anglo-liberal state.

In essence, then, this chapter will forge a model of the historical evolution of centralized educational governance which appropriates a number of themes from diverse and somewhat contradictory aspects of state theory, constitutional history and the 'genealogy' of governmentality. This cross-disciplinary research agenda is, I believe, a necessary adjunct to existing accounts of the 'origins of mass schooling'. As illustrated in the previous chapter, the latter have too often relied on social, economic and cultural themes which, while important, have not yet grappled with the endogenous, constitutional mechanics that underlie the governmental framework within which the modern school has emerged. In this way, the ultimate goal of this thesis is to provide an historically informed analytical framework through which contemporary dilemmas regarding an overly centralized policy process – a problem that remains endemic in devolutionary and neo-liberal reforms – might be better understood.
2. State formation in colonial Australia

‘The individual and the state’

One of the pressing contradictions in Australian civil and political life has been the juxtaposition of a pervasive state apparatus with a strong culture of free-market individualism. This duality has been a common theme in Australian history. W.K Hancock, for instance, contrasted Australia’s reputation for “personal independence and individual initiative” with an “excessive dependence upon the State.” When attempting to seek “some explanation of these contradictory reputations”, Hancock described a new country whose soil, climate and geographic reach had “thwarted individualism” and forced Australians to live in “association.” The inhospitable and fractured pattern of white settlement to Australia demanded that the colonists find guidance, not via the ‘invisible hand’, but central government, trade unions and the “gospel of mateship.” Thus, for Hancock, the Australian state has been the perennial symbol of “collective power at the service of individualistic rights”, and accordingly, the Australian people have long appealed to “government as the instrument of self-realization.”

While Australia’s history of ‘colonial statism’ was in part a legacy of penal rule and the military autocracy initially controlling all spheres of government and administration, the onset of democratisation, self-government and colonial liberalism in the mid-nineteenth century served to stratify the interdependence between the individual and the state. This was in distinct contrast to British practice which tended to minimize the degree of state intervention in the civil realm. British constitutionalism had long sanctified the ‘liberties of Englishmen’ through constitutional conventions such as the separation of powers, which, in addition to the decentralized routines of common law administration and ‘local self-government’, were designed to check any concentration of state power. In contradistinction, the Australian colonists soon discarded much of this convention, looking to the state as a means to secure the democratic rights of the individual, be it through state assisted social-welfare, public hospitals, minimum wage regulations, government funded capital works and free, compulsory and secular state education.

In 1868 the Westminster Review, the then vanguard of the English liberal tradition, published an extended account of the growth of central government in the Australian colonies. It described the “disposition, growing rapidly stronger every year, to lean upon the government for help in every affair of life. The government...is charged with duties which even a paternal despotism in the old

27W. K. Hancock Australia (Brisbane, 1961). 52, 168, 57.
countries would avoid. It is invoked as a kind of particular Providence, to regulate not only the political but the social and moral business of the citizens.” Australian governments were expected to “make roads and bridges, to find out new gold-fields, to build mechanics’ institutes, to subsidize friendly societies, to lay out botanic gardens...to repress unpopular industries, and to develop popular ones, to control the price of labour, to regulate the profits of capital, to make a provision for youth, to fix the hours of work.” For the Review, the increasing ambit of the central state was a function of the ascendancy of legislative power in the colonies. It complained that “the majority are steadily engaged in concentrating all power in the hands of the Assembly, which is their creature and slave”; and that the expanding jurisdiction of ministerial departments over local organisation was akin to a “suppression of individualism.” This, continued the Review, was endemic in a political economy which had forfeited “liberty” by attempting to achieve an “impossible equality” through the regulation of education, public health, master-servant relationships etc. Here, use of the term liberty implied a ‘negative freedom’ whereby the state was merely the guarantor of personal and property rights. While government had a duty to uphold the free play of the market it should not regulate or interfere with individual enterprise in order to achieve social equality, economic improvement or moral probity.

How then have scholars explained the contradiction between Australia’s liberal political heritage and its highly developed state apparatus? How did the colonial legislature, to again paraphrase the Westminster Review, come “to exercise nearly all the functions, not only of the Legislature, but of the Executive, and even of the judicature.”? This, according to the Review, typified the “Antipodean law of contrariety” in which the “Conservatives are Free-Traders” and the “Radicals are Protectionists.” For a good number of Australian historians, such ‘contrariety’ was typical of a utilitarian and pragmatic political culture whose individualistic and egalitarian spirit was tempered by the exigencies of a scattered population and a rapidly expanding resource economy. Hancock’s Australia provided the classic and still influential account of the historical nexus between economy, geography and state formation. He described the “predicament of the pioneers” who were “separated from each other by unheard-of distances, which, somehow or other must be bridged; they are strangers to each other, and they have broken familiar association...yet each is so isolated from his fellows and so engrossed in his struggles that effective local co-operation is impossible.” Premising that “Collective action is indispensable if an obstinate environment is to be mastered”.

Hancock asked how this “scattered and shifting aggregate of uprooted units [can] act collectively except through the State? They look to the Government to help them because they have nowhere else to look.”

Hancock was influenced by his contemporary, F.W. Eggleston, a past member of the Victorian Parliament who drew on his political experiences to chronicle “possibly the largest and most comprehensive use of state power outside Russia.” Eggleston observed that the “the strain and complexity of economic and social problems have appeared too much for the conventional handling methods of the individual, and the State has appeared to be the only authority big enough and powerful enough to deal with them.” Such faith in central administration was the historical outgrowth of the demand for regulation on the gold fields, the exigencies of colonial land policy and the “call for economic action” by government in a settler society. Eggleston made the point that the “direct influence of the convict system on the position of the State in Australian politics is not large”, particularly since the Victorian and South Australian colonies, both conspicuous progenitors of state socialism, were established as free settlements. A supporter of laissez-faire government who by 1930 did not believe that true ‘responsibility’ could be successfully transferred from the individual to the state, Eggleston argued that Australians had developed “the illusion that the State can be on a higher level of efficiency and principle than individuals.”

Thus Australian democracy has called in the aid of the State whenever there was a demand for any advanced policy; the responsibility for the equipment and development of the state was placed on the State: one by one most of the activities upon which development depended, and most of the great common services, came to be administered by Government departments or corporate agencies working under political authority.

---

30Hancock, *Australia*, 52–54.
31F.W. Eggleston, *State Socialism in Australia* (Sydney: 1932); in B. Galligan, “The State in Australian Political Thought” *Politics* 19:2 November 1984, 89. While, as Galligan notes, Eggleston’s “work was ideologically motivated by a strong commitment to extreme laissez-faire economics”, he nonetheless illustrated the centralizing momentum of early Australian state formation.
While Eggleston described the complete surrender of individualism to the state, Hancock was more sanguine about the delivery of individual right through a centralized political framework. For Hancock, the origins of the Australian state were individualistic, deriving from the levelling tendencies of migrations which have destroyed old ranks and relationships and scattered over wide lands a confused aggregate of individuals bound together by nothing save their power of collectivity. Each of these individuals is a citizen, a fragment of the sovereign people; each of them is a subject who claims his right — the right to work, the right to fair play and reasonable conditions of living, the right to be happy — from the State and through the State.35

Although Hancock and Eggleston diverged on the nature of state socialism, their analysis of the colonial state remains indicative of the explanatory scope of Australian state history. Accounts of the origins and development of Australian government tend to premise the causal primacy of ‘civil society’, or of social and economic descriptions of political development, and have shied away from supporting these conclusions with a coherent theory of the Australian state, or indeed, the constitutional or intellectual discourses which were integral to state building in the nineteenth century. This has been true of both liberal and Marxist scholarship. In the latter instance, the state is reduced to the forces of capital and the ruling elites who drive the economy, bureaucracy and parliament; and in the former case, as evidenced in Michael Roe’s grand narrative of “moral enlightenment”. a hybrid colonial liberalism, encapsulated in the victory of the urban bourgeoisie over the rural gentry, which set Australian politics free from “conservative power” and on course to realise its progressive and egalitarian destiny.36

Economy, class and state building

Following Hancock and Eggleston, historians have continued to explain Australia’s history of interventionist government in terms of the need to harness economic development in a new, underdeveloped and geographically dispersed society. The influence of Australia’s peculiar

35Hancock, Australia, 57-9.
economic genesis on the tenure of state development was given particular emphasis by Noel Butlin when he contended that “economic changes [have] conditioned political, social and cultural changes” in Australia, and therefore, that “economic history is the major part of all Australian history.” This reasoning had been evident in Manning Clark’s account of the struggle for democracy and colonial self-government in the 1850s, with Clark imploring that this “livelier and more fruitful experiment in political democracy went hand in hand with a rapid expansion of economic activity.” His argument followed that dual improvements in overseas communications and agricultural technology, factors which significantly expanded Australia’s primary export potential, encouraged the adoption of majority, parliamentary rule since the latter would shore up popular support for the social and technical changes required for an upsurge in economic activity. In this vein, John Ward argued that “economic objectives” inspired the colonists to demand self-government during the 1840s and 1850s. Thus, the “Merchants, professional men, skilled tradesman (and some small farmers)... united in a common [political] cause” which was aimed at strengthening the domestic economic market and lessening dependence on fluctuating export trade.

Having inspired the move to self-government, the demands of an incipient colonial economy prompted what Sol Encel called the “bureaucratic ascendency” of a state which has continued to act as “the administrative agency of the masses.” The limited availability of private capital needed to exploit Australia’s significant natural resource base, combined with a lack of natural comparative advantage, meant that “government enterprise, intervention, regulation and protection have for more than a century been the dominant factors in the growth of industry.” In a later study, Encel again emphasised that “In a relatively small, isolated community, the industrial economy has remained dependent on its overseas sources, on the state of the export market for primary products. and above all on government encouragement for this implanted structure.” The link between state building and economic isolation was later synthesised in Francis Castles’ account of the historic interdependency between “economic vulnerability” and demands for a highly protectionist

---

“domestic defence” policy profile which has seen government continue to offer “social protection” through intervention in industry, social welfare, unemployment and education.42

The motivating power of economic circumstance in these accounts fitted neatly with Marxist theories of the state that came to dominate political science in the 1970s. Following theories of the ‘capitalist state’ developed by Louis Althusser and Ralph Miliband, the story of the demand for state intervention wrought by an inchoate colonial economy was coupled with analysis of an emerging ruling capitalist class who were able to consolidate their influence within the state superstructure. The correlation between state building and class formation helped explain the interconnectivity between the state and capital expansion, and became the masterstroke through which the left could explain how capitalism had in fact underpinned Australia’s experiment in state socialism. Butlin and Encel accordingly amended their analysis, emphasising how the central state served to consolidate the power of the entrepreneurial, urban middle classes who unseated the land­owning gentry following the move to self-government and democratisation.43 Connell and Irving’s seminal Class Structure in Australian Society gave the clearest account of the link between “the autonomy of the state” which “emerged in the 1850s and grew rapidly in the 1870s in the form of a massive program of public capital formation”, and the consolidation of a ruling capitalist class which, unlike in Britain, alone lacked the necessary infrastructure to stimulate economic investment and growth.44

Ultimately, however, much of the Marxist wave tended to ignore the state, focusing instead on processes of class formation, ideology and hegemony. Terry Irving and Baiba Berzin argued that the populist and radical tenure of Australian political development was a hegemonic myth created by the urban middle classes during their battle for political ascendancy with the squatocracy. By co-opting radical, working class sentiment, urban liberals were able to subordinate pastoralist and squatter power and establish, in the words of Connell and Irving, the “Hegemony of the Mercantile Bourgeoisie.”45 More contemporary studies by the left, such as Alastair Davidson’s account of the development of Australia’s Invisible State, have similarly focused on the ability of the middle classes to hegemonically secure “property and personal rights” and thus fortify the liberal

45Connell & Irving, Class Structure in Australian History. 123.
community as “individuals and citizens” within a unified bourgeois state. Drawing on the symbolic myth of Australia’s radical and egalitarian political heritage, the ruling urban bourgeois elite have been able to hegemonically reproduce social consensus, and by inference, justify the highly interventionist role of the political state. State power, while reflective of the economic power of the dominant class, is thus a product of cultural and ideological hegemony imposed on the working and labouring classes via mass institutions of social control such as schools and the media.

More recent accounts of the history of state-economy relations in Australia have been less willing to explain high statism in terms of collusion between the state and capital, searching for more subtle analysis of the history of political economy and global economic relations. However most agree that Australia’s ‘hypostatist’ political culture derives from various exogenous economic forces – comparative ‘disadvantage’, a fragile, commodities based economy – which forced the state to become the “main steering agent in Australia’s political economy.” Bell and Head describe how “the problems of infrastructure provision in a vast and sparsely settled continent saw colonial governments, not private enterprise, play a leading role in economic development.” Stuart Macintyre similarly explains the massive growth in Australia’s gross domestic product during the mid to late 1800s in terms of ‘pragmatic’ government interventionism, arguing that the “state was doing what private capital could not or would not do.”

But while government was forced to “accelerate the flow of foreign capital” essential for such an attenuation of national economic output, particularly through the establishment of transport infrastructure, water and sewerage and programs for labour immigration – indeed, such

46 A. Davidson, The Invisible State, 142. Davidson’s argument, which employs theories of disciplinary power to understand state formation in Australia, is given a more detailed treatment in chapter five where it is juxtaposed with our own arguments concerning the dynamics of political development in the colonies.


49 Bell and Head, State, Economy and Public Policy in Australia, 7.

infrastructural development was the envy of other more ostensibly advanced capitalist economies – economic underdevelopment remains only part of the story. The hybrid interventionist/laissez-faire state political economy adopted in Australia would not have been possible in the context of a 'localised' governmental tradition which, while successfully retarding such interventionism in England, had also been a significant bulwark against state action in the colonies. Faith in state interference, while a product of economic circumstance or the close alliance between the state and the working classes, further required a fundamental shift in the constitutional foundations of liberal state building. But for various epistemological reasons, as outlined below, the fit between state history and political or constitutional theory continues to be downplayed by the historiography.

The Fragment thesis

While the historiography is strong on the link between local economic exigencies and the emergence of state centralization, historians have also reflected on the way imported aspects of British and European political culture have influenced state building in Australia. This idea was initially inspired in the 1950s and 60s by the wave of 'political culture' studies influencing American political science. Of particular note was Louis Hartz's thesis concerning the way 'fragments' of social and political traditions imported from Europe influenced 'new' or colonial societies. In Australia, English radicalism, with its faith in an interventionist, social-welfare state, had been employed by the working classes in their struggle for democracy and workers rights, and

---

51 This acceptance of an interventionist role for government was continued Macintyre, extended to "doughty defender[s] of laissez-faire" such as William Hearn, the Professor of Political Economy at Melbourne University, who acknowledged, in Hearn's own words, that "the interference of the government, if judiciously applied, may accelerate and assist the ordinary processes of natural development." From this, Macintyre surmised that "Most colonial politicians of the second half of the nineteenth century proclaimed their allegiance to the economic doctrines of Smith, Cobden and Mill, but were constantly limiting or modifying the operation of the market." He does not however explain the constitutional rationality underpinning this contradiction. It will shown, therefore, that Hearn was a legal positivist who displayed great faith in codification and legislative government. W.E. Hearn, Plutology, (Melbourne: 1863); quoted in D. W. Goodwin, Economic Inquiry in Australia (Durham, N.C.: Duke University Press, 1966), 289; in Macintyre, Winners & Losers, 24.

52 In the American context. Daniel Rodgers questioned the causal implications of the fragment thesis: "[It was] as if the revolutionary mind had come across the Atlantic in one or another late eighteenth century sailing vessel, packed as tract and pamphlet, to be grafted onto a headless social body." D. T. Rodgers, "Republicanism: the Career of a Concept" The Journal of American History, June 1992, 18.
therefore provided the impetus for colonial socialism. Rosecrance thus argued that the solidarity of the labouring poor and emancipist classes who made up a bulk of the ‘foundational population’, and who successfully opposed squatter monopoly of the land and struggled for ‘rights’ on the goldfields, allowed the principles of British working class radicalism to define state policy, therefore provoking Australia’s uniquely statist experiment in political liberalism:

The cultural fragment of British society implanted in Australian soil in the first half of the nineteenth century has retained a remarkable distinctness and fixity...Australian society today has umbilical connections with the egalitarianism of the gold camps, the struggles of exclusives and emancipists, and even the sullen resentments of the early convict settlements. More than other frontier countries, perhaps, Australia was isolated from the main streams of European culture; in consequence, it was destined to find its political and social tendencies immanent in the foundational population.

The lack of social division, as illustrated by the early demise of the squattocracy, combined with the ascendancy of a working class who opposed free-market governance – particularly after experiencing the unemployment, poor pay and working conditions associated with capitalist enterprise in Britain – divested Australian state building of the constraints of economic liberalism. From this emerged “one of the most remarkable paradoxes in industrial countries...a type of ‘socialist laissez-faire’.” As a new society ‘born modern’, Australia did not, continued Rosecrance, “identify liberalism with straitly limited government.” Australian capitalists were themselves the product of the radical myth, allowing capital and labor to combine to effect tariff protection, arbitration and minimum wage legislation. Indeed, urban capital would not have been able to triumph over the tenacious pastoralist lobby if it had not formed an alliance with labour interests. Reverting to Hancock, Rosecrance argued that the “founders of Australia already believed

---

53Hugh Collins summed up the influence of the fragment thesis on Australian state history, arguing that “Hartz’s description of Australia [as] a ‘radical’ fragment in which radical democracy overthrows an early Whiggery and proceeds to define the national spirit in a mild triumphant socialism” provides the “explanatory dynamics” for the metamorphoses of an avowedly centrist and utilitarian political culture in Australia. H. Collins, “Political Ideology in Australia: The Distinctiveness of a Benthamite Society” Daedalas, 1985, 151.

54R. Rosecrance, “The Radical Culture of Australia”, 275-76.

55Rosecrance makes the point that the “panoply of government intervention” has remained “tenuous”, noting that interventionism has tended to be “politically impartial, administrative, or even judicial”, and that governments have been unable “to excercise political control of quasi-judicial bodies and independent comissions.” Rosecrance, “The Radical Culture of Australia”, 312.
that individual rights could only be defended by political action: the state had to act in support of private rights; those rights could not be sustained by individuals alone." Contrary to the traditional enlightenment version of liberalism, it was not government but the "graziers and unregulated capitalists who were the greatest threats to individualism."\(^{56}\)

While Rosecrance did much to popularise the fragment thesis, he tended to make grandiose claims about an alliance between the working and urban/merchant classes which, unlike in Britain, facilitated greater faith in a populist state acting for the 'general good'. Subsequent historians, while appropriating the Hartzian typology, have offered a more subtle interpretation. John Hirst, for instance, criticised the Hartzians for presenting a typical "old Whig view of Australia's history which posits a weak middle class, and a large, confident working class," presuming that "Australian democracy was 'dedicated much less to the capitalist dream than to mateship'.” Shifting the focus from working class radicalism, Hirst proposed that Australian statism, particularly in terms of the early welfare state, was a legacy of the failure to transplant England's independent, localised and church based system of poor relief and social-welfare to the colonies.\(^{57}\) This happened for several reasons. First, the colonists became mindful of the increase in the poor rates at home which left "industry and enterprise crippled to pay them." Second, those "who might need assistance were equally unwilling to be subjected to the meanness and cruelty of the new-style workhouses." Consequently, it was through "the absence of a poor law [that] the unemployed in Australia were able to demand with a good deal of success that governments provide work for them." Moreover, once colonial governments became enamoured in resource development during the second half of the nineteenth century, the state was given even "greater opportunities to adjust their works program to provide relief for the unemployed."\(^{58}\)

This sense of government working for the 'greater interest' was, for Hirst, prominent in the early development of free compulsory schooling. Using the example of the 1872 Victorian Education Act, which was the first state legislation to enforce compulsory and secular schooling, Hirst showed that by 1882 public schools commanded 82% of all school enrolments in Victoria. This can again be explained as a peculiar 'fragment' of the more sectional institutional structure in England. The development of mechanics institutes and friendly societies, which in Britain were aimed at the

---

\(^{56}\)Rosecrance, “The Radical Culture of Australia”, 304–311.


\(^{58}\)Hirst, “Keeping Colonial History Colonial”, 92.
lower classes and were controlled by church and philanthropic groups, were in Australia attended by a broad cross-section of the population, and therefore became government rather than privately administered institutions. Hirst attributes this divergence to a “new society” which lacked the “same configuration” of “social groups” through which the mechanics institutes “originated and by which they were originally defined.” The colonists could gain “the best sanction of all for their activities...by identifying them as British”, however, they had to adapt them to local circumstance, particularly a scattered migrant population.59

Utility, expediency and circumstance

Hirst reinterprets many of standard social and economic themes – the geographic diversity of the population, the egalitarian ethos of a ‘new society’, the absence of a strong system of local government – which historians have used to explain the contradictory currents of Australian political development. The common thread in these accounts is describe a ‘utilitarian’ and practical political culture which adopted centralized modes of state governance in the face of its peculiar social, geographic and economic circumstance. This was typical of a generation of historians and political scientists including Davies. Encel. Hughes and Emy who, drawing again on the work of Hancock, explained Australia’s overarching state in terms of an “overwhelmingly pragmatic political style.”60 Indeed, the utilitarian label was initially employed by contemporary observers of ‘colonial socialism’ such the English Fabian, Beatrice Webb, who described the NSW Premier, George Reid, as a typical Australian politician whose “desires are material, and all his intentions practical and utilitarian.” Meanwhile, John Clifford was another British scholar to comment on the fact that “Australia had adopted the ‘greatest happiness’ principle and, because of this, universal education had been made a state priority and social problems like inebriation were approached scientifically, with a view that the state (unlike in Britain) should be the ‘protector of the feeble, a shield for the tempted, and a builder of disciplined and serviceable manhood’.”61 Whereas, as noted

59Hirst also links his cut on the fragment thesis to the rise of labor movement, which, having been galvanised by the establishment of the Labor Party in the 1890s, was “undoubtedly a borrowed institution.” Thus, while the founding of the Australian Labor Party “immediately secured much more than had been secured in Britain”, the movement still “had the encouragement and sanction of British practice.” Hirst, “Keeping Colonial History Colonial”. 101-103.


61 Webb cited in A. F. Davies, Essays in Political Sociology (Melbourne: Chesire, 1972), 28; in J. Walter,
by Rowse, earlier writers had trumpeted the ethical and altruistic hue of Australian political and indeed, educational development, self-interest and public utility became the explanatory tool of a generation of historians who sought to understand how this progeny of the liberal, free-market tradition contrived a political framework which, by the turn of the 20th century, was described as state socialism. 62

In a searching Marxist critique of this dominant tradition, Rowse rejected the idea that Australia's national political character was formed out of "an instrumentalist, pragmatic and utilitarian culture", arguing that this view presents "ahistorical...myths of our affluence and equality" since it assumes that the ruling state has "been able to feed, clothe and house most of the organized working class with a largesse envied in other capitalist nations, a largesse which underpins a politics of negotiation." In response, Rowse contended that this 'pragmatically' interventionist state should be viewed as "an achieved political effect, a practice of hegemony, subject to disruptive economic processes and the suspension of historical conditions that have hitherto been favourable." 63 By rescuing the left from a reversion to the analytically docile "politics of pragmatism", Rowse hoped to reinvigorate the historiography in two fundamental ways. Firstly, by questioning the notion that history is a product of the economic laws of human nature; and secondly, by proposing that the Australian state relies on institutional practices such as "the practice of voting, and the structuring role of arbitration in the trade union movement" which 'hegemonically' contains class conflict and perpetuates a dominant state structure that promotes capitalist economic and social relations. In a move away from structuralist and Althusserian notions of hegemony - the top-down inculcation of norms and ideas by socializing agencies such as schools, churches and interest groups that make up "ideological state apparatuses" - Rowse makes the point that hegemony is not an ideology imposed by a ruling elite on subordinate classes but is an "institutional complex created by the subordinate


Rowse, "Political Culture: A Concept and its Ideologues", 12–16. Rowse referred to a generation of 'consensus' historians who before World War I argued that the ethical/protectionist state was an outgrowth of the 'rational idealism' of Australia's egalitarian and classless political culture. These writers, in Rowes words, viewed "socialism without doctrines" as the triumph in state action of the practical altruism of Australians as a people." See, for example, Francis Anderson, Tendencies in Modern Education (Sydney: 1909); C. H. Northcott, Australian Social Development (New York: 1918).

Rowse, "Political Culture", 7.
class’s activities.” This is important since, by taking into account individual agency, it offers a less deterministic approach to a central question in Marxist social theory – by what normative principles do individuals conduct themselves within a capitalist social and political framework?

From here, Rowse takes up the neo-marxist project of infusing social theory with the subjective ‘conscience’ of the individual, and therefore, of showing how capitalist ‘state apparatuses’ rely on a recursive dynamic of conflict, opposition, and what some theorists have called a ‘subjectivization’ of state authority. This project builds into the ‘dull compulsion of economic relations’ posited in later revisionist studies by Hogan and Marginson. The class conflict that underpins the durability of capitalism is mediated through state institutions which Rowse, citing Raymond Williams, wants to understood both as a “technology and cultural form.” Consequently, any critique of mass state schooling must extend from the “ideas in the curriculum” to a “hidden curricula”, meaning the “material social practices in Australian pedagogy which train us into definite styles of social behaviour.” Rowse goes on to make the telling point that “another neglected aspect of hegemony in Australia is the federal structure of government.” While he says little more on the subject, Rowse exposed the dearth of analysis concerning the interdependence between class formation and the development of modern law and government in Australia: “Too often leftists ignore the heterogeneity of political conditions in Australia, and the stubborn and intractable legal structures in which class structures are articulated.” Furthermore, “Parliament and the electoral process are hegemonic because they create in an extremely practical fashion the ideology of the representation of individual interests in state action.”

While still guided by the Marxian premise that the “realities of capital accumulation condition State action”, Rowse made an uncommon attempt to understand the constitutional and legal structures that condition state power. However, such an interpretive framework continues to be held back by

---

64Marginson’s account of ‘markets in education’ gives currency to theories of counter-hegemony – taken variously from Foucault, and to a lesser extent Gramsci – by arguing that market relations rely on the struggle and agency of the free individual. In this sense, “the consumer is steered from a distance.” He takes his theme concerning the ‘silent compulsion of the market’, a term used by Marx in Capital, from David Hogan. Simon Marginson. Markets in Education (Sydney: Allen & Unwin, 1997), 16–24, 143.

65Rowse, “Political Culture “, 23.

66In this way, Rowse argues that “The activity of the voting as an individual citizen, of having an individual voice within the ‘supreme’ decision-making body of the land, helps to constitute people as individuals, rather than members of a class with a certain relationship to the means of production.” Indeed, the agency of the citizen-elector was, as will be discussed later, an important pre-condition for a system of parliamentary
the grand unifying theme of political pragmatism. Paul Finn, for example, typically argues that “Local exigencies, the rural economy, [and] pragmatism” were the factors which sparked “collectivist trends” in a polity founded on “individualism and capitalism.”67 Describing the “raw conditions of the colonies, the patterns of settlement and investment and the imperatives of development [which] impelled governments into activities without counterpart in Britain or which in that country were conducted by local government, private enterprise or private and charitable organisation”. Finn argued that it was through “practical necessity” that “Governmental activity, initially in capital formation, finally in social regulation, won the contemporary descriptions of ‘colonial’ or ‘state socialism’”.68 Macintyre similarly described the utilitarian character of state centralization, noting that while the colonists “subscribed to the liberal orthodoxy that the primary responsibility for his or her fate rested on the private citizen, partly in response to irresistible pressures and partly to reinforce the bonds of the society, they were already extending the ambit of government.”69

In an influential essay charting the evolution of ‘Benthamite’ political ideology in Australia, Hugh Collins attempted to synthesise the idea that Australian state building was premised on utilitarian pragmatism. While acknowledging that “the state that was delivered to Australia’s colonial democrats was inevitably a stronger, more intrusive, legitimately interventionist instrument than Victoria’s Britain”, Collins, working from the standard base of social and economic themes - the anti-transportation movement, the early alliance between the working and middle classes and so on - proposed that Australia’s distinctive process of political development gave rise to a Benthamite political ideology whose primary mechanism of rule was the central parliament. Describing Bentham’s own “schemes for representation, legislation, and administration” which found the “institutional means of securing that public good which maximizes public interest”, Collins argued that the process of democratisation in the colonies provided the conditions suitable for such a strong system of parliamentary rule.70 This idea was prominent in Macintyre’s description of the ascendant colonial liberals who “purged the doctrine of popular representation of its radical connotations” and

---

70Collins, “Political Ideology in Australia”. 151.
invoked “a doctrine of utilitarian individualism whereby the interests of voters were represented and mediated by their parliamentary representatives.” 71

Collins remains an apologist for the dominant tradition by fusing Hancock’s ‘realist’ description of the practical and pragmatic basis of high statism in Australia with the left’s concern about how such faith in the ‘common good’ has legitimized the claims of the ruling bourgeois elite. While both Collins and Macintyre acknowledge the faith in parliamentary representation that was a central tenant of Benthamism, neither relate this to a contrived institutional, governmental or constitutional framework, focusing instead on the ad hoc nature of Australian political culture. Thus, for Collins, the move to Federation in 1901 was a “practical adjustment to circumstance” in which a geographically discordant population could achieve a “limited range of cooperative action in matters like defence, trade, and immigration.” 72

But is it enough to argue that this system of government for the ‘general good’ was initially accepted by, or imposed upon, citizens/workers as the best means to end transportation, imperial rule and to fast-track economic growth in a geographically isolated region, as both Collins and Macintyre imply? Indeed, Collins has been criticised by ‘intellectual’ historians such as James Walter because his estimate of the influence of Benthamite ideology fails, like the dominant tradition, “to address the bearers of ideas”, causing “the ideology at issue [to be] largely abstracted from the social facts of economic structure.” 73 To reiterate our earlier point, class formation – described in this instance in terms of a superficially egalitarian, cross-class political culture – does not alone explain the constitutional debates which gave rise to the centralized and highly bureaucratised system of parliamentary government adopted in Australia. As evidenced by the historical resilience of the English constitutional tradition of local self-government, constitutional debate concerning the relative roles and responsibilities of the state and the citizen-individual, and

71 In this vein, Collins notes that Henry Parkes, a former member of the Birmingham Political Union and a prime mover in the consolidation of the suffrage and parliamentary reform in New South Wales, typified Bentham’s pragmatism by justifying “why suffrage should have been the key to reform, why the route to change should follow representation rather than revolution, [and] why the reformist middle classes and the disaffected lower orders should have been persuaded to join forces in pursuit of an interest considered common to both.” As such, principles of popular or individual sovereignty were transferred to their ‘representative’ ministers who were able to act decisively and pragmatically in the ‘public interest’ Collins. “Political Ideology in Australia”, 150–52
72 Collins, “Political Ideology in Australia”. 150–52
73 Walter, “Intellectuals and the Political Culture”. 240
therefore, of the institutional limits of state building, proved pivotal to the ascension of mass compulsory schooling in Australia, and therefore, need to be more clearly understood alongside accounts of political conflict or utilitarian pragmatism.

**Responsible government and the constitutional foundations of the Australian state**

As noted elsewhere, the explanatory power of utility and interest group conflict have dominated descriptions of the move to responsible self-government in the 1850s. Scholars have long debated whether the mid nineteenth century struggle for political democracy was a contrived attempt to establish the constitutional doctrine of ministerial responsibility; or whether it was a pragmatic means to secure local control of land and taxation. Not surprisingly, the latter position has prevailed. John Ward, for instance, maintained that both liberal and conservative reformers were less concerned about an “irresponsible executive” than their own control of the legislature: “responsible government was largely ignored by the public, passing almost without notice – a vague unknown system that liberals and radicals were prepared to ignore.” Colonial demands for constitutional parity with Canada, which had been granted responsible government in 1840, did not. therefore, mean “responsible government, but bicameralism and increased powers of self-government, including control of patronage and plenary powers of legislation in all colonial matters.” Ward described how in 1852, when John Pakington, after replacing John Russell as Secretary of State for the Colonies, asked the legislatures of NSW, Victoria, Tasmania, and South Australia to draft self-governing constitutions, none made any explicit reference to ministerial responsibility.

Townsley draws the same conclusion from Tasmanian events, arguing that the antagonists for constitutional reform were not “interested in the theoretical problems of politics as such.” The struggle for self-government was a cry for “no taxation without representation” and its proponents “were merely acting as the latter-day exponents of Whiggism.” Ward concurred that responsible government in Tasmania was an outgrowth of the anti-transportation movement: “So long as transportation had continued, its opponents had worked for an increase of self-government large

---

enough for Tasmania to abolish the system by colonial enactment.” It was the Colonial Secretary, the Duke of Newcastle, who actually granted self-government because “British policy had become one of establishing responsible government in colonies of settlement that seemed likely to demand it”, and as such, “the colonies did not in fact receive responsible government because they asked for it.”

Ward affirmed the conventional wisdom, established by A. C. V. Melbourne, which eschewed the influence of constitutional theory on the move to responsible government, and which argued that the colonists were “far more interested in obtaining self-government in local matters than in establishing ministerial responsibility.” In his landmark text on Early Constitutional Development, Melbourne argued that “responsible government” may have had a meaning in the United Kingdom in 1852, but, whatever that meaning might have been, it differed from the meaning generally accepted in New South Wales. In the colony it meant that, in local matters, there was to be full self-government, in which the Governor, as a constitutional ruler, would administer the affairs of New South Wales through his responsible ministers, just as the Sovereign did the affairs of the United Kingdom.” While some have been willing to challenge the orthodoxy, including Terry Irving, who in 1964 claimed, contrary to Melbourne, that the development of ministerial responsibility in Canada directly motivated the colonists in New South Wales, historians continue to argue that colonial political development was an ad hoc process serving short term ‘interests’, and as a corollary, does not, contrary to the position taken by this study, contain the seeds of a sophisticated constitutional model of liberal governance.

---

77Ward, “The Responsible Government Question”, 244.
80Irving's argument followed that “If the Canadian colonists were so aware of the nature of responsible government as to create the conditions for this development, then there is no a priori reason why the New South Wales colonists should not have demanded responsible government in the cabinet sense, too, at a time when, according to Melbourne, they were demanding only self-government.” T. Irving, “The Idea of Responsible Government in New South Wales before 1856” Historical Studies 1964, 193. Brian Dickey also described responsible government in New South Wales as an outgrowth of the Canadian experience. B. Dickey, “Responsible Government in New South Wales”, 220.
The tendency for political and constitutional historians to devalue substantive theoretical debates concerning ministerial responsibility is evident in legal histories which play down the ‘jurisprudential’ significance of the attenuated body of local statute law – a significant boon for the governing capacity of the central parliament – that emerged in the late nineteenth century. The increasing application of statute and legislative law-making has typically been described by historians in the context of an era of economic and population expansion and the attendant need for greater regulatory and re-distributive controls. But, as will be discussed below, the popularity of legislative law embodied an emerging jurisprudential tradition – understood as ‘legal positivism’ or the command theory of law – whose aim was not only to codify and rationalise a large body of prescriptive common law, but to bring public law under the purview of an accountable, ‘responsible’, paid, professional, expert and bureaucratised state apparatus.

While the inherited body of ‘irrational’ and inapplicable case law derived from British precedent did not help matters, the overriding difficulty was that the bearers of the common law – the magistrates, justices of the peace and their attendant local government network – held jurisdiction over a range of civil matters, including education, which were now coveted by central government. It was Bentham who vindictively referred to the ‘judicial fictions’ of judge-made law, and who, along with jurists such as John Austin, conceived a codified and legislative system of public law which was central to the broader project, not only of bureaucratised state building, but a ‘governmentalised’ strategy of governance. Moreover, these jurisprudential debates coincided with the attempt to strengthen the bureaucratic capacity of responsible cabinet government through the convention of collective ministerial responsibility. In this vein, it was the paid, professional and bureaucratic department of state, with a responsible minister at its head, which would ensure the proper implementation and management of legislative law. Such would have far-reaching consequences for the state’s ability to centralise school governance.

Thus, while motivated in part by social and economic circumstance, it is important to emphasise the way statute law making was a contrived governing strategy which formed part of a broader constitutional framework concerned less with economic structure than the internal dynamics of law and government. Conversely, legal historians such as Castles, when noting that in “Australia, as in Britain, legislative law-making emerged in the nineteenth century as a predominant source of law in many fields”, stressed that “new laws were required to meet the changing economic and social conditions of the time.” But if economic growth and rapid social change demanded a rigorous system of statutory regulation, forcing colonial law-makers to agree “that the basic principles of law should be contained in all embracing codes approved through legislative processes”. is it enough to
argue that this was purely an ad hoc response to the need to legislate heavily in areas such as water usage, mining and industry, as Castles argues, or were more systemic forces at work?81

While Castles ascribes the development of centralized cabinet government to the need for greater state regulation in the wake of social and economic expansion, constitutional historians such as McMinn have explained the increased influence of parliamentary government in terms of the relatively classless nature of Australian society. The latter prompted a united democratic response to the need for reform, a point given added force by a concentrated urban population where “radical ideas flourished.”82 Moreover, this strong democratic impulse inspired progressive constitutional innovations such as the payment of members and shorter parliaments. Designed to ensure a more accountable and responsible system of government, the payment of members, which had been instituted in the New South Wales, Queensland and Victorian lower houses by the 1880s, was not introduced in Britain until 1911. The colonies were also quick to reform the length of parliaments, which in Britain, under the terms of the Septennial Act, faced election every seven years. In Australia, “people quickly showed that peculiar distrust for their elected representatives which is

---

81 Cited from the Melbourne newspaper, *The Argus*, January 30, 1864. A. C. Castles, *An Australian Legal History* (Sydney: The Law Book Company, 1982), 445. While the common or judge made law still held jurisdiction over contract, tort and equity law, economic, industrial and government matters were increasingly “the subject of a large and often growing body of statute law.” British statute had hitherto been incorporated into the local law and this resulted in what the Melbourne newspaper, the *Argus*, in 1864 referred to as an unworkable “jumble of jurisprudence.” This was particularly evident in the transposing of feudal based English land laws which proved inadequate when regulating the vast tracts of land upon which the squatters and ‘free selectors’ vied for tenure. Legislation including the South Australian *Real Property Act* (1858) served to supersede the complex system of conveyancing inherited from the England common law system by centralising property registration in a Land Titles Board. Known as the system of ‘Torrens Title’, similar legislation was adopted throughout the eastern colonies by 1863. Furthermore, the extended debate in NSW over land reform, particularly the attempts by free settlers to secure tenure over land monopolised by the Squatters through pre-1850 leaseholds, was resolved by John Robertson through the 1861 *Crown Lands Alienation Act* and *Crown Lands Occupation Act*. A distinct movement away from the system of Crown leases and grants, freehold tenure would forthwith be granted upon full payment of a government loan, thus significantly extending the ambit of land ownership to the poorer and middling classes. In addition to the ‘land question’, Castles notes how parliament began to legislate heavily in areas such as water usage, and in the regulation of a burgeoning mining, resource and industry sector. Indeed, between 1855 and 1887 the Victorian parliament passed over 25 statutes regulating mining industry activity. Castles, *An Australian Legal History*, 445–68.

one of the great facets of Australian political life”, and by 1874 the parliamentary term in New South Wales was shortened to three years. McMinn makes the further point that such faith in parliamentary democracy lead to a highly factionalised and weak party system, therefore hindering, in the initial stages, the governing capacity of the new political system. This sectionalism was exacerbated by what McMinn referred to as “political inexperience and defective education.” In time, however, with the rise of “good administrators and clever politicians, particularly after the establishment of the Labor party in the 1890s, party government was secured and the “cabinet system survived.”

This ‘survival’ needs to be contextualised, not only in terms of the political savvy of individual politicians and the stilted but inevitable rise of a democratic and egalitarian political culture, but in terms of a multifaceted ‘revolution in government’ which, as typified by Bagehot’s fusion of executive and legislative power in the cabinet, re-figured the jurisprudential and constitutional foundations of liberal state building. Indeed, shorter parliaments and the payment of members was a strategy designed, not only to improve the democratic responsiveness of the political system, but to ensure that the legislature was better prepared – through mechanisms of accountability and official expertise as opposed to patronage and corruption – to administer a codified system of public law. This strategy of public governance cannot, therefore, be reduced to the land question, the anti-transportation movement and the struggle for political rights on the goldfields – however much these exogenous social forces influenced such strategies. While writers such as Hirst have properly noted that the “upsetting of the conservative constitution and the establishment of democracy was the most rapid political transformation in Australian history”, he has not developed this claim to describe the implications for political modernization or the ‘governmentalization of the state’, emphasising instead the consolidation of an egalitarian political culture which coalesced around the embattled call for democracy on the goldfields.

The struggle for ‘miners rights’ highlighted by both Hirst and McMinn is an important point, having ramifications for the heavy reliance on the mechanisms of representative government in Australian state building. Moreover, and this is another point that Hirst makes, this democratic impulse grew out of a distrust for localised, judicial authority as characterised by the discretionary authority of magistrates who held class and economic ties with the landed gentry. Thus, democratic faith in the

---

84Hirst, *Strange Birth*, ix, 273.
85Hirst notes that the arbitrary authority of the police magistrate was restricted through a continuing
governing capacity of the parliament along with democratic distrust of local or municipal
government propelled the emergence a peculiarly centralized state apparatus. While this is a
plausible argument, it makes the a priori and largely ahistorical assumption that constitutional
democracy imbued the colonists with political or 'natural' rights.

Historically, such rights had been a function of the rule of law, meaning that English liberty, a
notion consolidated by the revolutionary events of 1688, was premised on individual access to the
common or public law. This study argues, as did the radical jurists of the legal positivist school, that
the model of constitutional democracy which emerged in the colonies in fact rejected the doctrine of
natural rights. By giving the individual the opportunity to elect their representative in parliament,
the citizen forfeited any claim to 'rights', and indeed to 'individual sovereignty', which was now
held collectively within the sovereign parliament. It may be a little early for all this, but it is a point
that illustrates the need to apply a more rigorous analysis of the constitutional nuances which,
coming out of a great deal of philosophical and intellectual debate, underpinned Australia's highly
centralized experiment in state building.

Political culture and the 'atheoretical' nature of colonial political development

The history of the state in Australia continues to be dominated by a lineage of social, legal,
economic and political scholars who, since the historian Alfred Metin dubbed Australian political
culture 'socialism sans doctrines', have discounted theory or philosophical design from the story of
Australian state development. James Walter, writing in 1985, noted that this notion of a "politics
rationalisation of law and order. While the numbers of justices of the peace and police magistrates continued
to rise throughout the century, their judicial and administrative autonomy was severely diminished. In the
former case, their duties became purely ceremonial. In 1862 the New South Wales government stripped the
magistrates of any remaining police jurisdiction. The bureaucratization of the police force meant that the
central government would henceforth have a salaried official in each district. For Hirst, "the magistrates were
losing their position as administrators and being confined to judging...As fences were built, the contentious
issues of impounding, trespass and stock theft were heard less frequently. Masters and servants legislation
was not invoked so regularly because employees were not working under long-term contracts. A bad worker
was simply fired, instead of being taken to court. There were fewer people drawn into the magistrates
jurisdiction." Hirst, using the decline of the magistracy to demarcate the 'strange birth of colonial
democracy', misses the matrix of disciplinary power and constitutional reform which precipitated this change.
Hirst. Strange Birth. 234.

without ideas remains essentially unchallenged." McMinn, for instance, epitomized the view that the move to self-government was a practical arrangement which lacked any theoretical pretension: "while attachment to the principle of representation was genuine, the pressures which developed into a demand for 'responsible government' had their origin not, as in the American colonies, in the abstract political theory of the eighteenth century 'Enlightenment' or, as in Canada, in the tensions of rival nationalisms, but in the mundane administrative grievances spiced with personal ambitions and even with cupidity." Similarly, Michael Roe argued that constitutional theory had minimal influence on the political reforms initiated in the mid nineteenth century: "Little high philosophy inspired the clamour for control of land policy, or the resistance to police and gaols expenditure, or the antagonism to the Ordinance Bills and the district councils. All these issues, and the excitement they aroused in New South Wales, sprang from a loathing of taxation." Manning Clark, who was especially dismissive of the philosophical pretensions of radical liberalism, argued that while the colonial liberals were adamant about their inalienable right to property they had no interest in the 'rights of man'. Consequently, their achievements during the 1856-65 period - manhood suffrage, the secret ballot, land reform and eight-hour working days - were minimal in light of the continuance of plural voting, the failure to secure electoral zoning by population and the non-payment of members, factors which assured that men of property would dominate the parliament. These had not been uniformly abolished until the 1880s. when colonial parliaments passed a litany of social legislation including graduated income taxes, old age pensions in Victoria & NSW, land taxes, factory legislation and compulsory elementary schooling. For Clarke, the advent of full political democracy was not "introduced to batter down the walls of privilege" since there was no established aristocracy and since most Australians already had a "stake in the country." This story of a utilitarian and pragmatic unfolding of events, which allowed the Australian state to develop centrally, and yet to embrace popular sovereignty and laissez-faire 'ideal-types', continues

87 Walter, "Intellectuals and the Political Culture", 238.
88 McMinn, A Constitutional History of Australia, 40.
89 Roe, The Quest for Authority in Eastern Australia, 77. Likewise, George Nadel asserts that "The state in Australia expresses no ideals in itself. It is an instrument to be used for the enforcement of an ulterior unity, one which owes nothing to the state but to which the state and those reluctantly entrusted with its guidance owe all." G. Nadel, Australia's Colonial Culture, Ideas, Men and Institutions in mid-nineteenth century eastern Australia (Cambridge, Mass.: Harvard Uni Press, 1957).
90 C.M.H. Clark, Select Documents in Australian History (Sydney: Angus & Robertson. 1955), 316-17.
to marginalise the theoretical dimension of Australian state building. The latter, which requires indepth analysis of liberal constitutionalism and state theory and their particular evolution within the Australian context, has been ignored by whiggish and left histories which limit the operation of politics and government to the causal machinations of social upheaval and sectional conflict. In this vein, Loveday’s assertion that “there have been no fixed positions in Australian politics and no great debates on fundamental political philosophies” is typical, as James Walter points out, of the view that “politics here is simply about unintellectualized conflict of interest.” What was at stake, continued Loveday, “was not which abstract principle should prevail, but the political advantage to be gained by particular groups from the electoral arrangements.” Avoiding contemporary theoretical arguments about the nature of parliamentary representation, the rights of the individual versus the state and so on, Loveday focuses entirely on the “naked politics of interest.” While there is a significant historiography dedicated to the Australian intellectual tradition – including Tim Rowse’s study of liberalism and the national character, various attempts to come terms with political ideas in the Labor histories of Docker and Burgmann, Roe’s study of the Australian progressives, Macintyre’s study of colonial liberals such as George Higinbotham, or the number of biographies dealing with ‘thinkers’ such as Parkes or Eggleston – these, as Walter further argues, fail to show how ‘ideas’ and ‘competing value systems’ have inspired Australian political development. This deficiency robs Australian political history of a proper interplay between theory and practice. As it

91 Although Len Hume has explored the influence of intellectualism and political ideas on early Australian political culture, particularly the work of radical liberals including Edward Hawksley, a journalist who promoted the Chartist cause in Australia, the Benthamite educationalist Henry Carmichael, the Philosophical radical Henry Chapman and many others, he relates this lineage to the origins of pluralist political thought in Australia and not to any coherent theory of state formation. See L. J. Hume, “Foundations of Populism and Pluralism: Australian Writing on Politics to 1860” in G. Stokes (ed.), Australian Political Ideas (Sydney: University of New South Wales Press, 1994).


stands, the typology of geographic isolation, economic hardship, political sectionalism, working class radicalism and utilitarian pragmatism tells us little about constitutional and jurisprudential debates which have been fundamental to the enduring pattern of high statism in Australia. In its place, a more ‘synchronic’ historical model, based on the nexus between economy/culture/society and abstract theories of law and governance in the liberal state, is in many ways an ameliorative for the kind of intellectual gridlock which characterises contemporary studies of history and politics in Australia.

Walter made an effort to embark on this project when he argued that the lacunae of “traditional intellectuals” or great canonical thinkers such as Locke or Bentham within Australia’s political tradition should not bely the ubiquitous influence of “organic intellectuals” on antipodean political culture. “Having abandoned the search for major thinkers and great traditions, and accepted that all societies generate arrangements and institutions that allow for the articulation of meanings in everyday life”, Walter wants to show how key bureaucrats, politicians, university economists and publicists have imbued Australian political organisation with an intellectual continuity and rigor that was never provided by the traditional intellectual elite. 94 The former have, through their direct interaction with the public domain, been able to ingrain the hegemonic dictates of the dominant ideology, thus providing the driving force behind modern state development. 95

While illustrating how organic intellectuals have driven and legitimated “patterns of ideas” in Australian politics, particularly through his case study of the ‘professionalized intelligentsia’ and ‘industrial technocracy’ that emerged during the post-war reconstruction period, Walter’s critique of the “stultifying utilitarianism” in the histories of Loveday, Ward, Collins, et al., is limited by its own emphasis on ‘civil society’. As will be elaborated in the next section, a particular failure of revisionist and neo-Marxist theories of the state, or in this instance political culture, as appropriated in Walter’s and in Rowse’s case, through Gramsci’s theory of hegemony, is to over-emphasize the ‘legitimation’ functions of the ruling economic and bureaucratic classes. Defining political culture

95 Walter notes how career public servants such as H. C. Coombs, the economic advisor to the Labor Prime Ministers Chifley and Curtain in the early 1940s, helped establish the ‘braintrust’ which sought policies such as full employment during the initial post-war reconstruction period. Walter, “Intellectuals and the Political Culture”, 250. For Rowse, political and social theorists of the inter-war years such as Elkin and Burgmann saw centralized policy, particularly under the labour Government, as a “fresh chance to implement enlightened social policy and move society away from the selfish ethic of laissez-faire capitalism.” Rowse, “Political Culture”, 14.
as a “rhetorical construct in which values are represented and symbols are invoked to ‘persuade’ people to identify with and legitimate particular courses of action”, Walter focuses on the “dominance of the new management elite” whose “post-war reconstruction ideology” inspired a new technocratic economic order. Nevertheless, while providing insight into the short-term legitimation of state power by the post-war bureaucratic intelligentsia, Walter misses the long-term constitutional dynamics upon which bureaucratic power is itself founded.

**Toward the ‘legislative state’**

The latter requires some analysis of the state in isolation, of the theoretical and philosophical debates surrounding the evolution of centralized cabinet government in the mid-nineteenth century, and of the corresponding institutional strategies which, not simply bound by the whims of intellectual elites or social, geographic and economic imperatives, define the system of government through which Australian statism continues to flourish. As the failed attempts at ‘devolution’ discussed in the previous chapter show, centralized systems of state governance continue to delineate the operation of education policy at a federal, state and local level. It is not enough, therefore, to argue that the development of parliamentary government in Australia was simply inherited or ‘transplanted’ from the British liberal model, or that it was then given centralized momentum via the demands of a liberal/working class alliance and the corresponding failure to institutionalize democratic individualism. Australia’s uniform and centralized public policy network was not borne of some mythical turn of events. Economic and geographic circumstance played their part, however, they were mitigated by a broader ‘problematization’ of government which, congealing in the mid to late nineteenth century, was a contrived response to the failure of government by patronage as typified by the unaccountable and ‘irresponsible’ authority of the parish and local magistrate.

Australia’s bureaucratised system of educational governance was itself reliant on a particular doctrine of collective ministerial responsibility which, in contrast to the notion of individual ministerial responsibility practiced in Britain, established the framework for central departmental control of school governance. The debates surrounding democratisation and self-government, which will be described in detail in a later chapter, did not simply legitimize the power of an ascendant bourgeois elite but were endemic to an emerging mode of liberal governance which sought, in Bentham’s terms, to rationalize and bureaucratize political authority. While geographic dispersion

---

may have inhibited the establishment of localized authority, localism may still have survived were it not for the particular amalgam of constitutional, jurisprudential and philosophical debates which, in the context of the failures of British government to cope with the social pressures of industrialization, resulted in the rejection of the doctrine of the separation of powers, the Lockean notion of the social contract and the the 'inalienability' of the common law. Innovations such as shorter parliaments, the payment of members and an elective upper house were part of a broader constitutional shift in which the common law was superseded by statute law, executive and legislative power was concentrated, and the individual rights contained in the social contract was subordinated to the 'common good' expressed most forcefully in Bentham's theory of general utility. Thus emerged what the jurist, A. V. Dicey, referred to as the "legislative state."\textsuperscript{97}

The apparent contradictions which characterise the dual imperatives of centralization and \textit{laissez-faire} individualism have a consistency which has been avoided by a historiography founded on the 'politics' of conflict and discontinuity. Unable to reconcile the dualism in Australian political culture, writers including Paul Finn have argued that "Whatever its explanation, practical necessity, pragmatism and then some humanitarian concern triumphed over theory and ideology."\textsuperscript{98} Alternatively, this thesis proposes that the Australian state, and the education system that was spawned from it, have an interior unity that deserve closer analysis. To begin such analysis, we might firstly look at the broader debates and discussion surrounding the theory of the state and the historical study of state formation. These have coalesced around the effort to 'bring the state back in' which, while having little influence in Australia, has of late been a central theme in historical and sociological debate. While there has been various attempts by Australian academics to analyse the secondary literature relating to state theory, particularly the dynamics of contemporary state-economy relations, few, apart from Davidson, have related this discourse to the historic formation of the Australian state.\textsuperscript{99} These debates are, however, an important means for contextualizing the

\textsuperscript{97}A. V. Dicey, \textit{Introduction to the Study of the Law of the Constitution} (London: 1948 [1885 ed.]). This brings up another important debate about the nature of Benthamite liberalism. Australian scholars such as Finn and Macintyre have, as noted above, equated the latter with economic individualism, a view popularised in E. Halévy's influential \textit{The Growth of Philosophical Radicalism}. As argued above, our own analysis shows that Bentham's constitutionalism was avowedly statist. This interpretation will be discussed in more detail in later chapters.

\textsuperscript{98}Finn, \textit{Law & Government}, 3.

\textsuperscript{99}Galligan, writing in 1984, noted that "in the scholarly writing on Australian politics in the past the state has either been inadequately treated or ignored altogether...More recently abstract critical theories and theses borrowed from overseas experience have been applied to Australia without due regard for...or research into,
Dual development of Australian statism and mass compulsory schooling in the late nineteenth century.

3. General theories of the state

Since the 1960s and 70s, the predominant society-centred whiggish historical narrative has been critiqued by historians and social scientists who have contributed to a resurgence in the ‘theory of the state’. While theories of the Australian state are scant, both primary and secondary research into the ‘western’ state over the last thirty years is voluminous, for many overdone, and for many more, inconclusive. In some ways, the historiography itself aligns with changing perceptions of the state within the western political and philosophical tradition. Scholars have isolated a shift from early modern monarchical-absolutist state building which, replacing the desultory feudal estate, first became concerned with economic regulation, national languages and currencies, territorialization, taxation and militarisation; to what in the seventeenth and eighteenth century evolved into a bourgeois-capitalist state which, in simple terms, become less a function of raison d’État and the legal and territorial sovereignty of the monarch, than a pluralistic and contractarian polity which reflected the economic, class and hegemonic demands of an emerging capitalist society. This very generalised typology of western state formation, which identifies a transition from absolutist to liberal-capitalist state building, or from feudalism to capitalism, misses a third shift to what this study calls ‘legislative’ state formation.

Early modern state formation


101This story has of course been the subject of much nuance and re-interpretation, a point illustrated by Perry Anderson’s attempt to understand modern state building as a ‘redemption’ of feudal governing relations. See Perry Anderson, Lineages of the Absolute State. (London: Verso, 1974), 18.
In the fifteenth and sixteenth centuries, the 'reason of state' emphasised by political theorists including Machiavelli, Bodin and Hobbes marked a concern with state 'sovereignty', or the territorial, legal and ceremonial legitimacy of the monarch. The concept of state sovereignty first appeared in France and England in the late thirteenth and early fourteenth century. As described by Strayer, it was at this time that "basic loyalty definitely shifted from Church, community, and family to the emerging state." Scholars have typically argued that this shift coincided with the protracted Hundred Years War during which shifting regional allegiances forced rulers to galvanise centralized systems of military and administrative governance over a territorially defined population. Thus, the fact that "Sovereignty requires independence from any outside power and final authority from men who live within certain boundaries" informed the idea of the absolutist state outlined in Bodin's *Six Books of the Republic* (1576). The latter redeployed the concept of divine right in an attempt to find what Strayer described as "theological or legal terms to explain or justify a change that had already taken place in the position of the head of the state." As described by Caenegem, the resultant centralization of legal and economic institutions "saw public law develop...from the Germanic dispersion of the centres of power to the Roman concentration of all authority in one hand, that of the ruler assisted by his council." This process was consolidated during the civil and religious wars of the latter sixteenth to the mid-seventeenth. Under the auspice of a 'neostoic revival', the latter saw citizens accept the imposition of uniform taxation and national regulation of trade and currency in return for civil peace.

---


103 Describing the 'classic absolutism of the Ancient Regime', Caenegem notes that for three centuries this regime was "characterised by the unbridled rule of kings who were not bound by national laws, and by the sovereignty of nation states, which were not subjected to any supranational jurisdiction." R. C. van Caenegem, *An Historical Introduction to Western Constitutional Law* (Cambridge: Cambridge University Press, 1995), 74–75, 91.

While military and economic efficiency justified the unlimited sovereignty of the monarchical state on the Continent, Thomas Ertman notes that the situation was far different in Britain:

The absolute rulers of Latin Europe could legislate, tax, and conduct foreign policy as they saw fit, unconstrained by national representative assemblies; whereas in Britain, the monarch, though still influential, had lost many of his effective powers to a Parliament without whose approval no new laws could be passed, revenue raised, or wars begun. State infrastructures in Latin Europe were built around proprietary office holding, “inside” credit, and tax farming; while Britain possessed a set of core administrative, financial, and military departments numbering close to 10,000 employees along modern bureaucratic lines, and an entirely market-based system of public finance. 105

Ertman still concedes that England was forced, due to geo-political competition, to “make use of the same appropriation-prone institutions (proprietary office-holding, tax farming, ‘inside’ credit, military entrepreneurship) that would come to dominate the state apparatus in France, Iberia, and Italy.” 106 Nonetheless, while the England crown did not appropriate the meta-theological basis for sovereignty which underpinned the development of the absolutist state in France, the sixteenth century Tudor parliament, under the guise of royal supremacy, continued a process of administrative and legal centralization which allowed it to consolidate, for the first time, a ‘British’ nation-state. 107 It was particularly during the post-reformation era of population growth, economic expansion and urbanisation that a centralized and hierarchal civic structure – derived ostensibly from the Crown after the borough came under several charters of incorporation in the fifteenth and sixteenth century – replaced more autonomous modes of seigneurial governance in the English town. This process was aided by the elevation of the authority of the mayor. The chief executive and judicial officer in the town, the mayor, who acted as a justice of the peace presiding over various elements of legal and official business, was able to forge an administrative link between the

---

106 Ertman, Birth of the leviathan, 157-58.
town and the Crown, the Privy Council and the Parliament, thus enhancing the centralized momentum of early monarchical state building.

As touched on in the introduction, and as emphasised by Somers, Sayer and others, the intermingling of national and local authority in English state building remains a point of historical contention. For our current purposes, this period of early modern state building is important for establishing the ‘concept of the modern state’ as, in the words of Skinner, as “the most important object of analysis in European political thought.” 108 From a historiographical point of view, this is the moment from which scholars have approached an ongoing problem concerning the basis for liberal state authority, the proper demarcation of power between the state and its citizens, and the constitutional framework around which the governing functions of the state are organised. Until recently, this moment has been used to identify the shift from feudalism to capitalism, and thus to describe the origins of civil society, the idea of free, economic individual, and the ‘bourgeois’ state. From this perspective, political philosophers such as Hobbes and Locke conceived a ‘contractarian’ notion of state power designed to protect the right to property, the right to labour and so on. Accordingly, the capitalist state not only provides protection for its citizens from war, but accords the individual social, political and civil rights which allow individuals to maximize their economic capacity. 109 This is an especially important part of the story of English state formation since it explains how the absolutist origins of English state building were transformed to facilitate a capitalist state which existed to uphold, not simply territory and military power, but the free play of the market.

The triumph of the liberal-capitalist state was held back for various historical reasons discussed in detail elsewhere – the continuing threat of war, social revolutions, failed crops, famine, stalled industrial growth. What preceded it then, during the seventeenth and eighteenth centuries, was a kind of muted absolutism which, particularly in Prussia, was characterised by a centralization of state ‘policy’ and ‘police’ functions. Referred to by Foucault as Polizeiwissenschaft, this new art of government tended “to affirm and increase the power of the state to make good use of its forces, to obtain the welfare of its subjects, and, above all, the maintenance of order and discipline, the regulations that tend to make their lives comfortable and to provide them with the things they need

for their livelihood.” Similarly, Poggi notes that the “term Polizeystaat expressed the commitment of rulers to the development of a country’s resources and to the advancement of its population’s welfare.” While this process was somewhat delayed in Britain, particularly in light of the predominance of local government and a staunch free market ideology, the bureaucratisation and rationalisation of state authority on the Continent marked a definite shift from the sixteenth century raison d’etat as defined by the ‘advice to the prince’ concerning his conduct, his relationship both to God and his subjects, his territorial jurisdiction and so on. This was the origin of the process in which the question of how the Prince should govern the state was rationalised, bureaucratised, and in Foucault’s terms, ‘governmentalised’. Definitions of ‘the state’ were no longer limited, therefore, to sovereignty, territoriality or military power, but were dependent on its ability to oversee a system of social discipline that touched the lives and conduct of the individual. Additionally, these states appropriated the practices of ‘pastoral’ governance, evident initially within ascetic Protestant communities in central Europe, which saw the early modern military-bureaucratic monarchy shift its focus from territorial and juridical concerns to ‘social disciplinization’.

111 Foucault, “Governmentality”, 87.
112 In Foucault’s terms, this movement from the “territorial state” to the “population state” marked the end of the old etatist conception of the state power. Foucault goes on to make the point that this transition was “not a replacement but, rather, a shift of accent and the appearance of new objectives, and hence of new problems and new techniques.” Quoted from a series of lectures called “Security, Territory, and Population” and which grew into his article on governmentality. M. Foucault, [P. Rainbow (ed.)] Ethics: Subjectivity and Truth (New York: The New York Press, 1994), 67.
113 See Philip S. Gorski, “The Protestant ethic revisited: disciplinary revolution and state formation in Holland and Prussia” The American Journal of Sociology, 99:2 September 1993, 265. This shift has been drawn upon by historians of education such as Melton, who explained the rise of continental state schooling in light of the breakdown of patriarchal authority in areas undergoing proto-industrialisation, and a subsequent realignment of patriarchy around pietism and the needs of the state. Teaching would advocate affection and fraternal love over corporal punishment, obedience being ensured through compulsory attendance and constant supervision. In this way the state could impose authority without relying on the male-headed patriarchal household. The promotion of ‘self-government’ through public education would allow the state to reinvent traditional forms of authority at a time when territorial wars, religious apostasy, and a general challenge to the master-servant relationship threatened traditional forms of patriarchal authority. These grew into the modern techniques of social discipline which define the modern continental school system. J. V. H. Melton, Absolutism and the Eighteenth-Century Origins of Compulsory Schooling in Prussia and Austria (1988).
From an historiographical point of view, this shift from what Foucault called the "territorial state" to the "population state" marked the end of the old etatist conception of the state power.\textsuperscript{114} Theories of the state, political sovereignty and so on have accordingly been devalued as an interpretive tool for understanding government action, with historians describing western state development in terms of the economic and sociological processes lodged in civil society. Such was evidenced by the intellectual prominence of sociological theory, particularly that of Durkheim, at the juncture of the nineteenth and twentieth centuries. Durkheim's 'moral individualism', for instance, viewed the state as "an aggregate of individuals pursuing their best interests", a notion which transcended orthodox state theory since it placed the individual within an "organic" and shifting 'science of morality' derived from complex social, political and class formations.\textsuperscript{115} While Durkheim's state was the arbiter of the 'conscience collective', politics and government remained a nebulous realm which variously reflected free-market economic relations, competing interests and the laws of moral economy. Durkheim presaged the rejection of traditional state theory by sociologists and political scientists who by the mid-twentieth century were enamoured in pluralist and economistic theories of social and political development.

In this vein, Giddens notes that "the traditions of thought that dominate the social sciences today tend to be heavily indebted to their nineteenth century origins." But for Giddens, such analysis betrays any understanding of state power as something "integraly associated with military violence or administrative control within definite territorial boundaries" since the "industrial order is portrayed as completely different from the rule of absolutism that preceded it [and] the state is seen primarily as a coordinating framework within which economic relations are carried on."\textsuperscript{116} By devaluing the notion of autonomous state power, the state has come to be viewed, in Skocpol's term, as "an old-fashioned concept, associated with dry and dusty legal-formalist studies of nationally particular constitutional principles."\textsuperscript{117} For our own purposes, this presents an enduring

\textsuperscript{114}Foucault notes that this transition was "not a replacement but, rather, a shift of accent and the appearance of new objectives, and hence of new problems and new techniques." Quoted from a series of lectures called "Security, Territory, and Population" and which grew into his article on governmentality. M. Foucault, [P. Rainbow (ed.)] \textit{Ethics: Subjectivity and Truth} (New York: The New York Press, 1994). 67.


\textsuperscript{117}This rejection of the state was so comprehensive that it impacted on the tenure of public policy. Aynsley Kellow argues that the appeal of interest-group liberalism in the 1950s and 60s "might well have seduced modern conservatives into accepting a view of the minimal state. In doing so, it set the stage for the pragmatic
barrier to understanding the constitutional relations underpinning liberal state formation and indeed, the relationship between the emergence of the school and the modern state.

**The Marxist concept of the state**

The causal predominance of 'civil society' in Marxist theories of the modern state is typified by what Dunleavy and O'Leary describe as passive or *cipher* theories of the state. In this way, Marxist sociologists and historians long continued to view the state as a medium for competing or ruling interests. These instrumentalist accounts of the 'capitalist state' make the assumption, in the words of Jessop, “that the economic base determines the balance of political forces in the struggle for state power, as well as the institutional form of the state as an instrument over whose control political struggle is waged.” Thus for Marx, the state executive are a committee which organise the affairs of the bourgeois ruling class. Such reductive assumptions are indicative of the theories expounded in the *Communist Manifesto*, however they contrast with the more contingent, historical and comparative view of state power outlined in Marx’s earlier writings. This latter position, which will be detailed later, and which stressed the ‘relative autonomy’ and independence of the state from class relations, was left out of the dominant Marxist revival concerning the theory of the state. Most significant was Miliband’s *The State in Capitalist Society*, which concluded that “the dominant economic interest in capitalist society can normally count on the active goodwill and coalition between liberals and conservatives that subsequently was mobilised through the rhetoric and under the banner of the new right.” A. Kellow “The Curious Case of the Vanishing State” in M. Muetzelfeldt, *State, Society and Politics in Australia* (Sydney: Pluto Press. 1992), 38.


120 Held notes that Marx’s earlier position, which “stresses that the state generally, and bureaucratic institutions in particular, may take a variety of forms and constitute a source of power which need not be directly linked to the interests, or be under the unambiguous control of, the dominant class in the short term”, has been largely rejected in favour of a second instrumentalist view which “involves a narrowing down of the terms of reference of Marx’s analysis of the state.” D. Held, “Central Perspectives on the Modern State” in G. McLennan, D. Held, & S. Hall, *The Idea of the Modern State* (Milton Keynes: Open University Press, 1984), 33.
support of those in whose hands state power lies.”

This view was also appropriated by Marxist feminist accounts of a political system driven by institutionalised patriarchy.

While Miliband’s was a rather ahistorical insight into Marxist state theory, subsequent scholars from the left have attempted to fit the rise of the early modern liberal-capitalist state to the conventional Marxist historical narrative. Anderson, for instance, importantly addressed the anomalous appearance of the western absolutist state at the juncture between feudalism and capitalism. A fact which contradicted the idea that capitalism and the bourgeois state emerged simultaneously, it was left to Anderson to explain absolutism as the “redeployed and recharged apparatus of feudal domination” and the “new political carapace of a threatened nobility.”

Through the innovation of a centralised state framework, the ruling feudal aristocracy were able to make a chameleon-like transition from serfdom to bourgeois social and political relations. Anderson notes that it was Marx himself who described how the administrative structures of the absolutist state were made an instrument of bourgeois class rule. Thus,

European feudalism, as we have seen, proved the gateway to capitalism. It was the economic dynamic of the feudal mode of production in Europe which released the elements of primitive accumulation of capital on a continental scale, and it was the social order of the Middle Ages which preceded and prepared the ascent of the bourgeois class that accomplished it.

Similarly, Immanuel Wallerstein argued that the increasingly “resilient framework of the aristocratic monarchical state” allowed the transnational capitalist community to prosper after the economic decline of the seventeenth century. Thus, while the “relative equalisation of incomes” between the nobility and peasantry in the sixteenth century inspired a capitalist “world-system”

123 Dean notes that for Marxists, the sixteenth century ‘absolutist state’ “appears to disrupt neat schemas of historical development”, and that Anderson’s thesis was a “well constructed and complex attempt to save and even enhance a totalising theory.” M. Dean, *Critical and effective histories*, 143–4.
through which surplus wealth could be invested, this system was further solidified via a ‘modern concept of the state’ which allowed the “ruling strata to retain their collective privileges.”

The first wave of Marxist state theory was followed by macro-sociological, historical sociological and post-structuralist approaches to the modern state which, turning from Marx, tended to draw from social theorists such as Gramsci, Weber, Habermas, Elias, and more recently, Foucault. This shift from an instrumentalist conception of the state saw neo-Marxist scholars such as Nico Poulantzas presenting a weaker society-centred view which acknowledged the ‘relative’ autonomy of the state from the capitalist superstructure. As described by Hirst, Poulantzas emphasised the fact that “state apparatuses and state power are not homogeneous”, and that “the state is not a unitary entity and not the exclusive possession of any class.” State apparatuses are therefore “relatively independent political sites capable of transformation in their ‘allegiances’, role and power.”

The relative autonomy of the state was also taken up by neo-Weberians such as Block. who began to argue that bureaucracies have the power to shape and select state policy. Hugh Hecla was an early statist who gave various examples of autonomous state contributions to social policy making in Britain and Sweden, practices which were not simply overt and coercive exercises of ‘power’ but took the form a “collective puzzlement” on societies behalf. For Hecla, it is the process of “deciding and knowing” practiced by civil service administrators which has had greater impact on policy development than political parties or interest groups.

The notion of relative autonomy was imbricated in ‘crisis of the state’, conceived initially by Habermas, which described the contradictory functions of democratic legitimation and capital accumulation in the late capitalist state. For Habermas, the encroachment of the state into civil

---

society, or more precisely, the shift in the “organisational principle” of the state caused by the need for greater regulation of ‘disorganised’ capitalism, has undermined the traditional legitimation devices of economic liberalism.\textsuperscript{133} Wolfe agreed that the increasing centralization and bureaucratization of civil society had amplified contradictions inherent in the accumulation and legitimation functions of the modern state.\textsuperscript{134} In \textit{The Structural Transformation of the Public Sphere}, Habermas described the interdependence between the once dichotomous spheres of the ‘public’ and the ‘state’. The increasing intervention by the state into private affairs and the penetration of society into the state has distorted the idealised bourgeois separation between state and civil society. This is most evident in the enlightenment notion of a ‘reasoning public’ – Parliament or Congress – which has become ‘irrational’ through party politics and manipulation by the mass media.\textsuperscript{135} Similarly, O’Connor’s “dual and contradictory” capitalist state has undergone threats to its legitimacy function – social welfare, law & order, education, health – through a fiscal crises caused by the mounting cost of ‘social capital’ and ‘social expenses’.\textsuperscript{136} While O’Connor’s state is ultimately at the whim of monopoly class interests, he succeeds in showing how states are open to contradictory policies and influences.\textsuperscript{137}

Much of the resurgence in theories of the ‘autonomous’ capitalist state were derived from Max Weber’s theorisation of the administrative, legal and coercive organisations which he argued were at the core of state power. For Weber, centralized bureaucracy is the autonomous and ‘perennial structure’ through which the state has evolved. State forms have prefigured and allowed for the development of capitalism since they were built around a belief in the justifiability, legitimacy and

\textsuperscript{133}J. Habermas, \textit{Legitimation Crises} (London: Heinmann, 1975).


\textsuperscript{135}J. Habermas, \textit{The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society} (Cambridge, Mass: MIT Press, 1989).

\textsuperscript{136}J. O’Connor, \textit{The Fiscal Crisis of the State}.

\textsuperscript{137}There is, however, a problem with applying crises theory to the Australian context since, as Galligan points out. “The Australian state has always been deeply involved with accumulation...There has not been the recent recoupling of the political and economic in Australia because there has never been an uncoupling. The whole logic of legitimation has worked rather differently here...the state has been deeply involved in accumulation precisely in order to legitimate itself.” Galligan. “The State in Australian Political Thought”, 89.
legality of a ‘code of rules’ (the ‘legal-rational’ ethos). While capitalism has been the impetus to the ‘instrumental rationality’ of state bureaucracies, the internal dynamics of administrative apparatuses are homologous and not determined by class power. The relationship between bureaucracy and capitalism is indirect, acting in an intangible cultural sense. Weber then contradicts Marx in that he does not assume a shared interest between state officials and the bourgeoisie. Power exists in the nexus between ‘authority’ and the legal-rational domain, and not through class domination. This bureaucratic culture extends beyond the civil service to diverse forms of large-scale organisational and governmental structures (companies, universities, political parties, etc). In this sense both public and private administration have become bureaucratized. This bureaucratization is exemplified, in Held’s words, by the “growth of office hierarchy; administration based upon written documents; specialist training is presupposed and candidates are appointed according to qualification; and formal responsibilities demand the full working capacities of officials.”

Weber was able to explain the spread of bureaucratic organisation through its “purely technical superiority over any other form of organization.” 138 The Weberian model suffered, however, from comparative and historical inconsistencies since it was based on the highly centralised development of law and government in Prussia, France and throughout the continent. 139 This does not account for the fact that in Britain national agencies of administration and justice were never codified like the continental nation-state. While Weber himself noted the “patriarchal, summary and highly irrational” tradition of the Common Law in England, a fact compounded by the persistent influence of landed patronage in public policy making, he still universalised the growth of bureaucratic power and fails to account for the differing constitutional, legal and political experiences which underlay state development throughout the west. 140

As noted earlier, Marx himself alluded to the internal logics of bureaucratic state power, particularly in his Critique of Hegel's Philosophy of Right, which argued that bureaucratic institutions may not be acting in the interest of, or under the power of the dominant class. Although, in The Critique of Political Economy, Marx maintained that the material forces of production which constitute the economic structure of society is “the real foundation on which the legal and political superstructure arise and to which definite forms of social consciousness correspond”, Marx also proposed a more

ambiguous, contingent and state-centred view of the political process.\textsuperscript{141} In \textit{The Eighteenth Brumaire of Louis Bonaparte}, for instance, he portrayed a state executive showing contempt for civil society. Napoleon's government had become a "parasitic body" which did not exhibit statehood as an "instrument of rationality" but as a self-serving body willing to curtail the power of the bourgeoisie. From this perspective, the second French empire had attempted to play off the proletariat against the middle classes.\textsuperscript{142} Marx also acknowledged the ambiguous nature of state formation between different nations. Bob Jessop points out that Marx recognised the inconsistencies between state and capital in England. The fact that the aristocracy still controlled a decentralised state could not be reconciled with elliptical theories derived from centralized 'bourgeois' states in continental Europe.\textsuperscript{143} Further, in volume three of \textit{Capital}, Marx notes how the 1830s reforms in Britain, particularly the Factory Acts (shorter working days, better conditions), were an example of the state working against production. Engels would attempt to implore this sense of contingency on later Marxists, describing the political process as an "infinite series of parallelograms of forces which give rise to...the historical event."\textsuperscript{144}

Marx's more contingent analysis of state power was taken up by Antonio Gramsci. Eschewing what he called the "primitive infantilism" of economic determinism, Gramsci located state power in a process of 'hegemony', a concept which describes the way competing ideologies are resolved in favour of a dominant cultural conception of political, economic and social relations. Gramsci has been of particular interest to theorists of state education since ideological hegemony relies heavily on mass education. Andy Green, for instance, incorporated hegemony into his account of \textit{Education and State Formation}, arguing that educational state formation is "a dynamic concept which attempts to capture the delicate balance that results from the interplay of multiple social forces."\textsuperscript{145} Thus, the production of 'collective beliefs' and 'ideologies' are a central component in Green's definition of state formation:

State formation is the historical process by which the modern state has been constructed. This includes not only the construction of the political and administrative apparatus of government and all government-controlled agencies which constitute the 'public' realm but

\textsuperscript{141}Cited in Green, \textit{Education and State Formation}, 83.
\textsuperscript{142}Cited in Held, "Central Perspectives", 5.
\textsuperscript{143}Jessop, \textit{The Capitalist State}, 12–15.
\textsuperscript{144}Cited in Held, "Central Perspectives", 91.
\textsuperscript{145}Cited in Green, \textit{Education and State Formation}, 94.
also the formation of ideologies and collective beliefs which legitimate state power and underpin concepts of nationhood and national 'character'.

Similarly, Svi Shapiro draws on Gramsci to argue that state educational policies are not simply "some unalloyed product of the interests of a single dominant class, [but] are instead the mediated compromise of diverse class imperatives, interests and ideologies." Gramsci argued that the state mediates hegemony through 'illusory universals' which raise the mass to a particular cultural and moral level. These are diverse and historical cultural forms which help to explain the differing processes of state formation throughout Western states. In Britain, for example, the continuing bourgeois-aristocratic alliance based around decentralised institutions was perpetuated through the 'illusory' nature of 'laissez-faire' ideology. Alternatively, France's Jacobin movement usurped the nobility and extended the revolutionary aspirations of the bourgeois class since it presented itself as a "whole...an integral historical development." In Italy, the state was stratified through extreme measures like fascism because the prevailing cosmopolitan-humanist culture denied the bourgeoisie a 'mass' intellectual base. But while hegemony may be an avenue for imposing ideological 'consent' on the citizenry, this is not to imply outward mechanisms of social control. The capitalist state may, therefore, be influenced by an overriding faith in laissez-faire individualism, but it remains a medium for a diversity of interests and ideologies.

The autonomous state

The influence on these non-reductionist theories on historical sociologies of the state still leave them open to the use of Weberian and Marxist 'ideal types'. Consequently, while the causal route is more complex and contingent, these studies continue to explain the modern state's institutionalization and codification of economic systems, patriarchal social relations, national languages and currencies, territorialization and self-government as a 'monopolization of legitimate means'. This was particularly true of the statist revival of the late 1970s, initiated by Skocpol, Mann and others, which by 'bringing the state back in' tended to overemphasize the causal effects of the state. Writing in 1984, David Held asked whether the "international interconnections of the world

---

146 A. Green. Education and State Formation, 77.
147 S. Shapiro, Between Capitalism and Democracy (New York: Bergin & Garvey, 1990), 104.
149 See C. Mouffe, Gramsci and Marxist Theory (Boston: Routledge, 1979).
150 Mitchell, citing the American political scientist Gabriel Almond, argues that the earlier pluralist account of the state, while defective in many ways, "did not locate explanations solely in society but examined a complex
economy”, which has made “more tenuous” the “abstract idea of ‘the state’…forces us to ask whether the search for a theory of ‘the state’ is misplaced.” He replied, in line with the increasing contemporary emphasis on the state, by arguing that the theory behind state power should be pursued “ever more urgently in the face of the global struggle for resources and the escalating capacity for mass destruction – the issues of might and right, liberty and equality, class power and domination, violence and the nation-state.”

The most pressing dilemma facing statist scholarship was the ‘relative’ interdependence between the ‘state and civil society’, or ‘the state and the individual’. Statists such as Skocpol were initially keen to assert the autonomy of the state, that is, the influence of the state ‘upon’ society, arguing that the state is a major player in “political and social processes through their policies and their patterned relationship with social groups.” Skocpol showed, for instance, how states often lead autonomous lives because transnational structures and the force of “international flows of communication” often subvert domestic resistance from non-state actors. States also act independently via bureaucratic niches which are sufficiently insulated to impose distinctive, internally-based policy. This Weberian perspective was, for Skocpol, typified by the “The extranational orientations of states, the challenges they may face in maintaining domestic order, and the organisational resources of collectives of state officials.” Skocpol’s autonomous state was defined as

a set of administrative, policing, and military organisations headed, and more or less co-ordinated by, an executive authority. Any state first and fundamentally extracts resources from society and deploys them to create and support coercive and administrative organisations… Of course… political systems… also may contain institutions through which social interests are represented in state policy making as well as institutions through which non-state actors are mobilized to participate in policy implementation. Nevertheless, the administrative and coercive organisations are the base of state power.

---


151 Held, “Central Perspectives”, 51.

152 Skocpol, ”Bringing the State Back in”, 3.

153 Skocpol, “Bringing the State Back in”, 8.

154 Skocpol, “Bringing the State Back in”, 9.

While Skocpol variously discussed inter-dimensional and relational state/society processes; the relative autonomy, strength, or weakness of states; and substantive liberal or social democratic world views which legitimate state functions, she fails to emphasize the historical and contingent factors of state development, and, as Skocpol admits, tends to limit the state to its ‘administrative and coercive organisation’. Similarly, Charles Tilly’s account of early modern state formation emphasised the totality of the state, describing “…the degree of ‘stateness’ of the governmental structure...the degree to which the instruments of government are differentiated from other organisations, centralised, autonomous, and formally coordinated with each other.” In historical terms, it was “The ominous phenomena of war [which] gave telling reality and unquestionable legitimacy to the reason of state”, and it this which continues to inform the expansive nature of western state forms.

The influence of militarism on state building in early modern Europe is compelling. Samuel Huntington, for instance, argued that the military conflict which dominated Europe throughout the seventeenth century resulted in the suppression of diffused local and regional authority, the rationalization of bureaucratic-diplomatic government, and an increase in national taxation and centralized state revenue. This point has been an important means for transcending instrumentalist theories of the state. Mann, for instance, was able to argue that the modern state

156Katznelson, for instance, juxtaposed Skocpol’s statism with J. P. Nettle’s pathbreaking essay on the state as a ‘conceptual variable’. Through a deft historiographical survey, Katnelson rightly identified the “multidimensional quality of Nettle’s approach that has too often been overlooked.” To quote Katznelson: “Nettle sought to render the state a ‘variable in social science...for purposes of rigorous comparative analysis’ in four dimensions: as a unit of international relations; as a sector possessing autonomy, potentially capable of independent action; as an ensemble of institutions that pursue goals and carry out tasks; and as what he called a sociocultural object which can be viewed and understood in widely disparate ways. He suggested that each of these component elements can be arrayed separately on measurable ranges of more or less stateness to produce distinctive configurations for different times and places.” I. Katznelson, “The state to the Rescue? Political Science and History Reconnect” Social Research, 59:4. Winter 1992, 723. See J. P. Nett!, “State as a Conceptual Variable,” World Politics 20 1968, 559-566.


developed via practices that were “primarily military rather than economic in character. The state did not own property, it extracted its revenues on a fiscal basis and it was the coordinator of class action for military purposes rather than a usurper of class power.”\textsuperscript{160} In a later essay, Mann referred to the “territorial centralisation” of the state which is more than just authoritarian power, denoting instead a kind of “infrastructural power” which highlights the “capacity of the state to actually penetrate civil society and to implement logistically political decisions throughout the realm.”\textsuperscript{161}

Poggi is another theorist who highlighted the autonomy and permeability of the state, arguing that the defence of the nation, the liberation of labour and land from the aristocracy, and the maintenance of law and order were functions which made the state “active, interventionist, purposive and instrumental relative to preceding forms.” For Poggi, the state’s “domain has been progressively separated from the realm of civil society”, meaning that the state is a complex yet autonomous realm “whose parts all mesh, a machine propelled by energy and directed by information flowing from a single centre in the service of a plurality of co-ordinated tasks.”\textsuperscript{162} In a similar vein, Eric Nordlinger contended that the state has exerted its autonomy through its penetration of both the political and non-political realms. The first ‘endogenous’ realm includes political participation, levels of working class mobilisation, the amount of party competition, the number and organizational depth of political and quasi-political association, the membership density of trade unions, the strategies of political movements and mass political attitudes. The second non-political or social variables include socialization within the family and school, class structure, economic growth rates, education levels, mass communication networks, levels of urbanisation, land distribution patterns, import-substitution phases, the export of different types of products and requisites of a capitalist economy.\textsuperscript{163} Nordlinger typified the statist attempt to show how the state retains its autonomy through subjective and ideational perceptions about its capacity to act in the “national interest.” It is the idea that states act in “the maintenance of the political and economic order” that allows it to “articulate public interest pronouncements so as to gain popular

\textsuperscript{160}M. Mann, \textit{The Sources of Social Power} (Cambridge: Cambridge University Press, 1986), vol 1, 482.


support and ward off private pressures.” Likewise, Stephen Krasner’s *Defending the National Interest* argued that U.S. state foreign policy “is premised on the intellectual vision that sees the state autonomously formulating goals that it then attempts to implement against resistance from international and domestic actors.” This allows the central executive to retain a “high degree of insulation from specific societal pressures.”

### State formation as cultural revolution

The proliferation of statist scholarship in the 1970s and ‘80s was tempered by the emergence of a less circumscribed historical sociology of the state. Phillip Corrigan, for example, drew both on the theoretical work of Gramsci and Marxist history of E. P. Thompson to emphasize the comparative nuances of state formation. He showed how the ‘established’ tradition of patronage and paternal relations in Britain has proffered an elite and highly incumbent civil service, and accordingly, how ruling hierarchies and landed interests have been maintained through the continuing connection between localised elites and the state. Central to Corrigan’s argument was the ‘Old Corruption’ network which maintained, in ad hoc ways, the authority of a British state that was traditionally weak in terms of its bureaucratic and rationalizing functions. In addition, the British state has retained autonomy through its status as the ‘natural’ enforcer and creator of law. Thus, while the law is the natural expression of property rights and capitalist production relations it is ultimately directed by a state apparatus that can legitimately use force to ensure that the law is obeyed. Such was a feature, argues Corrigan, of the ‘bloody penal code’ via which the state enforced property rights and realigned the social structure in step with changing production relations. In his words, the state began to act to “establish, regulate and reproduce interlocking markets.”

---

166 P. Corrigan (ed.), *Capitalism, State Formation and Marxist Theory*, 42.
168 Corrigan, ed., *Capitalism, State Formation and Marxist Theory*, 42. Pierre Birnbaum furthered this approach by noting how the centralised, bureaucratic French state fostered industrial militancy among French workers; while the British ‘establishment’ encouraged more formal parliamentary means of negotiation such
tends to link state forms and practices to capital formation, his analysis allowed for a clearer understanding of how a seemingly ‘weak’ British state was central to the rise of industrial capitalism.

Corrigan later expanded on this account of the capitalist state to form a more detailed analysis of what he, with Derek Sayer, called the ‘Great Arch’ of English state formation. Their central thesis, that ‘state formation is cultural revolution’, grew from a concern that “Social theory, both Marxist and Sociological, often rests content with demonstration in general theoretical terms of the functionality of the nation state to capitalist production, seeing this as an end to analysis rather than a mere prelude to historical inquiry.” In addition, they wanted to expand on the account of hegemony or what they call the “Marxist ‘turn’, influenced by a particular reading of Gramsci, which stresses the activity of establishing and reproducing ‘consensus’.” The Great Arch, while remaining committed to the Marxist world view, considered the state in terms of ‘moral regulation’, or more particularly, the cultural reproduction and normalisation of meanings and representations attached to state agencies. Such moral regulation studies have been more willing to explore what Valverde terms “the relation between state formation and everyday social forms.”

Corrigan and Sayer, in their own words, attempted to search the “meaning of state activities, forms, routines, and rituals – for the constitution and regulation of social identities, [and] ultimately of our subjectivities.” As such, “state formation itself is cultural revolution”; state forms are cultural and cultural forms are state-regulated. To elaborate, “the repertoire of activities and institutions conventionally identified as ‘the State’ are cultural forms, and cultural forms, moreover, of particular centrality to bourgeois civilization...States, if the pun be forgiven, state; the arcane rituals of a court of law, the formulae of royal assent to an Act of Parliament, visits of school inspectors, are all statements. They define, in great detail, acceptable forms and images.”

Drawing on Foucault, Corrigan and Sayer argued that these “routines” and “rituals” of state are both “individualizing” and “totalizing”, meaning that the state is represented in terms of individual as enterprise bargaining. P. Birnbaum, “States Ideologies and Collective Action in Western Europe,” International Social Science Journal 32 (1980), 671–86.

M. Valverde, “Editors Introduction”, Canadian Journal of Sociology 19:2, 1994, vii–viii. Valverde points out the difference between the ‘moral’ and the ‘cultural’ in the late twentieth century. Durkheims broad use of the term, as appropriated by Corrigan and Sayer, was synonymous with the ‘social’ realm. Durkeim’s attempt to substitute sociology for religion caused definitions of ‘the moral’ to have a much wider cultural significance than they would today, when the cultural often transgresses moral boundaries.

identity; and, in terms of the broader collective rituals of nationhood. Accordingly, and following also from Weber,

"'The State' seeks to stand alone in its authority claims to be the only legitimate agency equally for this or that form of knowledge, provision, regulation or... 'administration'."\(^\text{171}\)

The *Great Arch* was an attempt to reinvigorate Marxist state theory through the sociological work of Weber and Durkheim. Corrigan and Sayer take as a central analytic Durkheim's definition of the state as "above all, supremely, the organ of moral discipline." More specifically, Durkheim's state describes

a group of officials *sui generis*, within which representations and acts of volition involving the collectivity are worked out, although they are not the product of the collectivity. It is not accurate to say that the state embodies the collective consciousness ([conscience collective ]), for that goes beyond the state at every point...The representations that derive from the state are always more conscious of themselves, of their causes and aims. They have been concerted in a way that is less obscured. The collective agency which plans them realises better what is it about...Strictly speaking, the state is the very organ of social thought.\(^\text{172}\)

The state, as the arbiter of 'moral regulation', attempts, in Corrigan and Sayer’s terms, “to give unitary and unifying expression to what are really multifaceted and differential historical experiences of groups within society, denying their particularity."\(^\text{173}\) Durkheim, unlike Marx, failed to position the ‘conscience collective’ as “a dominant class, gender, race, delineating and idealizing its conditions of rule”, however, he nonetheless grasped a shift from the economic to the ‘moral’ in the logics of modern state development.\(^\text{171}\)

Moral regulation has been of particular use in explaining how state power is ‘internalised’ or ‘subjectivised’ through the agency of the free individual in a liberal democracy. This point was taken up by Bruce Curtis, whose study of education and state formation in nineteenth century Canada conflated the boundary between state and society. According to Curtis, the state’s relationship with the individual is not one of “externality and repression”, but rather, the “conduct


\(^{172}\)Durkheim, 1904, 49–50. in Corrigan & Sayer, *The Great Arch* 5.

\(^{173}\)Corrigan & Sayer, *The Great Arch* 4

\(^{174}\)Corrigan & Sayer, *The Great Arch* 6
of 'private' activities goes forward increasingly in state forms.” The ‘egalitarian’ provision of public education by the representative state served, for instance, to create “social subjects who enjoyed and actively embraced their social subordination, who experienced subordination as equity and liberty.” Consequently, “education was government: government of the self.” “Educational administration as state formation” allowed the state to act as thearbiter of the conscience collective since it “superimposed an administrative grid upon civil society, elaborated and disposed practices and devices aimed at the regulation and transformation of popular character and culture [and] set in motion a dynamic of development in which administrative controls over education became increasingly dense.” Therefore, it is through the ambient and cultural influences of educational administration within civil society that mass state schooling has maintained its remarkable resilience and fixity.

The state, moral regulation and governmentality

These historical sociologies of the state have been criticised, particularly by proponents of the Foucauldian theory of governmentality, for being at one point overly culturalist, and at another too centred on the state. Mitchell Dean, for instance, proposed that Corrigan and Sayer cast too wide the net of symbolic state forms by equating moral regulation with culture. Consequently, the broad cultural ‘representations’ signified through individualizing and totalizing routines and rituals of state limit analysis of self-formation to a “process by which human subjects, as a matter of course, come to bestow meaning on or to represent their experience.” For Dean, self-formation cannot be understood in such elliptical terms since it negates “analysis of the multiplicity of practical, technical, and discursive means by which self-formation occurs and the possibility that the meaning-giving subject of its own experience itself is a particular social and cultural category and dependent upon definite social-historical and intellectual conditions.” The overly cultural and symbolic meanings which Corrigan & Sayer attribute to ‘state formation as cultural revolution’ fail then to “constitute an analytic of the diverse ways in which governmental techniques and practices are implicated in the formation, development, and assemblage of human capacities.” Dean notes that technologies and logistics of government emphasised by sociological state theorists such as

Mann and Giddens, in addition to Foucault’s invocation of disciplinary and bio-political power, have shown the way state subjectivities are composed of a multiplicity of administrative and ‘infrastructural’ routines and strategies. “To think of moral regulation in terms of the (mis)attribution of meaning to experience is,” argues Dean, “to remain within a general theory of language and representation and thus to foreclose the complex analysis of the relation between specific political governmental discourses and rationalities.”

Another limitation with Corrigan and Sayer’s account of state formation is the interior unity of their ‘bourgeois state’. As Hugh Emy commented, “One has the feeling sometimes that for Corrigan and Sayer, what happened in history is not terribly problematic, and analysis of cultural change is simply a way of giving a fresh lease of life to a familiar thesis about the overriding importance of class power.” Nineteenth century state formation was, for Corrigan & Sayer, a means of “consolidation and administrative formalization of legitimated structured social relations long in being.” Dean, however, questions the notion that the liberal state existed as a “unitary entity concerned with the production or reproduction of a particular social order based on definite forms of subjectivity, and as the agent of social control”, since it limits analysis of the governmental and ethical self-formation which occurs in private enterprise and in dispersed locations beyond the state – in the physical and social sciences, in medicine, psychiatry, psychology, criminology, pedagogy and so on. The difficulty here lies in the Marxist conception of the ‘moral’ as an “explicit, codified, system of evaluations.” By contrast, Dean wants to get closer to the Foucauldian notion of the moral found in Nietzsche, particularly his stress on the “practical and pragmatic forms and contexts of everyday life.” The latter, being concerned “less with the theoretical artifice of commandments and law than with the practical conduct of life”, demands that the conceptual apparatus of moral regulation and political subjectification encompass the multiple ‘practices’ of government self-formation that operate within civil society. In his way, political subjectification works less through ‘meaning and representation’ than through what Foucault, referring to the disciplinary regulation embodied in Bentham’s prison panopticon, called “a state of conscious and permanent visibility that assures the automatic functioning of power.” These techniques of surveillance form part of a series of architectural rationalities and strategies which are inscribed in

178 Dean, “‘A Social Structure of Many Souls’”, 151–53.
180 Corrigan & Sayer. The Great Arch, 170.
181 Dean, “‘A Social Structure of Many Souls’”, 153.
182 Dean, “‘A Social Structure of Many Souls’”, 155.
183 Foucault, Discipline & Punish, 201; in Dean, “‘A Social Structure of Many Souls’”, 157.
the ‘normalizing’ discourses of the human sciences. Dean makes the point that Foucault’s “scientifico-legal complex” emphasises “routines” of self-formation as opposed to the “rituals” displayed in the old juridical model of sovereignty which aimed power at the body.

This difference is the key to reformulating moral regulation under the auspice of governmentality. For Dean, the latter “defines a novel thought-space across the domains of ethics, government, and politics, of the government of self, others, and the state. of practices of government and practices of the self, of self formation and political subjectification, that weaves them together without a reduction of one to the other.” In Foucault’s terms, “This state of government which bears essentially on population and both refers itself to and makes use of the instrumentation of economic savoir could be seen as corresponding to a type of society controlled by apparatuses of security.” Foucault’s approach is instructive because it shows that security, being “at once internal and external to the state”, cannot be reduced to the forces of production. Security is achieved, not through physical force or economic control, but through power as knowledge. This knowledge requires an unceasing interaction with the supra-mundane minutiae of modern society.

More simply, in the words of Rose and Miller, governmentality describes “the complex historical trajectory of forms of political rationality and their relation to techniques and technologies of government.” These political rationalities encompass “changing discursive fields in which the exercise of power is conceptualized. the moral justifications for particular ways of exercising power by diverse authorities, notions of the appropriate forms. objects and limits of politics, and conceptions of the proper distribution of such tasks among secular, spiritual, military, and familial sectors.” Such rationalities find fruition via governmental technologies as defined by a “complex of mundane programs, calculations, techniques, apparatuses, documents and procedures.”

Accordingly, if “political rationalities render reality into the domain of thought, these technologies of government seek to translate thought into the domain of reality, and to establish ‘in the world of persons and things’ spaces and devices for acting upon those entities of which they dream and scheme.” Foucault himself called this a “tricky adjustment” between, on the one hand, “the states exercise of power through the totalising legal-political forms of its unity”, and, on the other, “its exercise of an individualising form of power through a ‘pastoral’ government concerned with the concrete lives and conduct of individuals.” While Foucault’s earlier account of disciplinary

---

185Foucault, “Governmentality”, 104.
power was criticised for emphasising the passive, or 'docile and useful' subject, governmentality importantly acknowledges a tension between the active, self-governing individual and the state. At the very heart of the power relationship, and constantly provoking it, are the recalcitrance of the will and the intransigence of freedom. Rather than speaking of an essential freedom, it would be better to speak of an 'agonism' — of a relationship which is at the same time reciprocal incitation and struggle; less of a face-to-face confrontation which paralyses both sides than a permanent provocation.

According to Gordon, what Foucault finds most intriguing about liberal governmental rationality, therefore, is "the idea of a kind of power which takes freedom ... and the 'soul of the citizen', the life-conduct of the ethically free subject." In this way, governmentality becomes a very useful analytical tool for deciphering the complex interdependence between state and civil society.

The post-structuralist state

Further discussion of governmentality will be left to a later section in which we will develop our own theoretical framework based on the link between liberal rationalities of government, the constitutional arrangements underpinning western state formation and the 'education question'. For the moment, Foucault's 'non-totalising' schema for understanding power in the liberal state, both in his early and later work, needs to be understood in terms of the broader influence it has had on post-structural accounts of the modern state presented by Giddens, Mitchell, Curtis, Torstendahl and others. Alluding to Foucault's 'non-totalised' analysis of the state and its relationship to civil society, Stephen Bell and Brian Head, for instance, drawing on the later work of Block, argue, in reference to state-economy relations in Australia, that the "the overlap and mutual interdependence of social, economic, and governmental/administrative activities is much greater than is implied by mainstream theory." In a similar vein, Timothy Mitchell, looking more broadly at western state theory, posits that the "state-society divide is not a simple border between two free-standing objects governing 'the system of natural liberty'".

---

189 Cited in C. Gordon, "Governmental Rationality: An Introduction", in Burchell et al., The Foucault Effect, 5.
190 Gordon, "Governmental Rationality", 5.
or domains, but a complex distinction _internal_ to these realms of practice.” Moreover, Mitchell
asserts that “we should not be misled into accepting the idea of the state as a coherent object clearly
separate from society any more than we should be misled by the complexity of these phenomena
into rejecting the concept of the state altogether.”

Responding to the conceptual-empirical distinction made in theories of the state proposed by Nettl,
Nordlinger, Krasner and Skocpol, Mitchell makes the further point that the state is not simply a
“subjective belief, incorporated in the thinking and action of individuals” that gives it an idealised
autonomy from society. Critiquing, for example, Skocpol’s _States & Social Revolutions_, which
explained the autonomy of the Bourbon monarchical state in terms of ideological notions of
“martial ambition” or the “vindication of French honor”, Mitchell argues that such an account needs
to encompass “new techniques of organisation and articulation” such as those “represented and
reproduced in visible, everyday forms [including] the language of legal practice, the architecture of
public buildings, the wearing of military uniforms, or the marking out and policing of frontiers.”
Indeed, Foucault’s history of disciplinary power illustrates how the new bureaucratic and military
strength of the French state was dependent, in Mitchell’s words, on the “organisation of space,
movement, sequence, and position.” The latter, which constituted a ‘microphysics’ of institutional
surveillance, inspection, regulation and classification, is used by Mitchell to describe a “new,
localized, yet enormously productive technology of power.” Importantly, this analysis moves
beyond theories of the ‘autonomous’ state which present an “image of power as a system of
authoritative commands or policies backed by force.” In addition, these technologies of power are
not only localised but have a ‘structural effect’ which, although not appearing as an “actual
structure”, make up a “powerful, metaphysical effect of practices that make structures appear to
exist.”

Foucault’s ‘microphysics of power’ had a similar influence on Anthony Giddens, whose theory of
structuration views the state in terms of a ‘duality of structure’ which is both a medium for social
practice and the outcome of such practice. In this sense, state and society are recursive and
interfused. Focusing on ‘technologies’ of administrative power, Giddens, in the words of Dean, “

---

192 Mitchell “Limits of the State”, 90.
193 Mitchell, “Limits of the State”, 81–82, 87
195 Giddens, _The Constitution of Society_. See also A. Giddens, “Structuration theory, past, present and future”,
'brackets out' the notion of sovereignty and popular representation as too implicated in the strategic development of the state to form an analytical or descriptive language."196 Rather, Giddens describes "power containers", or "circumscribed areas for the generation of administrative power" — schools, prisons, hospitals — which depend on "authoritative resources" such as the power of surveillance, supervision, the mass assemblage of citizens, the use of force and military power, and the formation of ideology through architectural representations of power. Surveillance — defined as the "collection and organisation of information that can be stored by agencies or collectivities and can be used to 'monitor' the activities of an administered population", including the "direct supervision or control of the activities of subordinates by superiors in a particular organisation or range of social settings" — is, for Giddens, central to the "internal pacification of emergent nation-states" and the process "whereby the spread of the capitalist labour contract was associated with state monopoly of violence."197

A similar ‘recursive’ understanding of the state underlies Torstendahl’s “network structure” metaphor which, turning from accounts of ‘relative autonomy’, views the state as a pervasive yet amorphous entity. Torstendahl’s state is avowedly non-reductionist since it “includes an internal capacity of policy-making for class and group interest influences without being a mere reflection of such interests or the capitalist economy as such.”198 Noting the discrepancy between state initiated ‘bourgeois’ coercion and Keynesian welfare policy, Torstendahl argues that while states undergo political pressure and attempt to develop relationships with most social interests they may ultimately manifest “state interests.”199 This is not to say that the state is autonomous but is a heterogeneous network which exhibits “reciprocity and a complementarily of strengths.”200 Goran Therborn, a co-contributor to Torstendahl’s State Theory & State History, similarly points out that the "resources of power" attributed to the state are not reducible to “its internal military set-up nor its parameters of population and territory", but “depend significantly on its capacity to develop the potentials of the population and the territory, through education, recruitment. technological advance or importation. infrastructural construction. etc.”201 State power is. therefore, no longer pre-

197Giddens. Social Theory, 174.
198Rolph Torstendahl, State Theory and State History (London: Sage, 1992), 21
199Torstendahl, State Theory. 85.
200Torstendahl, State Theory. 20.
201 G. Therborn, “The right to Vote and the Four World Routes to through Modernity”, in Torstendahl, State Theory and State History. 62-63, 92. For an insight into Therborns earlier and more reductionist writings on
determined but contingent on a peculiar ‘relational dynamic’ between the state and the demographic environment. To appreciate this relational dynamic historians must adopt a more synchronic and less diachronic approach to underlying social, political, institutional, economic and cultural patterns that shape both state and society.

4. Legal positivism, governmentality and educational state formation

**Sovereignty and the bio-political state**

The attempt to explore the interdependent relationship between state and society, whether it be through theories of structuration, network structures, bio-politics, moral regulation and so on, will undoubtedly serve to strengthen the place of the state in Australian history. Returning then to the ‘contradictory’ currents of Australian state development, the idea of the invisible, bio-political state which is dependent on the ‘life-conduct of the ethically free subject’ in some ways explains how *laissez-faire* individualism and state interventionism have been able to co-exist. However, the problem remains about explaining how this relationship is facilitated in terms of the constitutional building blocks of Australian state formation. Has the liberal state been able to interfuse itself so neatly with the citizen-individual due to the idea of popular sovereignty and parliamentary democracy; or indeed has modern state building relied on a less participatory and more representative system of parliamentary government which draws on the absolute sovereignty of the legislature? Theories of sovereignty play a crucial role in the bureaucratic and interventionist potential of the state, and therefore, its ability to create, in Giddens’ terms, ‘power containers’ which set up the architectural and administrative rituals through which the citizen can internalise authority and contribute to state building through ‘self-government’. The specific constitutional techniques which underpin law, government and bureaucratic power in the liberal state will therefore give some theoretical coherence to the apparent contradictions of liberal state formation.

This emphasis on the ‘practices’ of law and government, as expressed through the process of legislative action, correlates with the importance of centralized cabinet government for the growth of Australian statism. The theory of responsible government conferred to the Australian colonies

---

during the 1850s served to ensure that political authority and public policy was a product of ‘reform’ and unceasing legislative activity. Montesquieu, the founder of the separation of powers, continued the axiom that a science of politics must derive from the habits and customs of the people. This was the reasoning behind the common law. John Stuart Mill pointed out that Jeremy Bentham posited a universal science of politics which eschewed the ‘dignified’ and focused on the practical part of the constitution. His main concern was, in the words of Mill, that the executive body which “holds substantially in its own hands the governing power, should be chosen by, and accountable to, some portion or other of the people whose interest is not materially different from that of the whole.” This was important because Bentham’s legislative state was concerned, not with enforcing a contract, but with governing the population. Responsible government allowed the state to execute and administer the law for the majority. Further, it would allow the legislature to become an ‘adjusting’ rather than ‘preserving’ body. To again quote Bagehot: “The essence of the civilised age is, that administration requires the continued aid of legislation.” As noted above, Castles and other Australian historians have linked the growth of the Australian state in the late nineteenth century to a significant expansion in the statute-making function of the central legislature. The increase in parliamentary regulation in terms of social welfare policy, land policy, taxation policy, labour force regulation and education was not, however, simply an outgrowth of social and class conflict or economic growth. Nor was it, as implied by Giddens, simply an instrument of the new technologies of institutional surveillance which had come to define power in the modern nation-state. While the former variables are a necessary dimension of liberal state building, they are secondary to the fundamental dynamics of legislative power in the liberal state. To appreciate this point, we need to better understand the conceptual evolution of law, sovereignty and government in the liberal polity, factors which have been avoided by Giddens, Mann, Foucault and others for being too entrenched in the outward, juridical realm of state power.

**Legal positivism and the science of government**

Since the late 17th century constitutional laws, or what the nineteenth century English jurist A.V. Dicey described as “the rules which directly or indirectly affect the distribution of the sovereign power in the state”, have had a significant influence on the way in which we are governed. These

---


rules are normative and prescriptive, or as Blackshield and Williams note, "written and unwritten", a combination of legislation and convention. They have been particularly strengthened by the onset of legal positivism, a jurisprudential innovation which, in the words of Blackshield and Williams, "came to dominate legal theory during the 19th century [and which has] greatly influenced the development of Australian constitutional law." Stated simply, legal positivism had the effect of making the state or sovereign power, in this case the parliament, the origin of law, and the primary arbiter of public administration. As A. Vincent explained in his account of modern theories of the state: "Law originates with the State. The most extreme version of this [idea] is the school of legal positivism. The State is recognised as the only source of compulsory rules ... it is a continuous public power. This public power is formally distinct from both ruler and ruled. Its acts have legal authority and are distinct from the intentions of individual agents or groups." For Lee, legal positivism is the "doctrine of legal absolutism — the view that the legal sovereign is the legislative will which is omnipotent, supreme and absolute, issuing positive law overriding all forms of obligation that may compete with it for the allegiance of the citizen."

While common or customary law focuses on the rights and obligations of the individual, statutory or command law is concerned with the utility of government, and therefore the power and authority of the state. This distinction was made in a mid-nineteenth century pamphlet, published in Melbourne, which discredited natural rights theory and laid faith in a positivist theory of law:

[there are] questions of general utility which should, for the most part, lead to the rendering of all legal rights...the claim of right cannot be said generally to be absolutely conclusive; there is no rule other than that of utility, which affords any ultimate or absolute test by which to try the actions of men... in order that a law might exist in any community it is necessary that the bulk of the community pay habitual obedience to some sovereign legislature, and that that sovereign Legislature should issue general commands to its

1959]), 22; in T. Blackshield & G. Williams, *Australian Constitutional Law & Theory* (Sydney: The Federation Press. 1998), 6. Blackshield and Williams refined this definition, calling constitutional law a "body of rules according to which a state is constituted or governed, the way in which the organs of government are structured and defined, and the way in which those organs relate to one another and citizens."


subjects touching what they should do and what they should forbear from doing, such as are Acts of Parliament. 208

The difference between the command theory of law and “moral rules” is that the latter “are not made by definite people at definite times.” Alternatively, the virtue of statute law is that it “can be altered and repealed.” 209 Thus, it was in the mid-nineteenth century that political and constitutional theory converged with legal theory to give the state the interior unity that it has lacked under what Foucault termed the ‘vast, inordinate framework of juridical sovereignty’.

Significantly, the influence of legal positivism, even amongst legal scholars, has been slight in the historiography of Australian political development. As described above, democratisation, self-government and the attendant rise of colonial statism in Australia continues to be presented as a struggle for property rights or the consolidation of bourgeois social relations. This represents an epistemological reliance on economic, social and cultural variables which, unlike abstract theories of law and government, are more easily adaptable within an empirical historical framework.

However, the ascendency of cabinet government and collective ministerial responsibility – the constitutional pre-condition for the centralization of school governance in Tasmania and New South Wales – was not simply an outgrowth of the struggle for miners rights on the goldfields, the class victory of the urban bourgeoisie, or an underdeveloped colonial economy. While these historical junctures aided the process, the Australian state was not able to become highly bureaucratised until the command theory of law was entrenched as the foundation of Australian government. This jurisprudential model, which allowed legislation to be codified and administered in a unified and efficient way, was imbricated in new ‘technologies’ of political economy and social economy aimed at objectifying and calculating the supra-mundane life-conduct of the population. Furthermore, legal positivism opened up law as a field for political ‘subjectification’ or ‘self-government’ since the individual became, through the representative parliament, an active agent in the broader strategy of public utility. This thesis argues that Australia’s peculiar social and economic genesis provided the conditions for the adoption of legal positivism in Australia long before it was admissible in Britain.

Radical jurists and political theorists such as Bentham, Chadwick, Mill and Bagehot who were frustrated by the intransigence of the constitutional system in Britain saw, in the virgin political landscape of the colonies, a constitutional laboratory through which they could test their ideas for


reform. Not surprisingly, these progenitors of legal positivism have not featured in the
historiography because they represent a theoretical milieu which cannot be directly attributed to the
local circumstances which, for most writers, decided the fate of Australian political development.\textsuperscript{210}

Failure to emphasize the discourses surrounding legal positivism has been evident both within and
outside Australia. Writing in 1981, Fryer noted that “the relationship between law and the state has
been an absent dimension of the sociology of law.” This was a particular fault of the neo-statist
revival as characterised by Poulantzas, which failed to “deal with the structural location of legal
systems in capitalist societies.” If, as Poulantzas argued, the state is “the factor of cohesion between
the levels of a social formation”, this should, for Fryer, imply that the law is one factor in the
“general function of the state.” Furthermore, capitalist state formation has relied on the “expanded
role” of law and legislation as the “direct and immediate agency of economic and social policy.”\textsuperscript{211}

Interestingly, contemporary observers of ‘state socialism’ in Australia such as Eggleston were privy
to the utilitarian response to “feudalism, privilege and the machinery of paternalism” that embodied
“a theory of sovereignty and law which marked a definite advance in the theory of legislative
action.” For Eggleston, it was the “Austinian theory that law is a command and the State is
omnipotent [that] really paved the way for modern socialism. The power of the State, so conceived,
might be as effective to build up as to cut away.” The command theory of law quickly provided the
tools to “create the elaborate machinery necessary for state action.” It was, therefore, “precisely this
constructivist view of the function of the State which, after an early struggle against a rather
immature Liberalism, determined the trend of political activity.”\textsuperscript{212} This more robust analysis of the
nexus between jurisprudence, constitutionalism and the theory of the state tapered quickly, as was
witnessed in our earlier discussion, into a stock account of geographic and economic circumstance.
Similarly, legal historians such as Castles and Finn give only passing mention to debates
surrounding Bentham, John Austin and the school of legal positivism, which in both Britain and
Australia, had a profound influence on the need to codify law through an increase in the statute-
making authority of the parliament. When Castles, for example, described the process of
“modernising and clarifying local statute law” initiated by legal and parliamentary reformers such

\textsuperscript{210} As noted earlier, Collins’ account of Benthamite ideology in Australia typifies this tradition by viewing
utilitarianism in Australia as a secondary effect of political conflict and Australia’s distinctive socio-economic
circumstances. See Collins, “Political Ideology in Australia”, 150–52

\textsuperscript{211} B. Fryer et al., \textit{Law, State and Society} (London: Crom Helm. 1981), 15.

\textsuperscript{212} Eggleston, \textit{State Socialism in Victoria}, 23–24.
as the Victorian Attorney-General George Higinbotham, he included only a cursory mention of “the application of nineteenth-century philosophical ideas which had often been propounded by Bentham and his disciples.”

Governmentality, law and the state

To position legal positivism as a central analytic in the process of educational state formation in Australia requires an understanding of the historical relationship between law, sovereignty and the practices or jurisdiction of liberal governance. While Australian historians and state theorists in general have, in the face of the pluralist and society-centred narrative, acknowledged the autonomous and recursive dimensions of the modern state and its ability to manipulate economic, cultural and ‘technological’ formations, few have addressed the precise historical evolution of governmental power, or the tensions which surrounded the interfusing of state and society in liberal political theory. Furthermore, and as noted in the introductory section of this chapter, contemporary studies in governmentality have tended to miss much of the tension and complexity surrounding the particular debates surrounding the ‘nature and limits of government’ in Australia. For some, the application of Foucauldian analysis in this context might seem problematic since, as Dean points out, Foucault insisted that analysis of “power and government cannot be made simply in terms of the historical development of state institutions and the language of legitimacy, law and sovereignty.” But Dean tends to assume that modern constitutional and jurisprudential theory is synonymous with the old étatist concept of state power. While shaping the concept of governmentality against “an effective historical analysis of the emergence of forms of national government and administration”, a project which intersects with Webers analysis of the national administrative state, Dean also seeks to “dispel the obviousness of centralized and étatiste forms of rule”, instead exploring how “power relations enable the state to act as a centralised, unified locale, and the implications of this for conduct of the life of the governed.” By focusing on “practices of government”, Dean argues that governmentality cuts the “Gordian knot of the relation between micro- and macro-levels of power.” However, by relegating sovereignty and state theory to a

---

213 Castles, An Australian Legal History, 480. In the 1860s Higinbotham formulated bills for the full indexing and consolidation of the statute book to iron out any ambiguities in local legislation, and, to facilitate a more detailed and efficient use of regulatory legislation. This was the precursor to full codification of both the statute and common law, a project pursued most forcefully by the Victorian jurist and avowed legal positivist William Hearn.

214 Dean, Critical & effective histories, 179.
simplified realm of macro power, Dean misses the historical interrelation, and tension, between these discourses and the ultimate evolution of 'individualizing and totalising' forms of governance.

Central to Foucault's work on discipline and government – and this is a point which many scholars fail to emphasis – was his theory of the state. Foucault's 'de-centering' of the state remains a potent description of state formation. In Foucault's own words, the attempt to reduce “the state to a certain number of functions, such as the development of productive forces and the reproduction of relations of production” is paradoxical because

the state, no more probably today than in any other time in history, does not have this unity, this individuality, this rigorous functionality, nor, to speak frankly, this importance; maybe, after all, the state is no more than a composite reality and a mythicised abstraction, whose importance is a lot more limited than many of us think. Maybe what is really important for our modernity – that is, for our present – is not so much the etatisation of society, as the governmentalization of the state.215

Foucault's account of the governmentalization of the state provides insight, albeit indirectly, into the changing relationship between law and governance in the nineteenth century. Significantly, Foucault was able to reject the 'classical juridical theory' which still dominates jurisprudence and political theory and which focuses on the coercive and repressive tactics of law. By contrast, Foucault explored, in Litowitz' words, the “non-central locations” of a legal culture that has become "increasingly regulatory, administrative, and normative."216 The former classical model was, in the context of the Anglo-liberal state development, inherent in 'contractarian' modes of governance concerned less with reform, innovation or 'legislative action', than with protection and preservation of a status quo upheld through the doctrine of the balanced constitution. Foucault argued that the contractarian view of law and politics emanating from Hobbes, Locke and Rousseau conceptualises power as a “right, which one is able to possess like a commodity, and which one can in consequence transfer or alienate, either wholly or partially, through a legal act...Power is that concrete power which every individual holds, and whose partial or total cessation enables political power or sovereignty to be established."217 Indeed, while Locke and Rousseau consolidated the

---

215 Foucault, "Govemmentality", 103.
‘rule of law’ and the contractual understanding of the relation between state and society, Blackstone enforced the sovereign’s obligation to uphold the economic rights of the individual through the technical theory of the separation of powers.\textsuperscript{218} Power in this instance is negative – thus, for Hobbes, “Liberty, or freedom, signifies the absence of opposition.”\textsuperscript{219} By contrast, the governmentalization of the state was based on a shift away from “abstract juridical forms of contract and exchange”. Indeed, Foucault implicitly acknowledged the dynamics of the command theory of law when he urged that we must “cease once and for all to describe the effects of power in negative terms.”\textsuperscript{220}

Unlike instrumentalist, structuralist or Weberian theories of the state, Foucault’s account of disciplinary power avoids negative, contractarian descriptions of state authority by focusing on strategies or practices of government which are not aimed at “expiation” or “repression”, but “comparison, differentiation, hierarchicalization, homogenization, and exclusion.”\textsuperscript{221} Symbolised initially by the architectural and ‘invisible’ regime of power employed in Bentham’s prison panopticon, these strategies had implications for the relation between law and state forms by substituting the “accusatory justice” of the eighteenth century criminal law with a “problematisation of the criminal.” Such “concern with a punishment that it a correction, a therapy, a normalisation”, led to a “division of the act of judgement” away from the “judicial inquisition” and into “various authorities that are supposed to measure, assess, diagnose, cure, and transform individuals.”\textsuperscript{222} These techniques of normalisation were, for Foucault, the causal route to the ‘birth’ of the prison, the clinic, the asylum, the school and unitary systems of state administration. One of the most potent techniques of disciplinary power was the “examination”, a point which highlights the significance of the school as a principle site for the introduction and maintenance of these new governmental strategies. In Foucault’s terms, the examination constituted the individual “as a describable, analysable object”, thereby maintaining the citizen “in his own particular evolution, in


\textsuperscript{218}For John Stuart Mill, the “social compact” described by Hobbes and Rousseau was “fictitious.” Hobbes’ \textit{Leviathan}, argued Mill, “elaborately deduces the obligation of obeying the sovereign, not from the necessity or utility of doing so, but from a promise supposed to have been made by ancestors, on renouncing savage life and agreeing to establish political society.” Such a promise cannot be a “sufficient justification for the justice of government.” J. S. Mill. A System of Logic Bk. 4. Ch. vii in \textit{Works} VIII, 828.


\textsuperscript{220}Foucault, “Governmentality”, 98.

\textsuperscript{221}Foucault, \textit{Discipline and Punish}, 183.

\textsuperscript{222}Foucault, \textit{Discipline and Punish}, 227.
his own aptitudes or abilities, under the gaze of a permanent corpus of knowledge.” Secondly, the examination became an integral tool of political economy since it promoted the “constitution of a comparative system that made possible the measurement of overall phenomena, the description of groups, the characterization of collective facts, the calculation of the gaps between individuals, their distribution in a given ‘population’.” Disciplinary power became a pervasive, recursive instrument of state rule that “was exercised through its invisibility.” It relied, therefore, on a rejection on notions of law and government concerned with the preservation of property rights through outward signs of authority – as represented in the ritual of the quarter session and the public execution. It was the ‘practice’ of examination at the school and in the civil service which, argued Foucault, became the technique by which power, instead of emitting signs of potency, instead of imposing its mark on its subjects, holds them in a mechanism of objectification. In this space of domination, disciplinary power manifests its potency, essentially, by arranging objects. The examination is, as it were, the ceremony of this objectification.

As examination also contributed to the measurement of the population, it promoted macro-social techniques of public administration. Political economy, for example, departed from the orthodox practice of isolating individual economic agents. The new political economy, drawing on statistical representations of poverty, crime, unemployment, literacy and health, realised that aberrations in the distribution and division of the population could not be left to the natural harmony of interests but required government intervention. Again, this represented a shift away from common law authority. While traditional jurisprudence described the individual in relation to “a set circumstances defining an act and capable of modifying the application of a rule”, these new techniques of government measured and compared the individual in relation to others. The attempt to codify individual difference and particularity eschewed traditional distinctions based on status, birth, and wealth. The innate and *apriori* rights of the aristocracy were henceforth dependent on the experience of the individual constituted as an “as an effect and object of knowledge.” This is what Foucault called the “reversal of the political axis of individualization.” The theory of natural rights in Blackstonian law described individualization at the point where “sovereignty is exercised and in the higher echelons of power.” It was in the court that the common law lawyer gave ceremonial legitimacy to

---

223 Foucault, *Discipline and Punish*, 190.
the whole corpus of historical understanding which sanctified the property rights of the individual. As Blackstone himself stated, the common law embodied customs "not set down in any written statute or ordinance, but depending on immemorial usage for their support."\(^{226}\) The evolution of disciplinary power shifted these "historico-ritual mechanism's" for the formation of individuality — and ultimately the state — to "the scientifc-disciplinary mechanism's." This was the moment when, in the words of Foucault, "the normal took over from the ancestral, and measurement from status, thus substituting for the individuality of the memorable man that of calculable man."\(^{227}\) These "new mechanisms of normalizing judgement" were opposed — and this is a very important point — to a "judicial penalty whose essential function is to refer, not to a set of observable phenomena, but to a corpus of laws and texts that must be remembered; that operates not by differentiating individuals, but by specifying acts according to a number of general categories; not by hierarchizing, but quite simply by bringing into play the binary opposition of the permitted and forbidden." For Foucault, the "penalty of the norm" is irreducible to the "traditional penalty of the law." Thus, he asserts that disciplinary power can no longer be found in legal precedent:

The minor court that seems to sit permanently in the buildings of discipline, and which sometimes assumes the theatrical form of the great legal apparatus, must not mislead us: it does not bring, except for a few formal remnants, the mechanisms of criminal justice to the web of everyday existence.\(^{228}\)

The court, and the contractarian mode of governance it supported, was, throughout the Anglo-liberal state, controlled by the country gentry who sat in parliament and who formed a matrix of administrative power with the local lawyers and justices of the peace which administered property law, criminal law, the poor law, master and servants legislation and so on. The justice of the peace symbolized the liberal institution of local-self government, which asserted the autonomy of the Saxon shire against impositions from the central executive. This local judicial network typified a 'negative' liberal state that enforced the freedom of the individual and the natural right to property through the repressive tactics of transportation and capital punishment. Designed to check the growth of royal absolutism, the separation of powers doctrine compounded local power by limiting the possibility for unified action between the parliament and the executive. Moreover, the prominence of laissez-faire political economy served to limit state intervention by arguing that the


\(^{227}\)M. Foucault, Discipline and Punish, 193.

\(^{228}\)M. Foucault, Discipline and Punish, 183.
'natural harmony of interests' best regulated civil society. Yet it had become apparent that the protection of the right to property was not enough to produce a literate and skilled workforce, a comprehensive system of public health, or to solve the increasing levels of crime and pauperism in industrial society. This problem of population could only be corrected through the kind of national and comprehensive legislation that had long been retarded by a weak and fragmented executive.

What then were the historical pre-conditions for this transformation? Foucault identifies, in rather prosaic terms, three movements beginning firstly, in the fifteenth and sixteenth centuries, with sovereignty and the *raison d'etat* underlying the old juridical notion of law and governance; through to the birth, in the eighteenth century, of disciplinary power and technologies of governance which allowed the art of government to develop beyond its abstract, legalistic framework; and on to 'government', a movement driven by a problem of population perceived initially by political economists in the late eighteenth century, and through which, the state began to intervene in the internal workings of both the population and the economy. This 'problem' was historically prescribed by "the demographic expansion of the eighteenth century, connected with the increasing abundance of money, which in turn was linked to the expansion of agricultural production through a series of circular processes with which the historians are familiar." Foucault attempted to view these three movements as a 'triangle', a continuous counter-struggle, rather than a linear transformation. The central dynamic in the shift to government is the moment when population, rather than the contract, forms the 'target' of an ensemble of institutions, procedures and strategies of government. Foucault insists that

discipline was never more important or valorised than at the moment when it became important to manage a population; the managing of a population not only concerns the collective mass of phenomena, the level of its aggregate effects, it also implies the management of population in its depths and details. The notion of a government of population renders all the more acute the problem of the foundation of sovereignty and equally acute the necessity for the development of discipline.²³⁰

The state first became concerned with the aggregate affects of population, as noted above, via the 'science of police', or *polizeiwissenschaft*, conceived by German and continental political

²²⁹ Foucault, "Governmentality", 98.
²³⁰ Foucault, "Governmentality", 102.
economists of the seventeenth and eighteenth century. Also referred as the ‘science of happiness’ or ‘science of government’, the science of police used the ‘political arithmetic’ of statistics and demography to constitute “society as [an object of knowledge and at the same time as [a] target of political intervention.”231 Cesare Beccaria, one of the most influential of these theorists – his idea of ‘certain punishment’ influenced much of the ‘reformed’ criminal code in nineteenth century Britain and America – rejected orthodox political economy with its narrow focus on capital and the forces of land, labour, distribution and production. In 1769, while holding lectures for the Chair of Political Economy and Science of Police, he surmised that police was the fifth and quintessential object of modern political economy:

But neither the products of the earth, nor those of the work of the human hand, nor mutual commerce, nor public contributions can ever be obtained from men with perfection and constancy if they do not know the moral and physical laws of the things upon which they act, and if the increase of bodies is not proportionately accompanied by the change of social habits; if, among the multiplicity of individuals works and products one does not at each step see shining the light of order, which renders all operations easy and sure. Thus, the sciences, education, good order, security and public tranquility, objects all comprehended under the name of police, will constitute the fifth and last object of political economy.232

These state strategies or ‘policies’ of moral regulation, which were informed by a political arithmetic which could classify population, and were implemented through institutional technologies such as the prison or the school, would ensure the interdependence between the state and a ‘secure’ population. Consequently, Beccaria was able to challenge the contractual separation of the state and individual in classical political theory. Once the vagaries of an expanding industrial populace became more intelligible, the state could better intervene in and regulate the civil realm. The importance of statistics to the science of police is described by Hacking: “It was necessary to count men and women and to measure not so much their happiness as their unhappiness: their

231 Pasquino notes that in 1850, two years after the writing of Marx’s Manifesto, an economist named Fregier argued thus: “It can be affirmed without fear of contradiction that police is the most solid basis of civilization.” P. Pasquino, “Theatrum politicum: The genealogy of capital – police and the state of prosperity”. in Burchell etal., The Foucault Effect, 112.
morality, their criminality, their prostitution, their divorces, their hygiene, their rate of conviction in courts.” This “erosion of determinism” and “taming of chance” was, for Hacking, best appropriated in the early nineteenth by French administrators in the ministry of justice. Thus, the ‘comparative statistician’ Guerry argued that

Criminal statistics becomes as positive as the other observational sciences; when one knows how to stick to established facts, and groups them so as to separate out merely accidental circumstances, the general results then present such a great regularity that it becomes impossible to attribute them to chance. Each year sees the same number of crimes of the same degree produced in the same regions; each class of crimes has its own particular distribution by sex, by age, by season...we are forced to recognize that in many respects judicial statistics represent a complete certainty. We are forced to recognize that the facts of the moral order are subject, like those of the physical order, to invariable laws.  

The initial influence of the science of police was felt most strongly on the continent, a fact which explains the earlier centralization of school governance in France and Prussia. The state/population nexus was delayed in Britain, America, and, to a lesser extent, Australia, due to the intransigence of the juridical model of sovereignty, the common law, local self-government and so on. Thus, the Anglo-liberal state could not appropriate these emerging strategies of government without first addressing these constitutional barriers. To reiterate our earlier point, the attempt to effect this shift centred around the discourse of legal positivism. Foucault did not, however, pursue this line of analysis when acknowledging the movement from negative, juridical power to power as knowledge. Rather, his analysis of disciplinary power denied the influence of sovereignty or constitutionalism, refocussing instead on ‘practices’ or ‘apparatuses of security’ which are fluid, subjective, ahistorical and not bound by reason or legal custom. Foucault emphasised this point when describing “the discourses of discipline” which “have nothing in common with that of law, rule, or sovereign will...The code they come to define is not that of law but that of normalisation...It is the human sciences which constitute their domain, and clinical knowledge their jurisprudence.”

Later, Foucault conceded that the shift from “structures of sovereignty” to “techniques of government” is

---


not to say that sovereignty ceases to play a role from the moment when the art of government begins to become a political science; I would say that, on the contrary, the problem of sovereignty was never posed with greater force than at this time, because it no longer involved, as it did in the sixteenth and seventeenth centuries, an attempt to derive an art of government from a theory of sovereignty, but instead, given that such an art now existed and was spreading, involved an attempt to see what juridical and institutional form, what foundation in the law, could be given to the sovereignty that characterises a state.  

Foucault, referring to Rousseau's *Encyclopaedia*, notes the latter's rejection of the word 'oeconomy' — a terms referring to the management of the family, its property, finances, etc — and its replacement, as evidenced in the *Social Contract*, with "concepts like nature, contract, general will", that provided a "general principle of government which allowed room for...a juridical principle of sovereignty." Thus, "sovereignty is far from being eliminated by the emergence of a new art of government, even by one which has passed the threshold of political science; on the contrary, the problem of sovereignty is made more acute than ever." Foucault's approach is, for our own purposes, inconsistent because he tends to conflate the constitutional discourses occurring both in Britain and on the continent. This point is illustrated by the fact that Rousseau’s notion of sovereignty differed markedly from the one which underpinned the command theory of law. For Rousseau, 

Sovereignty cannot be represented, for the same reason that it cannot be alienated...the people’s deputies are not, and could not be, its representatives; they are merely its agents; and they cannot decide anything finally. Any law which the people has not ratified in person is void; it is not law at all. The English people believe itself to be free; it is gravely mistaken; it is free only during the election of Members of Parliament; as soon as the members are elected, the people is enslaved; it is nothing.

This invocation of popular sovereignty contrasted with the ‘legislative sovereignty’ defined by Bentham, Austin, Dicey and the legal positivists. It is an inconsistency that Foucault never wholly addresses. Consequently, governmentality fails to describe how sovereignty was reinscribed under the auspice of legislative government to facilitate the expansion of modern practices of government.

---

Although Foucauldian analysis gives prominence to the influence of Bentham on disciplinary power and the ‘panopticization’ of government, it focuses little on the jurisprudential dimension of the political rationalities inherent in utilitarianism. Governmental ‘practices’ such as the examination would not have been realised without a shift from the common law tradition, with its non-central and desultory administrative framework, towards legal positivism and a codified system of statute law controlled by a central, responsible department of state. By locating a shift from an absolutist to democratized and rights based notions of sovereignty which enshrined the natural, economic dynamics of population, and thus by avoiding constitutional and jurisprudential debates concerning state power, Foucault fails to explain how the English or colonial state, which was long opposed to unceasing legislative or any interposition between state and society, came to embrace a highly interventionist system of government. While Somers has emphasised the historically relational, reciprocal and ‘embedded’ positioning of communitarian and individual liberty within England’s nationalised legal and political framework, this explains aspects of the development of citizenship rights but stops short when confronted with the administrative state’s continuing incapacity to deal with the ‘problem of population’. So too governmentality, while importantly isolating the moment when the state became concerned with the collective and aggregate dimensions of the social body, does not show how this process relied on some important constitutional changes before it was to succeed in Britain. Thus, the idea that “governmentality was born out of...the archaic model of Christian pastoral, a diplomatic military technique,” and “the art of government...known, in the old seventeenth and eighteenth-century sense of the term, as police”, does not adequately describe its development in the Anglo-liberal context.

Foucault’s lineage of religious, military, and administrative history on the continent, particularly the growth in post-reformation Protestant states of a logic of self-government based on pietist notions of individual salvation and the corresponding creation of a highly bureaucratized military apparatus

---

238 See Somers, Rights, Relationality and Membership, 100–103.

239 M. Foucault, “Governmentality”, 104. In a later work Foucault detailed the influence of the Christian pastorate on the liberal state: “We can say that Christian pastorship has introduced a game that neither the Greeks nor the Hebrews imagined. A strange game whose elements are life, death, truth, obedience, individuals, self-identity: a game which seems to have nothing to do with the game of the city surviving through the sacrifice of citizens. Our societies proved to be really demonic since they happened to combine those two games – the city-citizen game and the shepherd-flock game – in what we call modern states.” M. Foucault. “Omnes et Singulatem; Towards a Criticism of ‘Political Reason’ “, in S. McMurrin (ed.) The Tanner Lectures on Human values, vol. 11, (Salt Lake City: Uni of Utah Press, 1992); in I. Hunter. Rethinking the School (Sydney: Allen & Unwin. 1994). 65.
and ‘territorial’ state during the religious wars of the seventeenth century, has been a common theme in recent studies of the origins of modern educational systems. Australian scholars such as Pavla Miller, Ian Davey and Ian Hunter, have, in the case of Miller and Davey, described the “intense competition for souls” in Lutheran and Calvinist doctrine which “developed coherent systems of doctrines, rituals, personnel, administration and institutions.” The resolution of the Christian pastoral into modern state forms was, for Miller and Davey, consolidated via the “inextricable matrix of power” between church and state. Hunter’s causal route is more ambiguous, describing a “piecemeal series of exchanges between a state that conceived of the school as a bureaucratic instrument for the social government of citizens, and a Christian pastorate that saw it as a means for the spiritual disciplining of souls.”

Thus, England’s most prominent educational bureaucrat, James Kay-Shuttleworth, initiated the 1835 Select Committee on the Education of the Poorer Classes in England as a “great public forensic ritual” through which “the pastoral school was tied to party interests and became a stake in the system of political combat that decides the ‘public good’ in parliamentary states.” Hunter qualifies the point by arguing that the convergence of the “government of states” and the “government of souls” did not take place through “a dialectical reconciliation of principles.” Rather, it “took the form of a long – in fact still continuing – series of collisions and adjustments, exigencies and innovations, through which a hybrid institution was improvised.” This qualification is made in light of an English experience in which, as we shall explore below, the ‘pastoral bureaucracy’ was timidly adopted.

5. The limits of the English state and the problematization of liberal government

The English common law long resisted any centralization or rationalization of liberal government. This resilience was due partly to an identification with the ancient principle of local self-government. One of the virtues of the common law constitution was that it maintained the autonomy of the Anglo Saxon shire against the imposition of royal or parliamentary power. Local


242 Hunter, Rethinking the School, 73.

243 Hunter, Rethinking the School, 67.
self-government was protected firstly by the common lawyers whose exclusive knowledge of legal precedent preserved the English law; and secondly, by the justices of peace who from the sixteenth century administered local administration in conformity with this law. As administrators of the poor law, master and servants legislation and the criminal law, the justices were the enduring linkage between local and central government. In the words of G. M. Trevelyan, these men not only “preserved society from confusion” but “saved England’s local liberties, and thereby in the long run her parliamentary institutions.” While the Kings Council supervised the magistrates the latter were the true foundation of English government. Without what Trevelyan called their “active and intelligent co-operation” the “central government could have done nothing.”244 The petty and quarter sessions through which the justices administered the law was one of the few ways in which a majority of the population came into contact with the state. This established the rule of law both as the constitutional birth right of each citizen and the fulcrum of early modern state formation.245 The localized foundation of British political culture was replicated in the free-trade ideology of the merchant middle class who, embracing the laissez-faire political economy of Adam Smith, wanted to break down the economic monopolies which underpinned mercantile and feudal political organisation. In the late eighteenth century these historical movements grew into a liberal-whig individualism which was sanctified by the doctrine of the separation of powers and the idea of the minimal state.

Attempts to centralize school governance in both Britain and Australia were heavily constrained by the theory of the negative state. In 1847, when Lord John Russell asked the House of Commons to invest one hundred thousand pounds in the ‘education of the people’, Thomas Macaulay complained, after supporting the measure, of being charged in the House with destroying the “civil and religious liberties of the people.” Opposition to state interference in education was, Macaulay observed, immanent in a continuing misunderstanding of the “nature and objects of civil government.” The view that the liberal state was limited to the exercise of negative power perpetuated problems of crime, pauperism and illiteracy. Macaulay realised that such a vicious cycle of vice and ignorance could not be corrected by a political community beholden to a negative view of government action:


245Hay commented that “The law was held to be the guardian of Englishmen, of all Englishmen. Gentlemen held this as an unquestionable belief: that belief, too, gave the ideology of justice an integrity which no self-conscious manipulation could alone could sustain.” Hay, “Property. Authority, and the Criminal Law”. 32.
Government is simply a great hangman. Government ought to do nothing except by harsh and degrading means. The one business of Government is to handcuff, and lock up, and scourge, and shoot, and stab, and strangle. It is odious tyranny in a government to attempt to prevent crime by informing the understanding and elevating the moral feeling of a people. A statesman may see hamlets turned, in the course of one generation, into great seaports and manufacturing towns. He may know that on the character of the vast population which is collected in those wonderful towns, depends the prosperity, the peace, the very existence of society. But he must not think of forming that character. He is an enemy of public liberty if he attempts to prevent those thousands of his countrymen from becoming mere Yahoos. He may, indeed, build barrack after barrack to overawe them. If they break out into insurrection, he may send cavalry to sabre them: he may mow them down with grapeshot: he may hang them, draw them, quarter them, anything but teach them.\

Similarly, in 1855, the social reformer Samuel Richardson questioned an eighteenth century theory of government in which

the anarchical tendencies of ignorance among the great mass of the community were not regarded as an evil in the polity of the State to be met by the diffusion of knowledge, but rather as eruptions, forming inevitable phenomena of social history, to be restrained by the interference of armed forces. The theory of government accepted coercion and punishment among its most active agencies.

Macaulay’s and Richardsons’s frustration reflected a fundamental shift away from the notion of negative power that long underpinned liberal state theory. While Macaulay was the author of the classic whig interpretation of the English Revolution, he was amenable to a science of legislation which had been given particular force through Benthamite and Chadwickian reforms in poor law and municipal administration. It was through such reforms as the New Poor Law Amendment Act and the Municipal Corporations Act that the fractured organisation of English government began to

\(^{246}\) T. B. Macaulay, Speech in House of Commons, April 19, 1847, 409.


\(^{248}\) T. B. Macaulay, History of England (London: 1848). This was the seminal whig account of the post-revolutionary ‘triumph’ of English liberalism. For Macaulay, “the history of our country during the last hundred and sixty years is eminently the history of physical, of moral, and of intellectual improvement.”
be transformed. These were part of a series of legislative efforts which attempted to rationalise the civil service, educational governance, local government and the administration of the colonies.\footnote{The colonies become a model for these reforms, particularly through the Durham Report (1839), which proposed responsible government, municipal reform, land reform, and a centralization of educational governance in the Canada's. The 'colonial reformers' who produced the Report were conspicuous in the domestic reform movement and soon had a profound effect on political modernization in the Australian colonies.}

Their common feature was the attempted creation of uniform, professional, accountable and largely centralized systems of government. Whig philosophy had begun to reconcile the individual 'interests' inherent in the English revolution, orthodox political economy and urban middle class ideology, with the notion of the 'general good' and the macro-economic realities of population.\footnote{This is not to imply the whole body of parliamentary whigs who passed the reform acts since they included, as Briggs explained, the 'intricate network of aristocratic 'connections' among the friends of liberty and order, the old constitutional Whigs of England.' It was the more radical whigs like John Russell, Lord Howick, and Lord Durham who began to acknowledge the inadequacies of English constitutional antiquity. A. Briggs. The Age of Improvement 1783–1867 (London: Longman. 1959). 237.}

This is no great revelation. However, the conventional interpretation of the whig adoption of "political innovation", as embodied by Asa Briggs, does not acknowledge any substantive constitutional shift and confirms the adaptability of liberalism through its indomitable march toward perfectibility. Briggs could not avoid the whig acceptance of "increasing government intervention to reconcile and harmonize diverging interests." The fact that "political economists and administrative reformers marched side by side in a campaign against the inconsistencies and wastes of traditional government" was, therefore, an incidental development consistent with the principles of 1688.\footnote{A. Briggs. The Age of Improvement. 274–75.}

This attempt to explain what MacDonagh called the "general collapse of political individualism in the last quarter of the nineteenth century" has long vexed historians and the 1950s and 60s witnessed a concentrated scholarly effort to decode the dynamics of this 'revolution in government'. MacDonagh himself challenged the accounts of 'administrative Benthamism', arguing that the social reforms of Edwin Chadwick and others made only a "peculiar, idiosyncratic contribution to nineteenth century administration." It was true that Benthamism's concern with the "regulatory aspects of the law", its "rejection of prescription, and its use of empirical and statistical method" worked "altogether with the grain" of administrative centralization in the mid to late nineteenth century. But for MacDonagh, Bentham's name is largely missing from the nineteenth debates over
administrative reform. Furthermore, he argued that this revolution could neither be explained through an account of humanitarianism, urbanization and industrialization, the Reform Acts, the Northcote-Trevelyan Report and so on. These factors are, for MacDonagh, too discursive to weld a neat causal account of the rise of modern bureaucracy. MacDonagh wants to understand an underlying and “self-generating” dynamic which is to be found, not in philosophy and legislation, but “the pressures working within society and the ‘spontaneous’ developments in administration.” This approach is justified as an attempt to investigate “the transformation, scarcely glimpsed till it was well secured, of the operations and functions of the state within society, which destroyed belief in the possibility that society did or should consist, essentially or for the most part, of a mere accumulation of contractual relationships between persons, albeit enforced so far as need be by the sovereign power.”

By so doing, MacDonagh importantly links the bureaucratization of English administration to a breakdown in the doctrine of juridical sovereignty and the social contract. The difficulty, however, remains in explaining this change or indeed what replaced it. For MacDonagh, this shift can be located in the increase and mobility of the population; industrialization; urbanisation; the diversification of transport, labour, and capital; the increasing influence of central legislation; and the “rapid development of parliament’s investigatory instruments.” This “legislative-cum administrative process” was not contrived but evolved as an *ad hoc* response to “social evils.” Once these problems became the subject of parliamentary enquiry and legislation “the ensuing demand for remedy at any price set an irresistible engine of change in motion.” Thus, the governmental revolution was formed through habit and circumstance; government grew in accordance with public sentiment to “legislate the evil out of existence.” Legislation was of course constrained by political conflict, resistance, and restrictive clauses. However, MacDonagh does not view these limitations in terms of constitutionalism or a normative crisis concerning the relationship between state and civil society. While problems arose including the “traits of the nineteenth century judiciary, a contractualist view of society and a professional hostility to statute”; “the master ideologies of the day, political and economic atomism”; “the current shibboleths on the corruption, extravagance, and inefficiency of governments conduct of any business”; and debate on “the proper limits to the area of ‘interference’”. these tensions were resolved through the pragmatic necessities

---

252 Oliver MacDonagh, “The nineteenth-century revolution in government: A Reappraisal”, *The Historical Journal*, vol. II, 1958, 65

253 MacDonagh, “The nineteenth-century revolution in government”, 57.

of administrative change. Such change was ingrained when professional executive officers were appointed as part of a centralization of public administration. Thus, "the pressures born of experience succeeded in securing both fresh legislation and a superintending central body." This nexus became established, not through further grand legislation, but the enculturation of bureaucratic rationality, or what MacDonagh called the "crystallization of expertise." The bureaucracy could then indulge in a highly statistical and experimental approach to government since their regulations were "passed effortlessly into law, and, unperceived, the ripples of government circled even wider." MacDonagh surmised his 'model' of the administrative revolution thus: "In the course of these latest pressures toward delegated legislation, toward fluidity and experimentation in regulations, toward a division and specialization of administrative labour, and towards a dynamic role for government in society, a new sort of state was being borne.

In writing off the immediate influence of administrative Benthamism, MacDonagh relates the ultimate success of the panopticon to the "concrete day-to-day problems" which "pressed eventually to the surface by the sheer exigencies of the case." He asserts that Benthamites who were too doctrinaire to have any enduring influence on legislation could not have contrived the ultimate adoption of the penitentiary scheme. This view conflicted with Brebner's earlier claim that administrative expansion was "Benthamite in the sense of conforming closely to that forbidding, detailed blueprint for a collectivist state, the Constitutional Code." MacDonagh's response was to show that while Benthamism fits the formula it cannot account for a revolution guided by circumstance and exigency. Henry Parris soon took issue with MacDonagh's approach since it failed to account "for the unconscious influence of ideas on mens minds." The growth of bureaucracy, while not "attributable to Benthamism as a sole cause, cannot be understood without allotting a major part to the operation of that doctrine." Indeed, Parris argued that Dicey's account, which erroneously equated Benthamite reforms with laissez-faire individualism, is more instructive than MacDonagh's since it recognized a connection between law and public opinion and

---

255 MacDonagh, "The nineteenth-century revolution in government", 62.
256 MacDonagh, "The nineteenth-century revolution in government", 60-61.
further related it to Bentham's influence. Parris insists that administrative change was possible due to the interaction of utilitarian ideas with the "processes of change going on around them." The reform of public administrative, as illustrated by the bureaucratic rationalisations contained in the Poor Law reforms, the Factory Acts, and the Education Act of 1870, was a particularly utilitarian response to social and economic change. The question was not "private enterprise or public enterprise, but where, in the light of constantly changing circumstances, the line between them should be drawn."^260

Parris might be right and Bentham was pragmatic about the issue of government interference. In regard the limits of the state, Bentham wrote that "The imposition of government may be desirable or not, according to the state of the account: according to the inconveniences attached to the measures in which the interposition of government consists. preponderate or fail of preponderating over the advantage resulting from the effect which it is proposed should be produced."^261 Bentham did not rely on Ricardo's economic model that assumed that economies tended towards full employment equilibrium and that all government activities were unproductive or diversionary. It was Ricardo's main critic, Thomas Malthus, who wanted to relieve post-war unemployment through government created capital and public works, who was closer to the Benthamite and utilitarian camp. Indeed, the binary opposition between laissez-faire philosophy and

\(^{259}\)Dicey, like Halévy, argued that "legislative utilitarianism is nothing more than systemized utilitarianism" and that "Benthamites looked with disfavour on state intervention." See A. V. Dicey, Lectures on the Relation between Law and Public Opinion During the Nineteenth Century (London: 1914 [2nd edition]) 125, 145; For Halévy, Benthamites were more influenced by Adam Smith than Bentham. Administrative reform was "the idea of free trade and of the spontaneous identification of interests." Halévy, The Growth of Philosophical Radicalism, 519; in H. Parremade, Constitutional Bureaucracy: The Development of British Central Administration since the Eighteenth Century (London: Allen & Unwin, 1969), 259, 266-7.

\(^{260}\)Parris, Constitutional Bureaucracy, 282.

\(^{261}\)J. Bentham, "Economic Writings", in Works II. 335. At times Bentham supported free trade and severely criticized Smith for defending the Usury Laws designed to regulate fluctuating rates of interest. See J. Bentham, In Defence of Usury (London: 1787).

\(^{262}\)Malthus' theory of population provoked state interference since "the power of the population is infinitely greater than the power in the earth to produce subsistence for man. Population when unchecked, increases in a geometrical ratio. Subsistence increases only in an arithmetical ratio. A slight acquaintance with numbers will show the immensity of the first power in comparison with the second. By that law of our nature which makes food necessary to the life of man, the effects of these two unequal powers must be kept equal. This implies a strong and constantly operating check on population from the difficulty of subsistence." T. Malthus, Essays on Population (London: 1798), 71.
interventionism has too often been overstated. English politics has often been seen as an attempt to resolve what Redlich called the “Fundamental Antithesis” in English constitutionalism, or more particularly, the “centralizing tendencies of the Norman tradition and the obstinate provincialism of the Anglo-Saxon.”\(^{263}\) However, in his account of Edwin Chadwick’s attempt to centralize the public health system through the Public Health Act, Flinn argued that there was “nothing approaching a consensus of opinion concerning laissez-faire and state intervention, even in the very narrow social sector represented by governments, parliament, and the press. In practice, the ears of ministers were assailed by a confused babel of voices rather than bewitched by the soft whisper of a single plea for inaction.”\(^{264}\) Thus, the campaign for sanitary reform was “not opposed by an immutable and unchallengeable principle; it was faced instead with a powerful opposition whose economic and political interests might be threatened by measures likely to reduce some incomes or diminish local autonomy. Chadwick and his supporters had to arm themselves, therefore, against the spurious use of social and economic theory which was merely the first line of defence of a group of opponents very well aware of the real nature of the threat.”\(^{265}\)

The debate about the relative influence of Benthamism, and the interventionist nature of administrative reform, is too atomistic and fails to contextualize this revolution within a wider problematization of the English state. Administrative reform was not simply an ad hoc response to ‘social evils’. Chadwick, Bentham, and their fellow travelers in colonial reform, the Earl of Durham and Edward Gibbon Wakefield, knew that bureaucratic innovation was futile without a rejection of common law constitutionalism. By displacing the doctrine of the negative state and infusing their social and economic reforms with legislative positivism, these reformers helped shift the ground of political liberalism. In time the notion of the ‘limits of state interference’ would be obsolete. This might explain the confusion over whether Benthamite legislation was in fact interventionist or laissez-faire. The tradition of individual rights and local autonomy lost their applicability in a representative state designed to govern, not for particular interests, but for the ‘universal interest’. The decline of political individualism and the rise of bureaucracy was thus borne of a fundamental challenge to the primacy of the rule of law in English constitutionalism. In this way the seventeenth


century jurist, Matthew Hale, made a futile plea to relieve poverty and crime through civil education:

The prevention of poverty, idleness, and a loose and disorderly education... would do more good to this Kingdom than all the Gibbets, and Cauterizations, and Whipping Posts, and Jayls in the Kingdom... by the accustoming the poor sort to a civil and industrious course of life... they would soon become profitable to the Kingdom.\textsuperscript{266}

Hale was aware of a basic flaw in the construction of the early modern English state. As a jurist he was implicated in a common law tradition which was content to enforce the abstract limits of juridical sovereignty. Capital punishment was the most effective form of ‘protection’ offered by the state to civil society. The bloody penal code typified the immobilisation of administrative forms within what Foucault called “the inordinately vast, abstract, rigid framework of the problem and institution of sovereignty.”\textsuperscript{267} The constrained juridical role of government was contrived by those seventeenth century jurists who wanted to avoid the territorial and religious wars of the preceding century through formal contractual obligations. It was John Locke who limited government intervention in civil society within the bounds political obligation. While government had a “Right of making Laws with Penalties of Death, and consequently all less Penalties, for the Regulating and Preserving of Property, and of employing the force of the community, in the execution of such Laws, and in the defence of the Common-wealth from Foreign Injury”, this was where that obligation ended.\textsuperscript{268} Any further expressions of state power relied on the ‘consent of the governed’. While Hobbes said that the Commonwealth is established by virtue of the rule of the sovereign, and that the removal of the latter would tend to the dissolution of the former, Locke insisted on the distinction between the “Dissolution of the Society. and the Dissolution of the Government.”\textsuperscript{269}


\textsuperscript{267} Foucault, “Governmentality”, 98.


\textsuperscript{269} Locke,\textit{Two Treatises on Government}. 406. This distinction is ably documented by Barry Hindess; see \textit{Discourses of Power}. 54. In the\textit{Leviathan} Hobbes surmised his unified concept of sovereign power thus: “The Greatest of humane Powers, is that which is compounded of the Powers of most men, united by consent, in one person, Naturall, or Civill, that has the use of all their Powers, depending on his own will, such is the Power of the Common-Wealth.” T. Hobbes,\textit{Leviathan} (London: Penguin, 1969), 150.
While Locke enforced the separation between state and society Hobbes’ absolute sovereign was also committed to the juridical limits of the social contract. The Leviathan would, in the nineteenth century, be redeployed and grafted onto the theory of parliamentary government. In isolation, however, it did not change the view that natural rights were to be preserved through a contractual exchange of power between the state and the individual. It was this assumption which limited state theory to the logic of protection and negative law.

Bentham, as the Godfather of disciplinary power, or the sometimes champion of the administrative revolution, understood that his panopticon scheme would not be realised without a reconstruction of the what Macaulay called the ‘nature and objects of civil government’. This difficulty is rarely broached by Foucauldian scholars, or indeed, more orthodox political historians. Foucault himself, as David Hogan rightly points out, “fails to offer anything like an adequate account of the relationship between the process of state formation and the deployment of disciplinary power.”

While Hogan makes the point in reference to Discipline and Punish. Foucault’s work on governmentality neither explains the particular constitutional transformation which, in a polity founded on the idea of a negative state, had to precede any of the massive institutional reforms which Bentham proposed. Political economy, for instance, did not break easily from the realm of free trade economics to embrace state intervention. This was illustrated by the persistent rejection of the penitentiary in the English parliament. Penal administration was itself imbricated within a matrix of state power which, while borne of the interdependence between central and local authority, had its fulcrum in the localities. The country gentleman and local magistrates who sat in the Commons rejected any unified social legislation which would threaten their autonomy in the ‘rotten’ borough. As long as parliament existed to protect the immemorial rights of Englishmen disciplinary power would fail to make the leap from theory to practice. Bentham may have appropriated models of pastoral and military-bureaucratic power, but his final and most important concern was a constitutional one. Having already transposed the pastoral techniques of the monitory school into his Chrestomathia and penitentiary, Bentham was left to remodel a truncated English state. Foucault avoided this fact since his account of panopticism entails a “new ‘political anatomy’ whose object and end are not the relations of sovereignty but the relations of


discipline. Yet while Bentham eschewed the territorial and judicial sovereignty employed by the sixteenth and seventeenth century *raison d’état*, he knew that panopticism could not be realised without a centrally defined and sovereign political will. It was the *Constitutional Code*, completed in the year of Bentham’s death, and co-adjudicated by the prominent Victorian bureaucratic radical, Edwin Chadwick, which made disciplinary power possible. The document, like most of Bentham’s theorising, had little immediate impact. However, in making the “art of legislation” the “supreme power of the state”, it brought legal positivism to the forefront of English constitutionalism.

Scholars of disciplinary power have been able to explain the governmental deficiencies of the localised British state by arguing that it was ‘differently’ bureaucratised. It is true, as argued by Somers, Ertman, Brewer and others, that the English state had long been able to interfuse central and local jurisdiction. Ertman, for instance, argues England did not inherit the “highly fragmented political landscape” of the Latin European “dark age polities”, and therefore, that this allowed a “territorially integrated local government built around the participatory political communities of the shire and hundred. The shires would in turn be reinforced and their competencies extended by the Norman and Angevin conquerors, who came to view these communities not as obstacles to, but as effective instruments of, centralized royal control.” Indeed, when the rule of law replaced divine right as the cornerstone of the 1688 Constitution, the Westminster Courts, particularly the Kings Bench, became a central administrative body who controlled the important areas of contract and property law. For this reason, Hume dissented from the commonly held view that the Hobbesian theory of law and legislation was developed in Europe before England. In terms of property law, equity law, and international law, the English legal system had, in the words of Hume, “long been centralized and unified, the local authorities had pretty effectively subordinated to the centre.”

The account of the ‘weak’ English state was also refuted by John Brewer who observed that the seventeenth and eighteenth centuries witnessed a massive centralization of fiscal, military and diplomatic governance. By the eighteenth century the English state had, via highly competent

---

275 Hume, *Bentham and Bureaucracy*, 10. Charles Tilly typified the argument that British state formation was not influenced by continental and Hobbesian theories of absolutism. Tilly, *Coercion, Capital and European States*. 
bureaucracy, implemented a uniform and national system of taxation. Other scholars such as Corrigan, Sayer and E. P. Thompson have concluded that while the British state relied on local functionaries to manage the poor, education, and the petty courts, it was still, through enclosure and commercial imperialism, a potent force in the rise of capitalism. Corrigan and Sayer describe a central state that, while relying on what Bloch called the "collaboration of the well-to-do classes in power", or what Maitland referred to as the "country gentleman commissioned by the King", had a "singular capacity...to accommodate substantial changes whilst appearing to preserve an unbroken evolutionary link with the past." English political culture had always been able to refer back to the "historic rights of Parliament and the liberties of freeborn Englishmen under Magna Carta and the common law" no matter how interventionist the state had become. Thus, Corrigan and Sayer describe important administrative developments which by 1700 had given rise to "the treasury, the birth of the Board of Trade, the enlargement and subsequent division of the Secretary of State's department, [and the] appointment of new officers to regulate and oversee.

These scholars focus on diplomatic and mercantile interventions in the civil realm which did not, however, carry over to localised control of schools, the poor laws, sanitation and so on. Moreover, patronage dominated the civil service beyond the reform acts and the development of full ministerial responsibility in the mid-nineteenth century. For Parris, neither the "Northcote - Trevelyan report, the Civil Service Commission (1855), or the introduction of Open Competition (1870) killed it." It was this lack of a competitive, accountable and salaried public service which, argues Wettenhall, perpetuated a fragmented and antiquated system of government. English administration was therefore defined by

- patronage appointments for political and family reasons, sinecure officers, placemen who held civil service office and sat in parliament at the same time, performance of work by deputy, sale of office and regarding the office as personal property, remuneration by fee

---

279 Cited in Corrigan & Sayer, The Great Arch, 79.
rather than mixed salary, the use of Latin text and Roman numerals in the Exchequer up to 1832, tally sticks and other archaic accounting methods, the lack of a central Treasury, small ministerial offices usually comprising only a few patronage-appointed clerks, the widely held view that the less government did the better, and the widespread devolution of what it did do into the hands of country gentleman serving as justices of the peace and a miscellany of multi-member and usually amateur boards.²⁸¹

Even the most hardened liberal-whig historians have acknowledged what Trevelyan referred to as the “clumsy machine of English police, judicature, and punishment.” For all the glory of the English Constitution, the “defects of justice were left unaltered.”²⁸² The failure of localized and judicial governance, unaided by a professional police force, to deal with emerging problems of crime and unemployment and what Halévy described as the “the huge fabric of English modern industrial civilization.”²⁸³ In 1833 Joseph Hume remarked that of over five thousand justices of the peace, half were clergy. For Halévy, it “was absurd to suppose that the average Justice of the Peace possessed...the amount of technical knowledge required” for modern government.²⁸⁴ Magistrates began to manufacture evidence and capital statutes were rarely upheld. The justice of the peace, free from the strict adherence to due process practiced in the Westminster courts, was prone to convict, not on evidence, but the influence and patronage accorded to him.²⁸⁵

The English aversion to a central police force meant that the severity of the penal code was matched by the uncertainty of its application. A regular police force had been avoided since the Revolution since, as Hay notes, the gentry “remembered the pretensions of the Stuarts and the days of the Commonwealth, and they saw close at hand how the French monarchy controlled its subjects with spies and informers. In place of the police however were a fat and swelling sheaf of laws which

threatened thieves with death. 286 As capital statutes and common law offences against property increased the judicial system could not, without professional policing, manage the enforcement of punishment or counter increased working class discontent. The central government perpetuated this archaic lack of competence since the Secretary of State in the Home Office, who was firstly responsible for the preservation of law and order throughout the kingdom, gave military assistance to local communities in cases of protest and civil disobedience. The executive duties of the Home Office also included the administration of the Australian colonies. Consequently, the continuance of transportation, while relieving the increasing criminal population, served to preserve the authority of the justices. 287

Transportation to the Australian colonies continued until the 1840s. For many political reformers, this was the most striking remnant of early modern state formation. 288 It was in 1802 that Bentham attacked transportation as antithetical to the system of “reformatory management” embodied in his penitentiary scheme. 289 The idea of the panopticon or inspection house was vital since it would conform, not only to prison design, but “without exception to all establishments whatsoever.” Morality, public opinion, and economy would be henceforth “seated... upon a rock”; and “the Gordian knot of the Poor Laws not cut, but untied – all by a simple idea of architecture.” 290 Still, transportation, the old poor laws, religious and parent based education and so on could not be substituted by panoptic systems of social regulation without a reconstruction of the constitutional and jurisprudential foundations of the liberal state. As will be outlined in more detail in following chapters, it was through his **Constitutional Code** that Bentham attempted to replace the ‘primeval fictions’ of the common law constitution with a strictly codified and statutory system of government. The enormity of Bentham’s task was well surmised by John Stuart Mill:

---

288 William Molesworth, radical MP and proprietor of the *London & Westminster Review*, which initially was a mouthpiece for Benthamism and Philosophic Radicalism, used his chairmanship of the 1838 Select Committee on Transportation to illustrate the general incompetence of English government. W. Molesworth, “Report of the Select Committee on Transportation”, in H. E. Egerton (ed.). *Selected Speeches of Sir William Molesworth, on Questions Relating to Colonial Policy*. (London: 1903), 15.
He had to conquer an inveterate superstition. He found an incondite mass of barbarian conceits, obsolete technicalities, and contrivances which had lost their meaning, bound together by sophistical ingenuity into a semblance of legal science, and held up triumphantly to the admiration and applause of mankind. The urgent thing for Bentham was to assault and demolish this castle of unreason, and to try if a foundation could not be laid for a rational science of law by direct consideration of the facts of human life.291

The key to Bentham’s Code was a ‘Pannomium’ that would unify all internal law – civil law, penal law, and procedural or adjective law. This “instrument of abbreviation, and security against inconsistency between one expression of will and another” was designed to replace the “chaos” of the common law.292 Such was an act of state formation since the registration and codification of the law in parliament required that it be regulated, not by a desultory network of justices of the peace, but salaried, accountable, professional, and centrally coordinated administrators. The traditional English model of responsible government would, therefore, have to be refined so that power was not divided but hierarchically proportioned to ensure a fluid demarcation of administrative authority. Accordingly, a single sovereign authority, the legislature, had to maintain tighter control of the law and its implementation. The executive, as derived from the popular legislature, was to ensure, as John Stuart Mill stated, that “The entire aggregate of means provided for one end, should be under one and the same control and responsibility.” Since English administration had heretofore been dominated by independent local boards which “nobody can be made to answer for”, Mill suggested that the executive, through responsible ministers of a bureaucratic department of state, expand its influence and effect a unity of purpose in English government.293

This constitutional discourse has thus far been discounted from studies of disciplinary power. While Ian Hunter, for example, is willing to link the interventionism of educational bureaucrats such as Kay-Shuttleworth to “a conception of government as a field of problems open to technical knowledge and resolution”, he does not address the inherently constitutional and jurisprudential nature of this decision. It is never explained how the pastoral bureaucracy created the state apparatus to engage “the arts of government that problematise political reality as a domain open to technical administration.” However Shuttleworth, as he found throughout a frustrating career, was not able to undertake the “enormous administrative labour of operationalising the pastoral school

292 Bentham, Constitutional Code, 8–9.
293 J. S. Mill, Considerations on Representative Government, in Works, XIX. 520.
system" until an important normative shift occurred within liberal state theory. In the face of consistent opposition to reform, Shuttleworth went to pains to show how "The authority of Government, especially in a representative system, embodies the national will. There are certain objects too vast, or too complicated, or too important to be entrusted to voluntary associations; they need the assertion of the power, and the application of the resources of the majority."295

Hunter is adamant, however, that the pastoral bureaucracy was not accompanied by the 'liberal problematization of government', and his account therefore ignores the issue of state sovereignty. But while the "lengthy and piecemeal process of institutional improvisation" which he describes is an important part of the story, these 'practices' should not be separated from the broader theoretical concerns of liberal political development.296 This of course relates to the dismissal of theories of sovereignty and the state in Foucault’s own account of a disciplinary power. As described by Smith, in Foucauldian analysis "the sovereign state cannot hold a pre- eminent position in government; its elements are not privileged but simply merge with many sites and processes, in and through which, the technology of power seeps silently and pervasively to govern populations."299 Yet Foucault, in his account of governmentality, expanded on the microphysics of disciplinary power to focus on the 'political rationalities' which underlay the management of population and societies, thus giving some indication of the process whereby political authority was rationalised and codified. Closer analysis will show how the latter project was central to nineteenth century debates surrounding issues of sovereignty and liberal state theory in England and Australia.

7. Conclusion

While post-structuralist theory has established an important link between the emergence of mass schooling and disciplinary or bio-political power, this thesis will show, in the context of the rise of centralized education in the Australian colonies, that this link was heavily dependent on a normative debate concerning the absolute sovereignty of the legislature. The divine right of cabinet government, with its attendant bureaucratic structure, was more easily embraced in a colonial state

294 Hunter, Rethinking the School, 70, 76.
296 Hunter, Rethinking the School, 77.
that had rejected local government, was geographically vast, and which, through the determination of the local and overseas reformers, had been alerted to the advantages of political modernization. As will be outlined in succeeding chapters, the ‘struggle’ for responsible government in the colonies was the embryo of absolute sovereignty in the liberal polity. This well-defined demarcation of authority gave the colonists a sense of the political improvements that were possible under central control. It must be remembered, however, that while responsible government subordinated the common law constitution and effectively took political power away from the conservatives, it did not give it to the liberals. The Whig constitution was not, therefore, re-fashioned in the guise of bourgeois hegemony. The constitution, and the state that it defined, was no longer an affect of class or economic power because it was no longer separate from society. The legislative state, through the infinitely innovatory realm of statute law, became a reflection of the complexity of population. While this point has been grasped, albeit tenuously, by a number of Australian scholars, the grip has been loosened by the epistemological limpidity of the dominant historiography. The latter, for reasons alluded to elsewhere, has been unwilling to explore legislative absolutism beyond the intransigent themes of economy and interest group conflict. By contrast, this study argues that the formation of the legislative state was the essential precondition for the development of mass state institutions such as the public school.

While this chapter has taken a long and discursive route in its attempt to establish an analytical model for understanding the fit between state formation, constitutional theory, governmentality and the evolution of mass state schooling, such is a necessary response to the historiography outlined in chapter one. Australian history writing in general has been very thorough when addressing the cultural life of the Australian nation since European conquest: its heroes, villains, cupidity, egalitarianism, its geographic isolation and brutal convict past. But little has been written about Australia as a model panopticon, a purveyor of an extremely sophisticated model of social and political organization formed as part of a global discourse concerning the means through which complex industrial populations might be governed.298 While more contemporary sociological and

298A significant body of work has emerged that applies analysis of disciplinary power and governmentality in the context of nineteenth century Australian political and social history, with Davidsosn 1991 study beginning this trend. However, most have attempted to fit the Foucauldian formula a priori without investigating the constitutional and legal logics that contradict important aspects of such analysis. See A. Davidson, The Invisible State: The Formation of the Australian State 1788–1901 (Cambridge: Cambridge University Press, 1991); Geoff Daniher, “Foucault, Ideology and the Social Contract in Australia”, in Foucault the Legacy, 104–110; G. Kendall. “Governing at a Distance: The Colonisation of Australia”, in Foucault the Legacy, 90–103.
critical analysis has tackled the governing practices, rationalities and subjectivities that underlie Australian economic and cultural life, little has as yet been written about the historical route through which these practices emerged. If the latter project is to be tackled in all its complexity, it will require a highly discursive and multi-disciplinary methodological approach. Thus, the shift from localized common law authority to centralized legislative governance was not a clear and sudden transformation. Rather, it signaled a point of confluence within a discursive web of discourses concerning the theory of the state, constitutional jurisprudence, political economy, social economy, administrative law and so on. Reflected in colonial debates over land policy, parliamentary reform, systematic colonization, criminal law reform and education reform, the historical linkage between the command theory of law and the formation of modern practices of government can thus be identified within the formative years of Australian state building. But before we can further investigate these relationships in the context of educational development, it will be necessary to provide a clearer map of the common law tradition, and of its governing inadequacies, that ultimately inspired Bentham’s model of legislative absolutism.
Chapter 3

Liberal constitutionalism and the rise of the nineteenth century legislative state

during the last half century prior to 1830, while the individual energy of Englishmen has
effected such miracles in the arts, in civilization, and in the acquisition of wealth, the
proceedings of the government present only the spectacle of inglorious nullity, without the
smallest evidence of superior wisdom or reach of thought – without any one lasting bequest
to fix the eye and esteem of authority.1

1. Introduction

When in 1834 John Stuart Mill demanded “Schools for all” and “superintendence shared between a
Minister of Public Instruction, and local committees of a most democratic constitution”, he was
appealing to a vision of government still at the margins of conventional constitutional opinion.2 A
response to the paucity of state funded education in Britain, Mill was further articulating a broader
frustration concerning the nature and jurisdiction of the liberal state. This frustration inspired a
series of mid-nineteenth century treatises on the British constitution, including Mill’s
Considerations on Representative Government, published in 1861, which attempted to redefine the
limits of government in constitutional debate.3 The preservation of archaic state forms had long
hindered the reform of social institutions like education. However, while due largely to the
influence of laissez-faire political economy, the traditional liberal antithesis between the state and
the individual was only part of the problem.4 Economic liberalism may have been hostile to state

3See also John, Earl Russell, An Essay on the History of the English Government and Constitution (London:
Longmans, 1873); Third Earl Grey, Parliamentary Government Considered with Reference to a Reform of
4Reformers like Mill and Bentham did not rely on Ricardo’s economic model which assumed that economies
tended towards full employment equilibrium and that all government activities were unproductive or
interference, but it was the constitutional foundations of British government that substantially limited the prospect for institutional reform. If public education was to become the common right of every British subject then the legislature and a codified system of statutory regulation would have to replace the common law as the source of political authority. The modern English state, in the words of jurisprudential philosopher John Austin, could no longer suffer "the monstrous evils of judicial legislation" where government is directed by "a measureless heap of particular judicial decisions" and whereby legislative law is "stuck by patches on the judiciary law, and embedded in a measureless heap of occasional and supplemental statutes." The "expediency of a Code, or of a complete or exclusive body of statute law" was the principle upon which Austin founded his critique of the common law. While a jurisprudential debate, this critique led to a 'science of legislation' that shifted the constitutional basis of political authority, and accordingly, the limits and jurisdiction of government and the state. Most importantly, it diverted administrative and governmental procedure from local judicial authorities to the national parliament where executive and legislative matters were rapidly becoming fused, compacted, and centralized. The relationship between shifting constitutional conventions and state formation was at the root of the development of centralized educational governance and it will be our object to explore this process.

But before we begin, it should be noted that the conceptual and historical depth of the material leaves one feeling that the following discussion is analytically undercooked. Still, these limitations are an accepted and necessary evil in the context of the wider project to which this work contributes. The goal here is threefold. a. to illustrate in general terms, and relying largely on secondary sources, the predominantly localistic character of the early modern English state b. to delineate a constitutional and jurisprudential 'problematization' of the English state which, emerging throughout the mid nineteenth century, was dedicated to reforming the archaic conventions of the 'common law tradition' c. to show how this problem was partly resolved through an absolutist conception of the sovereignty of parliament which, it is argued, served as the foundation of a centralized and pervasive system of liberal governance. This vast sweep of history, reaching from the fourteenth to the late nineteenth century, is not meant to be comprehensive. Thus,

diversionary. It was Ricardo's main critic, Thomas Malthus, who wanted to relieve post-war unemployment through government created capital and public works, which was closer to reformist and utilitarian theories of government. See T. Malthus, *Essays on Population* (London: 1798). 71

5 J. Austin, *Lectures in Jurisprudence* (London: 1861) II. 362. 370. This was in direct contrast to the contemporary view of Sir Robert Inglis, who resisted parliamentary reform by arguing that "Our Constitution is not the work of a code-maker; it is the growth of time and events beyond the design or calculation of man." R. Inglis, *Hansard* II. March 1, 1843.
while the following discussion admittedly contains some anomalies and omissions, the goal here is not to formulate a watertight causal narrative but to broadly identify a shift in English constitutionalism which allowed a liberal and ostensibly non-interventionist state to take control of institutions — including school, hospitals and prisons — that had long been managed by local authorities. In contradistinction to the predominating influence of social and economic structure in the historiography, the chapter will therefore give relief to the endogenous constitutional dynamics that, it is argued, continue to underpin a highly bureaucratized and centralized system of state controlled education in Australia.

2. The common law and the localised English state

John Austin’s challenge to the common law was not merely a jurisprudential matter. The science of legislation that underpinned his faith in legal positivism was premised on a uniform and centrifugal administrative network that was formed in opposition to the localised and arbitrary routines of the English state. The unpaid, unskilled, and largely unaccountable justice of the peace was, from the fifteenth to the mid-nineteenth century, the principal source of administrative authority in a system of government based on a loose reading of the common law. The discretion of the local justice was an expression of the autonomy of the parish against the centralizing impositions of the King or Parliament. It was in the local courts that the poor laws, master and servants legislation and the criminal law were interpreted and applied in the light of provincial circumstance. Importantly, this common law foundation of early modern English state building left little governing jurisdiction to the central parliament, and in this way, Vile describes how the “only impact of government upon the ordinary citizen was through the courts and the law-enforcement officers.”

This highly schematic account of the ‘localized’ English state contradicts important analysis of the centralizing momentum of the early modern monarchical state. As noted in the preceding chapter, Somers describes how the ‘legal revolution’ of the twelfth to fourteenth centuries initiated a highly centralized and nationalised juridical network that resulted in the ‘intermingling’ of central and local governance. In Somers’ words, “The English crown in the 12th century created the institutional outlines of a national public sphere by conjoining a revolutionary new territorial wide public law (common law) with the public (non-feudal) local governing bodies of the realm. It did so by appropriating from below and extending throughout the land the political and legal conventions of

the medieval cities and (to a lesser extent) those of the public villages.” This ‘legal revolution’
meant that “Remedies of procedural justice...promising the public liberty of the rule of law coexisted
with both substantive national regulatory and re-distributive statutes ...as well as institutions which
promised - or demanded - community participation...in the administration of law.” While this
account is important, and has been backed in part by Sayer, Brewer and others, it does not, for our
own purposes, illustrate how this juridical governing network was in fact prone to what nineteenth
century ‘technocrats’ such as Bentham and Edwin Chadwick referred to as ‘arbitram’, patronage and
self-interest. Accordingly, our own account of English state formation wants to understand the
aspects of the common law tradition that caused it to be so firmly rebuked by legislative positivists
such as Bentham and Austin.7

In this way, the juridical, territorial and contractual concerns of the Elizabethan and Stuart
Monarchies forced them to concede a significant portion of state authority to the legal fraternity. It
was the rule of law rather than divine right which protected both royal power and the property of
the aristocracy. In 1656 James Harrington referred to the “executive order” as “the frame and
course of courts and judiciaries”, and as late as 1680 Algernon Sidney divided government between
“the sword of war” and “the sword of Justice.” For Milton, this justice was to be administered by
local county courts to preserve a system whereby people “shall have Justice in their own hands,
Law executed fully and finally in their own counties and precincts.”8 While the English legal
system was in fact quite centralized, the justice of the peace remaining responsible to the Kings
Bench and central courts, historians have argued that these exercised minimal supervision over the
justices and the local petty session.9 Contention over common criminal, and statutory law were
often referred to the higher appellant courts, yet the Westminster judges rarely interfered in local
jurisdiction. The small clique of jurists who exhibited what Gray called the “old English bar’s
pretense of vast experience, of familiarity with all the rules and institutions of law and capacity to

7M. Somers, “Rights, Relationality, and Membership: Rethinking the Making and Meaning of Citizenship”
Law and Social Inquiry, 1994, 73. see Sayer, “A Notable Administration”; Aylmer, “The Peculiarities of the
English State.”; Braddick, “State Formation and social change in early modern England.”
8J. Harrington, The Commonwealth of Oceana (London: 1856), 27; A. Sidney, Discourses Concerning
Commonwealth, in Works, (Amsterdam: 1698) II, 795, in Vile, Constitutionalism and the Separation of
Powers. 29.
Place of the Public Sphere: Law, Community, and Political Culture in the Transition to Democracy”
American Sociological Review 58, no. 5 1993.
relate to them”, concentrated their efforts on the ‘seven pillars of government’ – “Religion, Justice, Council, Commerce, Confederation, Treasure, Arms by Sea and Land.”

English jurisprudence was enamoured in the religious, military, and mercantile concerns of the seventeenth and eighteenth century raison d’ etat and this manifested the arbitrary and ill-defined application of the law. While the judges were to enforce conformity with legal precedent during the twice yearly county Assize, the justices were rarely brought to account and local legislation was little influenced by the judges orders.

According to Landau, by the eighteenth century the “justices’ autonomy was established and the legal structure of their government determined. No directive from the central government – no Privy Council order, no parliamentary act, no judges decision – would create a major alteration in either their powers or the structure of their courts for over one hundred years.” The lack of uniformity between central and local governance was a problem acknowledged by the seventeenth century jurist Matthew Hale. While he recognised, in the words of Gray, that “even English law needs sometimes to be reformed deliberately”, little was done to alter the “delicate ecology” of the legal system. The potential for a national legal system was also limited by the operation of conflicting jurisprudential traditions. While it was a rule of law that ecclesiastical law, Roman civil law, and equity law should conform to the common law precedent inevitable inconsistencies remained. When, for instance, the Reformation nationalised the church, the ecclesiastic courts began to compete with the common law for jurisdiction – a point illustrated by conflicts between the clergy and the justice of the peace for control of poor relief and education.


The ambiguity of juridical reason was reflected in the heterogenous organisation of local government. The three main tiers of local administration were the parish, the county, and the municipal corporation. The justice of the peace, who was the chief judicial and administrative officer in each county, appointed the parish officer, and, numbering some 10,000 in the early nineteenth century, the parish embodied what Redlich called the “irreconcilable organisation” of English government. Municipal corporations were a token source of uniformity and in reality were “isolated patches variegating a network of parishes which spread over the whole country.” As units of administration, the parish was subordinate to the county and the Bench of Justices which displayed its administrative power in the court of quarter sessions. The quarter session had thus become, according to the Sidney and Beatrice Webb, “an Inchoate County Legislature, formulating new policies in respect to the prevention of crime, the treatment of criminals, the licensing of ale-houses, the relief of destitution, the maintenance of roads and bridges, the assessment of local taxation, and even the permissible habits of life of whole sections of the community.” This was endemic, writes Halévy, in “a country where the field of statute law was considered by everybody as limited, and where everyone had been accustomed, for centuries, to see judges ‘making law?’”

The laws and rights which applied to the incorporated districts were, like the common law, defined by an amorphous tradition of custom and privilege. Before the first Municipal Corporations Act was passed in 1835, municipal corporations had never been defined by statute. For Redlich, “you could hardly have found two municipal corporations of the same species; and there was no genus, or none known to the Jurist.” While the English town was, theoretically, a creation of the state, its origins pre-dated the Norman Conquest and were derived from the Anglo-Saxon shire court. Maitland, for instance, explained that these shires survived to form the parish and county system, thereby giving local government “an organised unity which has long had a common life, common rights, and common duties.” Such then are the origins then of the English affection for Saxon self-reliance and the principle of local self-government.

19 While later scholars such as Sayer and Campbell have in fact recognised the sophisticated and centralized features of the Anglo-Saxon state, it is the English perception of local autonomy and Saxon “self-reliance” which informed the logics of state formation until the nineteenth century. D. Sayer, “A Notable
The office of the justice was established by the Parliament in 1328 to keep the King's peace. The duties of the justice were both ministerial and judicial, the former including licensing, control of the administration of poor laws, and public works. Until the nineteenth century the justice controlled administrative matters through the monthly petty sessions, while matters of jurisdiction were traditionally referred to the quarter sessions. The petty session had been established during the sixteenth century in an attempt to devolve the administrative responsibilities of the overburdened quarterly courts. Citing Barnes. Langeluddecke tells us that

during the 1630s the petty sessions had become a court \textit{de facto} as well as \textit{de jure} on which quarter sessions was beginning to rely for nearly all out-of-session work...Indeed, by 1640...petty sessions had become indispensable to the divisional justices...and the machinery it had created was far too convenient to the magistrates themselves ever to pass into oblivion.\footnote{T. Barnes, \textit{Somerset 1625–1640: a County Under the Personal Rule} (Cambridge, Mass., 1961), 200; in H. Langeluddecke, "Law and Order in Seventeenth Century England: The Organization of Local Administration during the Personal Rule of Charles I", \textit{Law and History Review} Spring 1997, 15:1, 52.}

Charles I issued a Book of Orders in 1631 which, while largely replicating existing legislation, institutionalised the administration of poor relief, the maintenance of roads and public works, the building of gaols, and the regulation of ale houses, within the petty session. The attempt to bring the justices within a uniform and hierarchical administrative system was often rejected since, as Langeluddecke points out, local officers regarded the "Book of Orders as centralist intervention in their communities."\footnote{H. Langeluddecke, "Law and Order in Seventeenth Century England", 53; see also A. Fletcher, \textit{Reform in the Provinces: The Government of Stuart England} (London: 1986), 57–59; 123–34.} Langeluddecke's recent research into the influence of the Book of Orders shows that it was initially stifled because the justices and parish officers were unpaid amateurs "influenced by personal and economic preoccupations and problems." Moreover, centralized regulation failed because "JPs and other county governors were important as conveyors of policies and information between Westminster and the localities" but were "physically unable to secure the conformity of each individual subject."\footnote{H. Langeluddecke. "Law and Order in Seventeenth Century England", 76.} Central policies could not be properly devolved.
therefore, without the diligence, ambition and acquiescence of the justice or parish officer. Such virtues were rare, however, among unpaid local administrators:

The pressure of Westminster on parish officers to implement these policies, and the resolution of local communities not to comply with them, indeed led to an unprecedented conflict of loyalties among parish officers, and finally caused the collapse of local government during the late 1630s.

While local government was never successfully institutionalised, the power of the justices had, during the reign of Elizabeth, been given legal sanction in an attempt to better regulate poor law administration. Described by the 1834 Poor Law Commission, the 5 Elizabeth [1563] enabled

---


24 Langeluddecke, “Law and Order in Seventeenth Century England”, 76. This interpretation conflicts with the views, expressed by Barnes and Moir, that the Book consolidated the administrative authority of the justices. See Barnes, Somerset 1625–1640; E. Moir, The Justice of the Peace (Hammonsworth: 1969). In a later paper Langeluddecke notes that “the contents of most returns show that JPs enforced the Book of Orders to the best of their ability and that negligence was the exception rather than the rule. Frequently, it was not the lack of will, but deficiencies in local administration that prevented proper enforcement. Organizational difficulties thwarted the establishment of permanent divisions and regular holding of Petty Sessions. But the key problem with the Book of Orders was that JPs had wholly to entrust subordinate high constables and parish officers of their division with its enforcement and that these men were even less willing (or able) to forward information. It was at the parochial level of administration that central directives were scrutinized as to their necessity and their accordance with local custom and sentiment. The implementation of national policies, and the translation of orders into action, ultimately depended on those officers who were the last in the chain of command and who confronted the King’s subjects on a daily basis. Uneducated and unconcerned local farmers and artisans acting as part-time officers are unlikely to have had the time, energy and ambition to transform their villages into model parishes, or to do more than local necessities required. It was not only the widespread unpopularity of the Personal Rule, but this dependence of Westminster on the goodwill of parish officers and on their arbitrary interpretation of its policies which determined the fate of most Caroline attempts at reform. H. Langeluddecke, “‘Patchy and Spasmodic’?: The Response of Justices of the Peace to Charles I’s Book of Orders”, The English Historical Review, Nov 1998, 113:454, 1231.
magistrates to tax an “obstinate person” to their own discretion. Soon after the 14 Elizabeth [1572] gave
the justices authority to “select the objects of relief, to tax all the inhabitants of their divisions,
and to appoint collectors to make delivery of the contributions according to the discretion of the
justices.” This initial legislation went through several changes and amendments until the Act of
1723 (9 Geo. I, c. 7) settled the question of the authority of the justices for almost a century. The act
specified that the magistrates could not order poor relief until due cause could be verified by two
overseers in the particular parish. Nevertheless, the attempt to limit judicial authority over local
relief was minimal. In 1834, the Poor Law Report argued that magistrates exhibited an arbitrary
authority based on “favour or caprice.” Describing the practice of deriving a ‘scale of relief’ for
paupers, the commissioners noted that the scale was never published by the magistrate and was
“traditionary instead of written – the common law of the district instead of a code.” It was the
common law which then formed the basis of poor law administration and while the 59 George III, c.
12, s. 5 [1818] attempted to diminish the discretionary power of the magistrates by requiring two
justices to concur on relief, the pauper and overseer where still “at the mercy” of any two
magistrates. 25

As administrators of the Elizabethan Poor Law, the justices were responsible for propping up what
Trevelyan called “the tottering foundations of economic society.” But as Trevelyan himself
admitted, “This great principle saved society, though it could not abolish pauperism.” This was a
social and economic rather than political problem and the efficiency of the justices was ensured
through such “checks” as the Privy Council, who approved the poor rate, and the circuit judges,
who inspected the work of the magistrates through the routine of the assize. While on circuit, the
judges were to ensure that local administration conformed to national policy and Trevelyan assures
us that “Under the stimulus of this inquisition, the local magistrates learnt to carry out in detail the
general policy of the state.” 27

While this is an optimistic view of the accountability and efficiency of local self-government it
continues the idea, initiated in the sixteenth and seventeenth century, that the justice of the peace
“symbolize[d] the polity of England.” 28 The claim that the office of the justice preserved the fabric

of English constitutionalism is the central theme in British political folklore. The English revolution
affirmed, not the authority of parliament, but the common law, and for William Holdsworth,

The old idea of local-self-government subject to the law was retained in the system of local
government, as newly organised under the justice of the peace. The fact that, in the
sixteenth century, this idea was preserved, and these self-governing judicial officers of the
later medieval period were adopted as the basis of the scheme of local government, is a
unique phenomenon in Western Europe, of the utmost significance for the future of our
constitution and law.29

The men who, in the words of Gleason, “provided half the members of the House of Commons and
administered the Stuart countryside”, exemplified the close relationship between local
administration and the national parliament. It was “their peculiar combination of prominent but
private status with major public function which gave the J.P.s their cardinal role” in the English
revolution.30 As noted by Trevelyan, “The power of the Crown depended for its execution on the
active consent of magistrates, who again depended for their social position on the goodwill of the
neighbouring squires, and were on such friendly terms with the middle class in town and country,
that magisterial resistance to the Crown might at moments become one with the resistance of the
whole nation: and it was these moments which decided the fate of England.”31 The country
nobility’s ability to fuse local and central authority was, according to Lasslett, illustrated by the ease
with which the landed and merchant classes conducted economic and conjugal relations.32 In the
same way, Weber described the English gentleman as a fusion of rural and urban elites who had
“common ties to the office of the justice of the peace.”33 As members of parliament the ‘rising
gentry’ made the national legislature immanent in the functioning of the localized state. Sayer
observed that while royal absolutism subverted parliaments on the continent, the English parliament
survived through its link with common law administration.34

136–7.
30Gleason, The Justices of the Peace in England, 116. For Trevelyan, “This mutual independence of the
central and provincial administrations is the key to the history of the Stuart Epoch.” G. M. Trevelyan,
31Trevelyan, England Under the Stuarts, 19.
32P. Lasslett, The World We Have Lost (London; Methuen, 1971), 49–51.
34D. Sayer, “A Notable Administration”, 1397.
The justices of the peace constituted a national elite; a fraternity galvanised through the universities and inns of court. These successors to the feudal nobility were united by the rule of law and, separated from the divisions which fuelled civil war, presented a political coherence which accorded them even greater administrative responsibility after the Restoration. "More perhaps than any other revolution", wrote Gleason, "the great English rebellion showed respect for established legal forms." Moreover, Gleason argued that the common law foundation of English government was actually reaffirmed and strengthened during Cromwell's Republic. 35 The consolidation of the office of the justice gave important continuity to the early formation of the English state. For Landau,

Only in England did the state not develop into an entity separate from the elite and in conflict with it. In England the landed elite monopolized government, and the justices therefore embodied the peculiarly English union of social and official power. With the Glorious Revolution English landowners indubitably established their dominance over government. At no time, therefore, were the justices more powerful than in the century and a half following the Glorious Revolution. 36

Hexter claimed that it was this fusion of national and local authority which made the county magnate the fulcrum of the English civil war. 37 While Trevor Roper argued that the 'mere' gentry, with limited capital and a short line of credit, were unable to adapt to the price revolution and, therefore, that these "impoverished squires" initiated a revolution hostile to the crown and state power, Hexter insisted that these middling landowners provided the realm with the most important part of that 'self-government at the King's command' which is the most significant trait of the English polity. They were the Deputy Lieutenants. They were the Sheriffs. They were JPs. They were the commissioners in the counties...it was these same men who came to Parliament from the counties and the boroughs to make up the larger part of the membership of the House of Commons. This

majority of local magnates seems to have increased right up to 1640, so that in the House of Commons of the Long Parliament all other groups appear as auxiliaries.38

Before the civil war local government was controlled, as noted by Trevelyan, from the centre by the Privy Council, however as the parliamentary power of the gentry increased the independence of the justice of the peace was established. As members of the House of Commons, the gentry remained faithful to their local patronage networks and took little interest in national policy. Thus the country gentleman had one mission in Westminster – to resist any centralization of local authority. While clothed in the rhetoric of local self-government and the post-revolutionary liberties of Englishmen, this was in fact an attempt to preserve judicial independence from the encroachments of the executive and legislature. This idea of a ‘balance of power’ thus limited national administrative mechanisms to trade policy, the waging of war, and the general conduct of foreign affairs.

It needs again to be remembered, however, that the account of the ‘weak’ English state has been questioned and indeed refuted by John Brewer and others. Brewer, for instance, observed that the seventeenth and eighteenth centuries witnessed a massive centralization of fiscal, military and diplomatic governance. Indeed, by the eighteenth century the English state had, via highly competent bureaucracy, implemented a uniform and national system of taxation.39 Other scholars such as Corrigan and Sayer, and E. P. Thompson, have noted that while the British state relied on local functionaries to manage the poor, education, and the petty courts, it remained, through enclosure and commercial imperialism, a potent force in the rise of capitalism.40

However, the tendency to separate the parliament from social legislation cultured a general distrust of central policy and, according to Thompson, “Recourse to statute law was unpopular.” In the early eighteenth century forest laws were, for example, largely ignored by local magistrates. As one official lamented, “the statute has provided severe penalties in case anyone kills a deer, but the keepers have found so little protection from the Justices of the Peace that they are afraid to act.”41 Such disregard for parliamentary directives allowed the judicature to maintain its hold on political

power. For Thompson, “The hegemony of the eighteenth-century gentry and aristocracy was expressed, above all, not in military force, not in the mystifications of the priesthood or the press, not even in economic coercion, but in the rituals of the study of the justices of the peace, in the quarter-sessions, in the pomp of the Assizes and in the theatre of Tyburn.” This enduring feature of early modern state formation was endemic, wrote Thompson, in a period of social stasis typified by ‘old corruption’ and a ruling gentry who could manipulate their link between central government and local administration. It was these country gentleman who embodied the ‘peculiarity’ of the English state. Both highly centralized and localised, this state had been almost impermeable to development and change. This point was well brought out by Somers, who noted how the “structure of the English law was never fully state controlled nor fully decentralized” since the delegation of national administration to local elites “meant that centripetal state building was pegged to the concomitant strengthening and empowering of local administration.” It was not then surprising that until the mid-nineteenth century English government featured no national police force, a desultory and archaic prison system, a virtually non-existent public education programme, and an uncoordinated and overburdened system of poor relief.

As Chairman of the 1834 Poor Law Commission, Edwin Chadwick was quick to note that the inadequacy of poor relief was immanent in the formation of the English state. Chadwick, who had assisted Bentham in the drafting of the Constitutional Code, noted that the autonomy of the magistrates deprived them of the technical capacity to properly distribute relief. Patronage, corruption, and maladministration were themselves ‘effects’ of a problem inherent in the long duree of common law government. As the Poor Law Report of 1834 explained:

42 Thompson, Whigs and Hunters, 262.
43 Government by patronage and sinecure meant their was a distinct lack of accountability and efficiency both at the local and central level. The exchequer was described by Mathew Hale as containing “many great offices that receive the profit and fees of their office, and either do not at all attend it, or know not what belongs to it, but only perchance once a term sit with some formality in their gowns, but never put their hands to any business of their offices, nor indeed know not how.” Hale had was one of the few jurists willing to challenge the ‘irresponsible’ nature of executive government and suggested a reduction in the “perquisites of these offices.” M. Hale, “Considerations Touching the Amendment or Alteration of Laws” in Hargraves Tracts (1787), v. 1, 279; cited in Finn, Law and Government in Colonial Australia, 8.
The complex demands of nineteenth-century pauper management required that unpaid and unqualified justices be replaced by centrally appointed, accountable, and professional administrative officers. Chadwick insisted that "A more dangerous instrument cannot be conceived than a public officer, supported and impelled by benevolent sympathies, armed with power from which there is no appeal, and misapprehending the consequences of its exercise." The inadequacy of judicial governance might be then be resolved through the creation of a central agency which would, via regular inspection, enforce uniform administrative routines and thus isolate "bad practices." The magistrates who had hitherto disregarded the "will of the Legislature" would be subject to thorough superintendence, meaning that any maladministration would be exposed by noting the "aggregate of its effects," and submitting it to the "full force of public opinion." Irregular practices that were once "unworthy of attention" could thus be "correctly estimated and brought completely within the cognizance of the Legislature." This was an attempt to superimpose a governmental rationality which was no longer guided by the "narrow bounds of a parish, blind impulse, [and] impressions derived from a few individual cases." Government was, therefore, to be "regulated by extensive inductions or general rules derived from large classes of cases." 

The shift from localised to aggregate variables in the formulation of public policy was reflected in the substitution of the individual for the parliament in the logics of state formation. While the status and influence of the parish officer had long been the standard of administrative success, the attitude of the country gentleman failed to promise uniformity of action. In evidence given to the 1854 Poor Law Commission, it was shown that the "respectable and intelligent" officer worked "no
permanent change in his own parish” and still less in the “adjacent parishes.” Individual excellence failed to ensure conformity with central policy, and thus there was “little hope of permanent improvement...unless some central and powerful control is established.” 52 The commission then urged that local officers be “immediately responsible to the authority whose regulations they are to enforce; that it ought to be obvious that they really have no discretion, that the role of duty is inflexible, and that if they violate or neglect it, suspension or dismissal must be the consequence.” 53 Such an absolutist conception of public administration could not be realised, however, without a radical shift in the logics of liberal constitutionalism. The English state could no longer be driven by individual caprice and Chadwick would, therefore, endeavour to promote a centralized and codified system of parliamentary rule. This was crucial, it was argued in the conclusion of the report, since it would not only “remove or diminish the evils of our present system” but “will in the same degree remove the obstacles which now impede the progress of instruction...and will afford a freer scope to the operation of every instrument which may be employed, for elevating the intellectual and moral condition of the poorer classes.” 54

3. ‘Custom, Tradition, and Use’: the constitutional and jurisprudential foundations of the English state

As Chadwick’s mentor, Jeremy Bentham layed the foundations for political modernization through a sustained critique of common law jurisprudence. Albert Dicey, quoting Lord Brougham, claimed that “no one before Bentham had ever seriously thought of exposing the defects of our English system of Jurisprudence”; while in 1885 Henry Maine remarked that Bentham’s critique of the “legal fictions inherent in the primeval chaos of case law” was so thorough that not “a single law reform effected since...cannot be traced to his influence.” 55 Bentham rejected the inalienable authority of legal custom and brought the legislature and ‘politics’ to the forefront of governmental authority. 56 This substantially invigorated governmental reform in English and colonial political

54 Report of the Royal Commission of the Poor Laws, 496.
development. Thornton describes how the “philosophical radicals guided the discontent of the lower classes to express itself in Parliament, and then gave the lower classes a feeling which persisted throughout the century, that for the English parliamentary action was the proper way to achieve reform.”

The nineteenth century acceptance of active parliamentary government was a significant challenge to the conventional eighteenth century view of constitutional law. Lord Mansfield, as Solicitor-General for George III. argued that “Cases of Law depend upon occasions which give rise to them. All occasions do not give rise at once. A statute very seldom can take in all its cases. Therefore the common law that works itself pure by rules drawn from the fountains of justice, is superior from an Act of Parliament.” An affirmation of a fractured and localised political system, Austin believed that this denial of legislative sovereignty emphasised the “profound ignorance” of those “partisans of judiciary law” whose “rules” were a “heap of particular decisions inapplicable to the solution of further cases.” In fact judicial law was “not law at all: and the judges who apply decided cases to the resolution of other cases, are not resolving the latter by any determinate law, but are deciding them arbitrarily.”

The common law tradition which Austin opposed arose, in Postema’s words, “in response to the threat of centralized power exercised by those who proposed to make law guided by nothing but there own assessments of the demands of justice, expediency, and the common good. Against the spreading ideology of political absolutism and rationalism, Common Law theory reasserted the medieval idea that law is not something made either by king, Parliament, or judges, but rather is the expression of a deeper reality which is merely discovered and publicly declared by them.” The seventeenth century duplicated medieval political practices whereby there was, in Vile’s summation, “no clear distinction drawn between legislative and judicial activities, nor anything which resembled a theory of law or legislation.” The law was not premised on “a set of universal

57 A. M. Thornton, The Philosopher Radicals, Their Influence on Emigration and the Evolution of Responsible Government for the Colonies (Honours Thesis: Oxford University, 1952). Dicey claimed that Bentham was the dominant inspiration behind the legislative reforms of the period 1825–1870. see Law and Opinion in the Nineteenth Century.


59 Austin, Lectures in Jurisprudence II, 375.

60 Postema, Bentham and the Common Law Tradition, 3–4.

61 Vile, Constitutionalism and the Separation of Powers, 25.
rational principles", or the sovereignty of the king or parliament, and was derived from "historically evidenced national custom." The "fundamental conception of government" was for Vile "an instrument for distributing justice." It was not parliament but a decentralized judicial system which, until the mid-nineteenth century, was the primary source of public policy and administration.

The doctrine of the mixed constitution, which divided political authority between the Crown, the Lords, and the Commons, was the means to preserve the rule of law from absolutism. While the Elizabethan and Stuart monarchies attempted to shore up their authority from Catholic and Protestant dissent through clerical patronage and the institution of divine right, they failed to subvert the authority of the common law or the principle of mixed government. The established clergy were willing to legitimate absolute royal power but most qualified the point by insisting that government is not mere monarchy. John Aylmer, who would later become Bishop of London, in 1559 both denounced Catholic and Protestant dissent, arguing that legitimate government was shared between monarchy, aristocracy, and democracy. According to Sommerville, "The views that the monarch's authority is derived from the people, and that it is limited by the law of the land, were still expressed by clergymen in the 1590's," and it was Richard Hooker's *Laws of Ecclesiastical Polity* which affirmed that the Queen's authority was derived from the consent and laws of the Commonwealth. While the early Stuart clergy proclaimed the 'Divine Right of Kings' this was not as simple as absolute monarchical rule. Rather, the doctrine implied a system of natural law which could be applied to all governments. Governmental authority, whether monarchical, democratic, or aristocratic, was obtained from God and found expression in the laws of nature. Furthermore, natural law could only be discovered through reason, use, and custom, and common lawyers such as Coke and Hale relied on this assumption to ground public policy in the judicial process.

---

66 While Pocock made Edward Coke the paradigm example of the common law tradition more recent historians like Glenn Burgess argue that Coke's was an "extreme position" and he was "an eccentric, and sometimes a confused, thinker" less typical of seventeenth century common law scholars such as John Seldon and even Francis Bacon. G. Burgess, *The Politics of the Ancient Constitution. An Introduction to English Political Thought, 1603–1642* (London: Macmillan, 1992), 21; J. G. A. Pocock, *The Ancient Constitution and
The law of nature or the moral law of God was rational, reasonable and in a society where poverty and crime continued without any police or standing army the "necessity of government", in Sommerville words, "seemed manifest." Thus, the "notion that too little government is better than too much is modern", according to Sommerville, and it was Robert Bolton who epitomised the early seventeenth century view of government as the "prop and pillar of all States and Kingdom's, the cement and soule of humane affairs, the life of society and order, the very vital spirit whereby so many millions of men doe breathe the life of comfort and peace; and the whole nature of things subsist." The existence of civil government and 'the state' was broadly accepted in the seventeenth century, while the consent of the individual was used to explain how this political society evolved. Political consent was not, however, during the early Stuart period, regarded as a Lockean contractual agreement but was still lodged in natural law. Accordingly, the law could not be a function of legislation or rational public deliberation and must be conceived through some higher judicial reason.

In 1636 the common lawyer Thomas Nash proposed that "Laws of soveraigntie and subjection had there originall from the beginning of times, long before the Lawes of Moses were written, even from the Law of nature." The constitution was not good simply, however, because it was old, as Burgess explains: "custom was always subservient to reason: the ancient constitution was good because it was a rational system. Custom was a tool used to explain its rationality." Accordingly, the divine reason which underpinned customary law was guarded by the common lawyers whose exposition of 'immemorial usage' "regulated the relations of government and governed. Even the maker of statute law itself, the institution of the King-in-parliament, was also the High Court of Parliament and the highest common-law court in the land. This common law then constituted the English polity." The rationality of the constitution was maintained through the balance between the prerogative of the King and the rights and liberties of the people, or more particularly the Law. It was Bacon who affirmed that "the laws, without the king's power, are dead", and Coke balanced

---


68 T. Nash, Quarternio or a foure-fold way to a happy life (1636); in Sommerville, Politics and Ideology in England, 21.

the constitution through allegiance and protection: “for as the subject oweth to the king his true and faithful ligeance and obediance, so the sovereign is to govern and protect his subjects.”

Drawing on Pocock, Burgess explains the ‘common law mind’ through the predominance of legal antiquarianism in historical method. The collection of primary sources was influenced by a heavily teleological epistemology and the past was a tool to explain the inevitable destiny of history. For the legal antiquarian, “The past was a storehouse of moral knowledge waiting to be raided”, and this “made the past relevant to the present, and formed the basis for one of the central components of ancient constitutionalism, the idea of continuity.” While Dutch and French constitutionalism was influenced by resistance theory (in that Grotius and other mid sixteenth century Dutch theorists attempted to legitimate resistance to Spanish/Jesuit rule), the English common lawyers sought to maintain the status quo between church and state. The Calvinist resistance to absolute monarchy was never appropriated by an English culture of political conformism dedicated to the continuity of past and present. This was an attitude typified by Sir John Davies’ comparison of statute and common law in constitutional tradition: “doth far excell our written Laws, namely our Statutes or Acts of Parliament, which is manifest in this, that when our Parliaments have altered or changed any fundamentall points of the Common Law, those alterations have been found by the experience to be so inconvenient for the Commonwealth, as that the Common Law hath in effect been restored again, in the same points, by other Acts of Parliament in succeeding Ages.” Similarly Coke interpreted statutes such as the Magna Carta as “for the most part, but declaratories of the ancient Common law of England.” This of course was not the whole story and the need for statutory innovation was admitted by everyone through Aquinas, Bodin, Machiavelli, and in England Francis Bacon. Innovation was an inevitable corollary of time.

---


71 For Burgess, the study of ‘the common law mind’ is “a study of the way in which early Stuart lawyers conceived of the rational and historical basis of their own law, the common law of England. The study of the ancient constitution is a study of a process, not an event.” Burgess, The Politics of the Ancient Constitution, 21–22.


Custom was to some extent historically relative. But while, as Burgess points out, Bacon believed it “good therefore that men in their innovations would follow the example of time itself”, it was “good also not to try experiments in states, except the necessity be urgent or the utility evident.” Bacon displayed an Aristotlian cautiousness to reform which admitted the power of customary habit in politics. Likewise, Sir Henry Spelman argued that while “some will say a Parliament can do anything, I say it may quickly change the lawe but not the myndes of the people whom in this union we must seek to content.”

Custom was viewed by seventeenth century common lawyers as an expression of natural reason and while this reason was contingent, it was linked to positive law through artificial reason. The study of the written records of the English courts allowed the judicial profession to concoct an artificial reason that conformed with customary maxims and future legal judgements. While Coke, following from Fortescue, made these maxims immutable, much early Stuart jurisprudential philosophy accepted the mutably of custom when linking artificial reason and positive law. For Sir John Doddridge,

> The efficient cause of Rules, Grounds, and Axiomes is the light of natural reason tryed and sifted upon disputation and argument. And hence is it. that the law (as hath bin before declared) is called reason; not for that every man can comprohend the same; but it is artificiall reason; the reason of such, as by their wisedome, learning and long experiences are skilfull in the affaires of men, and know what is fit and convenient to bee held and observed for the appeasing of controversies and debates among men, still having an eye and due regard of justice, and a consideration of the Commonwealth wherein they live...

In the attempt to consolidate common law authority jurists believed artificial reason to be, in Burgess's words, “necessary to any account that wished to identify the common law with laws of reason.” Artificial reason confirmed the exclusive and conservative nature of English jurisprudence. Mathew Hale describing how the law could not be codified but found expression through ‘custom and use’:

---

77 Burgess, The Politics of the Ancient Constitution. 42
They are grown into use, and have acquired their binding Power and Force of Laws by a long and immemorial Usage, and by the Strength of Custom and Reception in this Kingdom. The Matters, indeed, and the Substance of those Laws, are in Writing, but the formal and obliging Force and Power of them grows by long Custom and Use.\textsuperscript{78}

Austin equated legal custom with the "arbitram of the judge", a view affirmed by Coke when he stated that "the judge is the mouthpiece of a law which transcends the judiciary."\textsuperscript{79} Like most common lawyers of the late seventeenth and eighteenth century, Coke argued that legislative enactments subvert the purity of ancient law, or what Blackstone later called the "venerable edifices of antiquity."\textsuperscript{80} But this distinction was often confused. Blackstone's whig philosophy included in its reverence for common law tradition a view that the sovereign or supreme power rests in Parliament where the people, whose natural right to liberty had triumphed against Stuart despotism, were represented. This was the essential tension within early whig constitutionalism. Postema thus notes that while Blackstone argued "forcefully for the foundational status of customary Common Law, he sought to defend the doctrine of Parliamentary Sovereignty on Whiggish contractarian grounds."\textsuperscript{81}

Blackstone acknowledged the contractual features of whig constitutionalism when he said that the state relies on "political union; by the consent of all persons to submit their own private wills to the will of one man, or of one or more assemblies of men, to whom the supreme authority is intrusted: and this will of that one man, or assemblage of men, is in different states, according to their different constitutions, understood to be law."\textsuperscript{82} Implicit in this statement however is royal, and ultimately common law prerogative: "when such an hereditary right, as our laws have created and vested in the royal stock, is closely interwoven with those liberties, which are equally the inheritance of the subject; this union will form a constitution, in theory the most beautiful of any, in practice the most approved, and in duration the most permanent."\textsuperscript{83} The king and the judge were an

\textsuperscript{78}Hale, A History of the Common Law, 17.
\textsuperscript{79}Postema, Bentham and the Common Law Tradition, 9.
\textsuperscript{80}Blackstone, Commentaries on the Laws of England I, 10–11.
\textsuperscript{81}Postema, Bentham and the Common Law Tradition, 17–18.
\textsuperscript{82}Blackstone, Commentaries I, 52.
\textsuperscript{83}Blackstone, Commentaries I, 184–211, in J. C. D. Clark, English Society 1688–1832: Ideology, social structure and political practice during the ancien regime (Cambridge: Cambridge University Press, 1985), 206.
almost metaphysical expression of the rectitude of the rule of law, while the people in parliament were a check that this power is not abused. The later were less a practical part of Blackstone's constitutional theory since he presumed the infallibility of common law precedent. The limited role of statute law was embodied in the jurisprudential logic of exposition, of teaching the law 'as it is'. This notion contrasted with Bentham's method of censure, which defines the law 'as it should be'.

In Halevy's words, "The science of law as set forth by Blackstone is not a science of reasoning but a science of learning...if it rests on principles at all, it can only be on principles which are merely nominal and fictitious." The constitution remains perfect because it need not be interpreted, only enunciated. If constitutional law demanded censure then this "might imply a right of dissenting or revolting from it, in case we should think it unjust, oppressive, or inexpedient. Whereas, our ancestors having most indisputably a competent jurisdiction to decide this great and important question, and having in fact decided it, it is now become our duty at this distance of time to acquiesce in their determination; being born under that establishment which was built upon this foundation, and obliged by every tie, religious as well as civil, to maintain it."

The principle of 'exposition' grounded constitutional sovereignty in judicial precedent. In Vinogradoff's terms, "As regards the state, the Law was assumed to be an antecedent condition, not a consequence of its activity." Instead of sovereignty being traced to the deliberate will of the legislator, its function was assigned to the "gradual working of custom, the proper function of legislation being limited to the declaration of an existing state of legal consciousness, and not as the creation of new rules by individual minds." It was this concept of sovereignty which Hobbes challenged when he continued Bacon's controversy with Coke in the guise of 'Philosopher v. Lawyer'. While Coke argued that political power is derived from the common law 'custom and usage', Hobbes believed that the will of a central, absolute sovereign authority preceded rational juridic procedure. Hobbes wanted to reinvest political authority in a single and absolute political head, the will of the executive in parliament, and therefore to rationalise constitutional authority. As this chapter unfolds, it will noted that Hobbes' Leviathan did not find expression until the evolution

---

84See Bentham, Fragment on Government I, 229.
86Blackstone, Commentaries I, 55.
87Vinogradoff, Outlines of Historical Jurisprudence I, p. 129.
of the nineteenth century ‘legislative state’. Accordingly, eighteenth century constitutional theorists such as Blackstone derived the prerogative power of the King and the executive from common law usage, and not from statute law. This allowed the courts to reject executive discretion. It was John Fortesque who originally denied the right of the King to interpret the laws since reason alone could not evaluate the technical complexity of legal precedent. Coke made a similar distinction at the court of James I: “his Majesty was not learned in the laws of his realm of England, and causes which concern the life, or inheritance, or goods, or fortunes of his subjects, are not to be decided by natural reason but by artificial reason and judgement by law, which law is an act which requires long study and experience.”

The voluminous and incomprehensible mass of case law which was drawn upon for constitutional judgements was a safeguard against monarchical or popular tyranny. Statute law was suspect to the self-interest of the King, or the Majority. Edmund Burke, for example, saw a reliance on jurisdiction precedent as the virtue of the Constitution. Judicial law was an essential check against absolute monarchy or pure democracy, allowing lawyers to “employ their sagacity to discover the latent wisdom which prevails in them [the common laws]...because prejudice, with its reason, has a motive to give action to that reason, and an affection which will give it permanence.” The function of the lawyer was not one of “exploding general prejudices” in the constitution. Rather, “we ought to understand it according to our measure and venerate which we are not able presently to comprehend.” On this foundation the Prime Minister, Lord North, in 1785 called the Constitution “the work of infinite wisdom...the most perfect fabric that ever existed since the beginning of time”, while Blackstone regarded it “in the whole and every part of it, the quintessence of perfection.”

For Dicey, “The task of the eighteenth century was the work of pacification” which “led in the sphere of the law to contented acquiescence with the existing state of things” So too, Thomas Arnold, the progressive educator and founder of Rugby College, commented on the “tranquillity” of

constitutional debate which "as usual, bred carelessness; events were left to take their own way uncontrolled; the weeds grew fast, while none thought of sowing the good seed."\textsuperscript{94} Contentment with English institutions exacerbated the conflict between Blackstone and utilitarians like Austin, who wrote that the former "truckled to the sinister interests and to the mischievous prejudices of power: and he flattered the overweening conceit of their national or peculiar institutions, which then was devoutly entertained by the body of the English people, though now [1826–32] is happily vanishing before the advancement of reason."\textsuperscript{95} Dicey observed that between 1689 and 1827 the only constitutional alterations occurred as the result of "political conventions and understandings." Essentially, "the law of the constitution" remained untouched. Even a progressive jurist like Paley, described by some scholars as an early utilitarian, argued against any constitutional reform since the Commons contains "the most considerable landholders and merchants of the kingdom; the heads of the army, the navy, and the law; the occupiers of great offices in the State. Now, if the country be not safe in such hands, in whose may it confide its interests...Does any new scheme of representation promise to collect together more wisdom, or to produce firmer integrity?"\textsuperscript{96} But as Dicey has argued in the context of the Glorious Revolution, Blackstone's kin were not necessarily "bigoted Tories" or "reactionists" since the revolution of 1689 [was] from one point of view a conservative movement...[and] was conducted under the guidance of Whig lawyers; they unwittingly laid the foundations of a modern constitutional monarchy, but their intention was to reaffirm in the Bill of Rights and the Act of Settlement, not the innate rights of man but the inherited and immemorial liberties of Englishmen. This is the basis of truth which underlies the paradox exaggerated by the rhetoric of Burke that the statesman who carried through the Revolution of 1689 were not revolutionists. They assuredly believe that the liberties of Englishmen were bound up with the maintenance of the common law. The conservatism then of the English Revolution found its natural representatives in English lawyers. If they demurred in the introduction of wide reforms, their hesitation was due in part to the sound conviction that

\textsuperscript{94}T. Arnold, \textit{Miscellaneous Works} (London, 1845), 276.


fixity of law is the necessary condition for the maintenance of individual rights and of personal liberty." 

This 'fixity of the law' meant that the Act of Settlement (1701) was one of the few statutory measures which anchored the constitution. Prescribing the "further limitation of the crown and better securing the rights and liberties of the subject", it asserted the authority of parliament by making judges accountable and "pleadable to an impeachment by the commons." But the separation of powers was never realised in Britain (contrary to the views of Montesquieu), and the jurisdiction between court and commons remained flexible. As Pole surmised, "there were very few hard and fast rules. The Constitution may be thought of as an organism, but not as a machine." This view forms a consistent part of the historiography. Lowell, for example, described a constitution "grown up by a continual series of adaptations...in this it is like a living organism. There are no doubt many small anomalies and survivals that mar the unity for the purpose of description, but these...do not interfere seriously with the action of the whole." The organic conception of constitutional development had long been used to secure the 'common law mind' and in 1785 Paley argued that constitutional reality is ever amorphous: "...there exists a wide difference between the actual state of the government and the theory. When we contemplate the theory of the British government, we see the King vested with...a power of rejecting laws. Yet when we turn our attention from the legal extent to the actual exercise of royal authority in England we see these formidable prerogatives dwindled into mere ceremonies; and in there stead a sure and commanding influence of which the constitution, it seems, is totally ignorant.

Convention neither guaranteed popular government while the Septennial Act of 1716, which instituted seven yearly elections, served to limit the part of representation in the working of the constitution. Seven yearly parliaments lessened opportunity for expression of public opinion, and, in place for two hundred years, the Act determined the 'representative' as opposed to 'participatory' nature of the political system. Opposition to the Septennial Act became one of the most potent

---

platforms for radical constitutional reformers worried that the growth of patronage might again breach the constitutional liberties of the Commons. Whigs were worried that the power of the Crown was again ascendant since parliament was rarely accountable. Further, septennial parliaments gave incompetent ministers virtual tenure, thus producing much dubious legislation and little incentive for reform. This enamoured many Whigs to the view that “representation had a far weightier place in the proper balance of the Constitution than was allowed by septennial elections, that the House of Commons should be compelled to return frequently to its source in the electorate, and should be reminded that it exercised power as a trust.”

3. Sovereignty theory and the critique of natural law

By the late eighteenth century a more radical vision of political authority began to supersede the old whig common law tradition. The movement was embodied by the London Corresponding Society, established in 1792 under the leadership of Francis Place and Thomas Hardy, and whose goal was to “restore the lost liberties of the constitution” and to ensure that every officer and magistrate should be responsible to “the great body of the people.” Reflecting the birth of ‘public opinion’ through increases in press reporting and pamphleteering, the society drafted a reformed constitution in 1794. English radicalism from the Levellers through to John Wilkes had demanded a more popular system of parliamentary government. The Corresponding Society can be seen, therefore, as the forerunner of ‘philosophic radicalism’ and a consistent nineteenth century movement toward parliamentary reform.

---

103 Francis Place Papers. British Museum add. mss. 27808.
104 The Radical Party were politically divisive and generally ineffective as a united party. But as Davis notes, they were known for their great ‘liaison’ networks throughout parliament and “their influence on opinion was out of all proportion to their numbers or political efficiency.” W. Davis The Age of Grey and Peel (Oxford: 1929). For Thomas, “who these Benthamites were...remain rather vague. They are the moles of nineteenth century legislation: you never see them but the mounds of earth show where they have been at work.” W. Thomas, The Philosphic Radicals: Nine Studies in Theory and Practice 1817–1871 (Oxford: Clarendon Press. 1979). While Marx presented the philosophic radicals as the ideologues of the Victorian bourgeoisie, Thomas argues that they were innovator’s and carried few doctrinaire attachments. See also A. M. Thornton, The Philosphic Radicals, Their Influence on Emigration and the Evolution of Responsible Government for the Colonies (Honours Thesis. Oxford University, 1952); G. Grote Philosophical Radicals of 1832 (London, 1866); E. Halévy, The Growth of Philosphic Radicalism (London. 1949); J. Hamburger, Intellectuals i
If the radical whig vision of representative government was to reinvent English constitutionalism then the common law foundation of the ‘Age of Blackstone’ would firstly have to be de-constructed. While James Mill, in his Essay on Government, argued that the interests of the government and the governed could be best answered with “the great discovery of modern times, the system of representation”, he failed to contextualise constitutional reform within a jurisprudential debate first taken up by Bentham in his Fragment on Government.  

Bentham wanted to “draw aside that curtain of mystery which fiction and formality have spread so extensively over the law”, and he accused Blackstone of resting sovereignty on the “metaphysico-legal impotence” of subjects. It was the sixteenth century state theorist Bodin who in France initiated the meta-theological conception of sovereignty in reaction to the medieval view of the king as a judge of unchanging law. Sovereignty gave the king authority to make and divest laws on the people, marking a step away from juridical reason toward an active legislative state. Conversely, Blackstone used sovereignty to affect a ‘higher’ law, a law which “ascribes to the king, in his high political character, not only large powers and emoluments which form his prerogative and revenue, but likewise certain attributes of a great and transcendent nature; by which the people are led to consider him the light of a superior being, and to pay him that awful respect, which may enable him with greater ease to carry on the business of government.” Bentham may have scorned this ‘screen’ for arbitrary and absolute government but he did not, as Rosenblum has shown, reject sovereignty. Rather, he reinvented the idea. Bentham’s constitutionalism was, for Rosenblum, “an heir to the sovereign idea” and “not a rejection of absolutism; his notion of utility made the pleasure of men generally the justification for every exercise of power and reconciled them to the irresistibility of innovation.”


105 J. Mill. Essay on Government (London: 1809). Hamburger shows that “Bentham’s main interest was law reform, whereas the followers of James Mill were more concerned with the movement for the reform of parliament.” J. Hamburger, Intellectuals in Politics, 18.


108 Blackstone, Commentaries, 1, 241.

109 Rosenblum, Bentham’s Theory of the Modern State. 77.
Sovereignty was developed by Bodin, and in England Hobbes, to give the central political executive greater leverage over static common law prescription. In this way, Bodin stated that “Sovereignty is the highest power over citizens and subjects unrestrained by the law.”

Blackstone’s sovereignty was thus opposed to a Hobbesian constitutional logic which was “not a normative recommendation but an analytic characteristic of all stable polities.” Similarly, early Stuart jurists such as Coke admitted royal prerogative but opposed sovereignty since it weakened the absolute authority of legal custom.

I know that prerogative is part of the law, but ‘sovereign power’ is no parliamentary word. In my opinion it weakens Magna Charta, and all the statutes; for they are absolute, without any saving of Sovereign Power; and should we now add it, we shall weaken the foundation of law, and then the building must needs fall...If we grant this, by implication we give a ‘sovereign Power’ above all laws.”

Coke stated his aversion to sovereignty during the debates over the Petition of Right in 1628. The question of how to define royal prerogative and the rights of the subject was made more ambiguous by a concept of sovereignty Coke believed to be undefinable. Lord Say related this ambiguity to the reason of state: “Reason of State, [is acceptable] in tymes of necessitye, etc., but not to rule the Lawe nor leave a gappe...Better have the Lawe to be positive and absolute, than the reason of state.”

While Coke and Say wanted to limit positive law to common law custom and royal prerogative, later utilitarian jurists such as Austin believed positive law to consist of “commands set. as rules of conduct, by a Sovereign to a member or members of the Independent Political

---

112 While Dicey argued that Coke’s notion of “Parliamentary Supremacy” allowed “habitual interference” with “private rights”, McIlwain reminds us that this authority was reserved for the courts and legal custom. Thus, “in many cases the Common Law will controul acts of Parliament and sometimes adjudge them to be utterly void.” A.V. Dicey, Law of the Constitution, 46; McIlwain, The High Court of Parliament, 139–148; in R. A. MacKay. “Coke – Parliamentary Sovereignty or the Supremacy of the Rule of Law?” Michigan Law Review XXII 1923–24, 215–216.
113 Commons Debates, 1628 III, in Burgess. The Politics of the Ancient Constitution. 196.
Society wherein the author of the Law is supreme.” This form of sovereignty underpinned a legislative absolutism which presumed the supreme authority of parliament. The foundation of Coke’s law could not be positive since “Whether or not the usage has the force of law depends on the decisions of the Courts...and the Court subsequently recognising the usage as a good legal custom without special proof.” Campbell quipped that “in the case of communities so destitute of any tie of political cohesion they may be said to live in a state of nature.” Austin attempted to limit judicial influence on the state by arguing that “political society must have a sovereign (one or a number) freed from legal restraints.” Sovereignty was indispensable to Austin’s definition of constitutional law: “the positive morality, or the compound of positive morality and positive law, which determines the character of the person, or the respective character of the persons, in whom, for the time being, the sovereignty shall reside: and which, moreover, supposing the government in question an aristocracy or government of a number, determines the mode wherein the sovereign powers shall be shared by the constituent members of the sovereign number or body.”

Campbell reiterated Austin’s Roman constitutional jurisprudence, believing that “the conditions of society under which a system of positive law can said to exist...imply a society organised on the principle that the command of the State largely pervades the relations and transactions of its individual members – a principle inherited from Roman institutions, and which is the backbone of modern civilization.” Coke would have been horrified to learn that by the nineteenth century Austin could pronounce that “if parliament for the time being be sovereign in the United Kingdom, it is the author, directly or circuitously, of all our positive law, and exclusively sets us the measure of legal justice and injustice.” It was this assumption which made civil liberty and individual rights dependent on a sovereign state defined by a fusion of law-making (legislative) and administrative (executive) functions.

State authority was henceforth dependent on active legislation rather than precedent and judicial interpretation. This denoted the development of the command theory of law and a view that, says Vile, “law is essentially the expression of an order or prohibition rather than an unchanging pattern.

117 Austin Lectures on Jurisprudence, 107.
119 Austin Lectures on Jurisprudence, 109.
of custom, a view that was reinforced by the emergence of a modern notion of sovereignty as the repository of the power to issue final commands. The command theory of law allowed Austin to define civil liberty as “liberty from legal obligation, which is left or granted by a sovereign government to any of its subjects: and that, since the power of the government is incapable of legal limitation, the government is legally free to abridge their political liberty, at its own pleasure or discretion... Where persons in a state of subjection are free from legal duties, their liberties would be nearly useless to themselves, unless they were protected in the enjoyment of their liberties, by having legal rights (importing legal duties on their fellows) to those political liberties which are left them by the sovereign government.”

To deflect the inevitable charge of despotism Austin referred back to Hobbes: “the sovereign power, whether placed in one man, as in monarchy, or in one assembly of man, as in popular and aristocratical commonwealths, is as great as men can be imagined to make it. And though of so unlimited a power man may fancy many evil consequences, yet the consequence of the want of it, which is warre of every man against his own neighbour is much worse.” Hobbes was objecting to the conventional seventeenth century opinion which “setteth the civil laws above the sovereign” and which “setteth also a judge above him. and a power to punish him: which is to make a new sovereign; and, again. for the same reason, a third to punish the second: and so continually without end. to the confusion and dissolution of the commonwealth.”

Returning to Bentham’s notion of popular sovereignty we see an attempt to reintegrate sovereignty theory within the social and political mechanisms of a parliamentary democracy. While this idea was evident in his Fragment, it was in the writing of the Constitutional Code, and with the coming reform acts firmly in mind, that Bentham re-figured the “metaphisico-legal impotence of subjects” into what he termed “irresistibility and innovation.” The latter premised state sovereignty on a democratic element who were “To obey punctually” and “censure freely.” This is not to imply the classical notion of a public sphere. Bentham’s polis is a subjective realm where the individual becomes an active component of government. Sovereignty, in the sense of uniformity of action, required a citizenry who could be ‘obedient and innovative’, meaning that they could adapt to the

---

120 Vile, Constitutionalism and the Separation of Powers, 26.
121 Austin Lectures on Jurisprudence, 111.
122 Cited in Austin Lectures on Jurisprudence, 113–114.
123 Bentham, A Fragment on Government; in Works I, 230. This is a point which informs much of Foucaudian and Nietzschean theory about the importance of individual will in the operation of the modern state. Foucault, for instance, describes the emergence of a ‘political rationality’ which, relying on the ‘recalcitrance of the will’, conflates the boundaries between the individual and the state and thereby generates a self-replicating governmental sphere.
exigencies of a complex polity without inspiring rebellion or collapse. For this reason, Bentham was careful to avoid Rousseauian notions of the general will and lodged sovereignty in the atomic individual.\textsuperscript{124} Politics would not be regulated through a communitarian moral order but each "internal persuasion of a balance of utility on the side of resistance."\textsuperscript{125} To quote Rosenblum: "Popular Sovereignty is plainly a matter of self-defence in practice, a matter of each subject's independent will to resist government when it acts in opposition to the happiness of subjects...Popular sovereignty explains not only the origin but also the nature of power; it justifies absolutism...It is entirely compatible with constitutionalism; division of power is evidence of a distrust of absolute power but not a rejection of it."\textsuperscript{126}

Bentham thus removed arbitrariness from the idea of sovereignty and replaced it with notions of innovation and change. The 'defeasible perpetuity' of legislation was necessary due to the variability of individual desire. Wrottesley, the mid-Victorian utilitarian and constitutional theorist, argued that legislation is both transient and fallible and its utility is only maximised through experience and change.

Our notions of the ultimate tendencies of actions must be collected by observation and induction, and by noting the result of a multiplicity of human actions which have been imperfectly classed, and of which the effects are seldom accurately ascertained. It may be that to class them completely, and trace all their effects, transcends human powers; but there can be no doubt that, as experience enlarges, this difficult task will be proportionately better performed, and legislative and moral rules, laws, and morality, will, with the progress of civilisation, from this among other causes, receive important improvements.\textsuperscript{127}

From this perspective, the conventional eighteenth century view of sovereignty was transformed from a normative to instrumental principle. A unified system of government and an 'omnicompetent' legislature were a historical and practical expression of the normative principle of utility. Bentham thus preferred centralized, unified, and accountable government to mixed and fragmented systems of administration. Responsible and democratic institutions gave the greatest

\textsuperscript{124}It is this point which had led Dicey, Halévy, and others to consider Bentham the champion of laissez-faire individualism.
\textsuperscript{125}Bentham, \textit{A Fragment on Government}; in \textit{Works I}, 287.
hope of fulfilling the ‘universal interest’, but this form of government was a preference rather than a
document. The ‘Democratical ascendancy’ proposed in his *Parliamentary Reform Catechism* was the
inspiration of James Mill, but while advocating annual elections, secret ballots, published records of
parliamentary debate and ‘virtual’ universal suffrage, these were not, unlike Blackstone’s mixed
constitutional monarchy, absolute constitutional principles. The three forms of government —
monarchical, aristocratic, and democratic — which Blackstone went to so much trouble to elaborate
in terms of *rights* and *duties* — “The natural and inherent right that belongs to the sovereignty of a
state...However they began or by what right soever they subsist, this *is and must be* in all of them a
*supreme, irresistible, absolute, uncontrolled* authority, in which the *jura summi imperii*, or the
rights of sovereignty reside” — were ‘fictions’ and ‘sophisms’ which ignored “the question of
utility.” Referring to Bentham’s scheme for pauper management, Himmelfarb notes “that there
was no such thing as the ‘rights’ of paupers. For there was no such thing as rights at all. There were
only interests” Thus the modern state provided the conditions for ‘security’ rather than ‘rights’, a
point elaborated at length, as described in the last chapter, by Foucault. According to Rosen, this
logic of security denoted the establishment of a “framework within which each person could realise
his or her own happiness”, and thus enabled Bentham to “move beyond the Lockeian conception of
the liberal state.” Security was not dependent, continues Rosen, on a judicial contract, but should be
“conceived more widely in terms of education, health, and welfare.” As Nassau Senior argued,
governments might have to intervene in the economy in the name of ‘expediency’ and no longer
should they be limited to a role of ‘protection’ in the sense of negative freedom and natural rights:
“The only foundation of government is expediency, the general benefit of the community. It is the
duty of government to do whatever is conducive to the welfare of the governed. The most fatal of
all errors would be the general admission that a government has no right to interfere for any purpose
except the purpose of affording protection.” Security, in the sense of the state actively intervening
in social legislation and the problem of population, had replaced ‘protection’ as the fundamental
rationality of government. For Gordon, liberty had become a “medium of government action”,

meaning that “disrespect of liberty is not simply an illegitimate violation of rights, but an ignorance of how to govern.”

Modern sovereignty theory did not derive the force of law from divine right, natural law, or the people, but relied on practice and procedure, or what Bentham called ‘adjective’ law. Rosenblum explains that “Neither the source of laws nor their force had any meaning or value for Bentham apart from the relationship between the intention of the legislator and the disposition to obedience on the part of the people.” The sovereign will is impotent unless the structure of the courts and the legal profession are understood and systematised. The fractured and imperfect record of case law meant that established precedent required greater validation. Thus, while statutes would replace the common law they still relied on a rational “idea of law.” Bentham’s command theory of law was anathema to the more orthodox common law prescription embodied in Blackstone’s commentaries, a work which formed the object of much of Bentham’s earlier critical jurisprudence. Speaking of an Act of Parliament, and following from the principles of Coke, “There needs”, said Blackstone, “no formal promulgation to give it the force of law, as was necessary by the Civil Law with regards to the Emperor’s Edicts: because every man in England is, in judgement of law, party to the making of an Act of Parliament, being present therat by his representatives.” Similarly, he argued that since the Laws of England are the quintessence of perfection and any alteration should be regretted: “That whenever a standing rule, of Law,... hath been broke in upon by statutes or New Resolutions. the wisdom of the rule hath in the end appeared from the inconveniences that have followed the innovation.” This was antithetical to a science of legislation which relied on accountability and innovation. Accordingly, Bentham, in the Constitutional Code, proposed that parliamentary debate be published and that ‘standing rules’ change as often as possible through annual elections.

Bentham denied sovereignty in terms of the Lockean social contract or Enlightenment concepts of natural law and the ‘indefeasible rights of man’. These were the ‘conceits’ that Blackstone employed to prop up aristocratic and judicial rule, and as such, they avoided the practical necessities of government. On Bentham’s death, John Stuart Mill credited him with having “cleared the rubbish of pretended natural law, natural justice and the like, by which men were wont to

---

134 Rosenblum, Bentham’s Theory of the Modern State, 92.
135 Bentham, Of Laws in General, 12, 185–192. in Rosenblum, Bentham’s Theory of the Modern State, 93.
136 Blackstone, Commentaries II, 178, 70.
consecrate as a rule of morality, whatever they felt inclined to approve of without knowing why.” Describing the English law as a “foundation of rude contrivances” and built of “vague cloudy generalities arbitrarily assumed a priori, and called laws of nature, or principles of natural law,” Mill praised Bentham’s insistence on codification, on a systematic law and “logically constructed nomenclature.” Similarly, Henry Maine argued that a priori theories had “satisfied speculation on the Past and paralysed speculation as to the future. They had for their basis the hypothesis of a Law and State of Nature antecedent to all positive institutions, and a hypothetical system of Rights and Duties appropriate to the natural condition. The gradual recovery of the natural condition was assumed to be the same thing as the progressive improvement of human institutions.” Maine expressed a common view among nineteenth rationalists that the dogma of natural law had produced the excess of the French Revolution. When James Mill read Kant’s Critique of Pure Reason, he told Francis Place: “I see clearly enough what poor Kant is about. but it would take no little time to take account of him...Hartley’s is the true scent.”

Inductive method informed Bentham’s system of ethics which was a fusion of the science of politics and morality. While the former “directs the operations of governments”, Bentham argued that “the other directs the proceedings of individuals; their common object is happiness. That which is politically good cannot be morally bad; unless the rules of arithmetic, which are true for great numbers, are false as respects those which are small.” Government had become a mathematical principle, with Bentham transforming Newton’s Principia Mathematica into a political and moral creed. David Hume was the first to transpose Newton’s natural philosophy into a moral philosophy. Accordingly, his Treatise was “an attempt to introduce the Experimental Method of Reasoning into Moral Subjects.” Hume’s theory of history was “to discover the constant and universal principles

---


139 Cited in Thomas, The Philosphic Radicals, 120.


141 Hume, Treatise on Human Nature bk. i. part i, sect. 4. Bentham’s moral arithmetic was also heavily influenced by the Italian political economist and rationalist Cesare Beccaria who wrote An Essay on Crime and Punishment in 1864. Bentham described him as “My master. first evangelist of reason, who hast raised thy Italy so much above England and also France...It was Beccaria’s little treatise on crimes and punishments that I drew as I well remember the first hint of the principle by which the precision and clearness and incontestableness of mathematical calculations are introduced for the first time into a field of morals.” This moral arithmetic was made possible by Beccaria’s shift from ‘expository’ to ‘censorial’ jurisprudence. The
of human nature, by showing men in all varieties of circumstances and situations and furnishing material from which we may form our observations and become acquainted with the regular springs of human action and behaviour.”¹⁴² The Newtonian revolution in the physical sciences was the principle through which Bentham attacked the English law. If Newton had discovered the essential dynamic of the “elements we breathe, surely it is not of much less importance nor of much less use, to comprehend the principles, and endeavor at the improvement of those laws, by which alone we breathe it in security.” Blackstone’s *Commentaries on the Laws of England*, a document which had “beyond comparison, a more extensive circulation,... a greater share of esteem, and applause, and consequently of influence,... than any other writer who on that subject has ever yet appeared”, was concerned only with archaic precedent and was defined by its “antipathy to reformation; or rather... [its] universal inaccuracy and confusion.”¹⁴³

A significant fault of the *Commentaries* was, in Bowyer’s summary, that they “imperfectly sketched out... the practical results of the responsibility of ministers to parliament.”¹⁴⁴ While the Bill of Rights and the Act of Settlement had established the ‘liberties of Englishman’ on the basis of responsible government secured by the doctrine of parliamentary sovereignty and the rule of law, “it was not yet clear”, in Marriott’s words, “by what precise method Parliament would effectively exercise control over the Executive, or by what procedure the Courts of Law would safeguard the liberties of the individual citizen.”¹⁴⁵ Bentham attributed this lacunae to the tradition of legal ‘exposition’: “To the expositor it belongs to shew what the Legislator and his underworkman the Judge have done already.” Borrowing from Beccaria, Bentham adopted the role of Censor: “To the Censor it belongs to suggest what the Legislator ought to do in future. To the Censor, in short, it belongs to teach that

former was typical of the natural law jurisprudence of Grotius and Puffendorf who attempted to define some innate legal virtue; the latter was Beccaria’s critique of penal law and his advocation of ‘intensity, duration, certainty, and proximity’. Bentham, *Works* III, 286; & *Works* I, 150 in Hart, *Essays on Bentham*, 40–2.

¹⁴²D. Hume *Inquiry into Human Understanding*, sect. viii, i.


¹⁴⁵J. A. R. Marriott *The Crises of English Liberty: A History of the Stuart Monarchy and the Puritan Revolution* (Oxford: Clarendon Press. 1930), 459. Marriott represented a Whiggish concern that this paucity of codified constitutional practice has been to the detriment of local authorities: “The work of local administration is increasingly committed to increasingly efficient clerks, secretaries and director’s.” Rather than confirm the prominence of the Commons “the tenure of legislation had passed from Westminster to Whitehall.”
science, which when by change of hands converted into an art, the Legislator practices.”

In order to specify the practice of government, Bentham attempted to break down the theological mystique, loyalty, and informal relations which banded eighteenth century government, and replace them with codified institutional responsibility. Hume explains that while Bentham “knew about informal relationships and their ability to pervade an administrative agency...it was precisely his aim to eliminate such forces and to make the working of his Executive depend entirely on the formal relations of command and obedience.”

Bentham’s theory of law had become, to again quote Hume, “dominated by the categories of the sovereign state.” In this, he equated “political society” with the “state of government” which is codified, separated, and hierarchically divided. Thus, he called on a responsible executive to “make provisions forth with for the bringing to light such scattered materials as can be found of the judicial decisions of time past, – sole and neglected materials of common law; – for the registering and publishing of all future ones as they arise; – for transforming, by a digest, the body of the common law thus completed, into statute law; – for breaking down the whole together into codes or parcels.”

The rationalisation of political society “expressed a belief that will and obedience – not the tacit adoption and acceptance of socially-created norms and values – constituted the bonds holding a society together. And they represented rights and duties as the products of will, as sustained by sanctions and as therefore depending on the existence of a sovereign to create and maintain them.” Liberal theorists like Wrottesley could by the 1850s argue “that the happiness of a community cannot be secured without the exercise of control”, and that this control “as exercised on men living together in society is only another name for Government.” Therefore, “Some kind of government must be established in order that these unions of men in society may enjoy that happiness which is their destined lot.”

Political obligation and obedience to political society and government was, henceforth, hinged on the idea of ‘security’ rather than the Lockean notion of consent which exclusively linked property to a theory of natural right. This idea was best expressed by David Hume: “I seek, therefore, some such interest more immediately connected with government, and which may be at once the original motive to its institution, and the source of our

---

149 Hume Bentham and Bureaucracy, 63–64.
150 Wrottesley, Thoughts on Government and Legislation, 25.
obedience to it. This interest I find to consist in security and protection, which we enjoy in political society, and which we never attain, when perfectly free and independent.\textsuperscript{151}

4. The ‘universal interest’ – from the separation of powers to the legislative state

The Constitutional Code was Bentham’s attempt to delineate the role and jurisdiction of the legislative and executive arms of parliamentary government. While the Code did not immediately inspire constitutional reform in Britain, it gave unprecedented form to the vague conventions of English constitutionalism. Published in 1830, the Code outlined a bureaucratised system of liberal governance which was hinged on the authority of a responsible, ministerial head who, as an elected representative of the parliament, would oversee local and juridical administrative units. Questions concerning the impartiality and accountability of a single ministerial head were be resolved through annual elections which would, through the threat of removal, restrain ministers from misrule.

Bentham’s notion of popular sovereignty was a practical constitutional model designed to make the administrative arm of government, the executive, both more accountable and efficient. For Hume, Bentham’s

Civil Service was to be organised on modern not on early nineteenth-century lines, for it was to consist of officials remunerated wholly by salaries, and recruited, promoted and disciplined according to carefully prescribed, formal, and quasi-objective methods. And the working relations, the obligations and many of the working conditions of the officials were also prescribed in great detail. Central to the working relations were the correlative notions of superordination and subordination – hierarchy – which Bentham insisted must operate through the whole governmental system.\textsuperscript{152}

Bentham contrived a model of responsible, cabinet government which viewed the modern state as a single legal entity. Rosenblum writes that Bentham’s state could “protect men better than any other form of order, and it is the best norm of order on another count as well: it is the idea most likely to reconcile men to diversity and change, which are the inevitable marks of modernity.”\textsuperscript{153} This representative state was formally and procedurally geared to ‘diversity and change’ – or to giving

\textsuperscript{151}Hume, Treatise on Human Nature, III, 2. ii, 485.

\textsuperscript{152}Hume Bentham and Bureaucracy, 66.

\textsuperscript{153}Rosenblum, Bentham’s Theory of the Modern State. 153.
expression to the aggregate of individual interests – through annual elections, universal suffrage, and ministerial accountability. The inner unity of Bentham’s legislative design prompted him to suggest the abolition of the Lords and the Monarchy. This was a very absolute conception of popular sovereignty, affirming his will to substitute centralized and bureaucratised cabinet government for checks and balances in English constitutional doctrine.

While Bentham praised the American constitution, a document heavily influenced by Montesquieu, he was suspect of the latter’s ‘separation of powers’ doctrine. In the Commentaries, Blackstone promoted Montesquieu’s technical system of law, the latter arguing that the “pains, the expenses, the delays, even the dangers of justice are the price which every citizen pays for his liberty.”154 “The screen for corruption” was Bentham’s response, “the screen made out of panegyric on delay and forms...the name on the manufactory is visible on it. Esprit de loix the manufactury: Montesquieu and Co, the name of the firm.”155 This critique proved to be very effective. According to Vile, “The attack upon the Montesquieu formulation of the triad of government powers, initiated by Bentham and Austin, was taken up by the writers on parliamentary government, and further developed in Germany, France, and America, so that by the early decades of the twentieth century the beautiful simplicity of the eighteenth century view of the functions of government lay mangled and shattered.”156 Walter Bagehot’s constitutional writings, devoted to the fusion of executive and legislative power in English constitutionalism, were pivotal to this shift, and for Vile, represented the “turning-point in the history of constitutional thought.” Bagehot signalled the emerging awareness of the nature of bureaucracy and a “complete reassessment of the ‘executive’ function” through “The impact of Prussian bureaucracy upon the nineteenth-century writers, the establishment of a non-political civil service in England, the dissatisfaction with the spoils system in the United States, and the development of the Weberian theory of bureaucracy.”157

It was in the early eighteenth century that the separation of powers replaced mixed government in English constitutional doctrine. The latter theory was essentially a system of checks and balances against arbitrary and tyrannical abuse of state power. The mixture of authority between monarchy, aristocracy, and democracy was, however, highly ambiguous. When, for example, the civil war demanded that the elements of government be properly demarcated the doctrine proved

154 Montesquieu, Spirit of the Laws; in Halévy, 379.
156 Vile, Constitutionalism and the Separation of Powers, 5.
157 Vile, Constitutionalism and the Separation of Powers, 7.
unworkable. At a time when the supreme authority of the people in Parliament had been admitted, the separation of powers was conceived as a means to balance governmental functions. Constitutional theorists such as Philip Hunton, for example, gave the King a sole executive function, meaning that legislative power, previously shared between lords, commons, and monarchy, was to reside in the Parliament.\textsuperscript{158} Cromwell ultimately abused his popular mandate to both make and execute the law and when House Committees were set up by common lawyers to investigate the matter, the parliament was charged with arbitrary rule. The separation of powers may then have been conceived in “the revolutionary conditions which temporarily destroyed the monarchy and the House of Lords”, but for Vile, “this was a situation too far ahead of its time to be maintained.” It was not until Montesquieu published \textit{De l’Esprit des Loix} in 1748 that “Ideas which had blossomed in the English Civil War, but which had been premature and unrealistic in terms of the then existing society, could now find fertile ground.”\textsuperscript{159}

Montesquieu initiated a peculiar notion of the separation of powers through an imperfect comprehension of English constitutional history. After reading Locke, Montesquieu assumed that English constitutionalism depended on the individual right to property, or what he called political liberty: “Political liberty is to be found only when there is no abuse of power. But constant experience shows that every man invested with power is liable to abuse it...To prevent this abuse, it is necessary from the nature of things that one power should be a check on another...When the legislative and executive powers are united in the same person or body ...there can be no liberty...Again, there is no liberty if the judicial power is not separated from the legislative and executive.” Blackstone summed up this doctrine when he said that “In all tyrannical governments...the right of making and enforcing the laws is invested in one and the same man. or in the same body of men; and wheresoever these two powers are united together there can be no liberty.”\textsuperscript{160} The most insidious aspect of Montesquieu’s formula was, for Bentham, the immunity of judicial law from interference by the crown or parliament. Vile notes the opinion of the French scholar Eisenmann, who argued that Montesquieu’s thought was most concerned with “trying to establish only the \textit{juridical} independence of the legislature and the government and not a separation of functions or persons.”\textsuperscript{161} The separation of powers further legitimated a judicial independence

\textsuperscript{158}P. Hunton, \textit{A Treatise on Monarchy} (London: 1843). in Vile, 40.
\textsuperscript{159}Vile, \textit{Constitutionalism and the Separation of Powers}, 34 & 77.
initiated under the Act of Settlement. That Act, in the words of Brennan, “ensured that the administration of the law could not thereafter be affected by the influence of either of political branches of government. The supremacy of the law was established as the basis for government and the arbitrary power of the Executive Government, which had proved destructive of freedom under the Stuart Kings, was dismantled.”

When Montesquieu argued for the autonomy and integrity of the three branches of government he failed to comprehend the power of the common law tradition in England. It was not surprising that Blackstone inevitably used the separation of powers to emphasise “the importance of the status and tenure conferred by the Act of Settlement upon the English judges.” Judges, he said, “had behind them the whole weight and mastery of the common law of England developing through judge-made precedents.” The theory of a balanced constitution no longer guaranteed common law authority and Blackstone appropriated Montesquieu’s formula for divided and functional power to consolidate the rule of law: “In this distinct and separate existence of the judicial power in a peculiar body of men, nominated indeed, but not removable at pleasure by the Crown, consists one main preservative of the public liberty which cannot subsist long in any state unless the administration of common justice be in some degree separated both from the legislative and from the executive power.”

The independence of the judiciary and the separation of legislative and executive power served then to consolidate the fragmented and localised system of authority in England, particularly since, like the balanced constitution, it rejected the idea of sovereignty. For this reason Bentham made sovereignty central in his critique of Blackstone’s technical system of government. Political liberty was not dependent on divided government. Power should be hierarchically delegated via a supreme authority which “receives no law, but only gives it, and which remains master even of the rules themselves which it imposes upon its manner of acting.” Referring to an omnipotent legislature, Bentham proposed an authoritarian version of representative government and a ‘pure’ democracy. As in the American constitution, the people were the ultimate ‘constituent’ power, but Bentham avoided the separation of powers and asserted that the executive and judiciary were

---

164Vile, Constitutionalism and the Separation of Powers, 104.
subordinate to the representative legislature. This assumption allowed the philosophical radicals to justify a system of legislative centralisation removed from localised judicial authority. Taking their queue from France’s *droit administratif*, nineteenth century government reformers succeeded in simplifying and rationalising the channels of bureaucratic authority. As such, the simplification of parliamentary routine was never a classically ‘liberal’ reform, and Halévy describes how “always impatient of philanthropic reforms”, Bentham “merely passed from a monarchical authoritarianism to a democratic authoritarianism, without pausing at the intermediary position, which is the position of Anglo-Saxon liberalism.”

Interestingly, the system of early colonial administration in New South Wales was used by Bentham to illustrate the importance of a sovereign legislature: “Over British subjects, the agents of the crown have exercised legislative power without authority from parliament: they have legislated, not in this or that case only, but in all cases.” Bentham appealed to the constitutional tradition of ‘birthright’ whereby any British subject is entitled to be governed by the laws of England, and it was this doctrine which justified responsible government in Canada. In the *Parliamentary Reform Catechism*, Bentham made a systematic attempt to show what the constitution ‘ought’ to be. Written during the war with France he called the latter “the grave – not only of French but of English liberties” since it affirmed military government and the “ascendancy of particular interests, the monarchical and aristocratical, which are adverse to the universal good.” The war was made possible through a ‘matchless constitution’ built on sinecure and corruption. Bentham believed the remedy to be “Democratical Ascendancy, or Ascendancy of the people.” Radical parliamentary reform was deemed the best means to “restore to the democratical, to the universal interest, that ascendancy, which by the confederated, partial, and sinister interest has been so deplorably abused.” In this, Bentham was upholding the original spirit of the revolution. Rather than advocate “outward and visible change being made in the forms of the constitution”, urged Bentham, the one needful thing is, that “the power of the purse should be actually and effectively in the hands of the real representatives, the freely chosen deputies of the body of the people; the power of the purse, because that is the power, by the exercise of which, all other needful powers were acquired, for the defence of the people against Stuart tyranny.” Bentham’s legislative state required, therefore, that

---

public money be systematically controlled by a responsible bureaucracy rather than the traditional
network of patronage or the military whims of the King.

Bentham’s reformed parliament would facilitate a change from localised committee government to
central ministerial rule. A single head of department was preferable to a board since, as Bentham
said, “Boards are screens” which limit the accountability function of representative government. 171
Likewise, John Stuart Mill argued that “The board suffers, even in reputation, only in its collective
caracter; and no individual member feels this, further than his disposition leads him to identify his
own estimation with that of the body.” This would not do in a professional bureaucracy since “the
fluctuations of a modern official career give no time for the formation of such an esprit de
corp...Boards, therefore, are not fit instruments for executive business.” 172 The constitution of local
representative bodies should also be dependent on an executive officer who is “singly responsible
for the whole of the duty committed to his charge.” Inspectors should be appointed by the central
government so that local management conformed to the rules laid down by parliament—especially
the “fulfilment of the conditions on which State assistance is granted to schools.” While the
administration of poor laws and sanitary regulation should remain with local authorities, it should
be remembered that “local representative bodies and there officers are almost certain to be of a
much lower grade of intelligence and knowledge, than Parliament and the national executive.”
Local communities were an inferior source of public opinion since they were “far less enlightened”
and “Far less interference is exercised by the press and by public discussion.” It is then the
“principle business of the central authority...to give instruction, of the local authority to apply it.
Power may be localized, but knowledge, to be most useful, must be centralized; there must be a
focus at which all scattered rays are collected, that the broken and coloured lights which exist
elsewhere may find there what is necessary to complete and purify them. To every branch of local
administration which affects the general interest. there should be a corresponding central organ,
either a minister, or some specially appointed functionary under him.” Localities may then not
“violate those principles of justice...of which it is the duty of the State to maintain its rigid
observance.” 173

171 Bentham. Letters to Lord Grenville on the Proposed Reform in the Administration of Civil Justice in
Scotland, in Works V, 17.
172 Mill. Considerations on Representative Government, 521. 536.
173 Mill. Considerations on Representative Government, 540-44.
Once the need for central bureaucratic government was admitted, Bentham had to rationalize a civil service which had long operated through the logic of jobbery and localized corruption. The conventional early nineteenth view that statesmen were, by virtue of their rank and file, enlightened benefactors, was dispelled by Bentham in a searching critique which made bureaucratic power contingent and relative to knowledge. Bentham's political arithmetic was a carefully crafted relationship between state power and knowledge in the guise popular education and bureaucratic rationality – 'Official Aptitude Maximized, Expense Minimized'. Legislation, if it is to promote utility, had to increase its knowledge of population, and in the *Constitutional Code* Bentham proposed, along with an elaborate ministerial structure including an Indigence Relief Minister, Education Minister, and Health Minister, a uniform registration of births, deaths, and marriages. The mapping of 'vital' statistics would provide a data for political economy and the resulting 'committee report' would provide a rational source for legislation. The collection of statistics was part of the 'inspective function' of government. Legislators would realise that ignorance was retarding the productiveness of free trade economics. Accordingly, a 'National System' of education linked to pauper management would allow individuals to promote their own active role in the market. The relationship between statistics and Bentham's moral science is cogently illustrated by Hacking: “It was necessary to count men and women and to measure not so much their happiness as their unhappiness: their morality, their criminality, their prostitution, their divorces. their hygiene, their rate of conviction in courts.” Statistics may be described as “the erosion of determinism and the taming of chance.” This moral science was best appropriated, argues Hacking, in the early nineteenth by French administrators in the ministry of justice such as the 'comparative statistician' Guerry. The latter wrote that

Criminal statistics becomes as positive as the other observational sciences; when one knows how to stick to established facts, and groups them so as to separate out merely accidental circumstances, the general results then present such a *great regularity* that it becomes impossible to attribute them to chance. Each year sees the same number of crimes of the same degree produced in the same regions; each class of crimes has its own particular distribution by sex, by age, by season...we are forced to recognise that in many respects

---

175 Bentham's plan for linking education to pauper management was adopted by the Poor Law Commission of 1841, but its directive, despite significant Radical support in the Commons, was rejected by the parliament.
judicial statistics represent a complete certainty. We are forced to recognize that the facts of the moral order are subject, like those of the physical order, to invariable laws. 176

The logics of government, being less preoccupied with territorial sovereignty and raison d’état, was now a social and political science which Halévy described as “being no longer contemplative and theoretical, but active and practical, as aiming at securing our domination over external nature.” 177 This governmental Newtonianism was the theoretical antecedent to Malthus’ concept of population, social Darwinism, and the reform movement of the mid-nineteenth century. The link between law, empirical method, and the social sciences gave the ‘problem of population’ a significant influence on mid-Victorian social legislation. Social scientists began to infiltrate bureaucracies and parliaments, demanding both a codification and nationalisation of a desultory common law too anachronistic to contend with the policy demands of urbanised and industrialised communities. The constitutional logic of dominant social reformers such as Edwin Chadwick was bureaucratising, centralizing, and contrary to the tradition of local self-government implicit in judicial law. Chadwick labelled localism ‘disunity’, arguing that “superior legislation” was a result of “doing everywhere the same thing in the same way.” The “code Napoleon” was the best example of an “administrative science” which effected “large economies in local administration” by “producing order where there was chaos, and giving a strong and binding force of unity to the administration.” 178

Centralized continental administration appealed to social reformers such as John Stuart Mill, Mathew Arnold and Edwin Chadwick since French and Prussian governments had, unlike in Britain, enforced protection for national industry, police regulation, interference in wage rates and the hours of labour, and a nationalised system of public education. 179 Mill described the “standing miracle” in Prussian “Government of which the pervading principle is the public good.” 180 His fondness of the higher rationality of continental administration was nurtured through his intimate links with French statesman and theorists such as Cousin. Cousin’s report on public instruction,

176 Hacking The Taming of Chance, 73.
177 Halévy. The Growth of Philosophical Radicalism, 6.
179 Chadwick established the centralised Poor Law Commission and General Board of Health while Arnold advocated nationalised education along the lines of the French Ministry of Public Instruction. See M. Arnold. A French Eton: or, A Middle Class Education and the State (London: 1864).
180 M. Victor Cousin was Peer of France, Councillor of State, Professor of Philosophy, Member of the Institute, and of the Royal Council of Public Instruction.
which advocated centralized ministerial rule, was “the animating spectacle of a government making
the civilization, and moral and intellectual culture of every human being among its subjects, one of
the direct objects of its own existence; and exhibiting in the pursuit of that object, a combination,
probably never seen in any other human government, of a wisdom in the choice of means, of patient
energy in the employment of them, and of that spirit which the politicians of all other countries
despise.”

It was John Austin’s wife, Sarah, who wrote the seminal review of Cousin’s article on nationalised
education. In her view, a centralized ministry of public instruction would not compromise the
doctrine that “the prime excellence of government is, to let alone.” A strong state was a modern
reality since society was no longer regulated by the bonds of paternal authority and filial piety. The
“Reverence for tradition, for authority, is gone. In such a state of things, who can deny the absolute
necessity for national education.” The important distinction between education and trade was that
the former is a duty and the latter a want. “If children”, says Austin, “provided their own education,
and could be sensible of its importance to their happiness, it would be a want, and might be left to
the natural demand and supply; but as it is provided by the parents, and paid for by those who do
not profit by its results, it is a duty and therefore liable to be neglected.” The ‘evils’ of ignorance
were “of sufficient magnitude to claim interference” and prompting the British executive, she stated
that “enlightened Government” could not permit “the same waste and destruction of moral and
intellectual faculties to go on from generation to generation.” Mill agreed but lamented that the
present structure of English government could not cope with such an innovation: “We subscribe
perfectly to the justice of this finely thought and expressed defence of the compulsory principle in
education; but we require, as a preliminary condition to the adoption of that principle here, what
already exists in Prussia, a Government which deserves, and has, the perfect confidence of the
people in its good intentions.”

Calls for an extension of executive jurisdiction over public institutions contravened a strong
tradition of local self-government in British constitutionalism. Conservative liberals like Toulmin
Smith, David Urquart, and Herbert Spencer appealed for restraint at a time when the evils of

---

'collectivism' were influencing legislation.184 In this vein, the *London Times* was adamant that "The state can hardly aid education without cramping and warping its growth, and mischievously interfering with the laws of its natural development." A mouthpiece for the 'aristocratic theory of civil government', the *Times* proposed a negative view of government in which the latter should "leave the course of events to regulate itself, and trust the future to the security of the unknown laws of human nature and the unseen influences of higher powers."185 When Arnold, taking his cue from the French administrative state, insisted that education should be state controlled and "treated as a matter of public economy, to be administered upon a great scale, with rigid system and exact superintendence", Smith labelled him an "autocrat", adding with rhetorical flourish that "every one of the despotic governments of Europe invariably shrouds its outrages on humanity and freedom, under cover of pretences exactly the same as do our English Centralist's."186

Mill joined the debate and attempted to resolve "the limits which separate the province of government from that of individual and spontaneous agency, and of central from local government." To this end he applied a typically pragmatic thesis: "The degree to which political authority can justly and expediently interfere, either to control individuals and voluntary associations, to supersede them by doing their work for them, to guide and assist, or to invoke and draw forth their agency, varies not only from the wants of every country and age, and the capabilities of every people, but with the special requirements of every kind of work to be done."187 Mill asked why "police, or gaols, or the administration of justice, should be differently managed in one part of the kingdom and in another." If "Security of person and property, and equal justice between individuals, are the first needs of society, and the primary ends of government", then they "should be placed under central superintendence" and not be "left to any responsibility below the highest."188

Smith countered Mill's logic, arguing that "Freedom and free Institutions and good government do not consist only in protection to person and property...Person and property may be protected, and yet the nation be a nation of slaves." Centralism was "only communism in another form", and Smith


188 Mill, *Considerations on Representative Government* in *Works* XIX. 541–42.
urged for the preservation of local self-government, or “that system of Government under which the
greatest number of minds, knowing the most, and having the fullest opportunity of knowing it,
about the special matter in hand, and having the greatest interest in its well-working, have the
management of it, or control over it.”

David Urquhart resisted Chadwick’s Public Health Bill and the imminent creation of a central Public Health Board because it was “un-English and unconstitutional....Centralization dissolves the bonds of society...[it is] a usurpation by the
government of the powers of local bodies, and a destruction by the general Executive of local
rights.”

In a review of John Austin’s 1860 article on “Centralization”, Mill noted the manipulation of that
term by “loose talkers on government and administration, when discussing subjects beyond their
comprehension.” Austin had attempted to clear the “misapplication” of such rhetoric:

Any interference by a government, with the interests and concerns of its subjects, however
expedient that interference may be, is reproached by those who would raise a prejudice
against it with a tendency to centralization; and by this brandishing of a word they can work
on the practical convictions of their hearers or readers with an effect which they could not
produce by a perspicuous statement of their reasons. To obviate the prevalent mistakes
concerning centralization, and to obviate the obstacles to improvement which they have
raised, and are likely to raise, is the purpose of the present article.

The idea of centralization had been confounded with what Austin described as “over-governing,
that is, an over-meddling by governments with the interests and concerns of their subjects.”
Centralized government was commonly conceived as “an over-regulating, over-restraining, over­
protecting government; paternal, as its friends would call it; a pestilent busy-body, as it would be
called by its enemies.” In opposition, Austin contended that “centralization has no tendency
whatever to lead a government to excessive interference”, and that there is simply misconception as
to “the legitimate province of government, and the proper limits of its interference.”

According to Mill, centralization signified the “constitution of subordinate authorities in a state, and such

189 T. Smith, Local-Self Government and Centralization (London: 1851); cited in H. J. Hanham, The
determination of their functions, as tends strongly to make them practically dependent upon the
supreme or sovereign authority." That authority was of course the people and the their
representatives in the legislature, meaning that "every subordinate authority exercises only such
powers as the legislature confers." Mill defined centralized administration as "an administration so
organised as to insure that the conformity thus assumed in theory, between the intentions of the
supreme and the conduct of the subordinate authorities, shall exist in fact." Centralization of public
administration was "one of the main elements of good government." 194

The commonly conceived notion that centralization "is inconsistent with the existence or with the
proper power and influence of popular local authorities" was countered by a plan for a due
delegation of local and general governmental functions. Austin specified administrative powers for
local authorities, "these being bound, however, to ask the preliminary advice of the appropriate
department of the general administration in every matter of importance and difficulty." The
constitution reform movement was founded on a fear of local corruption and "The obligation of the
local administrators to consult the general administration would be a considerable (though merely
moral) security against there abusing their powers." The expertise of ministerial departments was
invaluable for local government since "As those departments are constantly occupied with all
sections of the country, their experience of local affairs is far more varied than that of the local
authorities in any particular locality; and being accustomed to regard such affairs in relation to the
general interests, they are naturally superior to the local partialities and prejudices by which such
authorities are as naturally blinded and misled. The result of their varied experience and
dispassionate judgements would be constantly offered to the consideration of local government;
and, and as coming in the shape of advice rather than the form of command, would find a ready
acceptance with the local governments and populations, and insensibly correct the misconceptions
of their special interests." 195 It was this logic which inspired Mill to establish a system of
representative government which lodged constitutional authority in the parliament and therefore
could channel public policy into a professional and responsible bureaucracy.

6. 'The divine right of parliament'

194 Mill, "Austin on Centralization", 1063–64.
Mill's commitment to democratic representation put some limitation of the absolute authority of the sovereign legislature. This was not a problem for Walter Bagehot, however. Bagehot held less affection for democracy and proposed a theory of parliamentary sovereignty in which the cabinet hold supreme executive power over government. Bagehot wrote that

The efficient secret of the English Constitution may be described as the close union, the nearly complete fusion, of the executive and legislative powers. No doubt by the traditional theory, as in all the books, the goodness of our constitution consists in the entire separation of the legislative and executive authority, but in truth its merit consists in their singular approximation. The connecting link is the Cabinet.¹⁹⁶

Parliamentary government had defined English politics since the Glorious Revolution, but as Archer explains, "it was not until the second half of the nineteenth century that parliamentary sovereignty was made an integral part of some prominent British governmental theories."¹⁹⁷ When Bagehot stated that "The English Constitution, in a word, is framed on the principle of choosing a single sovereign authority, and making it good", he was justifying an emerging bureaucratic rationality: "policy is a unit and a whole. It acts by laws – by administrators; it requires now one, now the other; unless it can easily remove both it will be impeded soon; unless it has an absolute command of both its work will be imperfect. The interlaced character of human affairs requires a single determining energy; a distinct force for each artificial department will make but a motley patchwork. if it live long enough to make anything. The excellence of the British Constitution is that it has achieved this unity: that in it the sovereign power is single, possible, and good."¹⁹⁸

While most historians trace the origins of parliamentary or responsible government to the accession of William and Mary and the Bill of Rights – which stated that the Crown must not suspend or dispense with laws, levy taxes, appropriate money, or maintain a standing army without the consent of Parliament – John Manning Ward identified 1841 and the dissolution of the Whig government as the defining moment in actual 'responsible' government.¹⁹⁹ At that point the Monarch lost all discretion in forming a government and was forced to dissolve parliament since the government was

¹⁹⁶Bagehot, The English Constitution, 66.
not supported by a majority in the legislature. The discretion of the Monarch had been protected through corruption and a continuing alliance with the 'rotten borough'. Parliamentary majorities were further manipulated through cliques, factions and a fragmented party system. It was not till the Reform Acts of 1867 and 1884 that parliamentarians relied on popular support to win elections, a process which facilitated the emergence of party, and hence cabinet government.

The 1841 dissolution began to ferment some six years earlier when William IV replaced Melbourne's Whig government with a minority Tory ministry led by Robert Peel. That was November 1834 and while a lack of confidence brought Melbourne back to office in April 1835 a considerable backlash ensued. Naussau Senior, a political economist and advocate of parliamentary reform, reacted to Melbourne's dismissal with a reappraisal of English constitutionalism: “It has for many years been admitted, that a Minister, though appointed by the Crown, and nominally subject to be dismissed _mero mot regis_ [of his own will], without warning or explanation, really holds his office at the will, not of the Crown, but of the two Houses of Parliament. He might be disliked by the Court, he might be unpalatable to the King...but while retaining the confidence of the Houses of Parliament, he was, according to the doctrine which prevailed until the 15th of last November, secure.” At that point the essential yet specious foundation of the constitution — that being ministerial responsibility to the parliament and therefore the people — had been subverted. Senior continued that “If a Minister held office at the caprice of a Court, the Court, not Parliament, would be the field on which the battles for power are fought. The arts which succeed in Courts, and the measures which please Courts, would be the arts and the measures adopted.” This would of course be ruinous for any stable system of public administration since “When a Ministry rests upon public opinion, it is not indeed built upon a rock of adamant; it has, however, some stability”, but when the executive is left to “pure virtue in the minds of Kings, and Ministers, and public men...its structure is of stubble, and its foundation is on quicksand.” Senior knew that “The King of course is not responsible”, that “Royal responsibility is inconsistent with monarchical government”, and that any courtly bureaucracy is irresponsible, despotic, and ultimately inefficient.200

Mill recommended Senior’s pamphlet as “a text-book to the liberal members of parliament” on the “principles and arguments” for constitutional reform and as a counter to the “hack sophisms of the Conservatives.”201 What the liberals found most disturbing about the Tory constitutional agenda

---


was summed up by Peel's interpretation of the Reform Bill: "although before the Reform Bill, the House of Commons did in practice apparently exercise a veto upon the appointment of the Ministers of the Crown, the Reform Bill, [by diminishing the influence of the Crown and the aristocracy in the House of Commons], has brought us back to the theory of the constitution, Power of the King in choosing his advisers as unrestrained as that of the House of Commons in arranging the order of its proceedings – the reciprocal independence of the three branches of the Legislature." In that same speech Peel described the Reform Bill as a “final and irrevocable settlement of a great Constitutional question” since it had not abandoned “that great aid of government – more powerful than either law or reason – the respect for ancient rights, and the deference to prescriptive authority.” Even compared to a conservative Whig like Lord Brougham, this was a reactionary conception of liberal constitutionalism. Brougham described ‘prescription’ thus: “The foundation of government – that is, the duty to obey in the subjects – has by many been sought in what Lawyers term Prescription: that is to say, in long and indeed immemorial usage or possession...[However], Expediency, or a regard for what is for the general benefit of the community, is the only governing principle, and the only solid foundation of all rights.”

Prescription may “materially strengthen government power” but the “doctrine of Utility or Expediency leads us – that all government is a trust for the people – that kings have no rights in themselves, and for their own sakes as rulers, and beyond those enjoyed by the community at large.”

It was Grey who removed royal prerogative from liberal-whig constitutional theory and replaced it with the principles of responsible cabinet government. In Parliamentary Government, Grey’s most significant contribution to British constitutional thought, it was argued that “the common description of the British Constitution, as one in which the executive power belongs exclusively to the Crown, while the power of legislation is vested jointly in the Sovereign and the two Houses of Parliament [i.e. Blackstone], has ceased to be correct...It is the distinguishing characteristic of Parliamentary Government, that it requires the powers belonging to the crown to be exercised through Ministers, who are held responsible for the manner in which they are used, who are

expected to be members of the two Houses of Parliament, the proceedings of which they must be able generally to guide, and who are considered entitled to hold their offices only while they possess the confidence of Parliament, and more especially the House of Commons. Pre-empting Bagehot and Dicey, Grey asserted the fusion of Legislative and Executive power which were “virtually united in the same hands.” The advantage of this innovation for an expanded administrative state is that the executive can ensure that its policies are supported by necessary legislation. Professionalised bureaucracies could not operate if public revenue was controlled by patronage and constituent influence. Since 1688, the voting of money had been the sole authority of parliament but this only hampered the expediency of modern statecraft: “The imposition of taxes, and the appropriation of revenue to the public service, constitute one of the chief duties of Representative Legislatures, as well as the source of their power. In the performance of this part of their duties, it is of the utmost importance that they should act in strict concert with the Executive Government, or rather under its direction. Without this there can be no security for efficiency and economy in conducting the public service.”

Grey had essentially resolved Bentham’s wish to make representative government a vehicle for the accretion of executive and bureaucratic power. This point may seem deterministic but it is exemplified by a general distrust of populist government and an aversion to a separation of executive and legislative power. The American constitutional model of course makes a complete separation between executive and legislative authority. For John Stuart Mill, the advantage of such independence “is purchased at a price above all reasonable estimate of its value.” Consistent and national public policy was the virtue of a system of cabinet government which did not suffer conflict between opposing legislative and executive majorities. The civil service reformer, Henry Taylor, characteristically argued, therefore, that legislation should originate from government departments and that public policy would be separated from local and democratic interests. Any systematisation of British government should avoid factionalism. For this reason, John Austin and other Benthamites like Robert Lowe were opposed to the democratic reform measures contained in the 1858 Reform Bill. Austin wanted to consolidate the acceptance of statute law and ministerial

---

207 Mill. Considerations on Representative Government: in Works XIX, 525.
208 Taylor was an official in the Colonial Office who encouraged the then Under-Secretary of State for the Colonies, James Stephen, to reform colonial government. H. Taylor, The Statesman (London: 1836).
209 Robert Lowe was described by Dicey as the “last of the genuine Benthamites” and the “last and by far most
rule and for him “Any further extension of the suffrage may deteriorate the composition of the House” and that “spirit of compromise will be enfeebled, and the difficulty of working the system will be vastly aggravated.”

Once the Tories were displaced by the nine year reign of the Russell administration the issue of popular government was less exigent for the radicals. This was compounded by the revolutionary overtones of the chartist movement which undoubtedly influenced the anti-reform stance of Austin and Lowe. Mill was ready to acknowledge that the “non-represented classes, as a body, are just now, to all appearances, peaceful and acquiescent” and that the “main argument for excluding them from the suffrage is very much abated.” But Austin was sure that universal suffrage would encourage socialism and thus “ruin our finances, and destroy our economical prosperity.” This contradicted Mill’s commitment to universal representation and a competitive public sphere. Socialists too should “have their spokesman in Parliament, to ventilate their nonsense, and to secure attention to their sense and to the facts of their position. Until this is the case, the working classes, with however good intentions on the part of the Legislature, will never obtain complete justice.”

By 1860 the Whig vision of the constitution was still dependent on statesman derived from the natural aristocracy, “men of independent means [who] can afford to devote themselves to public life.” Austin had conducted one of the most sustained nineteenth century attacks on the legal establishment but this did not diminish his faith in aristocratic rule: “in consequence of the high and undisputed positions occupied socially by the aristocracy in question, they naturally acquire a cool self-possession, a quick insight into men, which are specially necessary to statesman in a free parliamentary country.” According to Austin’s “true theory of the British constitution”, parliamentary members are “not severally representatives of their respective constituencies, but are representatives of the entire kingdom.” In the event of a “reform giving to those classes (the lower middle class) an unchecked ascendancy in the House of Commons”, this principle would be threatened since “the constituencies would dictate to their representatives their votes on particular questions, and owing to their servile deference to the prejudices and caprices of their constituents, effective opponent of any attempt to alter the settlement of 1832.”

212 Austin, A Plea for the Constitution. 19.
the representatives would pledge themselves very generally to follow their imperative instructions."\(^{214}\)

Bagehot’s *Essays on Parliamentary Reform* supported a restricted franchise in preference to “the mere growth of population” since it “indicates the increase of property, and therefore of presumable intelligence.”\(^{215}\) The most “important function of the representative part of our legislature...is the *ruling* function. By a very well-known progress of events, the popular part of our constitution has grown out of very small beginnings to a practical sovereignty over all other parts. To possess the confidence of the House of Commons is all that a minister desires; the power of the Crown is reduced to a kind of social influence; that of the House of Lords is contracted to a suspensive veto.”

The House of Commons originally performed an *expressive* function acting as a petitioning body to communicate to the King the wants of the people but now it had become an authoritarian statement of bureaucratic rule.

Referring to the radicals, Bagehot argued that their “used to be much argument in favour of democratic theory, on the ground of its supposed conformity with the abstract rights of man”, but “This has passed away.”\(^{216}\) He challenged those reformers who “think they can show that some classes now unenfranchised as capable of properly exercising the franchise as some who have possessed it formerly, or some who have it now”, arguing that “Fitness to govern – for that is the real meaning of exercising the franchise which elects a *ruling* assembly – is not an absolute quality of any individual.” Thus, “The true principle is, that every person has a right to *so much political power as he can exercise without impeding any other person who could more fitly exercise such power.*” This was why the lower orders should remain “comparatively uninfluential.” Bagehot’s maxim of representative government was then that “justice is on the side of a graduated rule, in which all persons have an influence proportioned to their political capacity.”\(^{217}\)

Bagehot contrived a hierarchical mode of bureaucratic rule that was able to substitute the common law tradition without any substantial change to the laws of the constitution. In a shifting culture of constitutional *convention* – described by Dicey as “understandings, habits, or practices, which, though they may regulate the conduct of the several members of the sovereign power, or Ministry,


or of other officials, are not in reality laws at all since they are not enforced by the courts" – concepts of representative government could be manipulated without threatening the foundations of British constitutionalism. 218 The ambiguity of convention legitimized an overt centralization of political authority by the end of the nineteenth century, particularly in the realm of education. While this has led to the same abuses of power which Bentham and the philosophic radicals faced, it is difficult to apprehend an institution embedded in the vague anomalies of nineteenth century political and constitutional development. Bentham’s sovereign state was never codified. As James tells us, “if it was Bentham’s, rather than Burke’s conception of parliamentary sovereignty which became integrated into the standard nineteenth century interpretation of the British Constitution, Burke’s celebration of convention and precedent triumphed decisively over Bentham’s ambition to suppress the common law and replace it with a fully codified system of statutes. It is in this way that the British were able to reconcile their conviction that their fundamental rights were secure with their assumption that the powers of parliament were unlimited.” 219

Dicey’s faith in convention corresponded with his failure to adequately demarcate constitutional authority. For him, the first principle of the Constitution was the ‘Rule of Law’, meaning not only that “no man is above the law, but here that every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals... We may say that the constitution is pervaded by the rule of law on the ground that the general principles of the constitution... are with us the result of judicial decisions determining the rights of private persons in particular cases caught before the courts.” 220 Dicey’s second principle argued that parliament is the sovereign authority and has the “right to make or unmake any law whatever.” Parliamentary sovereignty means that neither executive, legislative, or judicial authority “can pronounce void any enactment passed by the British Parliament on the ground of such enactment being opposed to the constitution.” 221

Dicey fermented a still continuing dispute as to whether the rule of law was an issue of sovereignty or command, and the conflicting issue as to whether the model is, in Walker’s words, “portrayed largely as a general attitude, only partly manifested in identifiable principles and institutions.”

Walker described this conflict as the ‘Dicey paradox’, arguing that “While conveying fairly well the outlines of the underlying spirit, Dicey’s exposition left the ‘incarnate’ rule of law as a largely procedural formula, a matter of form and habit, a fragile construction that parliament could sweep away at any moment with impetuous or vindictive legislation. This obvious and radical conflict between the rule of law and his absolutist conception of the sovereignty of parliament Dicey did not adequately face.”

It was this contradiction which in 1884 caused Herbert Spencer to equate late nineteenth century constitutionalism with a Stuart like absolutism:

> The great political superstition of the past was the divine right of kings. The great political superstition of the present is the divine right of parliaments... The tacitly asserted doctrine, common to Tories, Whigs, and Radicals, that governmental authority is unlimited dates back to times when the law-giver was supposed to have a warrant from God... ‘Oh, an Act of Parliament can do anything’, is the reply made to a citizen who question the legitimacy of some arbitrary state-interference; and the citizen stands paralysed.

Spencer gives a clue to the pervasive influence of ‘legislative absolutism’ in latter nineteenth century British state formation. The individual rights implied in the revolutionary settlement had been superseded by statutory utility. According to John Austin, there are no “natural rights, whether to property, life or liberty whether of conscience, speech, or actions. There are only legal rights resting on utility.” This was a view appropriated by colonial political development. As Francis argues, “Colonial constitutions, like the metropolitan one, were being rebuilt to respond to an absolute sovereign, not to the rights of the citizenry.” This premise is fundamental to comprehending the evolution of centralized educational governance in Australia.

---

Chapter 4

Responsible Government, Education and the Discourse of Colonial Reform

"We predict...that in no long period Systematic Colonization will force itself upon our rulers, as an indispensable measure, not only of industrial policy, but of national safety."¹

1. Introduction

In the early nineteenth century British colonial administration was one of the most conspicuous hangovers of common law constitutional hegemony. Not surprisingly, Jeremy Bentham was one of the first to critique the overriding mandate of the rule of law and "judicial" power in the colonies, reasoning in his 1803 *Plea for the Constitution of New South Wales* that "A general right to legislation is one of those branches of power...as necessary in every political community whatsoever. old established or new established." By contrast, the 'Act to enable his Majesty to establish a court of criminal judicature on the eastern coast of New South Wales, and the parts adjacent' held "no such power as that of legislation", providing only "Powers for creating courts by judicature."² The judges who asserted the sovereignty of British law worked with, and often against, the governor whose authority as chief executive officer was detailed by the 1812 Select Committee on Transportation: "He is made Governor, and Captain general, with the most enlarged powers, uncontrolled by any Council with the authority to pardon all offences (treason and murder accepted), to impose duties, to grant lands, and to issue colonial regulations."³ Unilateral control of lands, external affairs, and the power of veto did not extend however to the actual administration of public policy. This was left to the Deputy-Judge Advocate who drafted the governor's orders in

---


² J. Bentham, *A Plea for the Constitution: Shewing the enormities committed, to the oppression of British Subjects, Innocent as well as Guilty... in and by The Design, Foundation, and Government of the Penal Colony of New South Wales*, in Works, IV, 254–255.

³ *British Parliamentary Papers, 1812 (341) II. 8*, in Davidson, *The Invisible State*, 95.
accordance with British law. This continued an English convention. Paul Finn notes that colonial
government had been “erected in the twilight of England’s locally-based system of public
administration, a system with the Justice of Peace at its centre”, meaning that bastions of local
government such as “the justices, and then the special purpose board, were early transplants to New
South Wales.”4 The 1823 ‘Act for the better Administration of Justice in New South Wales and Van
Diemen’s Land’ consolidated the power of the common law by specifying that any Law or
Ordinance had first to be lodged by the Governor to the Chief Justice of the Supreme Court who
was then to decide whether the “proposed Law is not repugnant to the Laws of England.”5
Similarly, at the farewell address to Governor Brisbane in 1825, the speaker proposed the
“substitution of English Law in the place of the arbitrary Regulations of preceding Governors.”6
While colonial justices lacked the kind of autonomy they enjoyed in England the Solicitor-General,
J. H. Plunkett, in 1835 lamented the “arduous and complicated” duties of magistrates who
performed the “governor’s men-of-all-work.”7

Colonial administration was significantly constrained by the received common law. Even the
autocratic machinations of Governor Macquarie (1810–1822) suffered the ignominy of judicial
censor.8 The justices which were called upon to help administer a burgeoning convict population

4Finn, Law and Government in Colonial Australia, 9. David Roberts observed that parliament, since the
Elizabethan Age, “had never tired of passing economic and social legislation, but it had invariably left the
enforcement of such legislation to the parishes and the justices of the peace.” D. Roberts, Victorian Origins of
5Cited in Clark, Select Documents in Australian History, 318.
6Historical Records of Australia IV, I, 631. Even by 1851, when Charles Fitzroy became the Governor
General of the Australian colonies, his oaths of office were administered by the Chief Justice of New South
7Plunkett, Australian Magistrate (Sydney: Gazzette Office, 1835), in Finn, Law and Government in Colonial
Australia, 9. Plunkett became the chairman of the National Board of Education in 1848 and had been active in
expanding national representative institutions. In 1838, as Attorney General, he petitioned Governor Gipps to
admit the public to Legislative Council debate. As a result, parliamentary debate began to be published in
newspapers and public deliberation on a national level became possible. See Historical Records of Australia
Series I. vol. XXI (Commonwealth Parliamentary Library: 1924), v.
8Both the Deputy Judge Advocate, E. Bent, and the Judge, J. H. Bent, contravened many of Macquaries
order’s due to ‘illegality’. While Macquarie’s authority was most often upheld by the Secretary of State the
Bigge Commission of 1819 recommended greater judicial independence and this was granted in 1823. See
were loath to adapt their common law birthright and the “local judiciary showed little propensity...to accommodate the common law to local conditions and circumstances." In his Lectures on the state of the colonies, Herman Merivale, a political economist at Oxford and in 1846 the successor to Sir James Stephen at the Colonial Office, observed that the “governor’s commission...within in own local jurisdiction has no limit”, but also that “local enactments cannot alter existing laws, and are subject to future imperial laws.” There were some cases in which “colonial legislatures can alter...the law which they carry with them”, but as Swinfen reminds us, “This was an opinion, he was obliged to admit, which was unlikely to recommend itself to lawyers.” Colonial reformers like Charles Adderly deplored “the monstrous thing...that British subjects should thus be subject to two sovereigns”, and Merivale himself found an “insuperable difficulty in distinguishing between Imperial and domestic questions.” Such difficulties resonate in contemporary debate over native title. While the Mabo decision reversed the assertion of the 1889 Privy Council – that there had been no land ownership or tenure prior to 1788 – the High Court still accepts, in the words of Henry Reynolds, “as settled law the British assertion of sovereignty in 1788. From that time forth there was only one sovereign and one system of law in Australia.”

In the absence of an established system of local government, the common law had tenuous institutional standing in Australia. The 1823 Act for the ‘Better Administration of Justice’ was an attempt to assert the division of powers and an independent judiciary but by 1856 the colonies had begun to adopt the conventions of legislative sovereignty and representative government. Bentham’s demand for legislative autonomy was incorporated into a system of responsible ministerial government which, in place in all the Australian colonies by 1860, signified a constitutional shift away from the common law tradition. While constitutional reformers in Britain were still attempting to break down administration by patronage and sinecure, the shallow foundations of judicial power in Australia soon gave way to a burgeoning legislative state. The executive council was transformed from a nominated body into a cabinet system of government in

---


3Colonial Office Papers 323/87, South Australia. Rogers to Merivale. 5 May 1858: Minute by Merivale, in D. B. Swinfen, Imperial Control of Colonial Legislation, 58


which ministers were collectively responsible to the parliament and statutes were to be enforced by an accountable department of state. While neither the Constitutional Act of 1851 nor the Governor's instructions from the Secretary of State specified that the Executive Council be composed of an elected ministry this quickly became a convention which inexorably linked Parliament and the Executive. Cabinet government was then established in Australia before England where the more whiggish notion individual ministerial responsibility predominated. By the 1880s statutory acts were in place which imposed a legal code on public service boards and departmental heads and which abolished the security of tenure and patronage typical of common law administration.

2. Sovereignty and the colonial polity

It was through the colonial focus of sovereignty theorists such as George Cornwall Lewis, Herman Merivale, and John Austin, that responsible cabinet government in Australia was given philosophical weight. In 1841, five years before he became Under-Secretary of State for the Home Department, Lewis wrote his Essay on the Government of Dependencies in an attempt to explain the "nature of the political relation of supremacy and dependence." He later concluded that transportation to Australia should end and that self-government, as was granted to Canada in 1839, should be extended to large colonies to encourage emigration and economic growth. Lewis noted, as Adam Smith had earlier, that for every British emigrant which had moved to a British dependency, two or three had emigrated to America. His argument ran that "new colonists take out with them the existing law of England" because "the law of England is the birthright of every Englishmen", but that this was true only because colonists "could not create off-hand a new body of law." The imposition of external laws should only be temporary since "the peculiar interests of

---

11The success of cabinet government was assured since the statutory allocation of administrative responsibilities was controlled by minister's elected from a majority in parliament. While early party politics were fractured and largely unorganized collective responsibility was enhanced since "Coalition ministries called upon collective responsibility as a cement for their union." P. Finn, Law and Government in Colonial Australia, 45. See P. Loveday, and A. W. Martin, Parliament Factions and Parties (Melbourne: Melbourne University Press, 1977).

12See McMartin, Public Servants and Patronage,


17Lewis showed that the theory of birthright did not apply to dependencies aquired by cession or conquest, which already possess a legal system of their own: and accordingly the body of English law does not obtain in
the dependency, growing out of its peculiar circumstances, necessitate the enactment of peculiar laws.”

Lewis was hinting at a theory of sovereignty which would subvert the authority of the judicial establishment throughout the Empire. Critical of the constitution and its transmigration to the colonies, Lewis believed that British law must give way to an indigenous, sovereign legislature. The incipience of many dependencies would demand that the British parliament provide an accountable and unified source of legislative government while, as was the case in Canada, the advanced colonies could derive sovereignty from their own independent legislature. Mark Francis gives an account of the 1838 inquiry into the Maltese colony where Lewis, along with John Austin, “attacked the constitutional basis of English justice in the colony because it potentially impugned sovereignty.” Colonial political development had been shackled through the imposition of the common law and local governments had no means to solicit positive legislation. Lewis’ main concern was that under British law “any act of the sovereign, however imperative and precise, would be placed at the mercy of subordinate judges.” The jurists which in the seventeenth and eighteenth century framed imperial policy to retain common law jurisdiction throughout the empire had also, in accordance with mercantilism and the balance of trade, maintained a ‘balance of power’ between the sovereign and each dependency. This, as Macaulay explained, was anathema to modern sovereignty theory:

there can not really be more than one supreme power in a society. If a time when a mother country finds it expedient to abdicate paramount authority, then there ought to be complete incorporation or complete separation. Very few propositions in politics can be so perfectly demonstrated as this, that parliamentary government can not be carried on by two really equal and independent parliaments in one empire.

dependencies so acquired.” The fact that ‘cession or conquest’ has been inadvertently acknowledged by Mabo leaves the potential for the settled colony doctrine and a large body of common law to be dismantled. Still, it would change little in the way of modern Australian government since parliamentary statute has long replaced the common law as the source of administrative authority.

19 Parliamentary Papers v. 29, 1838, Reports of the Commissioners Appointed to Inquire Into the Affairs Of The Island of Malta, part I. 10; in M. Francis, Governors and Settlers: Images of Authority in the British Colonies, 1820-60 (London: Macmillon, 1992), 18–19.
Similarly, Lewis argued that “if the government of the dominant country substantially govern the dependency, the representative body cannot substantially govern it; and, conversely, if the dependency be substantially governed by the representative body, it cannot be substantially governed by the dominant body. A self-governing dependency (supposing the dependency not to be virtually independent) is a contradiction in terms.”

It was with Herman Merivale that Lewis articulated, in the words of Francis, the “most remarkable of whig doctrines, that of limitless sovereignty.” While opposing the arbitrary will of the Crown these theorists set few boundaries for government, believing “that there was no limit to what the people’s representatives could do, though, of course, what they did might actually be restricted by expediency, caution and popular prejudice.” Lewis rejected notions of a mixed or balanced constitution and any division of “the sovereign power amongst a body of persons.” What was required was an omnicompetent sovereign; a parliament responsible for both legislating and executing the law. Citing Bentham, Lewis believed the separation of powers to be a constitutional misnomer since “there cannot be two independent sovereignties in one political community, and consequently...the power of making laws, and the power of executing them, cannot be lodged in persons legally independent of each other.” Even in America, the lodestar of the separation doctrine, executive and legislative powers were often combined. James Madison, in the Federalist, remarked that for most of the thirteen founding states “there is not a single instance in which the departments of power have been kept absolutely separate and distinct.” Representative government legitimated absolute sovereignty since “government has learnt to regard the interests of its subjects, the influence of public opinion is strong”, and therefore, “legislative and executive power may be exercised by the same person or body, without considerable risk of arbitrary rule.”

Outlining the theory of responsible government which led to the initiation of colonial self-government in Canada, Lewis urged that the “essential feature of Responsible Government is making the executive subordinate to the popular legislature; and in advocating this system for

22 M. Francis, Governors and Settlers, 20–21. Francis notes this notion of strong sovereignty has been avoided by most of the earlier historiography which wanted to assert the more democratic impulses of popular liberalism.
24 Lewis, The Government of Dependencies, 45. Lewis was referring to Bentham’s Tactique des Assemblees legislatives, wherein he advised the French Republican government over constitutional reform.
Canada, Lord Durham wrote in his report that the ‘entire separation of the legislative and executive powers of a state is the natural error of governments desirous of being free from the check of representative institutions’.26 The implication of sovereignty theory in the Durham Report illustrates the importance of that document for an understanding of colonial political development. Absolute sovereignty avoided the balanced and mechanistic structure of eighteenth century whig political theory, focusing on universal rather than particular interests. Both Lewis and Durham made popular education an indispensable function of political development. Thus Lewis, like Bentham, insisted that ‘public opinion’ was essential for a system of popular sovereignty founded on the logics of ‘obedience’ and ‘vigilance’.27

So too the language of natural rights which underpinned Blackstonian constitutionalism was rejected by Merivale and Lewis.28 Lewis argued that the supreme legislative authority could contravene any notion of rights concocted from judicial reason. He ignored any contractarian grounds for individual rights and was quick to divorce sovereignty from the Lockean doctrine of consent: “The electors can exercise no portion of sovereign power which they are said to depute to their representative. Their representative acquires by their election a portion of sovereign power; but they can scarcely be said to delegate or depute it to him.”29 The conventional whig view of political liberty implied negative power, limited government, and was opposed to absolute sovereignty or positive law. Bentham thus discarded the idea of civil liberty reasoning that “Liberty then is neither more nor less than the absence of coercion. This is the genuine, original and proper sense of the word liberty. The idea of it is an idea purely negative. It is not any thing that is produced by positive Law. It exists without Law, and not by means of Law.”30 If the power of positive law was to be


28 See Merivale, Lectures, 497. See Francis (1992), 22.


30 University College Papers, lxix. 44. cited in F. Rosen, “The origin of liberal utilitarianism: Jeremy Bentham
established in the colonies then, as Lewis later argued, “in respect internal affairs, the condition of the dependency approaches closely to the state of practical independence.” While the “dominant country determines the form of government by which the dependency is immediately governed...for other purposes, the dominant country interferes as little as possible with the internal economy of the dependency.” Sovereignty theory demanded that political power be unified and definable. For this reason Lewis urged that in a colony which lacked a strong system of parliamentary government the British legislature should remain sovereign.

Lewis and Bentham were attempting to realign the mercantilist logic which continued to dominate the construction of political government in the colonies. Mercantilism embodied a juridical conception of sovereignty which was enforced through a technical and legalistic balance of political and economic forces. The balance of trade upheld by controlling the flow of exports and imports throughout the empire was matched by a system of colonial rule bent on upholding the juridical and territorial concerns of mercantilism. This system was most notably critiqued by Adam Smith in the *Wealth of Nations*, wherein he described the attempt to create a “self-sufficient economic unit” through “restraints upon the importation of all foreign commodities which can come into competition with those of our own growth, or manufacture.” While restriction of imported produce for trade was anathema to Smith’s free trade political economy — “Consumption is the sole end and purpose of all production...But in the mercantile system, the interest of the consumer is almost constantly sacrificed to that of the producer; and it seem to consider production, and not consumption, as the ultimate end and object of all industry and commerce” — he also commented on the defects which ensued, especially in light of the recent war with the American colonies, when British law was imposed on local institutions. The domestic economy had been burdened “with the whole expense of maintaining and defending [the] empire”, Smith arguing that in the time that one hundred and seventy million pounds was raised through colonial trade two hundred million was spent during the American War of Independence. “Great Britain derives nothing but loss from the dominion which she assumes over her colonies”, was Smith’s summation, and it was only through political and economic autonomy that the benefits of colonial trade be realised. By 1793 Bentham

---

was also convinced of the futility of mercantilism, arguing in *Emancipate your Colonies* that the French should encourage self-government and free trade among her dominions. Colonial trade monopolies meant that “Liberty, property, and equality were violated on the part of a large class of citizens (the colonists) by preventing them from carrying their goods to the markets which it is supposed would be most advantageous to them, and thence keeping from them so much as it is supposed they would otherwise acquire.” J. S. Mill carried this assumption into the 1860s, and in his *Representative Government*, clearly stated that “England derives little advantage, except in prestige, from her dependencies.”

The critique of the balance of trade also extended to mercantilism’s concern with each subject’s legalistic obligation to the sovereign. Starting with Machiavelli, and extending through Montesquieu and Blackstone, mercantilism was an art of government which Michel Foucault described as being “trapped within the inordinately vast, abstract, rigid framework of the problem and institution of sovereignty.” The transplanting of British law to Australia was an attempt to impose both a territorial claim and a juridical contract derived from the Act of Settlement. Colonial jurists were employed, in the words of Foucault, to “ritualize the theory of the contract...the mutual pledge between rulers and subjects.” It was Bentham’s hope to transform this ‘art of government’ to a ‘science of legislation’ and an aggregate concern for the population in general. This became an important foundation for colonial self-government. Mid-Victorian colonial policy extended beyond political economy toward a social economy which wanted, in the words of Gordon, to “enable the wealth-creating mechanisms of the economy to work”. not just by removing “the obstacles of obsolete privileges and the restrictive policies of mercantilism”. but to address the “social problem” – to implement a “broader strategy, a political technology designed to form...something more than economic man: a social citizen.” This broader strategy required an active and sovereign legislature which would set about, among other things, rationalising the criminal law, supervising a centralized public education, and, via a comprehensive statutory code, simplify the ambiguity of judicial custom.


38Foucault, “Governmentality”, 98, 102

By inventing political economy, Adam Smith asserted the primacy of a labour theory of value which, argues Pennings, “plays a role of producing a system of calculation for the ‘subjects in general’.” This was a significant innovation for liberalism since it encouraged a nationalised, rationalised, and empiricised approach to public administration. Sovereignty should no longer be preoccupied with ‘legalistic obligation’, and for Smith, the “problem of sovereignty was how to facilitate the flows of commerce needed to improve the social conditions and vigour of the population.” Empirical knowledge was then “transformed from the calculation of a sovereign’s wealth based on a mercantile system to that inspired by the industrial innovations radically changing the sphere of goods production.”

Smith did much to clarify the role of state education in rectifying the social dislocation that results from the division of labour. Functional specialization served, therefore, to destroy “intellectual, social, and martial virtues”, and public education was thus “necessary in order to prevent the almost entire corruption and degeneracy of the great body of the people.” This degeneracy was inevitable without an integrated state political economy which incorporated the colonies as sites for the redistribution of labour and capital. Malthusian theory alerted political economists to the limitations of domestic growth, causing colonial development to become a constituent element of classical economy.

The aggregate concerns of Smith’s political economy was imbricated in a broader constitutional shift, detailed in the preceding chapter, from the logics of ‘natural right’ to ‘security’. When Bentham said that ‘liberty is a branch of security’, he meant, therefore, to disengage political sovereignty from economic subjects and to employ sovereignty as a means for governing the population in general. Security embodied techniques and rationalities of government which, in the context of the imperial administration, would make the colonies social and economic laboratories rather than objects of territory and acquisition. Indeed, the penal colonies were a microcosm of the crime, pauperism, illiteracy and unemployment that was increasingly associated with the long duree of an English state resistant to any rationalisation of authority. In this way, colonial administration, with its vague division between the Secretary of State, the Colonial Office and an irresponsible and autocratic governor was quickly targeted as an object of governmental reform. For Bentham, Merrivale. Lewis and their kin, such a convoluted administrative system was typical of an

---

41Smith, Wealth of Nation, 267.
By the mid-nineteenth century imperial administration had become the scapegoat in a broader critique of English government. The *Westminster Review* was, by the 1830s, already writing of the "colonial dominion which has ever been the bane and curse of the people of this country", noting that colonial government was "specially objectionable as a means of producing and prolonging bad government" since it "gave great opportunity for patronage and corruption." The *Review* justly attacked "the sinister interests on account of which we firmly believe that these colonies are maintained", drawing the analogy of "pumps for extracting the property of the many for the benefit of the few, the strongholds and asylums of despotism and misrule." In 1836 John Mill questioned the structure of colonial authority: "Are the vices, the prejudices, and the negligence, of our colonial management deducible chiefly from the corrupt use which our aristocracy has always proposed to make of the colonies for their own patronage and emolument?" Todd, in his seminal nineteenth century study of colonial political development, noted that "the administration of public affairs in such of the British colonies as were in possession of representative institutions was undeniably in an unsatisfactory state." This was related to the fact that the legislative body, the governor’s executive council, while "accountable to the Crown for the faithful discharge of their respective official duties, was not answerable, either individually or collectively, for the result of the advice which they might offer to the governor." In addition, the governor consulted the legislature at his own discretion and "the responsibility of government in no way devolved upon them [the executive council]." Complaints of "misgovernment" were then to be found in "the want of harmony between executive and legislative bodies." Similarly, Sir William Molesworth told the House of Commons

---

43 James Stephen, in light of his Colonial Office experience, wondered “What should be the aim of government? We should have studious and speculative men, standing aloof from mere despatch writing and projecting schemes of comprehensive and remote good. But...I do not know my alphabet better than I know that this is not the spirit of British Government and that the ambition of every Secretary of State and his operations will be bounded by the great object of getting off the mails.” Cited in C. E. Stephen, *The First Sir James Stephen* (London: 1906); in Eddy, *Britain and the Australian Colonies*, 26.


46 J. S. Mill “Taylors Statesman” in *Collected Works* XXIII, 632

in 1838 that “the Colonial Office administers for the colonies” and yet is not “represented in any assembly, to which that office is in any degree responsible.”

The unaccountability of the colonial governor was only part of a problem deeply embedded in the domestic organisation of executive government. It was during the Northcote-Trevelyan Committee into the operation of the civil service, which succeeded in curbing much of the patronage through which appointments were made, that Sir James Stephen, who by now had retired as Permanent Under-secretary in the Colonial Office, made a scathing indictment of the administrative capacity of his former department. Stephen, reiterating Henry Taylor, had linked this inefficiency to the lack of a professional bureaucracy. In particular, the convention of individual ministerial responsibility, which combined parliamentary and administrative duties within the one office, limited any prospect for developing an incumbent and expert civil service. Under the former governing framework, imperial administration would continue, in Stephen’s words, to be open to “the charge of frequent procrastination – of much uncertainty of purpose – self-contradiction – and neglect of many urgent interests.”

Smith realised this fact in 1776, arguing that if colonial government was to comprehend the empirical realities of the ‘system of natural liberty’ then it should have representatives sit in Westminster. But apart from the provision of a parliamentary agent for each of the colonies, Smith’s suggestion was never realised. Still, his prescription for representative government presaged the attempt to make the colonies the beneficiary of a new discourse concerning the constitutional basis of colonial political development. This was tied to the sovereignty theory of Lewis and Merivale since the latter were able to critique the balance of power and lay the foundation for a unified system of colonial government. The main object was to ensure that an accountable and definable administrative structure employ a coordinated, professional, and

50 See Henry Taylor, The Statesman (London: 1836), for the strongest expression of a reformed imperial administration around a responsible and professional cabinet department.
51 C. O. 537/22/3 Memo., March 30, 1832; in Eddy, Britain and the Australian Colonies, 36.
52 A. Smith. Wealth of Nation, 596, in Winch, Classical Political Economy and the Colonies, 15.
empirically informed method of governing, not territories and trade monopolies, but an aggregate population. It was in this context that Bentham looked on “the colonial empire as a vast field for experiments in philanthropy and reform.”

3. Systematic colonization and the political economy of empire

Colonial historians have tended to explain the development of parliamentary government in the colonies in terms of the triumph of whiggish constitutionalism. According to Todd, it was “the wise adaptation of British constitutional principles to the colonial polity” that facilitated the “constitutional maxim of ministerial responsibility to the colonial assembly.” This was a period when, explains John Ward, “British colonial policy was...being set on a new course by the triumph of free trade and the rapid evolution of responsible government.” It was the “enlightened Victorian liberal” Earl Grey who, by giving the Colonial Office “an unusual continuity of ministerial control”, institutionalised free trade and through a “lofty conception of imperial responsibility” precipitated the establishment of colonial self-government. In a later study, Ward revised his own ‘whig interpretation’ of “a wise unfolding of considered principles”, proposing that “in practice the colonial legislatures had developed in ways that conflicted with official British views of the imperial constitution and had proved irreconcilable not only with changing British constitutional ideas, but also with the assumptions of the British polity.” Ward attempted to chart a more contingent historical course by describing “anomalous societies” who were conceded self-government according to their own peculiarities and the changing conventions of the British polity. Responsible government did not, as has been pointed out elsewhere, imply majority party government in England until 1841 and the dissolution of the Melbourne ministry. That event finally entrenched the view that “the will of the Commons as representatives of the people must prevail against both sovereign and ministers.” It was this conception of party government, whereby the choice of ministers was not the prerogative of the crown but the legislature, which motivated the drive for self-government in the Australian colonies. Thus, while the self-governing colonies were

---

still to be extensions of the British constitution, the prerogative of the crown was limited to a few reserve powers.\textsuperscript{57}

Such acknowledgment of the vagaries of British constitutional development challenges the timing rather than the assumptions of the historiography. Firstly, as the next chapter argues, it is unlikely that responsible government in the colonies secured the ‘will of the commons’, or that the threat of dissolution substantially checked ministerial and executive power. Earl Grey, who Ward rightly ascribes a large influence over constitutional change in the colonies, wanted, as was noted earlier, to unite the power of the executive and legislature in the ‘same hands.’ As Secretary of State he failed to extend self-government to Australia yet, and most importantly, he applied sovereignty theory to colonial policy. It was in light of the ideas of Lewis that Grey demurred on the granting of full responsible government to New South Wales; and it was this same logic which caused Lord John Russell, the then Prime Minister, to retain imperial control in the constitution of 1856. Russell was fearful of a polity founded on sectional and particular interests and argued that a responsible legislature had to be unified through a single sovereign power. His argument, described by Ward, that the “colony would be better independent than nominally linked with a mother country”, justified the continuing veto power of the crown since parliamentary majorities could not be accorded sovereignty in such a nascent and fractured political community.\textsuperscript{58} The radical parliamentary Whigs, particularly Robert Lowe and Russell, were not willing to let the conservatives consolidate their authority since this would institutionalise the archaic administrative routines of aristocratic government. The colonial gentry were the justices of the peace, the lawyers, the high-church Anglicans and Legislative Council members who wanted to consolidate the abstract constitutional rights of the colonists in order to shore up their own juridical authority. It was for this reason that Russell, on the advice of Lowe, amended the New South Wales Constitutional Bill so as to retain the Crown’s power of “reservation and disallowance of colonial Acts.”\textsuperscript{59}

The attempt to guard against the propagation of peculiar interests in colonial constitutions was a reaction against what Foucault called the “territorial state.” The colonial conservatives who wanted to secure local control of land and revenue were hoping to contractually seal the limits of political power. This conflicted with an emerging strategy of political innovation based around an

\textsuperscript{57}Ward, Colonial Self-Government, 196.

\textsuperscript{58}Ward, Colonial Self-Government, 327.

\textsuperscript{59}Sweetman, Australian Constitutional Development (Melbourne: Melbourne University Press, 1925), 294.
omnicompetent legislature and a "population state." While reinforced through sovereignty theory, this movement grew firstly from the discourses and practices of political economy. Thomas Malthus told the 1827 Select Committee on Emigration that colonisation should not be an opportunity to dump paupers overseas but to better proportion labour and capital throughout the empire. The select committee was itself part of notable shift in a science of legislation - commissions, committees of inquiry, departmental reports, the census, demographics - which, while having antecedents in the *Doomsday Book* (1086) and early Norman bureaucracy, had previously promoted juridical sovereignty rather than the management of the population. Thus, the framing of the logics of the territorial state around peculiar and property interests suppressed the centralizing and bureaucratizing potential of English government.

It was not until the logics of political economy, security, and population subordinated the contractual concerns of the state that these latent central-bureaucratic tendencies were applied to the broader strategies of public administration. The New Poor Law, the Factory Acts, the various colonial constitutional acts, and centralized public instruction, were all part of an ongoing experiment in the management, not of territory and wealth, but a pastorate whose shifting internal relationships were the new object of government. Adam Smith made the point that it was labour and the consumer, not capital or the producer, which was the true end of liberal economy. It was an assumption which precipitated a significant shift in the logics of state formation and by the nineteenth century the local parish could not be trusted to regulate and 'secure' the population. This point was missed by Sayer when he assumed that the technical capacity of early state building, combined with the interdependence of local and national authority, facilitated nineteenth century "moral surveillance and policing of the labouring poor." While the origins of capitalism might be found in the medieval state, the rise of 'surveillance' and disciplinary power had more modern

---


61 Sayer notes that the *Book* was produced in two years and took less time to collate than a modern census. Other parliamentary records included the Pipe Rolls of the Exchequer from 1131, Common Pleas from 1194, King's Bench from 1300, and Parliamentary Rolls from 1340. These illustrate the importance of revenue and judicature in the late medieval and early modern English state. For Sayer, such records anteceded capitalism by setting "up the state as the supreme arbiter of entitlements to real property." Sayer, "A Notable Administration", 1395.

antecedents. These were immanent in a discourse about colonial reform which would influence political modernization both at home and in the colonies.

It was the relationship between political economy and colonization which served as the great watershed for the idea of parliamentary government in the colonies. Edward Gibbon Wakefield, whose theory of 'systematic colonization' was highly influential in the Australia, Canadian, and New Zealand colonies, was described by Marx as the most notable political economist of the 1830s. Wakefield believed that capital accumulation would dwindle in England unless government increased the division of labour through systematic emigration to the colonies. When he stated that "labour creates capital before capital employs labour", Marx saw this 'surplus value of labour' theory as one of the significant innovations of political economy, restating the dictum according to his critique of capitalism:

"By its surplus labour this year, the working class creates the capital that will next year employ additional labour." It was through a state controlled system of labour specialization and class stratification that the liberal economic model could be realised. Pappe explains that in proposing colonial emigration Wakefield's "intention was to transfer the stratified society of England to the colonies by means of a strictly enforced 'social constitution'". Wakefield knew that this would be impossible in colonies where government operated through patronage between the governor, large landholder's, and local magistrates. When fronting the 1836 Select Committee on Disposal of Lands in British Colonies, he argued that the whim of gubernatorial and judicial appointments caused "extreme uncertainty" in the system of land administration and that "the want of anything like a character of permanence, appears to render it extremely defective." Wakefield then proposed that a responsible and professional bureaucracy administer waste lands: "Parliament should confide that rather difficult task to a special responsible authority...who should be selected on account of their knowledge, fitness and ability."

In 1834 Wakefield succeeded in having his system tested in South Australia and Merivale promptly called it the first "instance in colonial history of the combined operation of capital and labour." Merivale hoped the experiment would "create a class of men, free and their own masters, willing to work for wages, and able to obtain an ample remuneration for labour, and unable or unwilling to make the immediate passage from the condition of hired labourers to that of independent land-

---

owners." When considering the system of government to be established in South Australia, Merivale proposed the principle of "absolute freedom, in which the executive power in the colony claims no greater rights than it has in a representative government at home." In an 1846 memorandum to the then Secretary of State, Lord Grey, Charles Buller elucidated the importance of systematic colonization for alleviating domestic economic imbalances and the continuing 'problem of empire': "Every consideration of internal improvement and tranquillity, of the well-being and comfort of every class of our population, of the extension of empire and commercial relations prompts the government of this country to devise means whereby a constant and large efflux of its capital and every class of its people may find employment in the fertile wastes of its various colonies. Nor need I in addressing you hesitate to assume that the only sound system of colonisation is one founded on the Wakefield principle."

The continued policy of transportation continued to hold back the more complete introduction systematic colonization, however. For constitutional and colonial reformers transportation was symbolic of an archaic political system and a Blackstonian penal code entrenched in juridical custom. These concerns were voiced during the 1838 Molesworth Committee into Transportation.

As Sweetman observed, the committee was initiated by Wakefield and the South Australia Company since transportation gave New South Wales, not only cheaper labour, but a lower price for Crown Land. This of course undercut the minimum price set in South Australia. From the outset the report was determined to end transportation and use the colonies to correct the glaring inconsistency between labour, land, and capital in England. If colonisation was to become an ameliorative for a stagnant economy then colonial administration would have to encompass the rationalised political technologies of the reformed legislative state. It was in light of the principles of cabinet government that the fallacies of the Colonial Office were made most apparent: "In the Cabinet, the affairs of the other departments of the State are more or less within the cognisance of

all members of the Cabinet, and each Minister, in his separate department, may be supposed to be responsible to the whole body; this cannot possibly be the case with regard the Colonial Minister, whose department embraces all the branches of government of our numerous and widely remote dependencies." The importance of responsible cabinet government for political economy, 'security', and positive law had been made patent by the faltering performance of a largely unaccountable Colonial Office. "Under our present system of colonial government", complained Molesworth, "no gentleman, no man of birth or education, ought to think of emigrating to any one of the British dependencies." In fact, the better class of emigrants would be "more apt to direct their steps to the United States of America, where they will enjoy institutions and self-government of English origin, and will not be liable to have their prospects marred by the ignorant and capricious interference of distant and irresponsible authorities, or of their ill-selected instruments."70

As the Colonial Minister in Melbourne's Whig government, Lord Glenelg was being held responsible for political unrest in Canada. The threat of rebellion inspired Lord Durham's Mission to Canada in 1839, who with other parliamentary radicals including Edward Gibbon Wakefield and Charles Buller proposed a system of responsible government in British North America. This became a reality in 1840 and was a significant breakthrough for the colonial reform lobby. It further meant that the Colonial Office started to suffer closer scrutiny from more moderate political actors. Lord John Russell and Lord Howick (later Earl Grey), who in the 1850s presided over the introduction of colonial self-government in Australia, were the most outspoken in Melbourne's cabinet about the incompetence of Glenelg's office.71 With Molesworth, these reformers began to override the jurisdiction of the Colonial Office. As Chair of the 1838 Select Committee on Transportation, Molesworth solicited "important information as to New south Wales and Van Diemen's Land" which he believed "would not have been obtained if I had not made bold, in seeking a colonial inquiry, to proceed as if there was no such department as that over which Lord Glenelg presides."72 The committee successfully forced the Colonial Office to discontinue transportation and thus removed the greatest argument against the granting of representative government in the colonies. Charles Buller, a Wakefieldian and the representative in Westminster

70W. Molesworth, "On a Royal Commission to Inquire into the Administration of the Colonies" June 26, 1849, in Selected Speeches of Sir William Molesworth, 256. Molesworth noted that in the twenty five years before 1849 three-quarter's of Britains 2 million emigrants had settled in America. Of the 800 000 which initially emigrated to Canada, half re-emigrated to the U.S.


See also Thomas, The Philosphic Radicals, 372.

72SelectedSpeeches, 23.
for the Australian Patriotic Association, knew that constitutional change was impossible as long as New South Wales and Van Diemen’s Land remained penal colonies. Thus, when Earl Grey threatened to reintroduce transportation to New South Wales, Buller consistently rebuked such proposals.\footnote{See Buller, “Memorandum to Lord Grey”), 1100. Charles Buller was a utilitarian, philosophical radical, an outspoken critic of the Whigs sanitized reform of the suffrage and the poor law, and highly influential in the establishment of colonial self-government. He was Durham’s Secretary of State in Canada and probably co-wrote the Durham Report, the seminal influence on the development of ministerial government in the colonies (the report not only recommended ministerial responsibility but also reform of the legal system, of education, of the Canadian Municipal Corporations Act, of the Colonial Office and colonial administration in general). With Molesworth and George Grote. Buller was a director of the South Australia Association and in 1834 and in 1837 sat on Molesworth’s committee on transportation where he learned much of conditions in VDL and NSW. He was also the British correspondent for the Australian Patriotic Association.}

As noted earlier, Bentham made one of the first and most telling critiques of transportation, describing the “characteristic feature” of the “Colonizing-transportation-system” in New South Wales as a “radical incapacity of being combined with any efficient system of inspection.” ‘Inspection’ defined a political economy of government; it was the only “effective instrument of reformatory management” since “reformation” is a “species of manufacture” and like any other manufacture it requires a “particular capital or flock in trade; the assortment being good, that is in sufficient quantity and of the accustomed quality, the business will go on in the regular course, like other businesses.” Bentham’s panopticon or penitentiary system displayed, “in its original state, frequent and regular inspection”, and in its “extraordinary and improved state, that principle of management carried to such a degree of perfection, as till then had never been reached even by imagination, much less by practice.” The Colonial Office, however, had founded the penal colony in New South Wales on a “system of incapacity and negligence” anathema to inspection and reformatory management. The object and premise of the transportation experiment was “a set of \textit{animae viles, a sort of excrementious mass, that could be projected, and accordingly was projected – projected, and as it should seem purposely – as far out of sight as possible.”\footnote{J. Bentham, \textit{Letter to Lord Pelham, Giving a Comparative view of the System of Penal Colonization in New South Wales, and the Home Penitentiary System, Prescribed by two Acts of Parliament of the Years 1794 & 1799} (Westminster, 1802), pp. 5–6 – MLC.} Transportation was endemic in a state formed around the juridical logics of property rights and natural law. Hence the individual was conceived, not in its relation to others, but in terms of a contract. Once that legal
relationship is breached the obligation of the state is discontinued. The judicial process thus ‘determines’ the individual and there is no ‘chance’ for reform.\textsuperscript{75}

Bentham opposed the transportation system because it removed punishment from the sight of the “aggregate mass of individuals.” The inspection system makes the scene of punishment the metropolis; it creates an impression through “imaginary contrivances” and “multiplying by every imaginable device the number of visitors and spectators: a perpetual and perpetually interesting drama, in which the obnoxious characters shall, in specie at any rate, be exposed to instructive ignominy, the individuals being, with equal facility, capable of being exposed to it or screened from it, as, in the judgement of those to whom it belongs to judge, may be deemed most eligible upon the whole.” Bentham’s system was dynamic and did not “rest upon cold forms.” For him, “A theory is indeed no farther good in so far as its indications receive, as occasion serves, the confirmation of experience ....practice is synonymous with wisdom. Bentham affirmed this theoretical ontology by observing his own experience: “In body, in mind, in every way, if my parents suffered I suffered with them. By every tie I could devise, my own fate had been bound up by me with theirs. Vicinity to the public eye, vicinity was the object with me, not distance. Recluse by inclination, popular at the call of duty, I did not shun the light, I courted it. Self-devoted to the task of unremitting inspection, it would have been a reward to me, not a punishment, to be as unremittingly inspected.”\textsuperscript{76} Inspection was integral to an array of carceral technologies – schools, asylums, prisons, hospitals – designed to systematically manipulate the population into divisions and classifications that would correspond with the rigours of modern political economy. Transportation was contrary to notions of inspection and reformation because it was the product of common law prescriptions derived, not from contemporary experience, but largely from the Black Acts of the early 1700s.\textsuperscript{77} Further, it was the justices of the peace who had a significant role in the management of the transportation system since, in McMartin’s words, they “negotiated the contracts with

\textsuperscript{75}The idea of chance informed the nineteenth century development of statistics and what Hacking describes as the “enumeration of people and their habits.” Determinism and the \textit{a priori} assumptions of the age of reason were replaced by notions of shifting and variable populations. It was this philosophical movement which allowed the individual to be reformed and reintegrated in society through such aggregate techniques of government which Bentham defined by ‘manufacture’ and ‘inspection’. I. Hacking, \textit{The Taming of Chance}, 1.

\textsuperscript{76}Bentham, \textit{Letter to Lord Pelham}, 8.

\textsuperscript{77}Transportation was the alternative when sentencing for the 20 000 capital offences prescribed by the Black Act. See E. P. Thompson, \textit{Whigs and Hunters} (London, 1975).
merchants...for the shipment of convicts awaiting transportation." Both domestic and colonial reform therefore depended on a challenge to this common law establishment.

While the Colonial Office took little notice of Bentham’s penitentiary scheme it began to have a profound affect on a coterie of parliamentary members, lawyers, bankers, capitalists, Quakers, and political economists who converged at Bentham’s country estate. James Mill, Francis Place, George Grote, Edward Wakefield and others began to apply Bentham’s science of government to education, criminal law, constitutional law, and colonial policy. James Mill was the great public educator and worked prolifically in practical educational programs such as Lancaster’s national monitorial system, the Chrestomathic School, the Mechanics’ Institute Movement, the Society for the Diffusion of Useful Knowledge, and the establishment of London University. Bentham’s Chrestomathia, published in 1817, was a systematic treatise on the curriculum and teaching methods of a secondary day school but it was not one of Bentham’s unique works, Francis Place claiming the original idea with Edward Wakefield in 1813. Place was a member of the British and Foreign School Society and the West London Lancasterian Association and appeared on the Chrestomathic school committee; while Wakefield was the founder of the Lancasterian Association in 1813.

It was Edward Wakefield’s son Edward Gibbon who would have a seminal influence on political development in the Australian colonies. Until the 1930’s, Wakefield’s were ideas quoted as the standard rationale for nineteenth century Australian state building. Hancock, for instance, used Wakefield to support his ‘environmental’ thesis, noting, particularly in the context of Australia’s scattered pattern of settlement, Wakefield’s argument that “new countries demand ample government.” Indeed, Wakefield had convinced Bentham – who with Ricardo had assumed the colonies to be a drain upon the capital of the mother country – that systematic colonization is “a work of the greatest utility.”

A Quaker, non-conformist and radical, with a family which included Elizabeth Fry, the prison reformer, Charles Darwin and T. F. Buxton, the emancipator of slaves, Wakefield has received

78A. McMartin, Public Servants and Patronage, 10.
79See Thomas, The Philo sophic Radicals, 120.
81Hancock, Australia, 53.
significant attention for his work on colonial emigration. Growing up in “households where among subjects commonly discussed were maternity homes, savings banks, the education of the poor, the position of women, the state of prisons and lunatic asylums, and pauperism and population”. Wakefield’s grandmother was Priscilla Bell, the feminist and social reformer who worked closely with Mary Wollstonecraft and was a friend of Thomas Malthus — his *Essay on the Principle of Population* not only informed Darwin’s theory of natural selection, but had a profound influence on the reformation of the poor laws, municipal reform and the policy of emigration to the colonies. The most conspicuous of Malthus’ radical disciples was Francis Place, who with Edward Wakefield formed close ties with Benthamite’s such as James Mill. These radicals heavily influenced the formative gestation of Edward Gibbon Wakefield, and, as Bloomfield writes, Wakefield’s colonial reforms were primarily a “policy for population” rather than empire.

Contemporary historians tend to treat Wakefield as a colonial scribbler rather than a serious, let alone influential governmental theorist. Norman noted that “Seldom has one achieved so much in his day for which he is so little remembered today. There are many, too many, intellectuals including historians and political scientists who have never even heard of Wakefield.” While Wakefield was integral in the Durham Mission and the discourse of colonial self-government, scholars such as New have argued that Wakefield “never indulged in theories of government. The fact that in a Utopian frame of mind he had written a sentence in *A Letter from Sydney* which suggests the enjoyment of ministerial responsibility by a colonial government is of hardly any significance. Although a voluminous writer, he never developed the idea.” This misses the urgency and complexity of Wakefield’s work, particularly his drafting of the South Australian constitution, which recommended representative assemblies once the population reached five thousand. It also misses the synchronous web of reformist discourse within which Wakefield’s work was produced. The theory of government resounded through the texture of his writing, particularly in *A letter from Sydney*, his first work on colonial reform, wherein he related the imminent decay of

---

Colonial Office policy to the Roman Empire: “the Roman Empire fell to pieces because its
government was a government of mere force, which, when applied to a great diversified empire, is
necessarily weak because force cannot stretch that far, and because there is no attachment in the
subjects toward the central power.” From this he was able to justify democratic self-government in
New South Wales, arguing that the colonists were “an instructed and civilized people...as well
qualified to govern themselves as the people of Britain.” While initially suggesting that elected
representatives should hold seats in the British Parliament, Wakefield preferred that the colonists
frame their own laws, in a Colonial Assembly, under the eye of a viceroy, incapable of
wrong, and possessing a veto like the King of England, but whose secretaries, like the
ministers of England, should be responsible to the people! At all events they must be
governed, by whatever machinery, with a view to their good and their contentment, which is
the greatest good, instead of to the satisfaction of their governor’s only.

Wakefield’s constitutional design was hinged on the need to retain some form of sovereign power.
However, while a local legislature could begin the important work of setting in place a relevant
body of statute law, such an incipient political community could not promise strong party
government and the prerogative power of the crown should be maintained.

Wakefield read both Beccaria and Bentham and was a firm advocate of certain punishment. For
Wakefield, capital punishment had proved to be arbitrary, over-zealous and susceptible to a pardon,
thus delimiting the reformatory value of the criminal law: “In proportion to the terror which a
punishment is calculated to excite, is the delusion of hope in the criminal that he will escape without
any punishment.” Concern with the criminal law led to Wakefield’s preoccupation with the
transportation issue. He viewed the penal colony in New South Wales both as a mirror of the social
decay produced by the British penal code. Faced with an archaic legal system and a cynical
Colonial Office, Wakefield wrote A Letter from Sydney to communicate the wasted potential of the
New South Wales colony. It was through the radical and utilitarian daily, the Morning Chronicle – a
vehicle for anti-Colonial Office sentiment voiced by Mill, Place, Buller, Lewis, Molesworth and the
like – that instalments from A Letter were first published.

87Quoted in Bloomfield, Edward Gibbon Wakefield, 201.
88R. Gouger (ed.) A Letter from Sydney: The Principle Town in Australasia – Together with an Outline of the
89Quoted in Bloomfield, Edward Gibbon Wakefield. 81
Richard Whately – Archbishop of Dublin, political economist, social reformer and ardent anti-transportationist – gave added momentum to Wakefield’s critique. In his *Thoughts on Secondary Punishment*, published in 1832, Whately highlighted the “utter inexpediency of the punishment of transportation”, arguing that it only served to nurture moral contagion and the “strength of temptations from bad education and habits, bad associates, strong passions, ignorance, distressed circumstances.” How should the convicts and colonies be managed if transportation was abolished? In recommending an antidote, Whately reviewed Edward Gibbon Wakefield’s principle of systematic colonization, arguing that education reform, emigration and the expansion of capital was the best option.

Whately was pivotal to an Irish lobby who, convinced that emigration would help alleviate Ireland’s expanding pauper population, had earlier forced the Whigs and reformist Tories to appoint an 1827 Select Committee on Emigration. As noted above, Thomas Malthus’s theory of population was given a strong hearing. When Malthus himself fronted the Select Committee he premised his thesis of over-population on “Civil and political liberty and education”, thus indicating a wider agenda than population control. The select committee misinterpreted Malthus’ demographic rationality, however, arguing that the domestic population problem could be corrected if ‘redundant’ labourers and paupers were simply dumped in the colonies. Malthus may have stressed

---

90In an 1831 review of Whately’s lectures on political economy at Oxford, John Mill stated that “If the English Church. and its universities, possessed many such members as Dr Whately...the prospects of the Church in this general era of reformation would be very different from what they are.” J. S. Mill, “Whately’s Introductory Lectures on Political Economy” *Examiner*, 12 June, 1831. 373: in *Works* XXII, 328.


92Malthusian population theory was given strong support by James Mill in his 1822 article on “Colonization” in the *Encyclopedia Britannica*. An attack on the monopoly of colonial trade and aristocratic government. Mill gave, in the words of Mills, “a cautious adherence to emigration as a remedy for over-population, recommending it on two conditions: first, that the land colonized yielded a better return to labour than that left by the emigrant; secondly, that the expense of removing emigrants was not so great as to cause more loss by the expenditure of capital than was gained by the diminution of numbers.” Mills. *The Colonization of Australia*, 27.

93House of Commons, *Select Committee on Emigration*, 1827.
the concept of optimum numbers but this was only part of the corrective; population control was as much about social, cultural, and ‘constitutional’ reform as it was about stark numerical efficiency. Even if the poor could be fed, clothed, and given shelter, they also had to be given the tools of government, the chance to learn a political rationality which could afford protection from and progression beyond human fallibility.

Political economy was about the maximisation of material relationships but this in itself could no longer guarantee economic health. The industrial and agricultural worker, who was increasingly the victim of structural unemployment, pauperism and a vicious cycle of vice and ignorance, had become the largest yet least understood component of classical political economy. A re-working of the relationship between labour, land, capital, and production could not alone solve this ‘problem of population’. As outlined in chapter two, this animated radical theorists to include another variable, henceforth known as government, into the study of political economy.94

Alluding to the “distress among capitalists and labourers in every branch of industry”, Wakefield, in an introduction to Smith’s *Wealth of Nations*, was “urged by the belief that economical suffering has been caused by mis-government.” In response, he wanted “to establish a virtual democracy...a grand but also fearful experiment.”95 This ‘virtual democracy’ typified a new vision of a representative state which, in Halévy’s words, would “crea[t]e artifices of such a kind that in spite of their avarice and their ambition [the citizen] shall co-operate for the public good.”96 Such a vision could be realized in colonies which, if established with the ‘public good’ in mind, provided the greatest opportunity to reform the archaic conventions of English government. Wakefield’s plan to attract emigrants – based initially on a ‘minimum price’ for land grants – to the colonies, reached fruition when the South Australian colony was established in 1834 under the framework of systematic colonization. This, of course, was a defining moment for the radical colonial reform lobby, and J. S. Mill, among others, was quick to explain the virtues of Wakefield’s plan for attracting free settlers to the southern antipode:

if a portion of our labourers could be removed from the country, where they are now earning a scanty and precarious subsistence, and placed in a new and fertile country, under the best arrangements which could be desired for giving the best possible productiveness to

---

94 Book five of J. S. Mill’s *Principles of Political Economy* is titled “Government”.


their labour, the surplus of what they would there produce, above what they can produce in
their present situation, would form a fund sufficient, in a year or two at farthest, to repay
with interest the whole expense of their emigration. Now, this fund, by the present scheme,
is to be taken hold of by the state, by a very simple mode of taxation, the sale of public
lands. And thus the expenses of emigration will be paid out of the increase to the general
wealth of the world, produced by emigration itself; the increased produce of the emigrant’s
own labour will be made available to pay the expenses of his emigration.

South Australia was held up, therefore, as the model for colonial reform, and Mill was excited that
“For the first time in the history of overpopulation emigration will now be made to pay its own
expenses.” More importantly though, Wakefield’s schema included a radical vision for a self-
governing colonial state. As such, once the adult male population of the colony reached 5000,
Wakefield proposed that an elected legislative assembly be established to administer all aspects of
local government. For Mills, “Considering the time at which it was proposed, it was a bold plan to
demand not only self-government at an early stage, but male adult suffrage and annual
parliaments.”

The English parliaments decision to adopt Wakefieldian reforms had done much, argued J. S. Mill,
to infuse “the hitherto inert body of Parliamentary Radicalism” in Britain. In this vein, the 1836
Select Committee on the Disposal of Colonial Lands gave intention for a bill which would make
sufficient price the uniform land policy in the colonies. Speaking in relation to the radical push for a
widened franchise, Mill believed the adoption of sufficient or minimum price to be “a more
immediate and obvious benefit to the industrious classes...than even the great constitutional changes
which we are contending for.” The efficacy of a minimum land price to provide a fund for
defraying the expenses of emigration were, continued Mill, so “powerfully enforced in the various
publications of the original and vigorous author of England and America”, that the select committee
“ended by almost unanimously adopting his views.” While the motion was bound to be opposed
by a “Colonial Office which...does not like to divest itself of arbitrary power...the bulk of the
Radicals”, along with “many of those influential men in the Tories”, were sure to endorse the

97 J. S. Mill, “The New Colony” Examiner, July 6, 1834, 419; in Works, XXIII, 736.
98 Mills, The Colonization of Australia, 221.
100 “Report of the Select Committee on the Disposal of Lands in the British Colonies” (1 Aug. 1836), Parl.
Papers, 1836, XI.
measure, leaving the Whig government the "undivided discredit of resisting, and vainly resisting, the most important proposition for the physical well-being of the working classes, which ever, perhaps, came before the British Legislature." Despite the initial economic difficulties associated with the South Australian experiment, this rhetoric continued, and in 1844 Mill predicted "that in no long period Systematic Colonization will force itself upon our rulers, as an indispensable measure, not only of industrial policy, but of national safety."

One of Wakefield’s most active colleagues in the establishment of the South Australian – and later the New Zealand – colony on the principle of systematic colonization was Charles Buller. In 1840, Buller authored Responsible Government for the Colonies, an administrative blueprint for a representative and self-governing model of colonial government. The object of Buller’s treatise was to “inquire into the anomalies that present themselves in the working of representative institutions, and to discover the cause that renders them sources of additional disorder rather than guarantees of good government in our colonies.” As early as 1839 Buller predicted “self-government for Australia in the near future”; while in 1843 he made a plea to the House of Commons to take account of the “means by which extensive and systematic colonization may be most effectually rendered available for augmenting the resources of her Majesty’s empire, giving additional employment to capital and labour, both in the colonies and in the United Kingdom, and thereby bettering the condition of her people.”

Buller’s underlying argument was that “the establishment of self-government” was the first step in “making colonization popular and successful.” He had “no doubt that the political condition of our colonies has been the greatest obstacle in the way of the very tendencies that lead to colonization”.

---

103 The South Australia Association, formed in 1833, was dominated by political radicals including J. S. Mill, Buller, Grote, Wakefield and Molesworth. These forced the passing of the South Australia Act in 1834 which essentially recommended the sale of crown land to pay for emigration.
stating that if “men of capital be got to furnish the means of taking out labourers, and conquering the desert” and “men of intelligence and refinement, and property be induced to quit the comforts of England, and lead our colonies to the furthest end of the earth”, it was most important that “every body of emigrants that goes out carry with it a complete power of self-government.” The Wakefieldian’s biggest problem was the subjection of middle and upper class emigrants “to a despotism of the Colonial Office and its employees which is the most repugnant to our English feelings of independence and security, and Our pride of freemen.” The principle and practice of liberal political economy was being trammelled by the colonial structure of authority, Buller noting that private capital could not flourish when “the Englishman who embarks his property in colonial enterprise is likely to have it risked by every caprice of a Secretary of State, by the operation of the unknown policy of subordinates here, by the influence of this mercantile house, or that religious society, or by the spite, whim, or folly of some Hobson, Fitzroy, Shortland, or Spain”? Since capitalists needed both labour and political influence, it was time for the “immediate establishment of representative government in every colony in which the colony is capable of freedom.” This did not imply that capitalism was the catalyst to representative institutions. Responsible government was not simply about the accumulation of capital, but balancing and regulating it within the tenuous structure of political economy. Such had been impossible in an English state whose common law constitutional foundation obstructed the kind of political modernization that Buller and the radicals were hoping to implement.

4. Domestic Reform

The demands of the colonial reform movement were of course intricately linked with the need for political reform at home. Debate over the administration of the poor was typical, and J. S. Mill, for instance, criticised the “English country gentleman, who, by their mode of administering the Poor Laws, have so frightfully demoralised our peasantry.” Written as a rebuttal to John Walter—proprietor of the conservative Times newspaper, magistrate, and an outspoken critic of the 1834 Poor Law Amendment Act—Mill used the opportunity to chastise the arbitrary administration, carried out by the parish and country justices, over the burgeoning indigent poor. Describing the practice of “granting orders of relief after the parish officers have refused it”, Mill contended that “Liberality in a Magistrate is like the liberality of an absolute King; it consists in giving away very

105[Buller “Memorandum to Lord Grey”, 1101–1102.]
106[Buller “Memorandum to Lord Grey”, 1105–1106.]
freely other people's money, and...almost always to the undeserving.\textsuperscript{107} The Poor Law Amendment Act stipulated that poor relief was to be administered by a central commission whose paid and professional officials were to regularly inspect the conduct of the magistrates and the overseers of the poor. The original poor law inquiry of 1832, which most notably included Edwin Chadwick and Nassau Senior, was conceived due to a perception that increasing unemployment and indigence was related to the ease with which the able-bodied poor could avoid the workhouse and rely on out-door relief. This problem was, argued the inquiry, linked to the arbitrary and discretionary power of the justices and a general lack of administrative uniformity. Thus, the profusion of vice and indolence in the early to mid nineteenth century was a problem of English government and not simply some innate moral deficiency in the undeserving poor. In response, a central poor law agency would, by systematising the routines of poor relief, serve to limit both maladministration and the number of itinerant able-bodied paupers. This governmental rationality was a practice which provided an interface between the state and the population. Such had never been a virtue of magisterial control since the justices were concerned with particular rather than aggregate cases. The justice made his decision to give relief, not as an act of government, but as an act of contract which had no wider appreciation of pauperism in general.

The application of central control, accountable and paid officials, and regular inspection had particular intellectual and constitutional origins. When Chadwick and Senior appeared as the prime movers in the Royal Commission of Inquiry on the Poor Law, Chadwick had recently completed work as Bentham's literary secretary during the writing of the \textit{Constitutional Code}.\textsuperscript{108} Bentham's concerns with irresponsible and inefficient local administration were directly appropriated by Chadwick and had significant influence on the Act of 1834. Some historians have countered such claims, Halévy doubting the whether the Benthamite critique of localism held much sway over legislators.\textsuperscript{109} Tending to equate Benthamism with free trade principles. Halévy argued, in light of

\textsuperscript{107}J. S. Mill, “Mr Walter’s pamphlet against the Poor Law Amendment Bill” \textit{Morning Chronicle}, May 12, 1834; in \textit{Works}, XXIII, 709.


\textsuperscript{109}Halévy argued that “while the economic monopoly of the landed gentry, as expressed in the passing of the Corn Law of 1815, and the political monopoly due to the ownership of so many pocket boroughs were violently attacked, it does not seem as if anybody objected very much to their monopoly over local government.” Halévy, (1935), 29. However, as Parris observed, Halévy was forced to tailor his argument to his original thesis. As such, the legislative innovations of the 30s and 40s were a brief lapse from Benthamism
the new poor law, that “the thing happened in accordance with their (the magistrates) secret desire and tacit agreement, because the power of which they were deprived was one which they felt as an obligation, the weight of which was greater than they were able or willing to bear.” This might be true but it shows that the judicial establishment, in realising the fallibility of local government, opened the way for the administrative revolution which was driven largely by Benthamite’s like Chadwick. This point was elaborated by Redlich when he said that the Poor Law Commission was the instrument which

recommended the principle of inspection (Bentham’s principle of inspectability) to the English people, so that it gradually extended to all branches of the inner administration until it has become the characteristic feature of English central government and an object of foreign imitation. Nothing but proved utility could have overcome the instinctive aversion of Englishman from such an institution.

The poor law commissioners had fulfilled the requirements for Bentham’s system of scientific legislation. For Redlich, the “creation of a central authority with control over central administration, the formation of Poor Law areas by reference to convenience and topography instead of no tradition and history, the recognition by the commissioners of the principle that executive officers should be paid, and the provision that the local authorities should be elected by the inhabited ratepayers of the district are all borrowed or adapted from the ‘Constitutional Code’.” According to the Poor Law Report, these innovations were aimed at observing the “aggregate effects” of population. The autonomy of the justices perpetuated “differences in the modes of administering the law in different districts”, thus “producing habits and conditions of the population equally different.” A central board would effect uniformity, not only of administration, but would fix the population in

and the natural harmony of interests which again defined social legislation in the 50s. See Parris, Constitutional Bureaucracy, 262.


111 Blackstone himself acknowledged the administrative limitations of the justices: “As to the powers given to one, two, or more justices...such an infinite variety [has been] heaped on them [that] few care to undertake, and fewer to understand, the office.” Blackstone. Commentaries i, 354; in Halévy. The Philosophical Radicals, 30.


114 The Poor Law Report of 1834, 415.
observable and classifiable units. This was what Bentham called ‘pauper land’, and it was part of a broader attempt to define and regulate gradations and distinctions in the social body.

The Poor Law Report inspired much opposition and it was viewed as an attack, not only on the power of the country gentry, but the foundation of the English state. For John Walter, the recommendations of the report were

an inversion of what has been esteemed the natural and regular order of all good Government, which rises from the management of families, parishes, towns, counties, into the general Administration of the State. Here the state starts first in the character of a Central Board, and diffuses its regulations below. This is what the French call centralization. Everything springs from Government in France. I do not know that is a happy example to copy.

Walter claimed that a central board was not only a threat to the independence of the vestry and magistrates, but was a “change in the British Constitution itself, [a] revolution in the manners and habits of the British people.” In response, Mill argued that the understanding of English government as ‘government by the people’ was a justification for “the little knots of jobbers who are called vestries [and] make their own laws.” Moreover, Mill observed that a central board was actually an attempt to retain some local discretion. From this perspective, a board can “relax its orders, can grant time, and make exceptions and concessions to peculiar circumstances.” Government by legislation would be too sudden and total a shift from localism. “A superintending functionary can gently untie all the knots”, continued Mill, “which the Legislature, if it proceeded by an imperative statute, must peremptorily cut.” Bentham of course wanted to avoid using boards since they acted as ‘screens’ for arbitrary judicial authority. The point was acknowledged, undoubtedly via Chadwick, by the Poor Law Commission when it insisted that permanent local officers should not remain responsible to the vestry since “a screen will be interposed between the Central Board and the actual administration of relief which will encourage and protect every sort of

---


116 J. S. Mill, “Mr Walter’s pamphlet against the Poor Law Amendment Bill”, 709.

117 Note that Mill later retracted his support of Boards and in Representative Government argued that only a responsible central department was a “fit instrument for executive business.” Without a single ministerial head, boards could not, therefore, be made accountable for their actions. Cited in Works XIX, 521.
animadversion." The board would thus have the authority to appoint and superintend officers. However, as Mill observed, the use of a Board was only a partial step toward the development of full legislative sovereignty. The commission was not responsible to the parliament and in an era of legislative absolutism it was soon dissolved and replaced by a department of state.119

The significance of the poor law reforms for state formation was the curtailment of the functional power of the gentry as justices of the peace. This was noted on a visit to England by Alexis de Tocqueville who interpreted administrative centralization as a democratic victory. Not so much a burgeoning droit administratif, centralization was for Tocqueville “a democratic instinct; instinct of a society which has succeeded in escaping from the individualistic system of the Middle Ages.”120 His colleague in England, Beaumont, also believed it “fortunate that a people who must reform its institutions can give the central power enough force to slowly accomplish its task, while withholding enough power to avoid tyranny.”121 For Drescher, the views of Tocqueville and Beaumont signified the resolution of centralization within liberal-whig political theory: “Initially the new poor law seemed only a symptom of centralization opposed to the spirit of local liberty and aristocratic diversity... A new stage of interpretation came with further study of the law itself and with Mill’s caution that England was far from moving toward massive centralization... Having come to England to complete their study of the egalitarian revolution, they were now grappling with an administrative revolution.”122

In addition to pauperism, the poor state of public health and sanitation in England was being attributed to archaic state structures. As the prime mover in the reform of public health administration, Edwin Chadwick headed an 1842 parliamentary enquiry into the Sanitary Conditions of the Labouring Population. In the final report he wrote that the

the noxious physical agencies depress the health and bodily condition of the population, and act as obstacles to education and moral culture; that in abridging the duration of the adult life of the working classes they check the growth of productive skill, and abridge the

119 See Bagehot, The English Constitution (London: 1867), for an account of the failure of an irresponsible board and the improvements after the poor laws were further centralized.
122 Drescher, Tocqueville and England, 81.
amount of social experience and steady moral habits in the community: that they substitute
for a population that accumulates and preserves instruction and is steadily progressive, a
population that is young, inexperienced, ignorant, credulous, irritable, passionate, and
dangerous.\textsuperscript{123}

This encompassed a complex discourse about medical sociology and the moral effects of physical
contagion. The onset of empiricism, associationist psychology, and the biological sciences inverted
Cartesian philosophy and it had become an axiom that the body, or the environment, profoundly
affected the moral and intellectual capacity, not only of individuals, but the population in general.
Bentham, the Mills, and indirectly Chadwick, had been heavily influenced by Hartian
materialism.\textsuperscript{124} Associationist psychology informed the design of Bentham’s Panopticon and
Chrestomathia (useful learning) school, and both were designed to facilitate an unremitting system
of supervision and inspection. “Instead of ‘man’ possessing reason, natural rights, and other
timeless attributes”, argue Francis and Morrow in regard the development of Victorian rationalism,
“the individual human being became an accretion of historically selected features while society
became an assemblage of naturally evolved customs. Human nature was no longer a constant which
was subject to unvarying moral and political subscriptions: it was now a plastic variable.”\textsuperscript{125}

The mind-body duality which underpinned the philosophy of the ‘age of reason’ informed the
constitutional logics of the eighteenth century English state. The separation of powers; the
individual versus the state; the division between local and central jurisdiction; and the boundaries of
common law precedent: each expressed a dichotomous view of politics and society. This was
typified by the domestic concerns of oeconomy, which precluded the family from classical political
economy. It was Bentham who first started to universalise and ‘panopticize’ governmental reason, a
process exemplified by Bagehot’s stricture about the need to fuse executive and legislative power in
the cabinet. When Chadwick said that a “deteriorated physical condition does in fact greatly
increase the difficulty of moral and intellectual cultivation”, it had wider implications for liberal
state theory since the interrelation between the individual and their environment hinted at a closer


\textsuperscript{124}Note Mills subjective theory of beauty: “the highest beauty is not that which is received \textit{from} the object,
but that which is given to \textit{it} by the perceiving mind.” Mill. “The Monthly Repository for June 1833” \textit{Works}
XXIII, 574.

205.
connection between society and government. The ‘condition of England’ question was not to be countered by expunging the vice and depravity of industrial poor through capital statute or the catechism, but through institutional reform. The “general condition of habitual or professional depredation”, argued Chadwick, “flourished in the absence of a proper preventative police, and in the absence of appropriate penal administration.” Chadwick suggested that criminality be solved, not through the recriminations of the judge, but by regulating the noxious habitat of the urban poor through a new mode of legislation which must be “examinational”, “exact” and “strictly educational.”

Chadwick believed that the problems of moral and physical contagion could not be placated without reform of municipal government. It was the local justice who, through the quarter sessions, was responsible for administering public works, the building of schools, sanitation, law and order, and the collection of a local rate. By 1860, the quarter session was still the only provincial board or council which regularly administered social legislation. However, as John Mill remarked, “the mode of formation of these bodies is almost anomalous, they being neither elected, nor, in any proper sense of the term, nominated, but holding on to their important functions, like the feudal lords to whom they succeeded, virtually by right of their acres.” Local government could not be reformed unless it conformed to the representative principle. The problem then remained of dividing electoral districts while retaining uniformity of action. The minute division of the shires and hundreds could not facilitate the convenient management of paving, lighting, water supply, and drainage. It was for this reason that John Mill was particularly scathing of local government within London:

The subdivision of London into six or seven independent districts, each with its special arrangements for local business (several of them without unity of administration even within themselves), prevents the possibility of consecutive or well-regulated co-operation for common objects, precludes any uniform principle for the discharge of local duties. Compels the general government to take things on itself which would be best left to local authorities, if there were any whose authority extended to the entire metropolis. and answers no purpose, but to keep up the fantastical trappings of that union of modern jobbing and antiquated foppery – the Corporation of the City of London.

127 Mill, Consideration on Representative Government; in Works, XIX. 537–8.
The question of uniformity was highest in the mind of Mill. It had become requisite that the management of police, gaols, and justice be the same throughout the kingdom, and therefore, that they be controlled by expert and 'representative' administrators: “Security of person and property, and equal justice between individuals, are the first needs of society, and the primary ends of government: if these things can be left to any responsibility below the highest, there is nothing, except war and treaties, which requires general government at all.” The best means to secure these objects was through “central superintendence.” While Mill was not sure whether the poor law and sanitary regulation justified the strict national inspection suggested for police, gaols and justice, it was, in light of the discourse of ‘moral pestilence’, that these had become primary objects of ‘good government’.

Mill made these comments in 1861, yet they continued a discourse which began when the 1829 Act for the Better Regulation of Parish Vestries made the election of parish officers subject to household suffrage, the ballot and annual elections. While adherence to the act was optional, causing it to be irregularly implemented, it was a break-through for radicals such as Francis Place. Place argued that the act “would give each vestry the power to originate and control all parish matters in every department, compelling them, however, to proceed in one uniform way all over the country, doing everything openly and publishing the audited accounts every three months.” Such views pre-empted the outline for municipal government in Bentham’s Constitutional Code, which when published in 1832 proposed the creation of districts and sub-legislatures to be elected by universal franchise. Local bureaucratic departments were to control education, police and pauper management. In the words of Halévy, Bentham’s aim was to “combine the advantages of centralization with those of decentralization, and moreover, the advantages of decentralization with those of democracy: he would have local self-government without government by the gentry.” The bureaucratisation of municipal government would make the unpaid magistrate redundant, and local institutions would develop through the logic of centrally codified law rather than the ‘arbitram’ of the judge.

Agitation for municipal reform peaked in 1833 when the Whig government established a commission to “collect information respecting the defects” of local government, and “to make enquires also into their jurisdiction and powers and the administration of justice, and in all other

---

129 Bentham, Constitutional Code (Bowring Edition), 640, 699
130 Halévy, “Before 1835”, 32
respects; and also into the mode of electing and appointing the members and officers of each corporation, and into the privileges of freemen and other members thereof and into the nature and management of income, revenue and funds of the said corporation." One of the outstanding vehicles of parliamentary radicalism, the enquiry, in the words of Smellie, saw "the Tory dogs...given the business end of a radical stick." 131 In this vein, the Webbs noted that "The reaction against the extra-legal autocratic oligarchy which had been established in county government was dramatic in its suddenness." 132 The Royal Commission on Municipal Corporations had exposed the unaccountability of local government. When the Municipal Reform Act was legislated in 1835, Joseph Parkes, a leading Birmingham radical, wrote that the "unincorporated towns will lust after and soon accomplish the destruction of their Self-Elect and the county Magisterial and Fiscal Self-Elect will next and early be mowed down by the Scythe of Reform." 133 The Report of the Commission was essentially a critique of the origins of the municipal magistracy, describing the charters of corporations established before the Revolution as "calculated to take power away from the community, and to render the governing class independent of the main body of burgesses. Almost all the councils named in these charters are established on the principles of self-election." 134 The incumbent parliamentary member, with the crown, nominated the Mayor, who was "the chief magistrate and executive officer of the corporation." While some municipalities had a limited franchise for the election of officers the Report noted that in "numerous instances the appointment of the inferior officers of the corporation rests chiefly or entirely with the Mayor." 135 This practice continued until the democratisation of the councils in the 1830s, and all charters granted since the revolution had been "framed nearly on the model of the preceding area", thus exhibiting a "disregard of any settled or consistent plan for the improvement of municipal policy corresponding with the progress of society." The Report recognised community "distrust" and "dissatisfaction" with municipal officers who were not only inefficient but were viewed as a political oligarchy who re-fashioned the Stuart absolutism under the guise of parliamentary government. Numerous cases of patronage and corruption were detailed in the report. The commission concluded that the "evils which have resulted from the mismanagement of the corporate property are manifold and of the most glaring kind. Some corporations have been in the habit of letting their land by private contract to members of their own body, upon a rent and at fines wholly disproportionate to their value."

While the “clandestine appropriation of corporate property” was specific to small towns, larger towns were guilty of “carelessness and extravagance in the administration of the municipal funds, and an exclusive distribution of patronage among friends and partisans.”

Lord John Russell produced the Municipal Corporations Bill one month after the Report of the Royal Commission was released, and the bill passed rapidly through the Commons. As a model of representative government, the bill was a great improvement on the Reform Act since the municipal franchise was not to carry the same property and occupation restrictions. The Municipal Corporations Act attempted to undermine patronage by transferring the nomination of justices from local councils to a central committee. This ended the practice of ‘self-election’ and, according to Jennings, the great innovation of the Act was that “Local constitutional peculiarities were swept away, and a skeleton constitution provided which was common to each borough.” Unfortunately, the Act only applied to 179 towns and most of the old boroughs were unaffected. Further, it was not until 1888 and the passing of the County Councils Act that the justice of the peace was denied its dual role as judge and administrator. This was not surprising in light of Russell’s warning to Edwin Chadwick about attempts to rationalise English political culture. From Russell’s perspective, while it was true that local government had been

lax, careless, wasteful, injudicious in the extreme...the country governed itself. and was blind to its own faults. We are busy in introducing system. method, science, economy, regularity, and discipline. But we must beware not to lose the cooperation of the country – they will not bear a Prussian Minister to regulate their domestic affairs.

This ongoing fear of overt centralization meant that the uniformity which was so integral to the Poor Law Amendment Act did not feature in the 1835 Act. The resilience of local-self government meant, therefore, that the radicals would engage in a protracted struggle over the reorganisation of the state. As was noted above, Mill continued the concerns of the Royal Commission into the 1860s. However, while local government was impermeable to immediate change, this debate opened other less precious institutions to reform. For Smellie, the dominating influence in the

---

reform of local government was the public health movement, whose success in reorganising urban and rural sanitary districts through the Public Health Act of 1875 was a precursor to the Municipal Corporations Act of 1882 and the Council Act of 1888. The 1882 act finally made the general regulation of roads, streets, drainage, sewerage, parks, gas and water, libraries, the fire brigade, lunatic asylums, and public health, the responsibility of a democratically elected and centrally coordinated administrative body.\textsuperscript{139}

5. The Durham Report and the discourse of colonial reform

Buller and Wakefield who were keen to transpose this domestic ‘administrative revolution’ to the colonies, and it was in the guise of the Durham Mission to Canada that ideas about political modernization were extended throughout the empire. An attempt to resolve a constitutional struggle in Lower Canada, the recommendations of the Durham Report were typical of the wider radical reform agenda. The mission began when Lord Durham was appointed by Prime Minister Melbourne to resolve the conflict between the colonial executive and an intransigent lower house who had blocked supply and demanded representation in the nominated executive. In response, the Report, which many attributed to Buller and Wakefield, who accompanied Durham on the mission, recommended responsible government, national education, municipal reform, prison and hospital reform, and a redistribution of land according to the Wakefield principle.\textsuperscript{140} Lucas observed that, “with the Municipal Corporations Act...fresh in mind, Lord Durham lays the greatest stress upon the establishment of a good system of municipal institutions, as a check upon the General Legislature.”\textsuperscript{141}

The actual influence of the Durham Report has caused contention among historians. For Morrison and Coupland, it was the watershed of nineteenth century colonial reform. However, while Morrison called it the “the Magna Carta of the Second British Empire”. Martin revised such ‘positivist’ analysis, describing the Durham mission as a “series of unpardonable disasters” whose

\textsuperscript{139}Smellie, \textit{A History of Local Government}, 32.

\textsuperscript{140}For Lord Brougham, “Wakefield thought it, Buller wrote it, and Durham signed it.” Buller was to take up his post as Colonial Secretary while Wakefield’s notoriety excluded him from any official capacity. See E. M. Wrong, \textit{Charles Buller and Responsible Government in the Colonies}.

"contribution to the discussion of colonial policy was influential largely as an embarrassment."\textsuperscript{142} In this vein, Australian historians such as Irving have described debate leading to the conferral of responsible self-government government in New South Wales without reference to Durham's report.\textsuperscript{143} While Martin conceded "that in Britain nothing was known about colonial self-government until the Durham Report provided for the first time an intelligent basis for discussion", it is for him implausible that "the ideas put forward by Durham had never occurred to anyone in Australia."\textsuperscript{144} John Ward acknowledged the wider significance of the report, yet, like Martin, played down its influence. For him, it "was a mere auxiliary of change, more remarkable to historians as a landmark, and, in our own century, as a guide to colonies seeking what was formerly called dominion status, than it was to contemporaries as an influence on policy making in Britain."\textsuperscript{145}

Martin's history is about the particular influences of particular actors and he misses a less tangible but no less powerful dynamic in the development of colonial self-government. The Durham report did not evince much reaction or recognition in the British parliament or press. But the point is less the historical influence of the report than its relationship to a wider current of constitutional reform discourse aimed at reconstructing liberal governance both at home and in the colonies. In many ways the mission was a political disaster and caused a significant imbroglio within the radical movement. John Arthur Roebuck, the radical parliamentary, colonial and educational reformer, had proposed full representative government in the colonies in 1833 and opposed the mission from the outset, believing that Durham had sided with the Whigs and that his policies served to placate the Colonial Office. The split between Durham and Roebuck was symptomatic of a division in the colonial reform movement. Thomas accordingly describes the gulf between those who "wanted to hasten the granting of independence to all the North American colonies, and those who wanted the home government to retain some control over their development."\textsuperscript{146}

\textsuperscript{144}Martin. The Durham Report, 5.
\textsuperscript{145}Ward, Colonial Self-Government, 305.
\textsuperscript{146}Thomas. The Philosphic Radicals, 380.
The former view, as embodied by Roebuck, argued that the developed colonies should be conferred independent sovereignty. Thus, Roebuck demanded “emancipation of the colonies from the mother country in the same spirit and for the same reasons that led them to oppose aristocratic government at home.” Durham realised the inevitable conflict of such a mission since the emancipists within the radical movement considered it an intervention over popular self-determination. Durham rejected the Governorship of Canada when it was originally offered to him in 1837, and his final acceptance in 1839 was somewhat surprising. Molesworth, the then de facto leader of the radicals in the Commons, remained faithful to Durham’s decision to leave, particularly since his Colonial Secretary was Charles Buller, a very popular radical whose views on colonial government were well respected. The influence of the other missionaries has been neglected and too much emphasis is given to Durham, who was only one of many supporters of self-government in Canada, and with Wakefield, Buller and J.S. Mill, typified the English radicals program for colonial reform. It should not have surprised Martin that “responsible government had been put forward before 1839 by the Baldwins, by Joseph Howe and by Roebuck and the English Radicals.” When J. S. Mill wrote that “A new era in the colonial policy of nations began with Lord Durham’s Report”, he qualified the remark by “speaking here of the adoption of his improvised policy, not, of course, of its original suggestion. The honour of having been its earliest champion belongs of course to Mr Roebuck.” The report may have been derivative but that did not dint Durham’s “courage, patriotism and enlightened liberality”, or “the intellect and practical sagacity of its joint authors, Mr Wakefield and the lamented Charles Buller.” These men were compelled to give the colonies “the fullest measure of internal self-government” by allowing them “to make their own free representative constitutions, by altering in any manner they thought fit, the already very popular constitutions which we had given them.” A year after the report was released Charles Buller published, as noted earlier, *Responsible Government for the Colonies*, stressing “the practice of governing by means of those who command the confidence and cooperation of the Legislature.” It was Buller himself who in 1840, with the usual muted response to colonial issues in the Commons, easily carried the Canada Bill through parliament. This institutionalised the Wakefieldian view that sovereignty, if it was to underpin the systematic development of the empire, should initially remain with the crown.

---

151 In 1841, the Canadian Legislative Assembly adopted resolutions that for Todd signified “articles of agreement upon the momentous question of responsible government, between the executive authority of the
Whig historians may have overemphasised the actual influence of the report but few could deny the philosophical antecedents which informed Durham's agenda and which are coterminous with the ultimate evolution of the modern colonial state. To miss the connection between Durham and Roebuck, however fractured their relationship by 1839, is to miss the significance of the report. The radicals were always politically divisive and never garnered enough party cohesion to challenge the Whigs or the Tories. After the 1833 election the Radical party had over 190 representatives in the Commons and by the time Durham left for Canada most were unseated or had drifted to the centre establishing Whig and conservative alliances. Durham typified the latter and Roebuck's vitriol was part of an attempt to consolidate the radicals tenuous institutional standing.

But that was a political matter and when we consider the reformist rhetoric of Roebuck and members of the Durham mission that conflict becomes even more superficial. The year Wakefield released *Art of Colonization*, Roebuck published *Colonies of England*. Both were an attack on the performance of the Colonial Office, Roebuck describing the misconceptions of these "statesman, of no mean authority, who consider our colonial possessions an unnecessary burden...They believe them to be costly and mischievous additions to our dominions – maintained crown and the Canadian people." Therein it was resolved that: (1) the head of the executive government of the province being, within the limits of his government, the representative of the sovereign, is responsible to the imperial authority alone; but that, nevertheless, the management of our local affairs can only be conducted by him, by and with the assistance, counsel, and information of subordinate officers in the province. (2) That in order to preserve, between the different branches of the provincial parliament, that harmony which is essential to the peace, welfare, and good government of the province, the advisers of the representative of the sovereign, constituting a provincial administration under him, ought to be men possessed of the confidence of the representatives of the people; thus affording a guarantee that the well-understood wishes and interests of the people, which our Gracious Sovereign has declared shall be the rule of the provincial government, will, on all occasions, be faithfully represented and advocated. (3) That the people of this province have, moreover, a right to expect from such provincial administration the exertion of their best endeavors that the imperial authority, within its constitutional limits, shall be exercised in the manner most consistent with their well-understood wishes and interests. Todd, *Parliamentary Government in the Colonies*, 76–77.

152 Roebuck was with John Mill a co-founder of the Utilitarian Society, and, according to Thomas, was "socked in utilitarian ideas." In the first issue of the *London Review*, Roebuck urged that "science, order, and logic" displace "antiquated rules, and foolish customs sanctioned by time." Echoing Bentham's call for a codified constitutional model, Roebuck believed that "One uniform system ought to be established, framed with reference to the present condition of the people; and to do this, the whole mass of ancient rubbish should be completely swept away." See Thomas, *The Philosophical Radicals*, 230–31.
partly from pride, and partly from a false notion of gain resulting from them.”153 In 1840 Buller stated the same problem: “While the public are every day becoming more and more alive to the advantages of the Colonies, the Government and Legislature seem more and more disposed to regard them as mere subjects of difficulty and annoyance.”154 It was Herman Merivale who noted the common influence of Roebuck, Wakefield and Durham. This “young and sanguine sect of colonial reformers... contemplated a reconstruction and great extension of the British dominion beyond the seas, on principles of internal self-government and commercial freedom.” To be combined with a “fixed system of disposal of colonial lands”, and application of the land fund to the “purpose of procuring labouring emigrants from home”, the experiments did not work since while “they wished at once to give full municipal freedom to colonists”, they did not anticipate that the emancipated people would first demand “to get rid of their favourite land system.” While “the sect itself is already almost forgotten” they have nevertheless “left behind it great results.” Indeed, “The extraordinary success which has on the whole attended the early colonization of our Australian empire is due, in a far greater degree than is commonly imagined, to the closet speculations of a few students, and to clauses of a few acts of parliament reducing these to practice.”155 Merivale represented the changing view of the Colonial Office toward self-government during the Russell administration (1846-1855) and, as outlined in the next chapter, the Australian colonies would soon be the beneficiaries of this colonial reform discourse.156

The Durham Report was significant both as a constitutional document and a recognition of the increasing interdependence between domestic and colonial reform. While Durham’s theory of responsible government simply meant “that the Crown would henceforth consult the wishes of the people in the choice of its servants”, this was not a standard appropriation of English parliamentary convention.157 The immediate constitutional aim of the report was to ensure that the executive is chosen from the legislature while the Crown was to maintain discretion over the appointment of ministers. More importantly however, Durham made an effort to delimit the theory of the separation of powers and bring colonial constitutions into line with sovereignty theory. The problem with the

incumbent system was that the Executive exercised discretionary power and therefore the authority of the sovereign had been virtually dissolved. While the Governor was of course responsible to the crown he was rarely held to account by the Queen’s ministers in London. The Secretary of State for the Colonies was occasionally called on to give advice on local policy yet he usually only intervened in matters of imperial jurisdiction. Sovereignty was not exercised at the local level either, since the colonial legislature was a subordinate authority who had no influence over the executive. Thus the executive council, the law officers, and the heads of departments who were all nominated by the crown “retained their offices and power of giving bad advice”, however much their maladministration was opposed by the peoples representatives.

Durham was less worried about democracy than a unified and accountable system of public administration. Responsible government was to be established so as to coordinate the efforts of the legislature, the supreme law-making body; and the executive, the supreme administrator. This could only be achieved by an executive made up of a parliamentary majority. While this had, since 1688, been a feature of English political design, the executive had meted out its responsibilities to an uncoordinated and decentralized judicial system. Like Lewis, Merivale, Austin, and before them Bentham, Durham, along with Wakefield and Buller, was motivated for constitutional reform in the colonies by the ‘problem of population’ and the need to secure good government rather than abstract notions of popular right. In describing the workings of “an ill-contrived constitutional system”, the report noted the “practical mismanagement which these fundamental defects have generated in every department of government”, and the “causes of division which unhappily exist in the composition of society.” Durham was concerned that there were no constitutional devices which harmonised the relation between the imperial or executive power and the local legislature. The corollary to this was dissension, collision, and maladministration. The Canadian assembly which was “hopelessly excluded from power” began, in its frustration, to express “the wildest opinions”, and appeal “to the most mischievous passions of the people. without any apprehension of having his sincerity or prudence hereafter tested, by being placed in a position to carry [its] views into effect.”

While a parliamentary executive would solve Durham’s immediate problem, he was adamant that sovereignty remain exclusively in the Crown. If the Governor was to be responsible to the legislature then he would be an independent sovereign rather than a subordinate officer. The

---

Secretary of State, John Russell, and Cornwall Lewis agreed with Durham that, as Lewis stated, ‘a self-governing dependency is a contradiction in terms’. Canada was to be given virtual independence for domestic matters. Nevertheless, and this related to the attempt to have retain an absolute sovereign throughout the empire, London had to have the last say on matters of imperial policy. It was Hobbes who proposed that the dissolution of the sovereign would mean the dissolution of society and Durham, by retaining the veto authority of the Crown, wanted to unify the operations of the popular and administrative branches of government under a single sovereign head. In the parlance of the report, the most “beneficial operation of British institutions...link the utmost development of freedom and civilization with the stable authority of a hereditary monarchy.”

The Durham Report made consistent references to the superior growth and prosperity of the United States. The underdeveloped landscape of British North America contrasted with the “thriving agriculture and flourishing cities...common roads...canals and railways...communication and transportation...schoolhouses... courthouses and municipal halls” that greeted the observer south of the Canadian border. This was explained, argued Durham, by a system of government which was responsible, codified and unified under the sovereign authority of the President. While each of the American states possessed representative legislatures, they were ‘united’ by the prerogative power of the President, and the British crown exhibited a similar jurisdiction over the empire. For this reason, Durham believed that power in the American political system was not separated. A similar view was taken by William Molesworth in debate over the 1850 Australian Government Bill. Reasoning that “the British Empire would be dissolved” if sovereignty was vested in the colonial parliament, Molesworth noted that the United States, as a central republic, was founded on the same assumption: “Our colonial Empire ought to be a system of colonies clustered around the hereditary monarchy of England. The hereditary monarchy should possess all the powers of government with the exception of that of taxation, which the Central Republic possesses. If it possessed less, the Empire would cease to be one body politic.” While Molesworth might have applied the successful operation of sovereignty theory to the United States, the operation of

162 As Samuel Huntington has noted, while England cut off the Kings head, America retained its substance through the office of the President.
163 Egerton, Selected Speeches of Sir William Molesworth. 391. As was noted earlier, Cornwall Lewis, quoting James Madison, also described the union of executive and legislative power in the American political tradition. Lewis, The Government of Dependencies. 47.
government throughout the British empire was plagued by a breakdown in the line of responsibility and therefore by fragmentation, corruption, and inefficiency.

Speaking of the disposal of public lands, Durham remarked on "an operation of Government which has a paramount influence over the happiness of individuals, and the progress of society toward wealth and greatness." Edward Gibbon Wakefield first made this point at the 1836 Select Committee on the Disposal of Lands in the British Colonies. Therein he attributed the "wealth and civilization" of the United States to a centrally regulated land policy, and more especially a 1793 Act of Congress which set a minimum price for the sale of land at two dollars per acre. As in the Australian colonies, the uncertain practice of giving large grants in the Canadas had left much land "unsettled and untouched." By contrast, the system of minimum price had encouraged emigration and systematic settlement over a large portion of the United States. The isolated pattern of settlement in the Canadas meant that

Deserts are thus interposed between the industrious settlers; the natural difficulties of communication are greatly enhanced: the inhabitants are not merely scattered over a wide space of country, but are separated from each other by impassable wastes; the cultivator is cut off or far removed from a market in which to dispose of his surplus produce, and procure other commodities; and the greatest obstacles exist to cooperation in labour, to exchange, to the division of employments, to combination for municipal or other public purposes, to the growth of towns, to public worship, to regular education, to the spread of news, to the acquisition of common knowledge.

Physical separation was matched by a fragmented and irregular system of administration which virtually isolated the central legislature from any control of crown lands. There was no immediate solution to the problem since it was impossible to establish district councils or municipal

165 House of Commons, August 1, 1836; cited in Report, 204. Mills noted that of the Select Committee five were adherents of systematic colonization, one was hostile, two represented the Colonial Office, and only three colonists gave evidence. During proceedings "Wakefield was the chief witness, and he was seen to great advantage in expounding and developing his theory, answering objections, and condemning all other methods of disposing of waste land." In was not surprising that the Committee recommended minimum price to be established as an Act of Parliament and that arrangements were made for land administration to become directly responsible to the parliament. R. C. Mills, 21
government in such vast and underpopulated territory; and secondly, the uncertainty and partiality of a land system administered by unaccountable magistrates and clergy discouraged emigration. Such problems did not hamper a system of minimum price which operated through supply and demand and which was centrally coordinated to ensure against corruption, jobbing and patronage. In both Canada and Australia, the magistrates administered land grants to their own discretion. Durham complained therefore that “misgovernment” and “gross favouritism has prevailed.” This was a viscous cycle since the dearth of roads, towns, markets, skilled labour, and education hastened re-emigration from the British colonies to the border states. Durham suggested that a palliative might be found in a general overhaul of civil government and more particularly by appointing, on the advice of Wakefield and the 1836 Select Committee, a Central Land Board, based in London, and which would superintend a coordinated system of land distribution. Durham, or most probably Wakefield himself, enumerated the theory of systematic colonization as a justification for the board. It would be a boon both for the mother country and the colonies since funds from land sales were to be used to encourage emigration and thereby promote the investment of surplus British capital, find a place for the surplus domestic population, extend the demand for British manufactured goods, and *inter alia* augment colonial revenue.

While the issue of land policy might be addressed by a central board, Durham still faced the fundamental constraints of government founded on British law and centred around the justice of the peace. Durham’s immediate aim was to implement an elective and comprehensive system of municipal government based on the 1835 Municipal Corporations Act. An attempt to improve transport, communication, and public works, it found voice through a Commission of Municipal Enquiry headed by Charles Buller. Authored by a leading Benthamite and philosophical radical it was not surprising that the Commission’s report criticised the attempt to transplant the common law tradition to the Canada’s. This contravened not only practical efficiency but the theory of sovereignty: “The system of unpaid magistracy, as incidental to the criminal law of England, was

168 Report on the Affairs of British North America, vol. II, 329. This came to fruition in 1840 with the appointment of the Board of Land and Emigration Commissioner’s. Responsible to the Secretary of State for the Colonies the Board affirmed the need for an expert and accountable administrative body to initiate and delegate the management of land and population throughout the empire.
naturally introduced into the province with that law: and the utter unfitness of the people for such an institution is a striking instance of the imprudence of unadvisingly engrafting the code of one country onto another.” In addition to the transfer of the magistracy, the Report condemned the Establishment of the Church in the colony. The impracticability of this measure was demonstrated by the inadequate scope and standard of sectarian education. The report claimed that “It is impossible to exaggerate the want of education among the habitants; no means of instruction have ever been provided for them, and they are almost universally destitute of the qualifications even of reading and writing.” While opinion in England was largely resistant to any state intervention in education, Durham reflected the emerging faith in the expediency of such an affront to local self-government. Education was the most potent governmental rationality for managing, not territory, but population. The report then argued that the almost “entire neglect of education by the Government has thus, more than any other cause, contributed to render this people ungovernable.” Thus Durham attributed the agitation and unrest in Canada to an underdeveloped system of public instruction. Without education, public opinion was informed, not by the intellectual and moral capacity of the population, but the ill-considered impulse of faction and sedition. Still, education would continue to be neglected under the current constitutional framework, and Durham remarked that only “a strong popular government in this province would very soon lead to the introduction of a liberal and general system of public education.”

6. ‘The love of justice’ – education and the limits of the liberal state

This link between a comprehensive public education system and a strong legislative state picked up on a discourse, prominent throughout the 1830s, which linked education to the idea of ‘political improvement’. John Mill, who along with radicals including Roebuck, Chadwick, Place, Buller, and Henry Chapman, formed the core of this movement, complained that the “political improvement” through which “the general spirit and purposes of English administration can be amended” was not possible while “jobs and appointments are heretofore for the benefit of the aristocracy.” The country gentleman who dominated the Commons remained faithful to their local patrons and opposed any accretion of central executive authority. They were then the bane of political reformers concerned about the lack of a national police force, an efficient system of pauper management, municipal reform, and most significantly, a comprehensive system of public instruction. “The


aristocracy and Tories in England” had, according to Mill, “uniformly set themselves, as a party, in opposition to popular education; and have never been induced to acquiesce in it even partially, except as a means of rendering the people subservient to their own political church.” While the “education of the people, and the cares of government for its universal diffusion” was the one issue that “might reasonably have been expected to unite the favourable wishes of contending parties”, the Tory and Anglican alliance were not willing to compromise their autonomy in the localities. 173

Mill made these comments in his review of Henry Taylor’s Statesman, the classic nineteenth century text on bureaucratic government that argued that public policy should not originate in the parliament but should derive from expert, paid, and permanent civil officer in a department of state. Pondering the kind of fundamental innovations which might encourage education reform, Mill wondered why Prussia and the United States of America, “though differing as much as possible in respect of political constitution, have yet alike distinguished for the solicitude of both governments to render education universal among the people”? While Mill did not say as much, he implied that the operation of sovereignty in both these constitutions encouraged a clearly demarcated administrative system. In England sovereignty, and more specifically responsibility, was ambiguously proportioned between central and local authorities. While national policy could be established for mercantile and military matters it was difficult to unify social administration. Combined with the “sectarian acrimony” inherent in the denominational struggle over education, Mill observed that there was little immediate hope for a coordinated adoption of “administrative improvements” in educational governance. 174

While some scholars have highlighted the ambiguity of Mills concept of national education, particularly the extent of the states responsibility and the manner of its intervention – he once argued that “To educate common minds for the common business of life, a public provision may be useful, but is not indispensable” – Mills primary concern was not the level of state interference, but the promotion of a ‘self-educative’ culture. 175 Integral to the push for education reform was the general diffusion of knowledge and the creation of political literacy in the daily life of the industrial worker. Thomas Davidson typified the push for ‘self-government’, arguing that it was integral to the “welfare of every individual, the security of property, the maintenance of social order, the

development of national progress, and the foundation of all national freedom.” 176 Under this assumption, Roebuck, Place, Henry Chapman Edwin Chadwick, and John Mill attacked the Taxes on Knowledge and sanctioned increases in ‘useful knowledge’. 177 The issue of popular knowledge was a direct challenge to the exclusive and esoteric domain of common law authority. Popular education and ‘useful learning’ were to give the citizen a more active and, in Bentham’s terms, ‘vigilant’ role in the operation of legislative government. While not meant to denote popular democracy in the classical sense, it was nonetheless essential that civil society have the means, not only to engage in more efficient and skilled work, but to ‘internalise’ a transparent and integrated system of governance that relied on a symbiotic relationship between the state and its citizenry. In his article opposing the taxes on knowledge, Edwin Chadwick quoted Bentham to illustrate the importance of education and ‘publicity’ for the modern operation of justice:

By publicity the temple of justice adds to its other functions that of a school of the highest order, where the most impressive branches of morality are taught by the most impressive means; a theatre in which the sports of the imagination give place to the more interesting exhibitions of real life. Sent thither by the self-regarding motive of curiosity, men imbibe without intending it, and without being aware of it, a disposition to be influenced more or less by the social and tutelary motive, the love of justice. 178

177 Chapman was one of Britain’s most astute government al reformers, working closely with Roebuck and Mill on education and parliamentary reform. While Colonial Secretary of Van Diemen’s Land he was the most active political theorist leading to responsible government. See H. S. Chapman, Parliamentary Government in the Colonies; or Responsible Ministries for the Australian Colonies (Hobart: 1854). The ‘taxes on knowledge’ were part of the “Two Penny Trash Act”, legislated in reaction to Cobbett’s radical pamphlet Two Penny Trash, and henceforth making it a crime to publish any intelligent comment on matters of church and state for less than six pence. Edwin Chadwick, who worked with Bentham on the Constitutional Code, and who later initiated the centralization of poor relief and public health, wrote several essays on the “Moral and Political Evils of the Taxes on Knowledge.” See Westminster Review, July, 1831. In 1833 Roebuck, who was generally accepted to be the Radical’s leader in the Commons, proposed and succeeded in forcing the first parliamentary grant for public education (20 000 pounds), and the following year a committee was set up “to inquire into the means to set up a national system of education.” See Hansard, v. 24, 3 June 1834.
A primary vehicle for the dissemination of populist political literature was *Pamphlets for the People*, set up in 1835 under the editorship of Roebuck. His first article, “On the Means of Conveying Information to the People”, argued that the people were being prevented from “knowing what is being done by their so-called representatives”. And that it is “the duty of the government to seek rather for means of prevention, than of punishment: that is, that it should not so much seek to deter the citizens generally for breaking the law through the terror created by punishing such as we have broken it, as by taking precautions, that no one should have the desire to break it.”179 A politically, legally, and morally informed citizenship could govern themselves; but it required a modern state willing to maintain the intellectual standards of an active political culture. For this reason, Roebuck established *A Society for the Diffusion of Moral and Political Knowledge*, its aim being “to increase and consolidate the power of the people, by increasing their knowledge both of the principles of government and morality.” The franchise or the ballot would not ensure political liberty alone and a system of representative government required an educated and self-governing citizenship:

The object we have in view is to instruct the people in their relative duties as citizens; to point out to them the rights which they ought to seek to attain. We believe that no people can be well governed that does not govern itself; but also, that the mere possession of power by the people is not sufficient to ensure a right employment of it...the people if they were wise and moral, can govern themselves well.

The emerging legislative state was premised on a governmental rationality which demanded an educated and civically acquainted citizenry. Bentham’s sovereign state did not derive its authority from power but knowledge. It depended on the moral and intellectual acumen of a population who could ‘obey punctually’ and ‘censure freely’. Similarly, “The government, under the best system”, insisted Roebuck, “can be but a reflection of the people: if they be wise, you will produce a wise government; if they be ignorant, an ignorant one.” Education was the governmental rationality which underpinned the franchise in the radicals vision of parliamentary reform. In 1835 the vote may have been won but for Roebuck, “A democracy, of itself, is not all-sufficient”, and national education had to accompany any increase in popular representation.180

---

180Pamphlets for the People, 5.
Individual freedom was no longer the ‘reason’ of liberal state formation, and the aggregate effects of population were rapidly becoming the foundation of liberal political development. Roebuck believed that the state should harness “the resources and powers of the whole people to perform such necessary labours as cannot so well be done by individual exertion.” This was Roebuck’s euphemism for the central educational state. It was typified by his reaction to the expanded political rights contained within Lord John Russell’s Municipal Act. The Act was a boon for local government reform since, according to Roebuck, “the great body of the people in towns will be endowed with self-government in all matters relating to their town affairs.” Its provisions would be futile, however, unless “the people should acquire the knowledge needed for the right exercise of this power.” It is not surprising then that Roebuck was never committed to a participatory, popular democracy, remaining faithful to the ‘representative’ authority of responsible, ministerial officials:

We do not suppose indeed, that the mass of mankind can become legislators – or even acquire the knowledge which a legislator ought to possess. But we do hope and confidently trust, that the people generally may be so far instructed as to be able to judge accurately of the intellectual and moral worth of those whom they select as their representatives. ¹⁸¹

In the same way, the Durham Report did not simply reform the constitution of the legislature, the executive, and the judiciary, but complemented these with significant attention to the structure and output of educational institutions. The political machine could not be repaired in the long term without educating its component part, the citizen. However elementary, education must be comprehensively diffused, and this was never a virtue of local and familial educational governance. Mill summarised the point when he said that “The principle business of the central authority should be to give instructions, of the local authority to apply them. Power may be localised. but knowledge to be most useful must be centralised.” ¹⁸²

Prior to 1833 there had been no state provision for education. In that year, Roebuck initiated a Bill which secured a 20 000 pound parliamentary grant for education. While Lord Brougham’s Education Committee of 1818 made the original proposal for a public education system, it was rejected by the Commons and labelled, largely by the Anglican and Tory lobby which made up the National Society, the largest provider of education in England, a subversion of free trade and local

¹⁸¹Pamphlets for the People, 8.
self-government. The 1833 grant showed a shift in this attitude and such intervention was justified, as was stated in the preamble of the legislation, since

while it is expedient to do nothing which may relax the efforts of private beneficence in forming and supporting schools, or which may discourage the poorer classes of the people from contributing to the cost of educating their children, it is incumbent upon Parliament to aid in providing the effectual means of instruction where these cannot be otherwise obtained from the people. 183

A departure from the traditional liberal view of the minimal, non-interventionist state, this reasoning gained momentum during the 1846 debate over Lord John Russell’s Education Bill. Russell himself justified government intervention in public education in the following terms: “There are great questions of public health and public education, in which I think it behoves the Government and the Legislature to attempt to improve the condition of the people. I mean no particular plan— I allude to no scheme; but I will say this in regards the education of the people, that no plan can be good, or worthy the adoption of parliament, which does not sanction and maintain the principle of religious liberty.” 184 This was an attempt to resist the Established Church’s virtual monopoly of curriculum and school governance. Anglican control of education began with the Establishment of the Church in the seventeenth century and it reflected the delegation of social administration to parish officials, and more specifically, the Tory/gentry/Anglican alliance in the country. Henceforth, as Green explains, “The central state intervened in education only to shore up the privileges of the Anglican Church and beyond this played no positive role at all.” Green locates this phenomena in a social stasis which did not suffer the “protracted national conflicts which, in continental Europe, propelled absolute monarchs into those deliberate efforts of nation-building in which education had played such an important part.” 185 This account fails, however, to draw a distinction between the constitutional and jurisprudential assumptions of this period, and the developments in liberal state theory which precipitated nineteenth century reform. The centralization of school governance is explained by Green in terms of middle class hegemony based around liberal individualism and classical political economy. For him, the administrative

185Green, Education and State Formation. 241–242. A more detailed analysis of Green’s account is provided in the introductory chapter.
innovations of the mid to late nineteenth century actually went “against the grain of the dominant culture.” Green is then able to draw a correlation between the rapid expansion of state education and *laissez-faire* doctrine by arguing that the former was historically activated through “bureaucracy by stealth” rather than the outward machinations of a centralized and interventionist state.\(^{186}\)

Green has a point since, as he noted, voluntarism and religion shielded the state from any control of education until the Education Act of 1870. Yet this should not preclude a potent discourse in favor of state intervention which, while having little initial legislative success, layed an important foundation for future reform. As the following debates illustrate, it would be wrong to argue that ‘Spencerian’ individualism and the “traditional liberal hostility to the state...constituted part of an interwoven cultural fabric which provided the backdrop to all thinking on education in this period.” While Green gives passing reference to the pro-centralization opinions of John Mill and Matthew Arnold, he locates these in a passing crystallization of the “contradictions in the dominant ideology.” These middle-class advocates of “professional expertise ” simply recognised that “whilst maximum economic advantage was to be gained through limitation in the cost and scope of government, the longer term interests of capital would require such reforms in administration and social policy as to make government expansion necessary.”\(^{187}\)

In returning to debate over Russell’s 1846 Bill, we notice that advocacy of state interference was not merely, along with municipal reform, public health reform, and civil service restructuring, a “series of compromises designed to alleviate social conditions within the limits of prevailing liberal opinion.”\(^{188}\) Green’s teleological analysis explains the rise of state schooling as a continuous movement from ‘old’ liberalism to ‘new’ liberalism, thereby failing to grapple with a fundamental change and in the constitutional logics of the English state. While Green described conflicting opinions about state theory, these were usually fuelled by pragmatism and political expediency. Closer inspection shows that these debates exposed a principled and enduring conflict about the limits, structure, and authority of English government. This was illustrated by the response of Thomas Duncombe, the member for Finsbury, to Russell’s proposal to centralize the operation of teacher salaries and training colleges in the Committee of Council of Education. Since the latter was appointed by the executive, and not the parliament, Finsbury demanded that “a select committee be


\(^{188}\)Green, *Education and State Formation*, 278.
appointed to inquire into the justice and expediency of such a scheme, and to inquire whether the regulations attached thereto do not unduly increase the influence of the Crown, invade the constitutional functions of Parliament, and interfere with the religious convictions and civil rights of her majesty’s subjects.”

Duncombe feared the operation of the executive as an absolute sovereign and wanted to retain a popular, and therefore local jurisdiction, over education. In opposition to this amendment, Macaulay, who served on the Council of Education, remarked that Duncombe had not adequately debated the question whether “the state ought to interfere.” Noting that “The country is excited from one end to the other by the great question of principle”, Macaulay insisted that the resolution of the right of the state interference would decide the fate of education reform.

If it could be assumed, argued Macaulay, that “it is the duty of every government to take order for giving security to the persons and property of the members of the community”, then this should imply a government mandate over education. This view was supported by another member of the Council of Education, James Kay-Shuttleworth, who remarked that “The authority of Government, especially in a representative system, embodies the national will. There are certain objects too vast, or to complicated, or to important to be entrusted to voluntary associations; they need the assertion of the power, and the application of the resources of the majority.”

Macaulay believed that an active liberal state was supported by laissez-faire political philosophy. While Adam Smith opposed government intervention in the arts, the sciences, and the economy, he made it a maxim of political economy that the state, in order to imbibe a civic morality among the expanding industrial population, should control the education of the lower classes. Without popular education government would be forced to continue its archaic rituals of social control. The “stocks and whipping posts, treadmills, penal colonies, and gibbets” with which the local justice upheld the venerable edifice of the common law highlighted a crises in the constitutional basis of British government. The advance of liberalism had been stalled by an inability to re-figure the principle logic of liberal constitutionalism. This problematic was ably illustrated by the continuance of transportation to the Australian colonies. Describing the Norfolk Island and Van Diemen’s Land penal colonies as a “hell on earth”, Macaulay argued that these dumping grounds for the criminal classes could have been avoided if “we had expended in training honest men but a small part of what we have expended in hunting and torturing rogues.”

---

189 Lord Macaulay, “A Speech delivered in the House of Commons on the 19th of April, 1847”, 400.


These concerns had not as yet impacted on liberals such as Duncombe or Edward Baines, a newspaper editor and free trade proselytiser for the Leeds manufacturing community. Baines argued that schools should remain within the province of local control. He showed that Education had not "hitherto been under the guidance of the State in England", and should remain "free" and be "left to the people themselves." With Duncombe, he insisted that state education would unduly increase the power of the crown. This continued the Whig apprehension about the accretion of executive power and the inability of free trade liberals to digest the increasing influence of sovereignty theory. As Weber observed, it was a peculiarity of English state formation which tied the interests of the urban merchant class with the country justices. As members of the Commons, this peculiar breed of English gentleman were able to retain their power and emoluments by ensuring that public policy was delegated to the localities. It was their 'particular' interest in preserving the vague symmetry between central and local authority in the English state which caused them to rally against the attempt to restructure government around any national interest.

In 1853 Russell drafted another Education Bill which was duly opposed by a delegation including members from the Conference of Voluntary Educationalists, the three denominations (Presbyterian's, Independents, and Baptists), and members of Parliament including Edward Baines. The voluntarists assured Russell that their schools would "bear a comparison with any that received government aid." A petition was presented from the Bradford Town Council which condemned the Education Bill on the grounds that "it will for the first time recognise by law, and will greatly tend to increase, the unconstitutional and already excessive power of the Committee of the Council on Education." The Committee was to distribute the school-rate, while the jurisdiction of the municipal council was to be limited to levying the tax and registering the scholars entitled to share it. The proposed school rate would, argued the petition, "operate unjustly on the rate-payers of the municipal boroughs, who will not only be subject to taxation for their own schools, but also for grants to rural districts and non-municipal towns, paid out of the general revenue of the nation." The petition concluded with an exegesis on the evils of government intervention: "the proposed measure tends to the consolidation of an educational despotism over all the public schools of the nation, and if carried, cannot fail to extend the political influence of the Government, to incur a wasteful

---


application of the national funds, and to destroy that noble spirit of self-reliance to which this nation owes so much of its moral greatness, and its progress in arts, science, and civilisation." 194

While this appeal to Saxon antiquity was an attempt to stem the increasing rejection of local autonomy within the discourse of administrative reform, the cultural resilience of local self-government could no longer placate the realities of political modernization. In 1855 Pakington, the former Secretary of State, introduced a "Borough Education Bill" which, by centralizing school governance within a central board, was to mimic school administration in Prussia. William Unwin, in a pamphlet devoted to repudiating this initiative, argued that the Act would interfere with the "the vigour and elasticity of our national life." Deriding the continentalism of Mathew Arnold and John Mill, Unwin observed that compulsory state systems in Prussia had failed: "even with compulsory laws, and the combined action of the most completely organised body of schoolmasters and clergy and police known in the world, the Prussian organisation has, as we have seen, failed to secure the universal education of its citizens." 195 Opposition to the Bill was justified as a principle of free-trade: "if we would be a free people we must be freely trained — that so far as education is a secular interest it should be free like trade; so far as it is an intellectual process like science, speech and the press." 196 By contrast, the Prussian system did not "enable the people to act upon the government, but enabled the government to act upon the people, for, at every possible point, care is taken to guard and strengthen the power of the ruler, and hem in and restrain the free action of the ruled." While the parish elects the local teacher it has "no voice in determining the character of teacher-training, or power to dismiss." The parish pays the school-rate, builds the school, provides maintenance, and enforces compulsion but the central power controls the appointment of the local committee. These arguments failed to subdue the broad support for centralization, Unwin complaining that the "British people — Churchman and Dissenters, Ultra-Conservatives and Philosophical Radicals, Country Gentleman and Lancashire Manufacturer's, all of whom probably had hard words to utter against Prussian policy, are endorsing it." 197 The Education Bill was to make local committees subject to government veto and teachers were to be responsible to central inspectors. Pakington's Bill was a recognition of Prussia's institutional capacity to deal with the problem of population.

---

194Cited in "Education Controversy" — Colonial Times, September 20, 1853.
196Unwin, Russian Primary Education, iv.
197Unwin, Russian Primary Education, iv.
Centralization of school governance was part of a science of government which was beginning to employ comparative political technologies in the rationalisation of public policy. Divorced from the enlightenment and European romanticism, this was a science willing to compromise and improvise.

Pakington’s Bill was rejected in the Commons. The continuing failure of legislative reform inspired the establishment of several influential lobby groups – including the National Education League, the Manchester Education Aid Society, and the Birmingham Education Society – who hoped to effect greater political commitment to nationalisation. The National Education League was established in 1869 and its object was the “establishment of a system which will secure the education of every child in England and Wales.” Time had diluted the anti-statism of Unwin and Baines, the League insisting that “where voluntarism and denominationalism have failed, the State should step in; and that, the State should be called upon to recognise the highest of all its duties, the duty of saying, that every citizen shall be brought up to be able to understand the laws he is bound to obey, and to understand what are the duties of a citizen.” It was proposed that some features of local governance be retained including elected local boards and a local rate. However the board was to be overseen by state inspectors and the state revenue was to contribute three-quarters of education funding.

Assertions about the primacy of the state in education were complicit in the increasing attempt to link education with the science of political economy. In 1865, E. Brotherton argued that “popular education is indispensable in a true and complete political economy...Political Economists have hitherto looked almost exclusively at the dead material things with which the science deals, and have too much overlooked the more important human elements which ought to be primary.” Considering the “more complex manufacturing and trading organisation which we possess”, Brotherton believed it had become “needful to have a corresponding perfecting of social and moral relationships.” As a tool of political economy, national education would work as self-correcting mechanism that could regulate the ‘population of population’. Most importantly, it would, through moral and vocational instruction, serve to balance the social and class divisions which Brotherton believed was “one of the main causes of the present evil condition.” Education reform needed to be

---

198 “Report of the First General Meeting of Members of the National Education League” Birmingham, 12 & 13 October, 1869.
199 “Report of the First General Meeting of Members of the National Education League” Birmingham, 12 & 13 October, 1869.
encoded within an organic science of political and social economy which recognised that "every
part of human life is now more strictly connected with, and involved in, the changes of every other
part."201 This idea was later embodied in T. H. Green’s organic conception of ‘constructive’
liberalism. Green fleshed out Austin’s abstract theory of sovereignty, arguing that

The sovereign should be regarded, not in abstraction as the wielder of coercive force, but in
connection with the whole complex of institutions of political society. It is as their sustainer,
and thus as the agent of the general will, that the sovereign power must be presented to the
minds of the people if it is to command habitual loyal obedience; and obedience will
scarcely be habitual unless it is loyal, not forced.202

Kay Shuttleworth forwarded a similar argument in the 1846 minutes of the Committee of Council
on Education:

The statesman who endeavours to substitute instruction for coercion; to procure obedience
to the law by intelligence rather than by fear; to employ a system of encouragement to
virtuous exertion, instead of the dark code of penalties against crime; to use the public
resources rather in building schools than barracks and convict ships; to replace the
constable, the soldier, and the gaoler by the schoolmaster, cannot be justly suspected of any
serious design against the liberties of his country, or charged with an improvident
employment of the resources of the state.203

This universalisation of governmental reason signified a significant step in Foucault’s linkage
between population, political economy and security. It was the redeployment of absolute
sovereignty within liberalism which universalised individual interests and imbricated them within
the logics of modern governmental rationality. The judicial ‘protection’ offered by the social

202In P. Harris & J. Morrow (eds.) T. H. Green: Lectures on the Principle of Political Obligation and other
Writings (Cambridge: Cambridge University Press: 1986); In the words of Francis and Morrow, “Green was
able to provide a basis for a positive conception of the state’s role without abandoning the concern with
individual freedom which attached his political thought to contemporary liberalism.” M. Francis & J.
Morrow, English Political Thought in the Nineteenth Century, 278; see M. Francis. “The Nineteenth Century
203J. Kay-Shuttleworth, “The Minutes of 1846”, in Four Periods of Public Education as Reviewed in 1832,
contract and the separation of powers no longer guaranteed individual and economic freedom, nor a natural harmony of interests. Invoking the analogy of the industrial machine, Brotherton described “thousands of wanderers among its revolving shafts and teething wheels, who are uninstructed respecting its dangers, and we take no pains either to train them for duty, or to fence of the machinery.” This problem would continue while the working classes are separated from the “faculty of government.” Foucault’s governmentalized state approached this separation of state and civil society in conventional liberal state theory by making this relationship indivisible. Thus Foucault describes new mechanisms or modes of state intervention whose function is to assure the security of those natural phenomena, economic processes and the intrinsic processes of population: that is what becomes the basic objective of governmental rationality. Hence liberty is registered not only as the right of individuals legitimately to oppose the power, the abuses and usurpations of the sovereign, but also now as an indispensable element of government rationality itself.

Liberty no longer then simply meant the protection of particular interests. Indeed, it was Shuttleworth who condemned the voluntarist lobby by arguing that “freedom of education” was a function of the paternal and guiding hand of the central government, to be extended in this instant through compulsory legislation. The idea that liberty was a measure of the ability of government to ‘secure’ the universal interest was integral to the new school of ‘social economy’ which gave classical political economy a sociological perspective. The science of social economy was institutionalised through the establishment of the National Association for the Promotion of the Social Sciences, and its members included Edwin Chadwick, Lord Brougham, Lord John Russell and Earl Grey. Grey, now the Earl of Shaftsbury, surmised the aims of the association as a response to claims, made largely by Toulmin-Smith, that social economy was a screen for ‘centralisation’.

---

204 Brotherton, Popular Education and Political Economy, 30
207 At the Second Annual meeting of the Association at Liverpool, October 11, 1858, five departmental jurisdictions were defined as objects for debate and research. They included 1. Jurisprudence and amendment of the law; 2. Education; 3. Punishment and Reformation; 4. Public Health; 5. Social Economy.
Our object is to excite that interest, to stimulate inquiry, and to collect all the zeal and energy that we can in every district and individual locality, and that each separate locality should be the foundation, the centre, the alpha and omega, of all the operations of that locality...Our object is that every person...shall be a centre in himself.\(^\text{209}\)

But this was not to imply a logic of free trade individualism. The individual may be the ‘centre in himself’ only by relating to wider aggregate concerns of the population. State forms should not develop out of the need to protect individual autonomy but to observe each in relation to the whole. Thus it was a maxim that state formation be informed by empirical method. The social sciences defined a government rationality which would “inquire...research...and collect experience” and, in addressing problems of ‘health, moral habits, and education’, would submit “as many minds as can be brought to bear on this great aggregate subject.” It was the subjectification of this governmental rationality which would harmonise and unify the political state with the economic individual. It was through the social sciences that the Earl of Shaftsbury hoped to “create and to sustain, a true, firm, paramount and wise public opinion.”\(^\text{210}\) Public opinion was the aggregate expression of what Bentham called the ‘the love of justice’, and would be best cultivated through public education. The President of the Department of Education, W. F. Cowper. agreed that “There is no security for our country, for its institutions, its prosperity, its greatness, or its safety, except in the good sense of the people. This sense...requires to be cultivated [and] we are bound, I conceive, not to rest satisfied until we are the best educated nation in Europe.”\(^\text{211}\) In a later pamphlet this idea was described as the “science of citizenship”. a notion which assumed that

---

\(^{209}\) Earl of Shaftsbury, “The Health, Physical Condition, Moral Habits, and Education of the People”, at a meeting of the National Association for the Promotion of the Social Sciences, London October 11, 1858. At the same meeting John Crawford, giving a lecture on the important issue of “Land and Money; or, Emigration and Colonization”, summed up the aims of the Association by arguing that “there is something rotten in the state: and that political economy which has attended to the accumulation of wealth, without regard to moral considerations, has been at fault: and that social economy which teaches the equitable distribution as well as accumulation of wealth fails to be practiced.”


\(^{211}\) W. F. Cowper, “On Education”, at a meeting of the National Association for the Promotion of the Social Sciences, London October 11, 1858.
public welfare is the sole end of that common action of the governed which is called government, and that a thorough measure of useful education is a necessary means to that end...the endowment of such systems of public education...will prepare the citizens for the duty of citizenship [which is] in the highest degree a matter of public expediency and legislative action.  

However, and this a point not taken up in enough detail by Foucault, the idea that the state was not exterior to society but comprised the ‘common action of the governed’ was not easily imposed on a constitutional logic permeated by the long duree of local self-government. The Edinburgh Review, when overviewing the 1861 Committee appointed to Enquire into the State of Popular Education – which recommended a reduction of state influence over schools – noted that education was becoming the most “bureaucratic of all offices existing in this country.” Indeed, in “this matter of popular education, the centralized interereence of the state has been carried to the last excess”, thereby contravening the “proud distinction in this country that we conduct our affairs without the intervention of the state.” The Committee of Council on Education promulgated a Revised Code for educational administration which actually proposed a decrease of public funding for education. Since 1846, the parliamentary grant for education had significantly increased without any corresponding improvement in the quality and output of the system. Robert Lowe, the vice-president of the Committee of Council on Education, then implemented a method of ‘payment by results’ which was to rationalise the provision of education in proportion to the performance of the schools. Grants to teacher training colleges were to be stripped and invested in managers who would conduct examinations to determine the relative levels of public funding. This effort to “economize”, as Lowe called it, was less a rejection of the right of the state to interfere in education than an extreme rationalisation of central-bureaucratic control of schools. The Revised Code actually increased the number of inspectors to ensure this efficiency. Mathew Arnold, the Inspector of Schools, thus called it a “a plan of immense examinations, more vast, more expensive, and more

---

213 The commission attracted intense debate and showed a distinct division in ideas about the limits of the liberal state. While Mathew Arnold and Kay-Shuttleworth wanted to maintain state intervention, a backlash emerged, headed by the Review, which insisted that “Government should never under any circumstances take the initiative and should neither make grants nor order inspection without local applications for the same.” A School Manager, National Elementary Education and the New Code (London: 1861), 9.  
unwieldy.” But for Lowe, this was a “definite, final, and precise” system which conformed to his narrowly utilitarian view that the state simply has a “business to promote education.”

Arnold and Kay-Shuttleworth were the most outspoken opponents of the Revised Code. Both expressed a deep fear that Lowe had undone the hard fought attempts to intervolve the state and education. Shuttleworth argued that the Code, by retracting the system of examining results in the education of the pupil teachers, “releases the teacher from all direct obligation to the State, and at the same time renders the income much more uncertain and insecure.” The previous teacher-training system, which was initiated by Shuttleworth in 1846, made the teacher the agent which connected the state and the people. Describing this method as “painful and repugnant to the minds of every Englishman”, the Edinburgh Review complained that the certified schoolmaster was “alone the product of government – taught, trained, inspected, salaried, and protected by a highly centralized system of administrative authority.” Shuttleworth replied that the state – “the most able governing minds in the counsels of the sovereign power” – must be responsible for “pauperism, crime, and disorder”, and that the new code destroyed its ability regulate “national ignorance and barbarism.” Under Lowe’s system, the inferior level of achievement in schools for the poorer classes would limit their access to state funding. Lowe was an economic rationalist who attempted to justify bureaucratic activity in terms of supply and demand. Shuttleworth assured him that it “is impossible to justify any part of the Revised Code by an appeal to the principles of free trade.” He insisted that “This work is not done for pecuniary profit”, and is “done under the conviction...that the wealth and strength of States, and domestic peace and prosperity, depend on the intellectual and moral elevation of the people.” The notion of a liberal state formed, not to protect individual liberty or private property and free trade, but to act in the universal interest, justified a comprehensive state assisted system of education. As Shuttleworth argued:

We are prone, in this country, to even an exaggerated confidence in the principles of self-government, having discovered how little the Government can do for enterprise in trade, there is a cry for free trade in education. Yet there are many things in which self-

---

217 By 1861, education employed more staff than the Secretary of State and the Home Office combined.
government needs the aid of central intelligence and will. Parliament and the Executive
Government confer on our municipal corporations the powers necessary to light, sewer, and
pave our towns; to provide an adequate water supply, markets, and a borough police.
Without the central will and intelligence, we could not act in a corporate capacity. 219

This reasoning was echoed by Mathew Arnold:

The State can bestow certain broad collective benefits, which are indeed not much if
compared with the advantages already possessed by individual grandeur, but which are rich
and valuable if compared with the makeshifts of mediocrity and poverty. A good thing
meant for the many cannot well be so exquisite as the good things for the few; but it can
easily, if it comes from a donor of great resources and wide power, be incomparably better
than what the many could, unaided, provide for themselves. 220

Arnold, with Henry Taylor, Kay-Shuttleworth, Bagehot, J. S. Mill, and later theorists like T. H.
Green and D. G. Ritchie, was part of a conspicuous shift in British constitutional doctrine. 221 It was
through the re-emergence of sovereignty theory that the liberal state transcended the whiggish and
aristocratic pretensions of minimal government. Mathew Arnold well surmised this development:

Aristocratical bodies have no taste for a very imposing executive, or for a very active and
penetrating administration. They have a sense of equality among themselves, and of
constituting in themselves what is greatest and most dignified in the realm, which makes
their pride revolt against the overshadowing greatness and dignity of a commanding
executive.

Describing the increasing separation between aristocracy and democracy, Arnold noted that the
common law tradition had lost its ability to govern. The objections to state education, whether
expressed as a principle of free trade, liberty, or 'self-reliance'. were based on constitutional

219 James Kay-Shuttleworth, “Popular Education”, in D. A. Reeder (ed.) Educating our Masters (Leicester Uni
Press: Leicester, 1980), 70, in Hunter, Rethinking the School. 68.
220 Cited in P. Smith & G. Summerfield, Mathew Arnold and the Education of the New Order: A Selection of
221 In 1867 Beales commented that Arnold was the mainstay of the “thought which led to modernization a
University Press. 1967), 12.
assumptions that were “less and less qualified to command and captivate.” The separation and parcellization of authority in the aristocratic state failed to facilitate a “rallying point for the intelligence and for the worthiest instincts of the community.” This point had been realised by the founders of the American Republic, who comprehended that “security for national dignity and greatness” was to be found in the “authority of the State.” Accordingly, the American federalists “deplored the weakness and insignificance of the executive power as a calamity.” The advantages of state sovereignty in American constitutionalism had been applied by Molesworth and Durham to colonial reform and, as with Arnold, it justified executive power without comprising liberty, of which America was of course the great protector. It was therefore necessary for the “English spirit to accomplish an immense revolution.” Once the population were “admitted to a wider sphere of thought, living with larger ideas, with its provincialism dissipated, its intolerance cured, its pettiness purged away, - what a power there will be, what an element of new life for England!” And so Arnold arrived at the means for developing this “great and beneficent power” - the “public establishment of schools” so that they may be “cheap and accessible to all.” State interference in education had become crucial at this juncture of what Corrigan and Sayer called ‘state formation as cultural revolution’. It was then in regards to education reform that Arnold most ably justified the expediency of ‘state-action’:

if State-action has often its inconveniences, our self-reliance and independence are best shown in so arranging our State-action as to guard against those inconveniences, not in foregoing State-action in fear of them. So it was with elementary education. Mr Baines says that this was already beginning to improve, when government interfered with it. Why, it was because we were all beginning to take real interest in it, beginning to improve it, that we turned to government - to ourselves in our corporate character - to get it improved faster.

These assumptions had vast implications for the future of both English and colonial state formation. Arnold’s theory of the state signalled a confluence of discourses about colonial policy, social administration, municipal organisation, political economy, social economy and education. These

222 M. Arnold, Democracy (This was Arnold’s report on the condition of education on the Continent which praised the ‘democratic’ system’s evident in France and Prussia. The report part of the 1858 Royal Commission on Education was published in 1860), in Smith & Summerfield, Mathew Arnold and the Education of the New Order, 60–65.

223 M. Arnold, A French Eton, 152–53.

224 Arnold, A French Eton, 140.
were the practices which promoted a new governmental rationality and which caused a re-theorization of the limits of the English institution of responsible government. The central executive of the liberal state was to rapidly increase its jurisdiction over the population as an act of liberty rather than despotism. By 1870 that idea was gaining currency within educational debate, with John Stuart Mill, commenting on the ‘New Education Bill’ in a meeting of the National Association for the Promotion of Social Science, supporting Edwin Chadwick’s proposal for a greater centralization of school governance. The creation of a Minister of Education, along with a permanent board of expert civil servants, was justified within a theory of

popular government in which statesman, and thinking and instructed people generally pressed forward with their best thoughts and plans, and strove with all their might to impress them on the popular mind. What constituted the government of a free and popular one was, not the initiative left to the general mass, but that statesman and thinkers were obliged to carry the mind and will of the mass along with them; that they could impose these ideas by compulsion as despots could."

It is with these thoughts that we might begin to comprehend the evolution of centralized educational governance in Australia.

Chapter 5

The Evolution of Responsible Cabinet Government in New South Wales and Tasmania (1830–1860)

1. Introduction

In 1867 William Hearn, the legal positivist and first Professor of Law at the University of Melbourne, noted that “The agency through which the Crown exercises its administrative functions has in recent times undergone a remarkable change.” He continued that

It no longer consists of ministers acting independently of each other, or of a council differing widely on every point of public policy. The Administration is now a united body, agreed generally upon all the leading political questions of the day, consulting upon the general policy which each department should pursue, and tendering to the sovereign its own advice. 1

Hearn was the leader of a new generation of Australian constitutional theorists who had embraced John Austin, the command theory of law, and the idea that parliamentary government should be unified through the fusion of executive and legislative power in the cabinet. While he acknowledged that “Parliament possesses no independent authority”, and is “merely the Council of the Crown”, he believed that sovereignty is now “exercised in a new and peculiar manner.” For Hearn, “Its agent is now in the Cabinet.” 2 Indeed, by the 1860s cabinet government had become an established convention in Tasmania and New South Wales. This became possible

1 W. E. Hearn, The Government of England: Its Structure and its Development (Melbourne: George Robertson, 1867), 11. In 1883 Hearn, drawing on the Roman jurisprudence of John Austin and Jeremy Bentham, proposed a codification of the laws of Victoria that would virtually supersede the common law. He argued that the admixture of common and statute law was “fragmentary, voluminous, difficult to find, uncertain when found, and altogether beyond the reach of non-professional persons.” Codification would then break down the esoteric domain of common law custom which maintained a complex and irresponsible system of government. See Hearn, The Theory of Legal Duties and Rights: An Introduction to Analytical Jurisprudence (Melbourne: 1883). 359.
when the new constitutions of 1855–6, which adopted the Durhamite model of responsible government, gave colonial parliaments a mandate to govern the population with centralized and bureaucratic efficiency rather than simply represent the particular interests of the propertied classes. Administrative historians such as Wettenhall have described how “The notion of the collective responsibility of Ministers, of the cohesion of a Cabinet, was thus recognised, facilitating not only the eventual capture of the citadel of government by the great political parties but also the shift in the locus of government responsibility to the legislature.”

It was Walter Bagehot who observed that advanced colonies were ripe to appropriate parliamentary government in its most modern form. This was particularly evident in the adoption of an elected upper house in Tasmania. While this initiative was stifled by the conservatives in New South Wales, the Tasmanian experience showed a willingness to substitute the English House of Peers, which was designed to check and balance popular government, with an elective system which ensured that parliamentary majorities would enjoy a clear mandate to rule. If, as so many scholars have argued, the English constitution was finally transposed to the colonies in the 1850s, then the latter had shifted in important ways from its early modern common law foundations. Nevertheless, the highly schematic state structure that developed in Tasmania and New South Wales were the resolution of a complex and often contradictory constitutional polemic. It is therefore difficult to provide an elliptical account of constitutional development in the Australian colonies in the mid-nineteenth century. This period marked a confused constitutional struggle that cannot be reduced to a battle between the local parliament and the imperial executive on the one hand, or between conservative and liberal interests on the other. The purpose of this survey is, therefore, to position debate surrounding the issue of self-government within a wider discourse concerning the design and jurisdiction of the liberal state, and as a result, to better understand the constitutional dynamics underpinning the emergence of the centralized educational state in nineteenth century Australia.

The centralization of colonial administration within the cabinet was not, as many historians have argued, merely an expedient to cope with the social, political, and economic stresses of the time. While the ‘problem of population’ demanded an increase in the civil jurisdiction of the central government, this could not have been possible without a shift away from the idea of the negative liberal state. Bagehot, in the same year that Hearn’s constitutional treatise was published, remarked that “At this moment, in England, there is a sort of leaning towards bureaucracy.” This was largely because the Prussians, who Bagehot described as the

---

“bureaucratic people...par excellence”, had “exited a kind of admiration for bureaucracy, which a few years since should have thought impossible.” It was in the highly centralized and bureaucratized Prussian state that, as discussed earlier, scholars have found the origins of mass compulsory schooling. By contrast, the British or colonial polity could not easily make the jump from a parcellized system of government to a unified bureaucratic state. Bagehot recognized the resilience of localism in British political culture, yet believed that under the recently formed conventions of parliamentary government, the liberal state had invented a system of bureaucracy superior to the Prussian model. Bureaucracy in Prussia was independent of the cabinet. This lack of ‘responsibility’ caused administration to become, in the words of Bagehot, “technical, self-absorbed, [and] self-multiplying.” Bagehot then claimed that the evolution of collective ministerial responsibility in the Anglo-liberal state avoided this problem since changing heads of departments would keep the permanent civil service accountable. Quoting George Cornwall Lewis, who adorned the permanent civil service as Chancellor of the Exchequer, Home Secretary, and Minister for War, Bagehot noted that

It is not the business of a Cabinet minister to work his department. His business is to see that it is properly worked. If he does much then he is probably doing harm. The permanent staff of the office can do what he chooses to do much better, or if they cannot, they ought to be removed. He is only a bird of passage.

For Bagehot, a responsible minister fulfilled the maxim, and this a point he derived from Hobbes, “that there must be a supreme authority, a conclusive power, in every State on every point somewhere.” This has been a crucial point for administrative historians such as Wettenhal, who described how ministerial responsibility caused a “radical transformation in the role of the Commons from that of the opponent of the executive government to that of source of government power.” For Wettenhal, these developments were a byproduct of industrialization and a demand for “government action to protect public health and safety, to regulate conditions of employment in factories and to ensure that at least the rudiments of education were provided.” Thus says little, however, about the jurisprudential and constitutional debates that carried these reforms. It was Bentham and Austin’s critique of the common law that allowed the administrative revolution to remain such an enduring feature of liberal political development. Traditional liberal constitutional conventions such as checks and balances and individual ministerial responsibility belonged to a political schema bent on upholding the sanctity of the

---

5 Bagehot, The English Constitution, 194.
7 Bagehot, The English Constitution, 214.
rule of law, the social contract, and limited government. If the state was to intervene in civil society to 'protect public health and safety', a shift in the boundaries of liberal constitutionalism was required. Responsible government became the tool to affect this change since it effectively redeployed sovereignty so that every act of government was strictly accountable to a single sovereign power. Hitherto, sovereignty had been used to limit government action. Henceforth, it would be a means to expand and rationalise the central state. The importance of responsibility in the revamped liberal constitution was surmised by Earl Grey:

It is no arbitrary rule, which requires that all holders of permanent office must be subordinate to some minister responsible to parliament, since it is obvious that, without it, the first principle of our system of government – the control of all branches of the administration by parliament – would be abandoned.9

The issue of responsibility was the means through which colonial government was able to embark on a rationalisation of its hitherto uncoordinated administrative framework. Still, any successful adoption of ministerial and cabinet government would firstly require the transformation of a common law constitution which, fortified by the colonial gentry since the 1823 Act for the better administration of justice, would not easily succumb to the idea of the legislative state.

2. A brief historiography of responsible self-government in Tasmania and New South Wales

It is this constitutional discourse which, as described in chapter two, has been marginalised by a historiography dominated by the 'enlightenment' view of Australian political history. In this sense, parliamentary government evolved as an inevitable reaction to a series of historical exigencies and circumstances which included the political ascendancy of the liberal-democrats over the hereditary claims of the landed and squatting classes; the attendant need to urbanise and industrialize a pastoral based economy; the need to superimpose a centralized governmental framework over a geographically scattered population; and general dissatisfaction with an imperial executive who carried on a noxious policy of transportation and maintained a monopoly over colonial land and revenue. This narrative of the 'pilgrims progress' towards enlightened self-government makes intellectual and constitutional assumptions that devalue complex debates concerning the nature of colonial law and government. Scholars have generally agreed that the move to a self-governing, cabinet system of government was less

Historians such as Brian Dickey, for instance, have argued that much of the schema for self-government contrived by urban liberal reformers who opposed William Wentworth and the old landed hierarchy was “as much [an attempt] to create a situation in which the old officials could not continue in office under the new regime as it was a consideration of the modes of applying the machinery of government.” Dickey thus relies on analysis of a battle between competing political interests and avoids the broader theoretical debates, which, it is argued herein, underpinned the process of political modernization in the colonies. This approach was indicative of a generation of constitutional and political historians including A.C.V. Melbourne, W. G. McMinn, John Ward and Terry Irving who have focused on the practical necessities of a self-governing parliament rather any far-reaching consequences for the administrative and bureaucratic capacity of the colonial state. As described elsewhere, Melbourne and Ward characteristically argue that the adoption of a bicameral legislature was not a contrived attempt to secure responsible cabinet government, as had been established in the Canada’s, but was largely an effort to foster ‘self-government’ in colonial affairs. Referring to the petition authored by conservatives and squatters and presented to the House of Commons in reaction to the 1850 Australian Colonies Government Act, Ward notes that the document did not suggest responsible government but the need to secure pre-emptive land rights, thus illustrating how both liberal and conservative reformers were less concerned about an “irresponsible executive” than their own control of the legislature.

Unlike Melbourne and Ward, Irving argued that the system of responsible cabinet government developed in Canada influenced the tenure of self-government in New South Wales, yet his analysis still only gives passing mention to the constitutional ideas that inspired Durham, the systematic colonizers and philosophical radicalism in general. This again relates to a tendency to focus on the general dissatisfaction with the ‘Whitehall autocracy’ inspiring both liberals and conservatives to demand a ‘representative’ and self-governing constitution which, in the opinion of Wentworth, was the “inalienable birth-right of the people of these colonies.” Wentworth articulated a broader demand for English property rights that most historians agree opened the

---


way for self-government, and that gave squatting and liberal interests the opportunity to vie for control of colonial government. This was the moment when, as described by A. W. Martin, Australia’s reforming, democratic and largely urban middle-classes began to lead the destiny of Australian political development:

It is generally accepted that a more or less distinct liberal movement, crystallizing in New South Wales during the anti-transportation agitation of the late forties, survived through the fifties as the spearhead for constitutional and social reform. Basically the movement represented the protest of townsmen against the oligarchic notions of Wentworth and the squatters; it was led by middle-class politicians, who tried to swing working class support behind them in a struggle for ‘democratic’ rights.14

Assumptions about a liberal ascendancy in Australian politics have, to reiterate our earlier point, served to simplify and trivialise the intellectual and constitutional debates surrounding self-government. Claiming that it is an axiom of the philosophy of history that the historian is not interested “where sovereign power was located than in how the power was exercised”, Townsley, in his Struggle for Self-Government in Tasmania, argued that the antagonists for constitutional reform in Tasmanian were not “interested in the theoretical problems of politics as such.” Townsley then presents a very whiggish account of the colonial liberals for whom “the sovereignty of the people implied protection against government and the assurance of redress in the courts of law...For indeed what was the great purpose of the common law if not to protect a man’s person, his reputation, and his property?”15 Michael Roe drew similar conclusions from his grand narrative of “moral enlightenment”, a hybrid colonial liberalism which set Australian politics free from “conservative power” and on course to realise its progressive and egalitarian destiny.16

The primacy of whiggism in accounts of colonial political development can be misleading. William Hearn pointed out that while “It is usual to consider the Revolution as the great landmark of our modern political history...we should regard it rather as a preparation for a later development than as the actual commencement of a new political era.”17 The whig constitution,

16Roe argued that “Little high philosophy inspired the clamour for control of land policy, or the resistance to police and gaols expenditure, or the antagonism to the Ordinance Bills and the district councils. All these issues, and the excitement they aroused in New South Wales, sprang from a loathing of taxation.” Roe, The Quest for Authority in Eastern Australia, 77.
with its reliance on a highly decentralised system of government, and its fear of executive power, was disembodied by the colonial constitutions. This was partly an attempt to integrate the state more fully in a colonial society tainted, not only by convictism, but abortive past efforts to replicate English institutions. Local self-government, as presided over by the country magistrates, was a conspicuous failure in the underdeveloped and dispersed political landscape of colonial Australia. The struggle for self-government thus needs to be understood, not simply as an attempt to secure property and common law rights, but in terms of the need to centralize political power and increase the bureaucratic capacity of legislative government. This latter project encompassed important debates concerning the separation of powers, bureaucratic rationality and the need to codify the chaos of the imported English law. These issues were to have a seminal influence on the governing capacity of the colonial state, and were typified by the appropriation of reforms contained in the 1854 Northcote-Trevelyan Report, the radical model for a paid, trained and hierarchical bureaucratic structure which pre-empted Bagehot’s suggestion that the cabinet policy be based on advice from incumbent and professional civil servants. The Sydney Morning Herald praised the report for its effort to make every “Executive chief responsible” and to implement competitive civil service examinations. These were not mere expedients but were formed out of a “broad philosophical inquiry” inspired by the likes of Jeremy Bentham and Edwin Chadwick.18

The Herald continued that

Next to an amendment and codification of that vast chaos of confusion – the English law – there is no subject which demands the earnest attention of our Legislators so much as an adjustment and organisation, upon right principles, of the executive machinery of Government, from the highest to the lowest branches.19

Historians of colonial self-government have characteristically missed the significance of this debate. Dickey, for instance, acknowledged that the Northcote-Trevelyan report was a “major step in transforming the mode of appointment” in the British civil service, however claimed that “Not a breath of its views were heard in New South Wales.” By avoiding this influential discourse, Dickey could argue that the history of responsible government is most significant as a “study of the manoeuvres of various political groups in the colony eager to possess the reins of power in the new scheme of things.”20

18SMH, October 21, 1854.
19SMH, October 21, 1854.
Sectional conflict is part of the story, yet it does not explain the constitutional manoeuvring which underpinned the evolution of responsible self-government in the colonies. Legal historians such as Paul Finn have similarly argued that “Local circumstances were to accentuate the importance of ministerial responsibility”, meaning that the unenlightened and inexperienced calibre of colonial politicians was an important incentive to adopt the conventions of responsible ministerial government.  

Finn uses Henry Parkes, the long serving parliamentary and education reformer, to illustrate his point: “Oneness of consultation and action, if I may use the phrase, is more necessary with us than in England. Here most of us are untrained in public affairs.” As the following discussion will argue, Parkes' hope to instil 'oneness' of political action was more than a response to an inchoate political order, but was a decisive step in eschewing the English convention of individual ministerial responsibility and 'local self-government', and adopting a governmental framework which, in line with the constitutional discourse of John Austin, Bagehot and Hearn, would fuse and centralise executive and legislative power in the cabinet and permanent departments of state. This point needs to be grasped before any telling analysis of the full bureaucratisation of school governance in the nineteenth century can be achieved.

Recent critical and revisionist literature presented by Macintyre, Burgmann, McKenna and Davidson have attempted to flesh out the liberal narrative of Australia's political evolution with accounts of republicanism, progressivism, Gramscian theories of hegemony and the history of political ideas. Nixon and Melluish, for instance, have described the influence of the Scottish Enlightenment on colonial 'metanarratives' about trade, progress and empire. This view of history envisaged Australia, in the words of Melleuish, as a dynamic changing entity in which great things were happening, ranging from the introduction of railways to the glories of democratic self-rule. It could be understood both as the triumph of progress and as the victory of civilisation, as humanity advanced through the stages of history. In the Australian colonial context this could be related to a number of developments, including the successful campaign against the re-introduction of transportation, the granting of responsible government and the hope that the convict

---


past would be shed and the colonies assume their roles as respectable and law-abiding members of the English-speaking world.  

Such analysis of a metanarrative of progress and political enlightenment simply repackages the story of an ascendant liberal ideal in Australian politics. Revisionist historians have also implicitly accepted the liberal narrative by linking colonial political development to the triumph of capital, property and bourgeois power. Alistair Davidson, for instance, draws on the work of Gramsci and Foucault to describe the underlying hegemony of the ‘rule of law’ in the creation of Australia’s *Invisible State*. For Davidson, colonial self-government was a clamour “for the common law rights which were supposedly the birthright of all Englishmen to protect themselves and their property from the despotic power of the governors.” Davidson deviates from the liberal orthodoxy by arguing that the self-government did not in fact secure popular or democratic rights but served to centre arguments about the powers of the state in the judiciary which in turn “arrogated to itself an exclusive right to speak with authority on matters of state.” Davidson quotes the Chief Justice in 1880, Sir James Martin, to support his assertion:

> A Supreme Court... is the appointed and regular tribunal for the maintenance of the collective authority of the entire community. The enforcement of all those laws which immemorial usage has sanctioned for the preservation of peace and order, and for the definition of rights between man and man, is entrusted to its keeping... this is a power unseen, but efficacious and irresistible and on its maintenance depends the security of the public.  

This classic whig statement of natural rights and the ‘immemorial custom’ of the common law did not, argues Davidson, lead to the “bourgeois political revolution” which in England made the people sovereign. Australia’s judicial elite embraced the rhetoric of the rule of law and individual right as the basis of a hegemonic system of power through which the state could produce and reproduce “rational citizens in the face of contradictions caused by capitalism.”

---


26 Cited in Davidson, *The Invisible State*, 189.

This study argues that the Australian state was formed around a rejection, and not, as Davidson argues, an empowering of the ‘rule’ of the common law. The ascension of a self-governing parliament was significant, not simply as a symbol of the triumph of private property or democratic individualism – although this is an important part of the story – but as an essential constitutional pre-condition for the codification, bureaucratization, centralization and ‘governmentalisation’ of state practices and institutions. In this sense, the era of state socialism which emerged in the 1890s in Australia was not merely the effect of a scattered population or the need for economic centralization in a period of economic recession. The former had important antecedents in the ‘struggle for self-government’ which, as the following account will illustrate, served to lay the groundwork for a system of ‘legislative absolutism’ in Australian government. This followed an era in colonial reform symbolised by the Durham Report’s constitutional recommendations for British North America in 1838. The Durham Report demanded responsible government in the spirit of Bagehot rather than Locke. Responsible government represented a matrix of municipal, educational, criminal and land policy reform which would be facilitated through the codification and rationalisation of public law in the parliament. Considering the centrality of sovereignty theory within this progressive parliamentary model, it was important not only to link the legislature and the executive through parliamentary majorities, but to provide for a single sovereign authority via the veto power of the Crown. Davidson himself acknowledges the importance of the Durham Report in transforming the demand for ‘self-government’, meaning colonial control of land and revenue, into a discourse about the structure of parliamentary government. However, he does not believe that the Report had any enduring influence on the Australian state since the constitutions of the 1850s, written by the lawyers and conservatives who still controlled the Legislative Council, ensured “the dominance of the judiciary and legal reason in politics.” Conversely, this study proposes, through a re-examination of the debates surrounding self-government, that the evolution of responsible cabinet government represented the important emergence of a new constitutional discourse which, by renouncing prescription and ‘legal reason’ and opting instead for a ‘innovative’ model of statute law, facilitated the later bureaucratisation of state institutions such as the school.

In 1853 the Secretary of State for the Colonies, the Duke of Newcastle, wrote that “while public expectation is as yet but little exited on the subject of Responsible Government, it is very

30 Davidson. The Invisible State, 189.
desirable that we should prepare ourselves to regard its introduction as a change which cannot be long delayed." 31 Newcastle knew that an executive selected from a parliamentary majority would solve two fundamental deficiencies in the colonial administration. Firstly, it would promote a unity of purpose between the legislative and executive functions of government. The want of harmony between the making and the administration of the law was the fault of an Executive Council who, while immediately responsible to Crown, were not individually or collectively answerable for the advice which they gave to the governor. While public administration was in fact quite centralized, the administrative duties of the Colonial Secretary were rarely held to account by the Executive Council. Acting under the discretion of the Governor, the Colonial Secretary delegated much of his overburdened jurisdiction to irresponsible justices and unpaid local officers. In the absence of any practical or effective system of accountability this uncoordinated chain of command failed to adequately govern an increasingly complex population. The cumbersome and fragmented routines of colonial governance would then be streamlined by a system of cabinet government which would correct the disparity between law-making and execution.

The second advantage of responsible government was to unite colonial administration under the authority of one sovereign. In contrast to the ‘parcellization’ of sovereignty between the executive council, the governor, and the Colonial Office, responsible government would unify their activities by retaining the veto power of the crown. The objective of this discretionary power, argued Dicey, was “to secure that Parliament, or the Cabinet which is indirectly appointed by the Parliament, shall in the long run give effect to the will of that power which in modern England is the true Sovereign of the state – the majority of electors.” 32 While only a convention, this effectively led, in England and Australia, to a centralization of executive power in the cabinet. Responsible government contrasted with a common law constitutionalism which wanted to avoid any concentration of political power. Blackstone’s insistence on an independent judiciary, for example, was a way to retain the administrative autonomy of the country justices. Similarly, the splitting of sovereignty in imperial administration was a means to empower the colonial judiciary against the autocratic authority of the governor. Responsible government in the colonies was an act of state formation since it demanded that public policy be controlled by responsible public officers instead of unaccountable local magistrates. This resulted in an increase in the size and function of central bureaucratic departments of state.

---

In contradistinction, Davidson believes that responsible government did little more than redeploy legal power into a hegemonic framework of popular consensus. It was not responsible government but the 1823 Act for the Better Administration of Justice in New South Wales and Van Diemen’s Land which established the modern Australian state. That Act, according to Chief Justice Forbes, provided for the “broad recognition of English law as the only rule of subjection” in the colony. English political institutions were to be replicated through the establishment of a legislative council, a supreme court, and limited trial by jury. Prior to the 1823 Act the presumption of Terra Nullius had already accorded the colonies the sovereignty of English law. This ‘settled colony’ doctrine assumed that there was no pre-existing claims to sovereignty, either in terms of land ownership or established law, and that Australia, having not been conquered, was the full beneficiary of British constitutional law. Such was explained in an 1828 memorandum from James Stephen of the Colonial Office:

New South Wales, not being a conquered colony, but having been acquired by the mere occupation of a vacant territory, the King, according to the settled rule of law, could not, in the mere exercise of his prerogative, create any Judicial or Legislative Institutions there, deviating in any essential circumstance from the corresponding institutions of the Mother Country.

Stephen continued that while British law was often “utterly inapplicable to the conditions of an infant settlement”, it remained the “birthright of English Subjects, which they carry with them when they quit their native land, to make settlements on waste or unoccupied territories.”

The 1823 Act was fought for by the colonial lawyers and landowners who realised that a recognition of their inherent birth-right would extend them property rights, control of the judiciary, and taxation by representation. By institutionalising the rule of law as the basis of political action, the courts became the foundation of the colonial state. This is a seminal and defining moment for Davidson. The evolution of representative institutions in 1856 served to

33 HRA IV:1, 669, in Davidson, The Invisible State, 125.
hegemonically reproduce the citizen-individual for the benefit of a legal class who had sealed control of the political superstructure. While Davidson might be correct in seeing the common law as the basis of private rights, private property, and a capitalist economy, it would be wrong to consider it the enduring logic of Australian state formation. The immediate difficulty is to explain the political and constitutional antipathy between the country gentleman, who initiated the 1823 reforms, and the urban middle-class who dominated the 1856 constitution. Davidson avoids this inconsistency by claiming that the rule of law achieved cross-class status through the universal belief "in the Lockean notion that the combination of the fruits of one labour with the soil is property." The "disciplined, produced...self-conscious Australian subject" was the product of a pervasive contractarian logic which led to a bi-partisan agitation for common law rights. Thus, the liberal ascendancy of the 1850s reaffirmed the privileged legal discourse which freed the squatters from the arbitrary rule of the governor. Excluded from the formation of this common law state, the citizenry then became passive subjects of a social laboratory which would reinforce their subservience to the rule of law.

Following Corrigan and Sayer's influential thesis on 'state formation as cultural revolution', Davidson's critique is an important attempt to understand Australian state formation in terms of hegemony and the influence of political structure on culture and social relations. The problem remains, however, about the continuing tendency to historically focus on the institutionalization of property rights within liberal political development. While Corrigan and Sayer do not in fact subscribe to a "Whiggish continuity", arguing that the ascendancy of the capitalist state has its origins in the Middle Ages, they are still determined to account for the "long wave" of English state formation as one which culturally and therefore contractually sealed the power of bourgeois interests. Thus, the "Common law provided both stability...and substantial liberty, for men of property." This meant that "England was in the bourgeois sense probably the freest country in Europe." It is this which "lies at the heart of the security of the bourgeois state in England", and it is this, Corrigan and Sayer concede, "that the Whig historiography grasps, albeit ideologically." The advent of representative government only served to affirm the unbroken ascendancy of what Sayer later called the "judicial person" or the "national citizen class." Quoting Durkeim, Sayer argues in regards to the expansion of the franchise, that "It is only within the State that individualism is possible." Similarly, Andy Green rejected Perry Anderson's influential thesis about the hegemony of the landowner class and the failed

---

35Davidson, The Invisible State. xiv.
38Sayer, "A Notable Administration", 1398.
bourgeois revolution, asserting that the English state was in fact defined by a “liberal
individualism [which] became the dominant mode of a specifically bourgeois hegemony.”39

It is worth juxtaposing a few more aspects of Davidson’s account of state development with our
own thesis – firstly because it employs a Foucauldian perspective which theoretically informs
much of our own account of Australian state formation; and secondly, because Davidson makes
a particular effort to understand the contradictory forces of high statism and classical liberalism
which, as alluded to in chapter two, continues to present a major inconsistency in the history of
Australian political development. Davidson attempts to explain the evolution of heavily
centralised and bureaucratic systems of social administration in the late nineteenth century by
referring to Australia’s early history of military rule and “an administrative structure built for
and by a despot.” While the “British state itself had not started on its own projects of reforming
the population”, Davidson assumes that the Australian polity embraced a revolution in
government via its military heritage.40 It was by default of the massive discretionary authority of
the Governor that a highly centralized police state developed contrary to the conventions of
English government. Paid from the crown’s civil list, and unchecked by any cabinet structure,
the Governor’s public officers were able to aggrandize their departmental power.41

Nevertheless, while the growth of the military bureaucracy was prodigious, administrative
practices could not, in the context of a more widely dispersed population, remain tightly
centralized. For this reason, much of the executive work was delegated to unpaid country
magistrates. McMartin, the pre-eminent administrative historian of the period, describes how
“the justices of the peace, as the governor’s men-of-all-work, became responsible for a range of
duties even more extensive than those of their English counterparts.”42 Davidson insists that this
did not dint the centralized momentum of the colonial autocracy. However, while penal
administration was in theory highly concentrated, the devolution of administration to the
justices precipitated a very English system of local autonomy. It is true that the colony lacked an
established culture of local government so that the magistrates remained, unlike in England, an
organ of central rule. Yet, as McMartin explained, the landowners and lawyers who constituted
the magistracy gave “intermittent attention to their administrative duties in addition to the time

---

39Green, *Education and State Formation*, 237; see P. Andersen, “The Origins of the Present Crises”, *New
Left Review*, no. 23, January/February 1964.
41While the creation in 1825 of an Executive Council made up of the nominated members of the
Legislative Council constituted a prototype cabinet system it did not exercise collective ministerial
42McMartin, *Public Servants and Patronage*, 75–76.
they spent on the bench.” The vast distances which separated the magistrates “tended to promote the growth of local idiosyncrasies and irregularities rather than regularity and uniformity in the dispatch of business.” McMartin concludes by observing that “although the system, in contrast with the situation in England, appeared highly centralized, in practice it was uncoordinated, flabby and haphazard.” Autocratic rule thus reproduced the desultory practices of the localised English state.

It might be true that the modern Australian state was antecedent by the bureaucratic initiatives of the military governors – in Van Diemen’s Land Governor Arthur built “files on each inhabitant to see how far they were reformed” – however the efficient management of a penal settlement should not imply a break from the archaic constitutional logics of the eighteenth century criminal law. The latter was not concerned with reforming the population through a centralized or expert civil service. Social administration was left to unaccountable clergy and magistrates while the central government enforced the protection of private rights and property through the sanction of the gallows, or as Bentham argued his critique of transportation, by viewing the criminal class, not as an object of reform, but as a “a set of animae viles, a sort of excrementious mass, that could be projected, and accordingly was projected – projected, and as it should seem purposely – as far out of sight as possible.” It was not until transportation had ended and the colony was subject to experiments in systematic colonization that this constitutional logic shifted.

The systematic colonizers realized that the colonial government could not implement effective administrative strategies for social and economic development under the current constitutional framework. Richard Bourke, the Governor of New South Wales from 1831 to 1837, was an early critic of the imperial political structure. As Governor of the Cape Colony he complained that “uncodified laws were confused, the courts were uncertain in operation, and many administrative officials were inefficient, inadequately paid and corrupt.” Bourke’s concern was mimicked by other prominent colonial officials. After twelve years in the Colonial Office, Henry Taylor wrote The Statesman, a seminal critique of British administrative practice and a work used by Wakefield to expose the inadequacies of colonial administration. Speaking of a lack of “any coherent body of administrative doctrine” in English government, Taylor affirmed

43McMartin, Public Servants and Patronage, 79.
44Davidson, The Invisible State, 100.
46Cited in Australian Dictionary of Biography, 129.
for Wakefield “the political immorality and the anti-colonising influences of the great corporation which is the government of our colonial empire.” Wakefield insisted on the “urgent need of the intervention of government in the multifarious business of constructing society”, exposing the “general paucity, often the total absence, of government in the colonies of Britain.” The exigencies of land management in new colonies most justified government intervention: “Land can only be obtained by the action of government in opening the public waste to settlers by extensive and accurate surveys, and in converting it into private property according to law. The general drainage of the new land, and the making of roads and bridges, require taxation according to law.” This was not the inherited common law but a dynamic system of statute law and it was its paucity in the Australian colonies which “operates as an impediment to emigration, and more particularly to the most valuable class of settlers.” This is why Wakefield had such a conspicuous presence during the Durham mission to the Canada’s. Responsible government was to employ the constitutional imperatives which would make political modernization, particularly in regards land and education policy, possible. While in Australia self-government was presided over by the conservative squatters and lawyers, it remained faithful to Durham’s recommendations through Amendments – as outlined below – initiated by John Russell and Robert Lowe. By retaining the veto power of the Crown, responsible government would be defined by modern theories of parliamentary sovereignty as opposed to patronage and the ‘fictions’ of judicial reason.

Davidson, reflecting a tendency among a majority of Australian historians, places far less importance on these “progressive protagonists” for reform of colonial law and government, arguing that the systematic colonizers “altered but little the implicit tendency towards the substantial dominance of the legal discourse in politics.” This was related to the immediate failure of party government during the initial years of responsible self-government. Under the faction system operating in the colonies, it was difficult to engage “state practices [which] depended on balances of power within the realm.” Yet, as Loveday and Martin have shown, while factional politics precluded a cogent party system in the first years of responsible government, it endowed colonial politicians with a “sense of responsibility” motivated, not by party advantage, but a willingness to “provide ‘good government’.” Faction leaders such as Henry Parkes and Charles Cowper could only secure a majority and sovereign claim over public policy through their administrative performance and political acumen. Davidson, however, argues that parliamentary majorities were impossible since the liberals who won control of the

legislature soon after self-government failed to re-allocate electoral boundaries to represent numerical population rather than aristocratic interests. Most importantly for Davidson, they “did not attempt to displace the commitment to private property and the British law and order to which the squatter leaders were also committed.” Davidson is adamant that “had Parkes, Cowper and the ‘masses’ they led managed to obtain an adequate electoral reform before the conservatives drafted the constitutions, they would probably not have challenged the rule of law in the name of the sovereignty of the people.”

In this sense, the ultimate bureaucratisation of the Australian state was unrelated to the constitutional innovations of the 1850s or thereafter. This misses the adoption, by the 1860s, of full ministerial cabinet government. The popularly elected executive, as Bagehot himself seemed to have observed, had attained the status of political sovereign. As outlined in the Australian Colonies Government Act, the 1854 Act to ‘establish new Electoral Districts in the colony of Van Diemen’s Land and to increase the Number of Members of the Legislative Council’, proposed that the “Government and the Legislative Council and the House of Assembly are to be styled collectively the Parliament of Van Diemen’s Land.” For Denison, “The idea of combining the Legislature and the Executive under one general head as ‘the Parliament’ is a novel idea, but I do not see that any practical inconvenience can arise from such a change in style.” The Act also made executive officers ‘responsible’, stating that in the event “of not being able to find a Constituency to return them as members of the House of Assembly, or of not being able, if returned, to command a Majority in the House of Assembly”, the present executive were to be dissolved. Denison failed to realise, however, that the 1854 Act laid the foundation for a system of cabinet government that would relegate the Governor’s role to one that was largely ceremonial. McMartin bears witness to the import of this moment for the process of state building in New South Wales:

In many ways what had been achieved between 6 June 1856, when Donaldson took charge as Premier, and 27 October 1859, when the colony’s fifth ministry came into office, was remarkable. For the first time, the right of the people to rule was acknowledged. As a result the Governor had been required to learn a new role...His place had been quietly taken by the Cabinet, with ministers, in accordance with the constitutional conventions, retiring to the opposition benches when they could no longer obtain the support of the majority of the Assembly. With these developments had come the acceptance of the principle of ministerial responsibility, the principle that the

51 Davidson, The Invisible State, 165.
52 Davidson, The Invisible State, 166.
53 ‘Denison to Grey’ 15th November 1854. TSA G0/33 v. 81, 647–670.
minister was responsible to the Parliament for all acts and shortcomings of his department.\textsuperscript{54}

This had little significance for Davidson, who remarked that modern bureaucratic systems of social governance were the product of the “coercive administrative patterns of the totalitarian society of convictism.” He continued that the latter was typical of the panopticon, “Bentham’s plan for a system of social regulation based on the omnipresence of Big Brother.” Accordingly, it was “Through the elimination of private space, first coercively and then through internalised discipline, [that] the functional model citizen of liberal society would be produced.”\textsuperscript{55} But Davidson’s effort to link the panopticon to a ‘totalitarian society’ denotes a “coercive-regulatory system” which Foucault believed to be antithetical to disciplinary power. Thus for Foucault,

Discipline...is not a triumphant power, which because of its own excess can pride itself on its omnipotence; it is a modest, suspicious power, which functions as a calculated, but permanent economy. These are humble modalities, minor procedures, as compared with the majestic rituals of sovereignty or the great apparatuses of the state.\textsuperscript{56}

Davidson partly avoids this inconsistency by focusing on the routine and regular inspection, which the colonial police conducted through the vagrancy and master and servants acts. In addition, the extensive range of administrative duties – licensing, customs collecting, collection of electoral rolls – coming under local police jurisdiction, increased the complicity between the police and the colonial community. This relationship, by inculcating a passive and obedient citizenry was, for Davidson, the catalyst to the latter expansion of disciplinary power. However, while the colonial police force was a branch of the central executive and remained highly visible throughout the populace, it was controlled, not by a uniform method of central superintendence, but by unaccountable police magistrates who summarily combined police and judicial power. In the same way, the school was held under the jurisdiction of the church and justices, and like the administration of justice, an archaic and underdeveloped educational system which could not be reformed until the common law constitution was dethroned as the basis of colonial law and government.

For this reason, education reformers such as Robert Low – Chair of the 1844 Select Committee which layed the basis for a national system of education in New South Wales, the leading

\textsuperscript{54}McMartin, Public Servants and Patronage, 79.
\textsuperscript{55}Davidson, The Invisible State, 16.
\textsuperscript{56}Foucault, Discipline and Punish, 170.
utilitarian in the colony and author of the ruthlessly bureaucratic 1861 ‘Revised Code’ for education in England – attempted to combine a strong program of both constitutional and educational change during his terms in office in the colony. It was this program for reform, which in a Foucauldian sense represented a concern with the ‘problem of population’ as opposed to natural rights, which began to have a profound influence on the push for self-government. In this way, the inability of the exclusives to consolidate common law constitutionalism, and not simply their electoral power, precipitated the rise of disciplinary power in the Australian state. It is imperative, therefore, that the historiography begins to grapple with this constitutional shift from a system of government concerned with the preservation of judicial law and individual interests to one based on legislative innovation and ‘universal interests’. The following pages will therefore provide an account of the rise responsible self-government in Tasmania and New South Wales which gives serious attention to constitutional, governmental, jurisprudential and intellectual discourses which cannot be reduced to a story of pragmatism, circumstance or the consolidation of bourgeois power.

3. Wentworth, Durham, and the contradictions of early constitutional debate

Referring to the 1844 Select Committee on General Grievances, Sweetman observed that the “request for Responsible Government was undoubtedly due to Lord Durham’s report...The influence of that great pathfinder upon the constitutional progress of New South Wales and of the other Australian colonies cannot be over-estimated.” The influence of Durham found its greatest expression in Wentworth, who made the “most frequent and forcible public references to that doctrine: it was he who elaborated and applied it to the administrative affairs of New South Wales.”\(^57\) Wentworth expressed hope that “this colony would enjoy responsible government” on “principles adopted in Canada”, that is, the “principle of filling offices as they become vacant with inhabitants of the colony”, but said little about ministerial government.\(^58\) Yet his agenda was largely one of colonial self-rule, or of ensuring that the executive was derived from the local legislature. In this context, Irving himself admitted that “it became possible to refer to responsible government in connection with control of finances or unrestricted domestic legislation without having to clarify whether the extension of the legislature’s power would precede or follow ministerial responsibility.”\(^59\) Wentworth epitomised a whiggish constitutionalism that lauded the separation of powers and opposed the growth of


executive government. When appealing to the "ancient rights and privileges of the popular branch of the Legislature" in demanding that "public supplies can only originate from the people", Wentworth proposed a nominated upper house to guard against majority rule and maintain the balance of power. Henry Parkes observed that while Wentworth "was saturated with Lord Durham's report on the constitutional grievances of Canada", he was "never a Radical, but always a whig... Constitutional reform for him meant putting an end to government from Downing Street, and handing over the affairs of the colony, including the public lands, to his own class."  

Wentworth used the Durham report as a lever to secure property rights for the pastoralists. Accordingly, he was opposed to systematic colonization. Both municipal reform and the imposition of a minimum price for land were threats to the pastoralists since they would centralise land policy and rationalise local administration. While Wentworth wanted to take control of land and revenue from the Imperial Executive, this was to introduce traditional constitutional arrangements rather than a progressive system of responsible government. Wentworth did not promote constitutional reform as a vehicle for political modernization, hoping instead to consolidate the whig constitution with its attendant checks and balances. As early as 1819, Wentworth expressed the need to maintain a "just equipoise between the democratic and supreme powers of the state, which has been found not less necessary to repress the licentiousness of the one, than to curb the tyranny of the other." Wanting to replicate the English convention of mixed government and individual ministerial responsibility, Wentworth's conservative constitutional philosophy was in fact rejected, not only for political reasons, but by those who perceived its limitations for administrative, and indeed education reform. In Tasmania, the Colonial Times described Wentworth as "inconsistent" and "selfish", believing it a "gross error" to label him a "champion of popular rights." As the mouthpiece of the landed oligarchy, Wentworth also had a limited view of public education. The Times believed that if he was a "true representative of the people", his object in "educating the people" would be to "render them worthy their duties as men and citizens, to qualify them as the electors of..." 

60 "Report of the Select Committee of General Grievances", 256. While Wentworth's hereditary upper house could not vote on supply they could vote on appropriation bills and other matters of government. For debate on Wentworth's Constitution Bill see VPLCNSW August, 1853.
63 The only liberals on the select committee to debate the constitution were Charles Cowper and William Thurlow, and their attendance at the thirteen meetings was minimal VPLCNSW V&P, II, October 1853. 123.
legislators, and to make them just judges of their rulers." By contrast, Wentworth's aristocratic theory of government opposed a progressive system of popular education: "demagogues of Wentworth's order look on all of this as sentimental humbug; his idea of men without the tail of esquire is of an animal to be imported for use—to be used with vigour, to cost as little as possible." The essence of Wentworth's constitutionalism was displayed during the transportation question "when he abandoned every hope and prospect for his country, for the mere chance of getting cheap labour." While Wentworth consistently demanded the ending of British interference in colonial government it was obvious, even in Tasmania, that he was "dividing power between the official and the squatter, to the exclusion of the people", and further, to the exclusion of progressive governmental reform.64

Wentworth represented a power structure which not only controlled pastoral lands but, as described earlier, a system of government that had been fortified by the common law constitution of 1823. The Act for the better administration of justice was consolidated by the early colonial liberals opposed to the unconstitutional authority of the military governors. Accordingly, the push for representative government and trial by jury was both a grab for political power and an attempt to transpose the common law convention to the Australian colonies. The 1836 petition of the Australian Patriotic Association, the voice of the colonial whigs in the 1830s, demanded "bona fide representative government" since "the remote situation of the colony from the Mother Country render it impossible that its political interests could ever rightly be understood by the Home Government authorities." To placate this lack of representation, the Association urged that it "bring its claims prominently and constantly before parliament and the people of Great Britain" through the maintaining of an official agency in London.65 While their parliamentary agent, Charles Buller, proposed that the colonists adopt full responsible government, end transportation, and implement a process of systematic colonization, the Association only wanted to bring the constitution in line with orthodox common law government. They then could continue to support transportation because it did not conflict with a constitutionalism that was antagonistic to modern parliamentary government.66

William Bland, the leader of the Patriotic Association, entered politics in 1821 and consistently worked with Wentworth in demanding trial by jury and representative institutions. He also worked assiduously in public education programs, particularly as a founder of a free Grammar

---

64"New South Wales Constitution Bill"—Colonial Times, October 20, 1853.
65Cited in E. Sweetman, Australian Constitutional Development, 123.
66Letter From the Australian Patriotic Association to Charles Buller, ESQ, M P in Reply to his Communications Respecting Certain Forms of Local Government Proposed for this Colony (Sydney: March, 1839).
School in 1825, as Treasurer of the inaugural Sydney College from 1835 to 1844, and in the formation of the Sydney Mechanics Institute. Like so many other colonial liberals, Bland believed in the moral and vocational importance of public education and yet opposed the development of uniform and centralized state institutions. This was evident in his reaction to Bentham’s penitentiary scheme. Bland criticized the reformist criminology of Captain Machonochie, who had inaugurated a ‘social system’ of convict management in Norfolk Island – Machonochie’s 1838 publication, Report on the State of Prison Discipline in Van Diemen’s Land, had a significance influence on the anti-transportation stance of the Molesworth Committee, the later proposing to substitute Bentham’s penitentiary scheme for transportation throughout the colonies. In response, Bland labelled “penitentiary systems of whatever description...unreformatory.” While politically motivated, this position was endemic in a constitutional logic which presupposed that the state should have a passive role in civil institutions. Thus Bland, a true whig, reiterated throughout his public life that individual freedom was the “principle activating power” of the “moral and intellectual advancement of the human race.”

The Patriotic Association’s advocacy of transportation was inimical to the radical colonial reform agenda. The Molesworth Committee, which effectively ended transportation to New South Wales, was integral to the wider systematisation of social governance via ‘inspectorial regimes’ such as the penitentiary, systematic emigration and state education. Molesworth himself typically argued that transportation did not have any ‘reformatory’ value. In this vein, the Spectator agreed that “there might be some prospect of reforming offenders in penitentiaries conducted under the public eye in England.” However, it was important to remember that if transportation were abolished, “emigration on a large scale is necessary to the colonists of New South Wales”, and if money were raised “on the security of unsold land, the means of supplying labour to the colony are provided.”

Even the conservative Times newspaper had rejected transportation in favour of the “reformatory” penitentiary system. The present system “stands condemned”, argued the Times, proposing that convicts be subjected to the virtue “of our

---


70Spectator. May 9, 1840.
philanthropy at home, instead of casting offenders hopeless and obdurate on the shores of New Holland." For this purpose Millbank penitentiary, Pentonville model prison, and Parkhurst gaol were to be administered by a central board who were to "draught off 'the reformed' to public works" through a system of probation. Similarly, in Molesworth's speech on the second reading of the Punishment Offenders Bill, he was determined to "abolish transportation, and to substitute in its stead a scheme of punishment more in accordance with the feelings and knowledge of the age."

This was to take the form of a 'separate system' through which convicts would be retained in solitary confinement and shielded from the moral 'pestilence' of cohabitation. Pentonville penitentiary was to employ this panoptic system of separation and surveillance and would, after five years, prepare the criminal to re-enter society through employment on public works. However, since the domestic labour market was already overburdened, Molesworth realised that systematic emigration would have to accompany the penitentiary scheme. Furthermore, recidivism rather than reformation would be the end result if an accessible labour market was not established. Molesworth averted then to the Archbishop of Dublin, Richard Whately, who, "as the highest authority on matters connected with this subject, proposed for this purpose that liberated offenders who should be willing to emigrate, should be furnished with the means of conveyance to these colonies where they could easily find employment." Published in the *Herald*, Molesworth's speech animated the colonists in New South Wales to reject Earl Grey's suggested renewal of transportation – albeit in the limited sense of giving convicts a ticket-of-leave to New South Wales in the last stage of their sentence.

Charles Buller alerted the Patriotic Association to the inherent incompatibility between the transportation system and responsible government. While New South Wales remained a penal colony it would, in addition to "obstruct[ing] to a very large extent, the stream of respectable Emigration hither", hinder the establishment of "representative institutions." The propriety of transportation had been long questioned in Britain and, according to Buller, "probably the only reason why that system was not long ago put to an end is that there existed a very great uncertainty, and it was an arduous task to determine what might be the most expedient substitute for the same." In Westminster, responsible government was seen as unsuitable for 'penal' settlements. Buller told the Patriotic Association, therefore, that "when I point out the wealth, the population, the intelligence, and the immense future importance of New South Wales, and the necessity of securing it good government by giving it free institutions. I am always met by

---

71*Times*. June 4, 1847.

72"Speech of Sir William Molesworth, in the House of Commons. June 3, on the second reading of the Punishment Offenders Bill": in *SMH*, October 8, 1847.
the answer that it is a penal colony. That answer is almost universally considered in your case sufficient enough to outweigh all the general arguments in favour of representative institutions: and I regard the abolition of transportation as a preliminary necessary to the establishment of free government in New South Wales.” 73

In 1849 William Bland urged that transportation should be continued as the best means of supplying labour in the colonies. Remark ing that “the form of Colonial Government, and the mode of supplying us with labour – or rather of relieving England of her surplus masses of population – are again becoming matters of consideration both here and at home”, Bland claimed that the systematic colonization experiment, particularly in South Australia, was a failure. 74 Instead of “adopting the Wakefield labour system”, the Colonial Office should have “extended the labour system then in existence.” 75 Bland then blamed the Report of the Select Committee on the Minimum Price of Upset Land (1847) for adhering “to the delusion of applying the proceeds from the waste land of the colony to the importation of labour.” 76

While Wentworth and Bland appropriated the Durham constitution in ways that were antithetical to its broader political design, the parliament and press in Sydney and Hobart, having been initially excited by events in Canada, started to adopt much of the reformist rhetoric of systematic colonization. 77 While the conservative section of the media were writing off the South Australian experiment as a ‘bubble colony’ suffering unemployment and stalling development, the Australian believed that failure in Adelaide would not lessen the benefits already gained by other colonies. Wakefield had inspired a steady flow of “emigration, enterprise, respectability, and capital”, and most importantly, the “trite maxim of political economy…that the more you add to the number of independent flourishing communities, situated in geographical vicinity to each other, the more you develop the natural resources of each, and, consequently, the more you do to increase the wealth, intelligence, and, indeed,

73Quoted in Australian, November 19, 1840.
74W. Bland, Letters to Charles Buller, Junior, ESQ., M. P., from The Australian Patriotic Association (Sydney: 1849), i.
75Bland, Letters to Charles Buller, xv-xxi.
76Bland to Charles Fitzroy, HRA I: XXVI, 184. The ‘ruinous effects’ of the South Australian experiment was refuted by the Hennan Merivale: “Although the colony has suffered a little in the public estimation from the disappointment which has followed exaggerated expectations, still, a community has passed through the first years of existence, usually so trying to a new settlement, almost without a struggle; into which capital has poured with a profusion unequalled in colonial history...There is not at the present time one of the Australian colonies where wages are so high as in and round Adelaide.” Cited in The Memorial of Lieutenant-Colonel Robert Torrens (Pamphlets: Mitchell Library, 042 P578), 3.
77See SMH, June 21, 1844: Australian, January 30, 1845.
population of a particular community." South Australia would promote a fluid and diversified system of trade, distribution, and exchange throughout the colonies: "the interchange of commercial and maritime communication between two colonies, whose wants and the products of whose industry are definitely increasing, will constitute a lucrative source of revenue to both. They will benefit by each others mutual intelligence, and by the subsidiary aid of efficient lines of steam transit, will, indefinitely, increase the import and export trade of each country." If South Australia did not prove sustainable, New South Wales and Port Phillip would receive the free emigrants and labour prices would drop. This was a theoretical inevitability since labour, "possessing as it does the power of locomotion, and the facility of transferring itself from one place to another, has, like water, a tendency to find a common level." That being so, "Mr Wakefield and Sir W. Molesworth had been doing us a benefit" by expanding the "commodity of labour." The Australian did a good public relations job for Wakefield, stating that "the New South Wales press, so far from denouncing South Australian emigration, should rather promote it than otherwise." So too the Sydney Morning Herald backed up Buller’s 1843 speech in the Commons on ‘systematic colonization’, arguing that, while not producing immediate results, "there have been many indications that its powerful array of facts, its cogent arguments, and its earnest appeal to the philosophy and patriotism of the House, were not lost upon the public mind."

The Wakefield plan not only inspired free trade but also a centralized and uniform administrative apparatus. In December 1839, Lord John Russell successfully forwarded a resolution to establish a ‘Central Board for the disposal of Waste Lands in the Colonies and to Superintend Emigration’. With a "view to promote a well-regulated system of emigration", the Colonial Land and Emigration Board was regarded by the Australian as "a real benefit to the public – a large stride made by the government towards a sound system of general colonization." The principles laid down by the 1836 Select Committee on Emigration, which "were those of Mr Wakefield", informed the move and land, instead of being sold by auction, would retain a fixed, uniform, and ‘sufficient’ price. Russell’s initiative proved that "Government and the Colonial Office are no longer overridden by Lord Howick, the patron of auction-sales." Russell had been won over to Wakefield, and more immediately Durham:

The establishment of a central Land Board, instructed to direct the stream of emigration from the mother country to the colonies, so as to proportion in each the supply of labour

78 Australian, June 18, 1840, 2.
79 Australian, June 18, 1840, 2.
80 SMH, July 13, 1844.
81 Colonial Gazette, January 1, 1840.
to the demand; the application of the net proceeds of land sales as an emigration fund; in the selection of emigrants, the preference of young couples recently married; and the raising of an emigration fund on the security of future land sales; these are the essentials of the essentials of the Committee's Report, as originated and expounded by Mr Wakefield, in his evidence, and his various writings, from the Sydney letter, in 1829, to the Report of Lord Durham's Commission on Canadian Lands and Emigration — the latter accepted and appealed to by all sorts of people in Canada...will confer on England and the Colonies the best boon that either have received from government this many a long year.82

The creation of the Board was also a boon for the idea of responsible administration since the Commissioners on the Board would “be made responsible. They will stand forth, and be known, instead of skulking in a back parlour of Downing Street.” Accordingly, The Australian was ready to “let Lord John Russell thus far have the credit of breaking down the viscous system of jobbery and inefficiency, protected or submitted to by his predecessors.”83

Pro-systematic colonization rhetoric also found voice in the Hobart press. Even the conservative and Anglican mouthpiece, the Courier, citing the English publication, the Daily News, stressed the urgency for “extending the field of remunerative investment both for capital and labour.” The News found, “in the brief annals of South Australia”, the proof that “a means has been devised for ensuring the industrial organisation of a settlement from its very first beginning”, and while it had not “been fostered with steady parental care by its original projectors in this country” and had fallen victim to “partial and irregular” implementation and the “intoxicating cup of land-jobbing and speculation...under the auspices of the Colonial Office”, it had “proved sufficiently operative to show what benefits it should confer if honestly and intelligently adhered to.”84 Systematic colonization, by allowing the government to set the price for land, was a shift away from laissez-faire and the ‘unlimited accumulation’ of property. The News described how “Land [was] regarded the common property of all settlers”, and could not be acquired “in private property and for the purposes of remunerative employment, except in consideration of a price so low as to yield... a profit sufficiently exceeding what could be obtained in this country to tempt settlers thither, yet sufficiently high to prevent anyone from appropriating more than he could use.”

82 'Colonial Land and Emigration Board'' Australian, June 18. 1840.
83 'Colonial Land and Emigration Board'' Australian, June 18. 1840.
84 The Courier October 28, 1848.
This was a subversion of the property logic which underpinned liberal constitutionalism. The point was qualified by the News, arguing that the central Land and Emigration Board was of course deferent to the “democratic tendencies of the present age”, and would take “the most jealous care of individual liberty.” The News made a specious connection, therefore, between modern bureaucratic government and traditional English assumptions about “entire commercial and industrial freedom...liberal civil institutions” and “local self-government.” This typified the confused constitutional polemic surrounding the conflicting discourses of self-government, responsible government, political economy and systematic colonization. As will be described below, it was not until the drafting of the self-governing constitutions in the 1850s that the competing logics of constitutional development began to be resolved.

While systematic colonization was widely applauded, the imposition of the New South Wales Constitution Act of 1842, initiated by the then Secretary of State, Lord Stanley, which introduced minimum price into the colonies, was virulently opposed by many of the colonists. While both the colonial whigs and landowners saw the Durham report as a liberator of colonial government, and more especially, local revenue, its architects were derided for initiating the measures for a minimum price contained in Stanley’s Act. Wentworth typified this contradiction, and having read the Durham Report believed that the Australian colonies should attain “what had been conceded in the Canada’s.” Opposition to the minimum price was fuelled by a misunderstanding of its more salient affects. While minimum price signified a progressive political economy, many saw it, including the utilitarian Robert Lowe, as a vehicle for continuing imperial rule. The balance of labour and capital, while a particular problem in the depressed colonial economy of the early 1840s, was overshadowed by concerns about control of land and revenue. “There are battles to be fought in the new legislature”, stated Wentworth, “battles of the most vital consequence. There is the battle of the Civil List...the battle of the wastelands and territorial revenues...Canada has obtained the wastelands, the territorial revenues, in exchange for the Civil List. And why has this partiality been shown? – Because, gentleman, Canada rebelled.” It was specious to argue that Durham demanded self-government in Canada as a means to secure the economic security of the local merchants and landowners. The motivations for Canadian self-government were indeed more complex than this, and Wentworth purposely avoided the wider agenda of the Durham Report.

---

85 The Courier October 28, 1848.
86. The Select Committee of the Legislative Council, appointed on the 31st day of June, 1844, ‘To enquire and report upon all Grievances not connected with the lands of the Territory’ in SMH, December 13, 1844.
87 SMH, April 11. 1843.
Calls for responsible government in the 1840s were dominated by Wentworth’s common law constitutionalism. However, other actors, including the Colonial Secretary, Edward Deas Thomson, wanted to ensure that government was guided by utility rather than sectional interests. Thomson was primarily concerned with increasing the administrative potential of the colonial state. He knew, therefore, that responsible government, as guided by the English practice of individual ministerial responsibility, would stifle administrative efficiency. Sovereignty theory dictated that a nascent political society maintain a strong and unified executive. Accordingly, in the absence of party government the authority of the crown had to be retained. Thomson thus urged that “Responsible Government is perfectly incompatible with a dependency of the Crown, and that it is suited only to the circumstances of an Imperial State.”

As both leader of the Legislative Council and spokesperson for the government, Thomson exerted considerable influence on public policy. For him, the colonial legislature should focus on executive business, or what he termed “those great fundamental rules which are best calculated to produce the greatest amount of good for the community at large.” At this early stage of colonial political development full responsible government would leave government, not only to the whim of faction, but to the country lawyers and justices who dominated the Legislative Council. The Colonial Secretary was quick to define his constitutional position, therefore, as Wentworth formed a party in opposition to the government. Thomson knew that Wentworth wanted responsible government to placate their own sectional interests. Wentworth held a particular aversion to Governor George Gipps’ support for minimum price, district councils, and the civil list. When Thomson attempted to appropriate part of the 1842 estimates for the public service, Wentworth called it executive tyranny. A select committee on the ‘deficiencies for estimates in 1842’ was then established and the subsequent enquiry detailed the ‘irresponsibility’ of executive conduct:

before Colonial Governments can be clothed with a due share of constitutional responsibility, the head of each must be surrounded with responsible advisers, who should control its acts, and be themselves responsible for its measures. in the same way as the ministers of the Crown are responsible for the acts of the Crown in England.

This kind of rhetoric was a precursor to Wentworth’s 1844 Select Committee on General Grievances. The attack on the incumbent executive was not surprising considering that Thomson was the head of the most centralized departmental structure in the Empire. It was

---

90 VPLCNSW, December 14, 1843; in Foster, Colonial Improver, 79.
Governor Darling who in 1827 made the Colonial Secretary responsible for the efficient execution of all executive orders. Commanding the administration of all departmental heads including the colonial treasurer, the surveyor-general, and the colonial surgeon, this centralized system was cumbersome yet essential for retaining the absolute authority of the Governor. Thomson had rationalised this system after taking office in 1837, yet, by the 1850s, the office was unable to cope with the increasing complexity of colonial government. While Thomson recognised this inadequacy, and later engaged in a thorough reform of public administration, he was never committed to responsible government in the whiggish sense of individual ministerial responsibility. The Colonial Secretary's office was made up of impartial clerks who were able to continue their administrative duties without political influence. Thomson wanted to retain these professional bureaucrats who administered each department with little interference from nominated and elected officials. This contrasted with the English assumption that ministers direct both the political and administrative functions of their department. The English model was an update of the old system of administrative patronage. By contrast, Thomson, while a conservative in the sense of his opposition to democratic institutions, was adamant that for colonial government to operate efficiently and effectively, it must adopt the conventions of collective ministerial responsibility.

In was via the 1844 New South Wales Report of the Select Committee of General Grievances that the colonial gentry attempted to institutionalise their common-law birthright and deflect the kind of political modernization proposed by Thomson. Therein it was argued that the unofficial nominees of the Crown had deprived the Legislative Council “of that control of the public purse, which the Imperial Legislature on the one hand, and successive Secretaries of State, with the sanction of the Lords of the Treasury – on the other, have over and over again placed at its disposal.” The Select Committee further demanded that the colonial legislature be given “the necessary privileges of a representative body, which imply that control over the ministers, and administration of the Colony which belongs to responsible Government, properly so called, and which can only exist, where the decision of a majority can occasion the choice – as well as the removal of functionaries – who are entrusted with the chief executive departments.” This was a direct appropriation of majority government per Durham. It was however, more a tool to attack Thomson than an enduring constitutional prescription. For this reason, the Report claimed that “it is clear from the evidence of the Colonial Secretary and Colonial Treasurer. that, in their opinion, no legal responsibility whatever attaches to them for any advice they may give the Executive”91 Wentworth’s committee also argued against the “entire separation of the executive and legislative powers” since it gave the governor exclusive power over the public purse and

enabled the “colonial executive to set to defiance the opinions of the majority of the council, and to trample without impunity on the most sacred rights of the community.” 92 Yet, as illustrated by Wentworth’s later proposals for a nominated upper house, these claims were not made in the spirit of cabinet government, providing instead a means through which the pastoralists could maintain control of the executive.

4. The critique of local self-government

While the constitutionalism which underpinned political reform in Sydney and Hobart tended to affirm the sovereignty of the common law, the stresses of colonial political development could no longer prop up a fractured administrative system directed by the justice of the peace. Jean Ely put it well, noting how the “Colonial liberals were soon disabused of the illusion that their national system could depend upon British-type municipal institutions ‘in the stage to which they have been brought by the labour and experience of centuries’.” 93 Typically then, while the Colonial Secretary was the head of a centralized and influential public service he still relied on the justices who administered local government according to British law. The 1823 Act which established the Supreme Court of New South Wales insisted by reason of the “fundamental principle of English law that, however the Crown in exercise of its prerogative may institute Courts of Justice, such courts must proceed according to the course of the common law.” 94 Under the 1828 Australian Courts Act, the application of law could no longer depend on the will of the governor, meaning that the judicial system officially became independent of the executive. For Else-Mitchell, this was a “recognition and affirmation by the British Parliament of Blackstone’s proposition that the common law of England is carried by Englishmen as their birthright to any new country in which they settle.” 95 John McLaughlin described how the 1823 Act symbolized the “unquestioned assumption”, in evidence from the first years of settlement, that the existing office of the Justice of the Peace should be continued in New South Wales, that the holders of such office should have jurisdiction to deal in matters regarded as not sufficiently important to deal with by the new Supreme Court, and that there should be no departure from existing practice in the type of person appointed to

92Cited in Melbourne, Early Constitutional Development, 308.
93Ely, “The Institutionalization of an Ideal”, 228.
the commissioner of the Peace, or the manner in which proceedings before magistrates should be conducted.\textsuperscript{96}

As guardians of the common law, the country magistrates and justices of the peace had become responsible for a large part of executive work, particularly the policing of the convict population, the maintenance of general law and order, and the supervision of crown leases. The 1830 Act of Council for better regulating the powers of Justices of the Peace (10 Geo IV, no. 7) gave the justices “summary jurisdiction, powers, and authorities over felons and offenders....for any part of the said Colony and its Dependencies.”\textsuperscript{97} The police magistrate, for instance, controlled the employment of local officers, administered police and gaols, and lobbied the central government for funds to implement public works. Golder notes that in new South Wales the “decentralization of the colony’s police meant that local forces were literally at the disposal of the local bench, so that the situation in some districts was almost feudal.”\textsuperscript{98} William Gunn, a Justice of the Peace for the colony of Van Diemen’s Land and the Chief Police Magistrate, observed that “all general correspondence related to police” pass through his department, and further, that the “sentences of local Benches...are sent to the Chief Police Magistrate, to be submitted by him to the governor for approval.”\textsuperscript{99} In addition, the magistrates in each police district were responsible for the composition of the electoral role, the issuing of licenses to sell alcohol, the licenses to print money and the care of the insane.\textsuperscript{100} David Neal, referring to the New South Wales colony, noted that the office of the justice of the peace “offered prized symbolic, practical and strategic advantages to those ...who could secure it.” The magistracy henceforth became the site for a significant political struggle between the exclusives, who largely controlled the magistracy, and the emancipists, whose resentment toward this relic of English government was expressed by E. S. Hall in 1829:

Great families, by there being Magistrates and Civil Officers, form a strong chain of political power in this Colony. The faint, distant cry of these poor people, if it should happen to penetrate to the Government House in Sydney (which is not very probable)


\textsuperscript{97}Quoted in \textit{Letter to the Right Honourable His Majesty’s Principle Secretary of State for the Colonies, London, From John Bingle, Esq., One Of His Majesty’s Justices of the Peace, for the Colony of New South Wales} (Sydney: 1832), 39–40.

\textsuperscript{98}Golder, \textit{High and Responsible Office}, 55.

\textsuperscript{99}“Minutes of Evidence Taken Before the Committee on Police”. \textit{VPLCNSW}, May 27, 1835, 5.

will have to break through the clamour and misrepresentations of a host of wealthy, interested and greedy men. Of men who are on terms of friendship with the members of our close Council, who are the makers of those laws by which the poor of this Country are now being everyday sacrificed to the rich. ¹⁰¹

This political network both mimicked aristocratic government in England and relied on the common law to maintain its authority. It included such eminent colonists as J. R. Brennan, who had emigrated in 1834 as a solicitor, and in addition to owning large estates in James Macarthur’s Camden electorate, occupied the positions of police magistrate and superintendent of convicts; and W. N. Manning, who settled in 1837 as a Barrister and subsequently became the Chairman of Quarter Sessions, Solicitor General (1844–56), Acting Judge of the Supreme Court, member of the Legislative Council (1851–56) and an ally of Macarthur during the 1856 election. ¹⁰² Most often, these men were aligned with the High-Anglican clergy who, up until the creation of a National Board in 1848, were the dominant force in colonial education. As the leaders of the ‘established’ church, the Anglican hierarchy had a constitutional mandate to control schools. This point was continually used to obstruct the introduction of a national system. It was the Anglican jurist William Burton who argued that the 1828 Courts Act, which made colonies subject to the English law, established the Church of England as the national church of Australia. As in England, this gave the clergy exclusive rights over public provision for religion and education. ¹⁰³ Furthermore, once the colonial gentry aggrandized their power via their intimacy with the office of the justice and the clergy, they began to assert the economic monopolies typical of the English aristocracy. The latter point was illustrated by Anglican support for the duty imposed on Australian corn. ¹⁰⁴ It was Robert Lowe who consistently opposed this network and in 1845 he wrote that “the Church of England is the principle obstacle to the emancipation of trade, and the diffusion of education, probably the only efficient remedies for the disorganised social condition of the Mother-country.” ¹⁰⁵

It was the unaccountable and summary power of the magistrates which soon drew the ire of many colonists. In Tasmania, during George Arthur’s Lieutenant Governorship, the justices were a common source of patronage and corruption, especially through their supervision of crown land. The journalist Henry Melville published several articles showing how, since the magistrates were appointed by the central executive, they had become enamoured in the practice

¹⁰¹Hall to Murray, 2/5/1829, HRA I. XV, 64–5.
¹⁰⁴See SMH, September 10 & 13. 1845.
of land jobbing. In 1835 Melville was himself imprisoned for supporting the recently dethroned magistrate, William Bryan, who refused to collude with Arthur on a land grant. Describing the office of the Police Magistrate as one founded purely on the patronage of the Governor, Melville remarked that land jobbing deterred emigration, particularly of capitalists, to the colony.

The critique of the administration of justice served as a catalyst for the push toward more efficient and responsible government. In the 1830s, this discourse was fuelled by the summary powers of magistrates in the policing of the convict population. Large landowners and magistrates such as James Mudie had a reputation for jettisoning due process when disciplining convict labour. As the political strength of the emancipists increased, these abuses of authority were consistently brought to the surface. In 1833 the emancipist lobby successfully convinced Governor Bourke and Chief Justice Francis Forbes to draft a Bill which would give the colonists trial by jury and allow emancipists to sit on civil juries. The Jury Act (An Act to Consolidate and Amend the Laws for the Transportation and Punishment of Offenders in New South Wales, 3 Wm IV. no. 3) not only limited the gentry’s exclusive ‘right’ over the common law, but emphasised the imperfection of aristocratic government in the colonies. Justice Forbes himself had been integral in the Act of 1823 which secured limited trial by jury and established, along with a Supreme Court, the first Executive Council. However, Forbes, a liberal and progressive jurist, did not believe that the Chief Justice should continue to serve on that body since, having been granted veto power, he would unduly obstruct the executive. This was indeed the purpose of an act designed by the colonial lawyers and landowners to secure their own common law rights and supersede the authority of the Governor. Accordingly, Forbes was aware of the need to assert the legislative will of the colonists without hindrance from common law prescription. He argued that when deciding whether a particular law was ‘repugnant’ to common law custom, the judges performed a political function beyond their judicial responsibly. Thus, judges had essentially become legislators, a fact noted in the Colonial Office by James Stephen, who observed that “the judges...pass through a course of political enquiry in order to satisfy themselves of the applicability or non-applicability of the particular law to the colony.”

106 Melville owned the Colonial Times which was set up to oppose Arthur and his magisterial network.
See H. Melville, Two Letters Written in Van Diemen’s Land Shewing the Oppression and Tyranny, of the Government of that Colony (London, 1835)
asserting their political will and becoming “instrumental to the abuse and degradation of the government.”

Forbes used his judicial authority – he called himself the “the Lords House” – to support the emancipists and challenge what he perceived as a largely corrupt magisterial network. In addition to liberalising the judiciary, Forbes had demanded responsible government in 1826. For him it was “erroneous in principle and inconvenient in practice to resort to the British Legislature to make laws upon matters purely local.” In outlining measures for constitutional reform, he argued that the “Executive Council is to be considered as a government body...as a cabinet for the colony; this is strictly constitutional; His Majesty rules the Empire; but he rules it by means of responsible ministers; and we know that in practice the government of the Kingdom is directed by cabinet. This I propose as a model for government in New South Wales.” It was bold to assume that responsible cabinet government was a British political reality in 1826, but nonetheless, it showed Forbes’ willingness to implement accountable parliamentary procedures and allow local statute to balance the jurisdiction of the imported common law.

The Act of 1833 gave Forbes, with Bourke, a significant role in constitutional reform. It prompted the exclusives, as represented by James Macarthur, to press for William Burton – Supreme Court Judge and advocate of the educational monopoly of the Established Church – to fill the position of Chief Justice after Forbes’ retirement in 1837. Two years earlier, the Justices in the colony were called on to elect a Chairman of Quarter Sessions and the exclusionist C. D. Riddell was unanimously appointed ahead of Bourke’s confidant, Roger Therry. Riddell was the Colonial Treasurer and his appointment “suggested a deliberate breach of faith” since Therry was favoured by the Governor. Bourke subsequently abolished the position of Treasurer from the Executive Council, telling Secretary of State Glenelg that Riddell was “the willing tool of a small but active party, who are in declared hostility to my

---

110 “Forbes To Houghton”, June 1, 1827, C.O. 201/188; in Melbourne, 118.
111 It was Robert Campbell, a pastoralist, member of the Legislative Council (1825–1843), member of the London Missionary Society and friend of Samuel Marsden, investor in Anglican Churches, and supporter of Broughton and the Kings School, who opposed the Act and represented the magistrates attempt to maintain the exclusives legal oligarchy. Bourke sought sanction from the Secretary of State to deflect Campbell’s remonstrances over the jury issue. See “Bourke to Stanley” HRA I:XVII, October 2, 1833.
113 Letter, May 27, 1837 (C.O. 201/267), in Roe, Quest for Authority, 55.
administration, uniting himself with a member of the Legislative Council who is well known for his factious opposition.”

Historians have commonly emphasised the clash between Bourke’s liberalism and the conservatism of the country magistrates. For Roe, “A major theme of Bourke’s government was his attempt to strengthen the executive vis-a-vis the amateur Justice.” In reaction, the “gentry strove consistently to magnify their juristic power as against the governments.” Yet while this was a “struggle for power”, it was also a constitutional struggle between common law government and, as Forbes’ political philosophy seems to suggest, an emerging faith in the need to develop responsible administration based on local statute. Roe himself acknowledged how, by the early 1840s, the gentry began to rescind their faith in local self-government, wanting instead to consolidate their authority in the legislature. It was at this point that Macarthur entered an alliance with Wentworth. Indeed, Macarthur began to support Therry, who co-adjudicated in Bourke’s attempt to nationalise education and was opposed by the gentry as Chairman of the Quarter Sessions. Therry sought election in the Legislative Council as the member for Camden, with Macarthur hoping to win the support of Therry’s strong Catholic constituency. Macarthur ultimately failed, however, to gain a seat in the reformed legislature, marking a decline in the governmental power of the country justices. By this, we can position the 1840s as a period that saw a broad shift toward the need to develop the administrative authority of the local executive. This had the effect of increasing awareness, however incipient, of the administrative scope of centralized cabinet government.

The stipendiary magistrates, who as ‘commissioners of crown lands’ enforced the increasingly unpopular system of minimum price, came under consistent attack during the 1840s. Even Wentworth’s 1844 select committee described the magistrates “present arbitrary and extraordinary powers”, particularly in regard to their authority to deny the landowners security of tenure. The Squatting Act of 1839 stipulated that all commissioners be magistrates and, in the words of Golder, “that ‘one Justice’ could summarily revoke a squatter’s license on a variety of discretionary grounds, including ‘malicious injury’ to Aborigines”, illustrated the summary nature of judicial authority in the colonies. These paid magistrates had accrued far greater authority than the ordinary justice – the sole power to settle boundary disputes, to deal with master and servant cases, to control the movement of convicts still under assignment, and to ensure that the Aboriginal people, per Glenelg’s instruction to Bourke, were treated according to

115 Roe. Quest for Authority, 41-2.
British law. While justified on economic grounds, Governor George Gipps, in 1847, decreased the government grant to police magistrates, a move which later laid the pretext for the diminution of the commissioners authority.

The arbitrary nature of common law government was to inspire the ultimate centralization and professionalization of the magistracy. In the Tasmanian legislature, T.G. Gregson argued that the police magistrates were complicit in a “fearful system, founded upon convictism” and should be dispensed with. He continued:

the time had arrived when the system which had been established in the days of the triangle could be dispensed with, for magistrates, he said, were nothing but floggers; it was not requisite they should have a knowledge of the law, or be able to read Burn’s Justice. So that they could carry on the work of the office, that was all which was required; and when an unpaid justice got by the side of the stipendiary, “What is your opinion of the case?” said the stipendiary. “Oh, whatever you says is right.” was the reply, and in consequence of that system many a poor unfortunate fellow has been sent to the gallows.

The Courier, the vehicle for the Tory-Anglican lobby, immediately replied to Gregson’s “wounding of the feelings of a body of respectable, intelligent, and conscientious men”. claiming that while “the office of the justice is a very ungrateful one”, the magistrates and country justices had “uncompromisingly administer[ed] the law.” Further, “if country landholders will not act, and cannot be expected to act, how may we ask, is the police protection of society to be carried out?” This point was resolved in both Tasmania and New

---

118 See Select Committee on Police, VPLCNSW, 1847, 2. This began a rapid deterioration of the police magistrates authority and by the end of 1847 there were only seven left in New South Wales. See Golder, High and Responsible Office, 53.
119 In the case of Bicheno, Richmond, and Swansea, he recommended that police clerks remain to keep the records but that the position of stipendiary magistrate be abolished. Gregson himself arrived in Tasmania in 1821 as a free settler, soon after lobbying for the administrative separation of Van Diemen’s Land from New South Wales which occurred in 1824. A fierce critic of Arthur, the magistrates, and the clergy, Gregson lobbied for trial by jury and representative government, especially through his newspaper the Colonist. His assiduity in part led to Arthur’s recall to London in 1836. After gaining the respect and patronage of Franklin, Gregson was appointed to the Legislative Council in 1843 and consistently campaigned for free, secular, and compulsory education
120 VPLCVDL, December 20, 1855
121 Courier, December 31, 1855
South Wales, as we shall see later, by a rationalisation of the administration of justice wherein the unpaid magistracy was replaced with professional and ‘accountable’ lawyers. Similarly, ecclesiastical districts, which fortified the local jurisdiction of the clergy and magistrates, were dissolved. In Tasmania, Thomas Chapman, in response to opposition from the clergy, argued that these districts were funded by the state, and had a right to be abolished by the state. The Courier countered this logic, arguing that when such reforms “Loosen by rash and public contempts the bonds of a nations religious attachments, ridicule the tradition of ancestral reverence, teach a people that they are amenable to no other will but their own, and assert in their ears that they are the sovereign power in all things”, they will “have subverted the foundations of the national morality.” Typically, the rhetoric of constitutional ‘birth-right’ was used to legitimate the present structure of authority: “We stand upon the palladium of British liberty, and in rightful language of prescription and plain sense declare, that the English people, all over England and the colonies, are one and indivisible; their lawfully elected representatives carry with them prescriptive rights and privileges in every spot within the British dominions.” The demand for these ‘prescriptive rights’ was made in opposition to the increasing faith in the administrative fortitude of parliamentary statute. As Hirst explains: “The gentry had one comfort: no one succeeded to the prominent place which they had held in local affairs when they composed the magisterial benches. Just as the liberals were securing their hold on the benches, the power they exercised began a long decline.”

While reform of the judicial system, as Gregson complained, was slow to take hold in Tasmania, it had been a prominent subject of debate in Sydney since the late 1840s. In 1848, the Sydney Morning Herald described Jeremy Bentham as “by far the most profound and philosophic Jurist of modern times”, and used him to challenge Wentworth’s anachronistic attitude to law reform. Wentworth chaired a select committee to take evidence on the subject of law reform, using his authority to quash a proposal for amalgamation of the legal profession. Considering the cost and inefficiency associated with the separation of barristers and solicitors, the committee argued that amalgamation would be cheaper “in that multitude of cases, in which one intelligent man of law is sufficient for all purposes from the beginning to the end”; and more efficient “in that it offered the public the means of coming into immediate communication with all the most efficient of both branches of the profession: and thus tightening the bonds of

---

122 Courier, December 27, 1855
123 Courier, September 21, 1855.
124 Hirst, The Strange Birth of Colonial Democracy, 252. The administrative role of the magistrates was becoming obsolete as Master and Servants legislation was being phased out and the electoral system was centralized.
125 SMH. April 25, 1848.
professional responsibility." Wentworth had opposed these measures because they threatened
the power and hierarchical design of the legal fraternity.\textsuperscript{126} The issue of legal reform occupied a
fair portion of the Council's agenda, with Robert Lowe moving a reading of a Bill to simplify
equity proceedings and to limit the power of the judge to compel parties to resort to arbitration.
From this perspective, Robinson argued that "the administration of justice in this colony is in a
most unsatisfactory state, and in small cases the expense amounts to a denial of justice."\textsuperscript{127} This
was not an isolated critique, but illustrated the attempt by government reformers, not only to
attack the political or economic power of Wentworth and the squatters, but to dismantle the
common law system of government upon which their power was based.

It was in the convoluted struggle over municipal government that the constitutional foundation
of the colonial state was more fully debated. A fundamental part of the Durhamite constitution,
 municipal reform was quickly tested in the Australian colonies, particularly when Governor
George Gipps proposed legislation to establish municipal corporations in 1840. But when the
exclusives vehemently opposed measures to introduce local taxation and give an equal franchise
to the emancipists, Gipps was forced to withdraw the Bill. The real problem, however, was that
a rationalisation of local government would diminish the exclusives authority in the localities.
This had always been a fear of the English gentry class, and they succeeded in long suppressing
municipal reform – as illustrated by the sanitised measures contained in the 1835 Municipal
Corporations Act. Opposition was exacerbated in New South Wales when the Constitution Act
of 1842, in addition to providing for the election of two-thirds of the thirty-six member
Legislative Council under a restricted franchise, proposed that the colony established official
representation of constituencies through district councils. The current electoral districts of
course greatly favoured landed interests. Thus, while district councils were supported by Deas
Thomson, they were trenchantly opposed by the landowners who dominated the Legislative
Council. When Gipps finally introduced district councils in 1843, their authority was practically
ignored, particularly in the country. This was explained by Gipps in an 1846 dispatch to the then
Secretary of State, Lord Stanley:

\begin{quote}
District Councils are as much parts of the present constitution of New South Wales as
the Legislative Council is a part of that constitution, and they were, moreover, called
into existence simultaneously with the Legislative Council; but some supplementary
powers, necessary to the due performance of their functions, were left to be supplied to
them by the Legislative Council instead of being conferred on them by the Act of
Parliament itself; these powers have never been supplied, and partly from the want of
\end{quote}

\textsuperscript{126} SMH. April 25, 1848.
\textsuperscript{127} VPLCNSW. April 25, 1848.
them, partly from an apprehension studiously excited throughout the Colony of increased taxation, the District Councils...remained to this day entirely inoperative. 128

Central government was always preferred by the colonists because it did not impose such direct tax measures as a local rate. An 1844 Select Committee argued that district councils could never raise enough local taxation to carry out there necessary administrative functions, and further, that there was a lack of suitably qualified persons for the position of Councillor. George Allen, the Alderman of Sydney, did not believe that necessary taxes could be raised even in a populous district like Sydney. It was, therefore, not “desirable that the police or education should be placed in the hands of these Councils”, and that they “are much better in the hands of government.” 129 While not meaning to “to impugn the principle of municipal government”, the committee concluded “that this was a matter of so purely a local character, that any legislation of the Imperial parliament must, of necessity, prove a failure.” Typically, the argument ran that the “scattered and displaced state of our population”, along with “the pastoral pursuits and habits of a great bulk of that population”, tended to “dispersion instead of that concentration which is the essence of municipal government.” These geographic and demographic constraints were a feature of a Canadian experience in which “District Councils have proved a complete failure.” 130

Opposition to municipal reform continued throughout the 1840s. In 1848 the Legislative Council considered the increasing ‘disbursements and liabilities’ of the districts councils, while the Herald surmised that most had “no means of discharging” their debts. 131 During debate in Council, the general opposition to the establishment of the councils was reiterated. Donaldson explained that he “had always been opposed to the District Councils, and that he would continue to oppose everything having any connection with them.” Suttor was as bold as to argue that “the House had never recognised the existence of such bodies”, and that he “hoped they never would.” 132 In a despatch to Secretary of State Grey, Governor Fitzroy himself complained that in the time since District Councils had been established, “there has not been one road made or repaired under their Charter, not one school established, not one public building erected, and not

128 Sir George Gipps to Lord Stanley, HRA XXVI:1, April 29, 1846, 28.
129The Select Committee of the Legislative Council, appointed on the 31st day of June, 1844, ‘To enquire and report upon all Grievances not connected with the lands of the Territory’ in SMH, Friday, December 13, 1844.
130The Select Committee of the Legislative Council...upon all Grievances.”
131SMH. May 1. 1848.
132VPLCNSW, April 27, 1848.
one farthing raised or applied to the support of a District Police or to the administration of Justice.”

Coinciding with lobbying from Molesworth to give the Australian colonies power to manage their own affairs and construct political institutions in accordance with their peculiar circumstances, Secretary of State Grey was widely criticised for his attempt to impose district councils in New South Wales. Grey’s proposal to “provide for the municipal government of the various towns, etc., and to secure for these municipalities there just weight and consideration” was part of a general proposal to separate the Port Phillip colony from New South Wales. In 1839 a committee representing the Port Phillip colony presented a petition to the British Parliament demanding “A Responsible Government entirely separate from and independent of New South Wales”; and “A free and extended legislative representation, corresponding with the extent and population of the District, and equal to the exigencies of a free State.” These demands were very near the specifications outlined in the Durham Report. Sweetman observed that this was “certainly striking” considering that at this stage the report had barely been released in the Australian colonies. The separation of the Port Phillip District from New South Wales, as was stipulated in the Australian Colonies Government Act of 1851, was prominent on the agenda of the colonial reformers, and it was Charles Buller who directly lobbied Grey for separation. After Buller explained to Grey his theory of responsible government and systematic emigration, he asked “Why should not the people of Port Phillip, if they desire it, be separated from New South Wales and given perfectly free institutions?” The Port Phillip Herald expressed the frustration that “not one single member of the legislature, from his Excellency the Governor down to the Clerk of the Councils, has ever visited Port Phillip, or has a vague idea of the actual state of the province.” The Colonial Office admitted the political inadequacies of a district whose economic and population growth necessitated a system of responsible municipal government, and in 1847 Grey wrote to Fitzroy sanctioning the creation of a separate colony. The issue of self-government for Port Phillip, while drawing the

---

133 Fitzroy to Grey, *HRA* I: XXVI, 147.
134 See Molesworth’s House of Commons Speech July 25, 1848; requoted in *SMH*. November 18, 1848.
135 Earl Grey to Sir Charles Fitzroy”, *HRA* I:XXV, July 31, 1847, 698–703.
137 Buller “Memorandum to Lord Grey”, 1102–1104.
138 Quoted in *Port Phillip Herald*, May 26 & 29, 1840.
139 Earl Grey to Sir Charles Fitzroy”, *HRA* I:XXV, July 31, 1847, 698–703.
ire of exclusives and magistrates whose authority in the district would be diminished, was therefore accepted as a progressive step toward a more modernized colonial polity.140

It was the clause for municipal government in the 1847 despatch that drew the strongest opposition from a colony whose constitutionalism could not yet conceive an integrated system of representative government. The Australian, for example, which had been a strong supporter of national education, argued that Grey failed to appreciate “that the unanimous voice of the Australian colonists had declared these councils to be altogether insusceptible of practical application in this widely spread and thinly populated, territory; that if applied, they must bring in their train ruin and confiscation.”141 Grey’s rationale for the establishment of district councils was as follows:

Local self-government, if necessary for the good of the whole colony, is not less necessary for the good of the several districts of which it is composed. For this reason it was that parliament provided for the erection throughout New South Wales of Municipal Corporations, which should, in various respects, balance and keep in check the powers of the Legislative Council. By this method it was supposed that the more remote districts would be able to exercise their fair share of power, and to enjoy their proper influence, in the general policy of the whole province: but the result has disappointed the expectation. The Municipalities have only a nominal existence. The Legislative Council has absorbed all the other powers of the colonial state. The principle of self-government in the districts the most remote from Sydney, is therefore acted upon almost as imperfectly as the conduct of affairs had remained under the same management and institutions as those which the existing system superseded.

Grey, like the Durhamites, knew that municipal government was crucial to establish proportional representation and an integrated system of responsible government. Its main advantage was of course to rationalise and make accountable the arbitrary routines of the unpaid justice. In this vein, Grey noted the benefits of municipal reform in British North America and the United States:

experience of our own country, that of the British provinces in North America, and also that of the former British colonies which now constitute the great republic of the United

140 The Colonial Treasurer, C. D. Riddell, and the Bishop of Australia, both Legislative Council members and staunch defenders of exclusive political interests, where the only two to vote against the proposed separation.
141 Australian, December 31, 1847.
States, may be said to have conclusively established not merely the great advantage of
devolving the management of local affairs upon the inhabitants of districts of moderate
size, acting by their representatives, but likewise the converse of this, and that evils of a
very serious kind result from committing the exclusive management of the affairs, both
general and local, of a whole province, to a central legislature, unaided and unbalanced
by any description of local organisation.142

This was not a critique of central government per se but an attempt to improve the
uncoordinated and irresponsible structure of colonial government. The fact that municipal
corporations were to bear to the popular branch of the general legislature the ‘relation of
constituents and representatives’ was, for the Sydney Morning Herald, a “bold and startling
innovation.” Grey’s despatch provided for municipal government as an adjunct to a bicameral
legislature. This design was explained by the Herald: “The changes introduced into our existing
legislature are twofold. In the first place, the elective and nominee members are to constitute
distinct branches, the former to be styled on the House of Assembly, and the latter the
Legislative Council. And in the second place, the elective members are not to be returned, as
heretofore, by majorities of the qualified inhabitants of Electoral Districts, but by the Municipal
Corporations.”143 The latter would ensure that the conservatives could not change the electoral
divisions as per the current constitution. Grey also proposed a federal congress, reasoning that
“It is necessary that while providing for the local management of all such interests, we should
not omit to provide for the central management of all such interests that are not local.” Since the
British parliament could not oversee the management of all national issues, a federal
government could regulate areas of common or national interest including import duties, postal
communications, roads and transport, and financial regulations.144 This proposed systemisation
of representative government from the central to the local level was a portend of things to come.

The class and economic objections to municipal reform came from the squatters, who would
lose a significant amount of representation in the re-drawn municipal districts based on
population rather than wealth. For this reason, the Herald wondered how, “if representative
members of the colonial legislature are to be returned by Municipal bodies”, that the “wealthy
and intelligent section of the community, the holders of crown leases”, were to be
represented.145 In the following few months Grey’s constitutional proposals were treated in the
Herald as an “attack upon our liberties.” Provoking a series of public meetings and petitions

142Grey to Fitzroy. HRA XXV: I, July 31, 1847.
143SMH, December 27, 1847.
144Grey to Fitzroy. HRA XXV: I, July 31, 1847.
145SMH, December 29, 1847.
opposing Greys despatch, the Herald remarked that the colonists had “approved themselves a thoroughly British people. Australians and immigrants have alike demonstrated their Anglo-Saxon lineage.” Grey’s manifesto would thus trammel ‘self-reliance’ in the country districts, threatening the “glories of the British Constitution” and the “fundamental rights of British subjects.” However, while largely rejected, Grey’s radical constitutional design was the catalyst to more detailed analysis and debate concerning the constitutional make-up of the colonial state. Grey may indeed have been premature in promoting such an advanced constitutional framework, buts its underlying logic, administrative efficiency as opposed to property rights, would, as the following narrative illustrates, have significant influence over the design of responsible government in the colonies.

5. Legislative absolutism and the move toward centralized cabinet government

On May 10, 1848, the Legislative Council of New South Wales resolved “that the erection of Port Phillip into a new province may be affected without any fundamental change in the Constitution.” This imbued some colonists with a fear that British colonial reformers were attempting to upset local policy and effect over-zealous political change. The Australian asked whether it can be

(as indeed rumour asserts) that to the notorious Colonization theorist, Edward Gibbon Wakefield, and not to Lord Grey, that the colony is indebted for the Constitutional theory which his Lordship has so dimly shadowed forth in his Despatch of the 31st of July? Is it really to the discoverer of that great secret in colonization, now familiarly talked of under the ‘Wakefield Principle’ and which, according to its enthusiastic advocates, was to have made mankind rich, virtuous, and happy for the rest of their time on earth — it is really to this gentleman that, in his new character as Constitution monger we owe this plan which Lord Grey thinks will “settle the Colonial Governments on a basis on which the Colonists may, under the blessing of Divine Providence, themselves erect institutions worthy of the Empire to which they belong, and of people from who they are descended.”

---

146SMH, February 16, 1848.
147Cited in Sweetman, Australian Constitutional Development, 227.
148The Australian, December 31, 1847.
The connection between Grey and Wakefield was not wholly justified considering that the Society for the Reform of Colonial Government, set up by Wakefield in 1850, disparaged Grey for his failure to expunge the ‘monster grievances’ – the civil list and imperial control of waste lands. Nonetheless, and exemplified by his 1858 essay on parliamentary government, Grey was privy to the latest governmental theories. While he may not have been a dupe for Wakefield, he was determined to modernize colonial political institutions. Like Wakefield, he realised that cabinet government was unworkable without proportional representation and well-defined electoral boundaries. He hoped, therefore, that a reformed system of district government would lay the basis for an expansion of the state legislature and the development of majority government. But some colonists were not yet ready to embrace such a shift. The *Australian* believed that such rapid democratisation – “a violent and sudden change to which neither the state of society, nor the extent of their population is accommodated” – was only applicable to the last stages of political progress, which would be the consummation, not the mere commencement, of a complicated colonial polity, and which would demand all the refinement of a highly-educated, a wealthy, a concentrated, and a numerous population, whose position in all these most essential regards would urge them to accomplish the first and most natural desire of all enlightened and free-spirited men, to keep the control of their own affairs in their own hands.

Grey’s proposal to substitute electoral districts for municipal councils, and therefore to ensure that elections were based on numerical population rather than landed interests, was described by the *Australian* as un-English since it failed to understand the habits and circumstances of local colonists who had not yet “learned the art of local government, or become attached to the duties which it imposes.” Local government had succeeded in America since the original emigration to North America was characterised by a “bold spirit of inquiry and independence” and constituted

---


150 The colonists were generally fearful of the power wielded by Grey, Wakefield and other systematic colonizers. In addition to being statesmen and political theorists, these men wielded a lot of power through their personal investment in the colonies. Grey, for example, was a Director of the New Zealand Company, a Royal Charter enterprise which hoped to exploit the social and economic potential of New Zealand after the South Australian company had suffered from stalling development. The press in New Zealand described the “reckless, inconsiderate, and pernicious” activities of the Company. These included speculation, extra-treaty land sales, jobbing, and having shareholders, on bankruptcy, reimbursed from the colonial revenue. *Southern Cross*. November 27, 1847.

151 *Australian*, December 31, 1847.
a “vast mass of free and enlightened opinions, professed by men who had early been accustomed to inquire, and to think for themselves, and to form their own judgements and be guided by their own principles.” These views typified the contradictions inherent in early constitutional debate in the colonies. While the *Australian* opposed aristocratic government, it feared radical political reforms which would essentially increase the power of central government since these might help to consolidate the power of the gentry who had a stronghold within the Executive Council. The liberal press had not, therefore, figured that this broad reconstruction of municipal and parliamentary government was an attempt to challenge the constitutional integrity of a common law tradition that remained the main barrier to governmental reform.

Considering the increasing ratio of free immigrants that had left England dissatisfied and disillusioned with the corruption, inefficiency, and unaccountability associated with municipal organisation, it was not surprising that local government was initially resisted. The 1833 Royal Commission into Municipal Corporations, for instance, showed how

there prevailed amongst the inhabitants of a great majority of the incorporated towns a general and...a just dissatisfaction with their municipal institutions, a distrust of the self-elected municipal councils, whose powers are subject to no popular control, and whose acts and proceedings being secret, are unchecked by the influence of public opinion; a distrust of municipal magistracy, tainting with suspicion the local administration of justice, and often accompanied with contempt of the persons by whom the law is administered; a discontent under the burthens of local taxation, while revenues that ought to be applied for the public advantage are diverted from their legitimate use and are sometimes squandered for purposes injurious to the character and morals of the people.  

The corruption inherent in the old corporations was generally acknowledged by the colonial press. In 1849 the Hobart *Courier* gave the following assessment of England’s municipal history:

The corporations of Great Britain in their first institutions were little republics – executing justice by their own magistrates – bearing arms for their own defence, – and

---

152 *Australian*, January 14, 1848.
performing all the acts and enjoying all the privileges of internal sovereignty. At a later period they were monopolies imbued with the most selfish spirit, and bartering their privileges for money; they were the main strength of Toryism, and long leagued with a detested faction which changed its name to elude the odiums it inherited. These corporations were often nests for fraud, gluttony, drunkenness; and the institutions they dishonoured were only saved from extinction by throwing them open to light and air, and utterly swamping the faction who had abused and debased them.154

The profusion of statutory boards over the second half of the nineteenth century was an effect of the inadequacy of municipal government. In some part a hang-over of the authority of the Governor-in-Council — a prototype cabinet in which the Governor and Executive Council collectively deliberated on public policy — and the natural progression toward collective rather than individual ministerial authority, the statutory board was also one of the few means to provide central supervision of education, public works, finance, transport, and social-welfare.155

The inefficiency of local-denominational school governance was, for example, a primary motivation for the creation of the National Board of Education. Established in 1848, the National Board was the product of Robert Lowe’s 1844 select committee into education which opposed attempts by the then Governor, George Gipps, to fund and administer schools via district councils, and which proposed a system of central funding and inspection that resulted in the first government grant to public schools. Furthermore, the national board that was created on the advice of Lowe, was the catalyst to full ministerial control of the public school, having been transformed into the Council of Education in 1868 before the final introduction of a Department of Public Instruction in 1880.

While proposals for municipal government were slow to take hold, Grey’s contentious provision for an elected upper house was given more immediate recognition. This point was supported by Earl Grey’s successors in the Colonial Office, Sir George Grey, who in 1854, in a despatch to Governor Denison, wrote that “Her Majesty’s present government are of the opinion that, provided the Legislative Council is so constituted as to possess the respect and confidence of the community, and at the same time to be less directly liable than the Assembly to popular impulse, and to be acting as a salutary check against hasty legislation, the particular mode of constituting it is not a matter of primary importance; and they do not, therefore, feel it necessary to insist on its being nominated by the crown.” In the same 1854 dispatch George Grey officially acknowledged “the right of communities such as those now organised in Australia to

154Courier, October 6, 1849.
155See P. Finn, Law and Government. 59–62.
legislate generally for themselves.” A year earlier Earl Grey, in a review of his colonial experience under Lord John Russell, admitted the difficulties of formulating a principle of election for an upper house but that the principle was nonetheless essential to increase the sovereign legislature’s “weight and authority.” A responsible upper house would, under a system of majority government, provide a mild check on “hasty legislation” while giving the cabinet a clear mandate to initiate and execute statute law. In New South Wales, the conservatives, presuming that the Legislative Council was to be nominated, argued, in the case of W. H. Suttor, that “under responsible government, there could be constant antagonism between the Upper and Lower Houses, and between the aristocratic and democratic parties.” Similarly, Bland stated that it would create “interminable collisions” with an executive nominated by the crown. A second house would rarely be effective “except on those very rare occasions when the interests of the Home Government and the Colony happen to be also those of its members.” The more progressive constitutional theorists admitted this fact and therefore proposed that the upper house be elected and form part of a system of collective ministerial responsibility.

The constitution of the upper house was a delicate matter. While Denison wanted to maintain the separation of powers by ensuring that the Council was not dependent “upon the popular will”, the Colonial Secretary and Benthamite, Henry Chapman, argued that election should provide for a parliamentary majority in both houses. While espousing the “salutary principle of the separation of powers”, Chapman insisted that “the constitutional control of the legislature over every department of state should not be impaired.” Dissension between nominated and elective chambers should be avoided so that cabinet government could operate most efficiently. Chapman called parliamentary government “a ministry responsible to, and virtually removable by a parliamentary majority. Thus, under the British Constitution, a ministry which cannot retain the confidence of a majority of the House of Commons, cannot, for any length of time, carry on the government.” These thoughts were contained in a pamphlet on *Parliamentary Government* designed to show that “In the colonies the executive may persist in measures and a general line of policy opposed to the views of the majority without either the American or English check.” As a response, Chapman recommended “the English constitutional check of a responsible ministry”, arguing that while the legislature has nothing to do with “executive action” it has everything to do with “executive control.” Accordingly, the “proper

---

156 Grey to Denison”, *HRA* XXVII:1. 1854.
moment for making communications must always be left to the discretion of the executive...there can be very few subjects which ought to be withheld from the legislature.”

Citing the Canadian experiment in self-government, Chapman noted that the “surprising manner in which Canada has advanced in population, wealth, and general resources since the introduction of a responsible ministry, is such as would have been impossible under a feeble government.” The *Mercury*, the dominant source of editorial opinion in the colony, called Chapman a “constitution monger”, claiming that responsible government was inapplicable in small and underdeveloped colonies.

The *Mercury* reviewed Chapman’s pamphlet on the day that it published the ‘Report of the Select Committee on the New Constitution’. In a radical deviation from British practice, the report recommended the establishment of a bicameral legislature with an elected upper house. As its author Richard Dry himself acknowledged, “It is in the constitution of the Upper Chamber that your committee have been compelled to promote the greatest departure from the British constitution.” The issue of an upper house was highly contentious in both New South Wales and Tasmania. In the former instance, Wentworth’s influence ensured that the ‘Bunyip Aristocracy’ retained control of a nominated Legislative Council. By contrast, and as attested by the report of the new constitution, the strong anti-transportation and liberal lobby in Tasmania were resolved in favour of an elected upper chamber in the hope of dethroning the landowning monopoly in the Legislative Council. Not surprisingly, the *Mercury* championed a more orthodox constitutional model and opposed an upper house in any form:

> the experience of our council now might have warned us against wanting them in duplicate for the future. What do we gain? This – that in addition to the internal dissensions of the houses, we shall have endless squabbles with each other? To the miserable figment of ‘responsibility’ we have sacrificed nearly all that...could be desired in sound legislation. A certain amount of official experience and aptitude is always necessary in the chief offices of an executive...impossible to find here is such plenitude as to secure a constant supply when we are subject to the changes and chances of popular election.

The *Courier* concurred, arguing that the social and political calibre of the colony did not justify a body which would become a “superfluous and a nuisance.” Admitting that an elected second

---

162 *Mercury*, October 7, 1854.
164 *Mercury*, November 1, 1854.
chamber might be needed to check the “transient ebullition of the popular will” in an established colony, the Courier argued that Tasmania was still a “petty community.” Indeed, the Governor is “the head of a municipality, but not a prince; and we require municipal laws and not the pomp or parade of a sovereign state... The attempt to establish government after the pattern of the supreme legislature and executive, is to suggest to the colonists the notion of a total independence.”

Representing the ‘particular’ interests of the country gentry, the Courier typified conservative reaction to a system of majority government preened of traditional ‘checks’ such as high property qualifications and a nominated upper house. By contrast, the 1853 Select Committee on the New Constitution was part of a concentrated effort in Tasmania, inspired in part by a faltering economy and the continuing ‘taint’ of convictism, to effect political modernization via a progressive model of responsible cabinet government. The elected upper chamber recommended in the report was proposed in light of the failure of Canada’s nominee Legislative Council. Referring to the conflict which prompted the Durham mission, the Report remarked that “a nominated Upper Chamber not only failed to accomplish the end for which it was designed, but that it has produced discontent on the part of the people so serious as to have led to rebellion, and on several occasions to a stopping of supplies, by which the government has been seriously embarrassed. and the advancement of the colony greatly retarded.” Dry affirmed that nomineeism was “bad in principle – that it would be bad in practice – and that, by vesting great power in a small and irresponsible body, it would jeopardise the liberties of the people.”

By late 1853 the Courier, realising that responsible government was an inevitability, began to support the idea of bicameral government. Apart from the Mercury, the Tasmanian press generally consented to the principle of Dry’s report. Its two fundamental proposals – that the executive be directly responsible to the legislature through removability of the governor by a two-thirds majority in both houses of parliament; and that the elective principle be adopted instead of a nominee or mixed constitution – were vindicated by the Courier and the Colonial Times. An elected upper house was justified as a conservative measure since the ‘people’ would provide a better check on the lower house than patronage or privilege. Problems with electoral boundaries arose, however, due to the failure to establish a comprehensive network of municipal government. The Courier urged that if “the people were prepared to govern themselves by local administration of their own affairs” then it would preferable to partition the

---

165 Courier. October 6, 1849.
167 See Courier, November 4, 1853; and Colonial Times, November 5, 1853.
island into municipal districts. But it was clear that such an “experimental career in self-government” was unlikely and a freehold franchise was proposed. 168

The shift in the Courier’s constitutional philosophy coincided with a period of flux in Tasmanian politics. The year 1853 marked the cessation of transportation, the establishment of a central board of education, the sacking of Henry Chapman and Alan Turnbull from the executive due to their opposition to Denison’s transportation policy, and the drafting of a new constitution. In all this, the long-running transportation debate was probably the key issue upon which the future direction of Tasmanian state building was fought out. In 1849, when transportation had officially ended in New South Wales, it became apparent that Van Diemen’s Land alone was the destination for the British criminal class. In that year 20 ships arrived carrying almost 2000 convicts, and by 1852 another 5000 felons were landed. In response, H.S. Chapman made a statement in the Council on behalf of “the Representatives of a people...to point out to you that the neighbouring colonies, in common with ourselves, are still suffering severely from the effects of the late system of Transportation” 169 This was a form of emigration which appalled liberals and capitalists well versed in systematic colonisation. But more importantly, the outdated eighteenth century legal system upon which the system had been founded represented a far deeper problem. Benthamite penal and legal reform discourse not surprisingly found voice in Tasmania. Therefore, and the Hobart Town Advertiser, when speaking on the transportation issue, advocated a “thorough reform of our Criminal Courts and Police Offices in the Mother Country.” In this vein, the Advertiser urged that the criminal classes should not be arbitrarily “shovelled-off”, but receive sentences “apportioned to the crime” as outlined in Captain Machonochie’s “General views regarding the Social System of convict management.” 170 Similarly, the Colonial Times argued that “transportation was unfitted for the object proposed”, supporting the late Charles Buller and the Archbishop of Dublin in their recent plan for relieving English poverty and crime through increased emigration. 171 Such typified the views of the Anti-Transportation League formed in 1849 in Hobart by prominent lawyers, parliamentarians, journalists, and bankers including John West, the historian and proprietor of the liberal Launceston Examiner, T. D. Chapman, T. G. Gregson, and Richard Dry. The League worked closely with delegates from Melbourne and Sydney to consistently pressure the Imperial Government to abandon transportation. In Sydney, it was the Australasian League, headed by Robert Lowe, which in 1850 held numerous protests against Earl Grey’s threat to give ticket-of-leave holders passage to New South Wales.

---

168 Courier, November 4, 1853
169 VPLCDL, September 16, 1853.
170 Hobart Town Advertiser Friday, June 14, 1849.
The Anti-Transportation League were formed in opposition to the pastoral lobby who wanted to continue transportation as a more consistent and less expensive source of labour than emigration. In Tasmania, Governor Denison was undoubtedly influenced by the landowning clique and continued to support transportation as the best source of labour in the colony. His opinion had been clarified in an 1848 despatch to Grey: “when I discover any other method by which an amount of labour adequate to the supply of its wants can be poured into the Colony, then, and not until then, shall I be prepared to admit that it would be for the benefit of the country, in either a moral or industrial point of view, that Transportation cease.” But in the face of a renovated and more liberal Council – the product of the 1850 Australian Colonies Government Act which gave Tasmania a two-thirds elected legislature in conformity with the New South Wales Act of 1842 – Denison’s stand would encounter firmer opposition. When the Council forwarded a petition demanding abolition only four members rejected it – the Attorney-General and three nominees. Denison was outraged and he dismissed his Colonial Secretary, Henry Chapman, and the Chairman of the Land Board, Alan Turnbull, for transgressing the Governor. Chapman refused to vote with Denison due to his firm conviction that transportation and representative government were incompatible. The dismissal of Chapman alerted the colonists to the need for a responsible executive. The petition presented by Gregson in the Legislative Council claimed that the actions of Denison was an “interference of the executive government with the freedom of speech and vote, without which the council must cease to possess the confidence of the colony.” The view that the Lieutenant-Governor had “adopted a most dangerous and injurious opinion in reference to a constitutional right of the people of this colony” was an expression of the recently evolved doctrine of responsible government. It was in 1841, during debate over the wrongful dismissal of the Melbourne ministry, that the crown lost its discretion to dissolve a ministry, or dismiss an executive officer, without majority support in the parliament. Chapman was soon portrayed as a martyr in the cause of

172 Denison to Grey, Feb. 5, 1848.
173 In Launceston Examiner, October 20, 1853.
174 Townsley missed this fact. He argued that the claim that “the Council had the sole power to deal with members for acts committed within it” gave “expression to a doctrine that was entirely foreign to British constitutional practice.” Townsley could then argue that the anti-transportationists were acting purely out of political expediency and not a considered constitutional theory. T. D. Chapman and Gregson therefore initiated the constitutional committee because they realised that “they could bring about the end of that system (transportation) by a change in the constitution of the colony.” Townsley, who favoured the “constructive” and “energetic” administration of Denison, argued that the constitutional reformers were only concerned with their own “social and economic interests.” Townsley, Struggle for self-Government, 130, 137–8.
responsible administration. When released, his pamphlet on parliamentary government, as the *Mercury* indignantly described, was treated with the “fever of adulation.”

The select committee on the new constitution made Chapman’s ideas on parliamentary government an integral part of Tasmanian constitutionalism. Chaired by the ardent anti-transportationist, Thomas Daniel Chapman, it recommended that the upper house be elected rather than nominated since “it would be wrong in principle and destructive of the best interests of society, to vest in a privileged and irresponsible class those powers which are inherent in the people.” The framing of the constitution should then be in accordance with the citizen elector who is the “legitimate source of all power.” William Race Allison, a nominee member of the Council, responded by moving that membership of the assembly be increased from 30 to 36 “in order that the feeling of the colonists thereupon may be more extensively expressed, and the new, rapidly increasing and varied interests of the country more fully represented.”

Considering the time it would take to re-appoint the electoral districts, Dry, in opposition, noted that the Constitution Bill might be stalled for another three years. Allison’s measure was attacked by Chapman, Gleadow, and Dry as a means to preserve the status of the nominee members. These members were given support by the *Launceston Examiner*, whose editor John West consistently reproached “noxious nomineeism” as a bulwark against parliamentary reform.

Historians such as Townsley have acknowledged that an elected upper house was a “radical departure” from orthodox constitutional convention. However, these writers have also suggested that it was a political expedient designed to dethrone the nominee members. Such accounts miss, however, the pervasive constitutional reform discourse which accompanied such reforms. The 1853 select committee was preceded, only a month earlier, by the publication of a new constitution drafted by the radical whig and Irish political prisoner, William Smith O’Brien. The *Examiner* lauded O’Brien’s “Outline of a New Constitution” as a scheme which would “secure good government and responsible administration.” O’Brien, an avowed Wakefieldian, yet like Grey supported Transportation in some instances, constructed the classic Durhamite constitution. An elected Governor was to enforce the sovereignty of the Crown through a swath of reserve powers and the authority to “summon and prorogue the colonial parliament, and to dissolve the House of Assembly.” In addition, O’Brien’s constitution proposed that the House of Representatives be elected “in proportion to the free population”; that the Chairmanship of the quarter sessions be abolished; that the Judges should go on circuit four times a year to promote a

---

175 *Mercury*, October 7, 1854.
176 *VPLCVDL*, October 4, 1853; in Townsley, 139.
more coordinated and responsible judicial system; that municipal councils form electoral
districts; and that a colonial confederation be established via a colonial parliament and a federal
court of appeal. This typically Wakefieldian constitution had a remarkable resemblance to the
one drafted by the Select Committee. Thomas Daniel Chapman quoted Molesworth to explain
the theory behind the new constitution:

It is a fundamental doctrine of the constitution that the crown, in the exercise of its
prerogatives, should always act by ministers responsible for the representatives of the
people. In the colonies the crown exercises its prerogatives by means of the governor,
therefore the governor should be responsible for the exercise of imperial powers to the
imperial parliament, and of colonial powers to the colonial parliament. Now, as there
can be no doubt that a colonial governor, or any officer of the crown, would be removed
on an address praying for his removal being presented from either house of the imperial
parliament, I think that a colonial parliament ought to possess some power of causing
the removal of a colonial governor by an address to the crown...the address must be
agreed upon by two-thirds of the whole number of members of the colonial
parliament.

This was the classic statement of sovereignty theory within progressive colonial
constitutionalism. The Governor would, in the spirit of Bagehot, provide for a ‘dignified’ and
single sovereign while the parliament would ensure that the practical parts of the constitution
are carried into effect. Chapman also proposed that electoral districts for the lower house be
based on “population” and not “acres or sheep or cattle.” The Report coincided with the release
of the Report of the Select Committee inquiring into education, which secured a central
education board and the abolition of the penny-a-day system which left education largely to
local control.

The report on the new constitution was also accompanied by debate over the Municipal Bill.
Not surprisingly, members of the Council remained sceptical about the applicability of
municipal government in Tasmania, with the Solicitor-General remarking that “corporate bodies
had not worked well in the colonies.” Nonetheless, municipal organisation was important for the
constitutional reformers since it would, as outlined in the Select Committee proposals, provide
responsible members for the upper house and, as stipulated in the Municipal Act Amendment
Bill, subvert the authority of the police magistrates by shifting most of their jurisdiction to an
elected Municipal Mayor. In addition, matters of local jurisdiction such as public works, which

---

178 Launceston Examiner. August 31, 1853.
179 VPLCDL. October 4, 1853.
had fallen under the jurisdiction of the magistrates, were to be carried out by paid commissioners. Such Benthamite reforms were accompanied by the general transformation of the constitution, the ending of the transportation and reform of school governance. Municipal reform formed part then of a broader process of state formation designed to place an administrative web over local populations that hitherto had been governed arbitrarily and inefficiently by the unpaid and unaccountable magistracy. In this way, the granting of licences, the superintendence of schools, the systematisation of local rates and the operation of public works were to become the responsibility of elected and paid public officers. Municipal reform was thus a microcosm of a broader reconstruction of the colonial state which would reach its zenith when a fully centralized system of responsible cabinet government was put in place.

A governmentalised state apparatus that could effectively employ institutional surveillance through what Foucault called ‘bio-political’ power was a project that relied on the vigilance of the colonial reform lobby both at home and in the colonies. Accordingly, liberal and reformist publications such as the Launceston Examiner were keen to venerate the reform agenda of William Molesworth, Robert Lowe, the Duke of Newcastle and John Russell, who, coming to dominate the Colonial Office in 1853, were described as the “most talented staff of officers that ever guided the affairs of the empire are now in power.” The former were considered “among the most prominent of Australia’s friends”; particularly Lowe, who having left New South Wales in 1850 had since become a member of parliament and bitterly opposed Wentworth’s proposals for a nominated upper house and an electoral system weighted in favour of the country districts. When the New South Wales Government Act was being debated in Westminster, Lowe protested “against that House being made the tool and instrument by which an oligarchic faction in a colony should rivet a galling yoke upon the necks of their fellow-subjects.” It was through these debates that Lowe alerted the Parliament to colonial conditions and set the tenure for self-governing constitutions.

---

180 See Cornwall Chronicle, August 27, 1853. Considering the difficulty of passing the municipal legislation Gleadow proposed, in an attempt to undermine the authority of the country gentry, that magisterial and judicial functions be let out by tender. Cornwall Chronicle, October 15, 1853.

181 Yet the Examiner lacked an appreciation of the constitutional logic of Lowe, Molesworth and co. These were not free trader’s in the literal sense. The Examiner, while advocating Durhamite notions of a responsible government argued for “Local action as opposed to centralization”; the abolishment of general taxes; and the power to collect a local police assessment given to each district. Launceston Examiner, March 3, May 7, 1853.

Historians have typically argued that Tasmania’s new constitutional model was conservative because it did not propose independence or diminish the prerogative power of the Governor. This, however, misses the fact that the sovereignty theory advocated by Lowe, Russell, Molesworth, Chapman, O’Brien, the Tasmanian select committee and the ‘constitution mongers’ in general demanded that the Governor remain a ceremonial yet potent symbol of sovereign power. Such was uppermost in Earl Grey’s policy logic, and he failed to extend responsible government, as had been conceived in the Canada’s, to Australia because common law government would be consolidated by the conservatives who held power. Responsible government could not operate if the latter would legislate for full independence since it would dissolve sovereignty in the colony. The authority of the crown to delay the confirmation of colonial law gave the local legislature an opportunity of reconsidering and amending these laws. Grey observed “repeated instances in great improvement in the legislation of the colonies having been due to the exercise of this power.” In New South Wales Wentworth had realised this fact. With the conservatives, he attempted to break down sovereignty in the colony through an amendment to the 1850 Australian Colonies Government Bill designed to deprive the crown its power of veto. The Russell administration, with much support from Robert Lowe, successfully opposed the measure. Accordingly, the conservatives which controlled the New South Wales Council bitterly criticised the final bill. In 1855, their ‘Declaration and Remonstrance against the New Constitution Act. 13 & 14 Vict., chap. 59’ insisted that the colonists gain a fuller measure of independence. Lowe, however, was adamant that such ‘particular’ interests would not gain control of the legislature. The pastoral lobby had little appreciation of the subtleties of a complex industrial economy, and Lowe’s influence, as a member of the British Parliament, ensured that the former would not, having been preened of the system of government by patronage, be able to perpetuate their hold on political power. Government would henceforth be open to the best qualified political candidates, a natural aristocracy who would rule with a constitutional mandate and be held accountable in lieu of performance rather than patronage. These utilitarian ideals formed the pith of Lowe’s electoral speeches when contesting the Sydney elections in 1849: “The great question is – what are the requisites of a representative?...The first and great requisite...is independence...Hoping nothing

184 Lowe won a seat in Parliament in July 1852. He later had a significant influence on English education reform when appointed Vice-President of the Committee of Council on Education in 1860. There he established the revised code of regulations which insisted on ‘payment by results.’ His utilitarian reforms included the creation of public service exams, which substituted merit for patronage in admission to the civil service; the abolishing of imprisonment for debt; and the securing of a law for limited liability. Lowe left the commons in 1880 when on May 25 he was given a peerage and became Viscount Sherbrooke.
and fearing nothing (and pursuing) steadily the one great high and noble ultimatum of all
government and all legislation, the greatest happiness of the greatest number."\textsuperscript{185}

Lowe wanted to affect a utilitarian political realm unhindered by sectional politics or a
separation of powers. In a similar way, the classic constitutional check on ‘hasty’ legislation, the
appointed peerage in the House of Lords, was strongly avoided by the framers of the new
Tasmanian constitution. The elected upper house embodied the constitutional shift away from
the common law toward an expansive legislative state. This digression from the Whig
constitution was not slight or borne merely of local circumstance. The colony may have lacked
an established peerage, but a nominated upper house was still feasible. On the first of November
1854 an ‘Act to establish new Electoral Districts in the colony of Van Diemen’s Land and to
increase the Number of Members of the Legislative Council’, as outlined in the Australian
Colonies Government Act, was passed in the Tasmanian legislature. In a despatch to Grey,
Denison described how the Act “provides, in the place of the present Council, for the
substitution two houses to be named respectively the Legislative Council, and House of
Assembly. Their bodies are to be altogether...elected by the free unsolicited Choice of the
Community...The Government and the Legislative Council and the House of Assembly are to bestyled collectively the Parliament of Van Diemen’s Land. The idea of combining the Legislature
and the Executive under one general head as ‘the Parliament’ is a novel idea, but I do not see
that any practical inconvenience can arise from such a change in style.” The Act also made
executive officers responsible. Thus, in the advent “of not being able to find a Constituency to
return them as members of the House of Assembly, or of not being able, if returned, to
command a Majority in the House of Assembly”, the incumbent executive were to be
dissolved.\textsuperscript{186} The new constitutional embodied the theory of responsible cabinet government
immortalised later by Bagehot and Hearn. It was now left to transpose these ideas into a
practical administrative structure.

The new constitution in New South Wales was similarly framed, even though the 1853
Constitution Committee, as chaired by Wentworth, was bent on establishing an hereditary upper
house. The landed and magisterial interests were stronger and more established in New South
Wales than Tasmania. Moreover, Wentworth successfully hid behind the rhetoric of property
rights. Liberals such as Charles Cowper and John Robertson, who sat on the committee, were
unable to influence the draft constitution – Cowper tried to have the bill postponed – before it
arrived in London. However, it was their that problems began. Wentworth’s offsider, Charles
Nicholson, was worried that “Even if a good measure be adopted...there is a chance of it being

\textsuperscript{185}Peoples Advocate, December 1, 1849.
\textsuperscript{186}Denison to Grey' November 15, 1854. TSA GO/33 v. 81. 647-670.
rejected at home—and the chance is much augmented by Lowe.”187 Lowe knew that Wentworth wanted to impugn sovereignty and, by giving the conservatives control of what would inevitably become an independent parliament, destroy the opportunity to establish a thorough system of ministerial responsibility. John Russell was also unwilling to let Wentworth establish the kind of system of aristocratic government which he had been opposing in Britain. Thus, while the New South Wales Constitution Act (18 & 19 Vict., c. 54) provided for a nominated upper house, the Secretary of State ensured that the veto power of the crown, which the conservatives hoped to abolish, was retained. Ward insists that the significance of the granting of responsible government lay in the “power of the colony to govern itself...and also the power of the colonial government and the electorate to control the colonial executive.”188 However, the Act was the start, not only of self-government, but of the ascension of a modernised and rationalised vision of colonial state formation. This vision encompassed a redeployed liberal constitutional model based on the absolute sovereignty of the legislature. If public policy was to be centrally and ‘responsibly’ coordinated via the central parliament then Wentworth’s orthodox whig vision of liberal government would have to defer to a model of centralized cabinet government. Rather than simply ‘represent’ propertied interests and delegate social administration to ‘irresponsible’ clerics and magistrates, this model of government would facilitate heavily bureaucratised modes of public administration.

For this reason, the issue of administrative arrangements became a central feature of political debate in the change-over to self-government. The reformist liberals heavily influenced administrative reform through the ‘Select Committee on the Changes in the Administration under the New Constitution Act’, chaired by James Martin. The report of the committee proposed that on “the coming of that Act into operation the advisers or ministers of the Crown in the colony are to be subject to what, under the British constitution, is designated ministerial responsibility.”189 This was not merely a ploy to secure political power but to overhaul the pitiable administrative system controlled by the old nominated executive. In 1854 the Sydney Morning Herald urged that “the necessity of some amendment in the present capricious and irregular mode of appointing public officers has been made manifest by the frequent exhibitions of incompetence and negligence on the part of almost every department.”190 The Herald, as noted earlier, then supported the recommendations for a responsible, competitive, and paid civil

190SMH, October 21, 1854.
service, as proposed by the Northcote-Trevelyan Report. One of the “chief inducements” for the Trevelyan model was that it challenged “the fact that the subordinate officers in public establishments have little or no constitutional responsibility.” Thus, the Herald insisted that the attempt to wipe patronage and “bad or weak government” from the character of the civil service in Britain was “no less applicable to this country than the mother-country.” The select committee hoped to secure this transformation of colonial administration by constitutional means. It pre-empted Bagehot’s stricture that permanent and professional officers of each state department be held accountable via a responsible ministerial head. By virtue of their place in the cabinet, these ministers would provide for collective ministerial responsibility and a well coordinated system of ‘good government’.

The New South Wales Select Committee also influenced debate in Tasmania. The recommendation that the President of the Upper House have equity jurisdiction and be removable with the ministry was opposed by the Courier who was adamant the President not sit “durante placito populi.” The argument ran that the upper house members – who were, through electoral gerrymandering and a restricted franchise, largely to be composed of the landowning clique – were “independent, instructed, and respectable jurymen” of “high integrity” and “considerable experience” that had been “called upon to withstand the licentiousness and energy of the popular element.” For the Courier, the President embodied assumptions that the new constitution was still bound by the traditional convention of constitutional checks and balances. Accordingly, his independence would preserve the status of the Legislative Council, and more especially, the landowners, magistrates and clergy they represented. It was through the Electoral Act that the landowners attempted to consolidate their membership in the Council.

During debate on the Electoral Bill, T. D. Chapman demanded, therefore, that population form the basis of representation. He thought it absurd that “a district with 120 voters, 10,000 gum trees, and 50,000 sheep, should have one member, while Hobart Town only returned four.” While Chapman ardously fought for the right of the city constituents, the country members objected to the ‘tyranny of the town’. When Chapman’s amendment went to a vote, many of his supporters succumbed to the pastoralist lobby and rejected the measure. Conflict between country and city members continued. When the later proposed vast expenditure on a new government house, an electric telegraph, wharf development and railroads, the member for Glamorgan protested that too much of the colonial revenue was being siphoned from the pastoral districts and invested in urban development.

---

191 SMH, October 21, 1854.
192 Courier, December 23, 1855.
193 VPLCT, January 10, 1856.
194 VPLCT, Tuesday, December 20, 1855.
Increasing expenditure on civil infrastructure, including education, could not continue under the present constitutional system. For this reason, the *Tasmanian Daily News* was worried that the new constitution did not adequately encourage a centralized cabinet structure. The constitution stipulated that the Premier only required two faithful ministers to form a government. This meant that the executive would most likely be made up of competing interests, thus blocking any unified approach to legislation — indeed, this fear was a portend for the heavily factional political climate that characterised the first years of responsible government when a Premier could form a ministry with four aligned ministers. The *News* asked “How it would be possible, therefore, for him to form a powerful administration? How could there exist any harmony of action?” Cabinet government would not provide for a fusion of executive and legislative power if “All the subordinate members of the Government would be entirely independent of [the Premier], and his authority.”

Similarly, in Victoria, the *Argus* described past ministries which were “pitchforked together”, thus precluding the possibility for unified executive action. For this reason, the *Daily News* proposed that majority cabinet government be succoured by increasing the mandate of the Pension clause which only provided retiring pensions for three members of the old Executive Council.

In Sydney, the *Herald* did not believe that the Governor could maintain sovereign authority in the same way as the Queen in England. The argument ran that if the basis for sovereignty was in any way tenuous then the cabinet system would lack cohesion. The *Herald* admitted that “to let the majority shape the measures of Government, and give the Governor a cabinet responsible for their execution” was “perfect and enlightened in its forms”, yet it may “place the ruler of the day in the greatest difficulties.” The problem was a lack of social stratification, meaning that the absence of a strong colonial aristocracy undermined the pretensions of the separations of powers. In this way, “The great influence which the Crown possesses as the head of the privileged classes, and which has often been stronger than the Commons, cannot be found in a colony where the differences of rank are those of luck rather than origin. Thus the Governor’s position, when the house shall rule the country, will be one of eternal conflict, or studied acquiescence.” While it might be possible to moderate this “ascendancy of the people” through “a disposal of patronage” or “bribery”. these might “purchase votes” but “surely cannot secure them.”

If the loss of crown authority was inevitable, then it should be realised that the present government lacked the political strength for “important affairs.” The incumbent officers were largely at the “end of their official life”, and could not take the necessary initiative to fulfil the

---

195 *Tasmanian Daily News*, January 5, 1856.
196 *Argus*, January 8, 1856.
197 *SMH*, July 14, 1856.
duties of a sovereign legislature. Bereft of the political rectitude and stabilising powers of the crown, the responsible executive should then be comprised of active and independent leaders elected for their political and administrative acumen and their ability to act in the 'general interest' rather than in terms of short-sighted, sectional and popular caprice.

The most important innovation of the new constitutions was that they allowed professional, non-elected officers to sit in cabinet and retain an incumbent role in departmental administration. While the principle ministers should be elected and responsible to the parliament, the *Tasmania Daily News* described how “the policy and government of the country will have to be decided upon and arranged by a cabinet to which no Executive Councillor need have access *ex virtute officii*.” In this way, professional officers may continue “to occupy the post of Senior Members of the Executive Council, without being compelled to solicit the suffrages of the colonists in a contest for an elective seat: and the Government would in this way be able to command, at all times, the counsel and suggestion on many important points connected with the public affairs of a person of this officers professional experience without committing a servant of the Imperial Government of the varying opinion and changeeful politics of the day.”

Following the recommendation of a New South Wales select committee, this cabinet was to take the form of a colonial Privy Council. As to the question of how the responsible ministry was itself to be constituted, two methods, which had been proposed in Victoria and New South Wales, were considered. In the first instance, ministers were to be entrusted with the administration of the actual department over which they preside, and were to conduct both parliamentary and executive business. Alternatively, as Deas Thomson had proposed in Sydney, ministers were to be limited to parliamentary duties, with a professional administrator, like the Under-Secretary of State in England, given the role of advising the minister and controlling departmental business.

The second proposal pre-empted the creation of an extra-parliamentary professional bureaucracy. The seed of this development lay in the assumption that “an influential chief of a party, an experienced parliamentary leader and a clever debater, may be very little acquainted with the details of an office, or the method required for the management of a public department.” The English convention in which ministers were given control of offices for which they were unqualified would, for the *Daily News*, be to the detriment of colonial politics: “There seems no reason why, through any superstitious devotion to English precedent, we should feel ourselves bound to adopt in Australia, practices which have been tried and found wanting at our antipodes.” It was feared that a non-professional ministry would evolve during
the transition to parliamentary responsibility. This was the typical Benthamite aversion to popular government. As such, democratic impulse should be separated from the business of government. It was unacceptable that the new constitution would allow officials, by virtue of their electoral mandate, to administer without departmental knowledge, and without a rational and scientific conception of the best means through which to manage and regulate the population.

In New South Wales, Deas Thomson had laboured long on the question of the “division of the Cabinet or Administration, under Responsible Government, into different Ministerial Departments, and the distribution of the public business amongst them.” Indeed, it was not “possible for any one mind to grasp the whole of this important subject in all its bearings, direct and indirect, and it is only by the rude test of experience that the matter can be finally and satisfactorily settled and adjusted.” Yet Thomson had come upon a scheme that would “work most conveniently for the public service.” He proposed that the civil service, or ‘subordinate’ departments, “should be charged with the transaction of details, so that in the changes of Administration which may from time to time take place under the new form of Legislative Responsibility, the machinery of Government should never be liable to be stopped or impeded.”

A professional bureaucracy were then given effective control of departmental administration while the “Ministers were to direct those large measures of general policy.” The devolution of administrative authority to heads of departments was a radical measure that redefined the boundaries of responsible government. Thomson quickly declared that it was not “expedient to adhere to that which appears to have been contemplated in the Constitutional Act” since therein it was prescribed that public officers be nominated from the Legislative Assembly. In contravention of the Act, Thomson believed that these officers should be chosen on merit, should be paid, and in effect, should ensure that government is a function of the ‘science of legislation’ rather than the ‘natural rights’.

In his proposals for a responsible ministry, Thomson also digressed from the original Act. Added to the ministerial portfolios of Finance and Trade and Crown Lands and Public Works was a Minister for Public Instruction. This was an unprecedented innovation. Thomson hoped to give this minister control of nearly every educational institution in the colony. These included Sydney University, Grammar Schools, National Schools, Denominational Schools, the Protestant Orphan School, the Roman Catholic Orphan School, the Institute for Destitute Children, Literary and Scientific Institutions, Schools of Arts and Ecclesiastical Institutions. Since all of these received some state support. Thomson argued that “it is a duty as well as the

200 Administrative Arrangements -VPNSWLA, October 30, 1856, 877.
201 Administrative Arrangements -VPNSWLA, October 30, 1856, 878–80.
right of the Government to keep a vigilant watch over their management; and with this view the Minister for Public Instruction should be vested with the proper authority for exercising a supervision over them.” The Colonial Secretary then provided, in light of the recent establishment of representative government, a philosophical justification for state control: “With the free Institutions which have been granted to the Colony under the new Constitution, it becomes every day more necessary to increase the facilities of imparting instruction to the children and youth of the Colony, that when they grow to manhood they may be better able to exercise, with discretion and upright principles, those political privileges which have been bestowed upon the community.” Furthermore, if the legislature was to continue its “very liberal provision” to education, then the “judicious encouragement of an enlightened Minister” was required. This showed the important interconnection between the need to improve the moral and civic education of the citizenry; and the need to mirror these ‘upright principles’ in the operation of a rational, responsible, objective and bureaucratised system of school administration. Education reform was therefore welded to the constitutional mechanisms underpinning the modernization of the colonial state. Centralized educational governance became a model through which the civil society could be classified, regulated and trained to ‘subjectivise’ the routines of bureaucratic conduct, both within working institutions, the family and so on. Furthermore, a responsible and ‘democratic’ ministerial department of education set the example for the full bureaucratisation of other public sectors such as the health, social-welfare and law and order.

Education reform was increasingly being used to debate issues of bureaucratic design and it was not surprising that Governor Denison promised to address the education question in his opening Council speech of June 1855. The speech was much anticipated by the Sydney press, the Herald insisting that “No subject will come before the Council during its present session more important than the issue of education.” While certain that no “other subject will even approach it in importance”, the Herald acknowledged, however, that “extreme difficulty surrounds the question in such a state of society as ours.” In Tasmania, the Daily News justified the nationalisation of school administration in terms of “the triumph of the principles of enlightened liberality over the dangerous and discreditable dogmas of civil disability and religious disqualification.” There is greater complexity here than the rhetoric suggests, however. The social and political advantages of religious equality were not limited to the broader dissemination of public instruction. The principle was also implicit in the wider process of state

---

202 Administrative Arrangements - VPLNSWLA, October 30, 1856. 881-82
203 VPLNSW, June 15, 1855
204 SMH, July 3, 1855
205 Tasmanian Daily News, January 21, 1856
formation since it encouraged the “abolition of all sectarian distinctions in the appointment of public servants.” The liberalisation of the civil service had deeper constitutional repercussions since it would limit the influence of the magistrates and Established Church, and in this sense, the whole common law tradition, over the implementation and administration of state policy.

In this vein, the Daily News entered an ongoing polemic with the Courier, an avowed ally of the Anglican and judicial clique, in regard to the latter’s wish to dismiss Thomas Arnold, the Inspector of Schools in Tasmania, because he had recently become a member of the Roman Catholic Church. The secular press argued that such a demand was not so much a contravention of liberal principle but was “inconsistent with the true theories of sound policy and prudent legislation.” The fitness of a public officer must depend on their professional acumen rather than their political or religious affiliations. By contrast, the Courier argued that “The public may have forgiven him his amiable weakness as a man – may have overlooked his incapacity as a Secretary of the Education Board – but they will never tolerate his occupancy, as a Romanist, of that post which prescribes the instructional discipline of the youth of the great majority of the humbler classes of Tasmania.” The News countered by refocussing the argument on Arnold’s ‘responsibility’ and administrative ability. If the public were to accept incompetence, as the Courier seemed to suggest, it was, for the News, “indeed worse than intolerance.” The “fitness of the individual” should be the primary consideration in the appointment of public officer. Indeed, this maxim was crucial for the future of public education: “If there be a department of the State in which sectarian considerations should find no admission and exert no influence, it is that of education, fostered and supervised by the...free and full-grown State.”

6. Conclusion

This chapter has attempted to illustrate how a complex fusion of discourses concerning executive government, municipal organisation, the administration of justice, administrative arrangements and public education contributed to a seminal shift in the constitutional foundation of the colonial state. As the Daily News implied, the idea that education should be controlled by a bureaucratic department in a ‘free and full-grown’ state had, out of the protracted struggle for self-government, come to dominate colonial constitutional discourse. It is difficult to pinpoint the reasons for this shift. Partly from social and economic circumstance, and partly from the

---

206 Courier, January 18. 1856. See also Colonial Times, January 22, for Protestant opposition to Arnold’s “disloyalty and disaffection.” The Tasmanian Daily News (January 24, 1856) soon reproached the Times for its “intolerance and bigotry.”

melee of political and factional debate, it became apparent that public administration needed to be centralized within a responsible and omnipotent legislative state. This had deep implications for the future of Australian government since it signalled the decline of orthodox liberal constitutional convention. The constitutional debates leading to self-government had effectively discredited the social contract, natural rights theory, the balance of power, checks and balances, local self-government, and the inalienability of the established common law as a means to regulate the conduct of government and to create and administer public policy. But this was not an easy transition. The first twenty years of responsible government were marked by political impotence and a great deal of administrative ‘irresponsibility’. While universal suffrage and vote by ballot provided for a system of representative and majority government it did not, however, destroy the mentality of localised corruption, or alleviate the faction system that retarded the growth of a strong party system. Furthermore, the creation of ministerial departments of state were not initially matched by the national taxation system needed to increase the government’s ability to fund and administer public institutions. Further still, a failing party system could not provide a strict regime of political accountability. In this light the Herald, in 1867, described “A species of bribery corrupts the public morals and every constituency has its price. The administration of public lands and the grants of public works...present enormous efforts of gratifying friends. Public opinion becomes warped by selfish expediency [and] the people of New South Wales are unwilling to be taxed.”

Nonetheless, such ambivalence showed that minimal government, patronage, irresponsible boards and the arbitrary will of the justice of the peace were no longer acceptable means to govern the population. The Australian polis was now, conceptually if not practically, a function of the sovereignty of parliamentary majorities. Accordingly, it would provide security, not in terms of patronage, property rights or common law precedent, but via the utility of a responsible, professional, centralized and innovative state apparatus. Henceforth, the magistrate would occupy the margins of public administration. As the Tasmanian Daily News implored: "nothing can justify, in a government with any pretensions to a parliamentary origin, the assignment of a purely judicial functionary, like a stipendiary magistrate, the task of assisting in the formation of the policy of Government, or the devising of the laws which he has to administer daily from the Bench." From this perspective the Herald hoped that “Government will place upon the representatives of the people the whole responsibility of providing such machinery as will simplify, cheapen, and accelerate the administration of justice among their constituents.”

---

208 SMH, May 25, 1867.
209 Tasmanian Daily News, January 10, 1856
210 SMH, July 16, 1855.
albeit with less immediate results. It was only after the logic of responsible cabinet government was more fully entrenched in political culture and practices that the hitherto localised system of school governance was overhauled by the legislative state. Thus, it would be almost twenty-five years before Deas Thomson’s effort to create a ministry of public instruction would be realised. It is in the context of this constitutional, intellectual and cultural formation of the colonial state that the following chapters will examine the full bureaucratisation of educational governance in Tasmania and New South Wales.
Chapter 6

The Development of Centralized Educational Governance in New South Wales:
1830 – 1880

1. Introduction

The following discussion offers a revised interpretation of the historical emergence of centralized school governance in New South Wales by linking educational reform debate to a broader shift in liberal constitutionalism. It details, therefore, how educational change in nineteenth century New South Wales was fundamentally linked to the changing fortunes of the English common law and the system of ‘juridical’ governance, as symbolised by the 1823 Act for the ‘better administration of justice’, that it supported. As argued extensively elsewhere, the latter was an important moment since it gave constitutional legitimacy to the governing claims of the established church, the landed gentry, and the local magistrate. In Foucault’s terms, this matrix of governing authority adhered to an eighteenth century model of state power based on the logics of contractual obligation, property rights and a mercantilist conception of Empire – which, as noted in the preceding chapter, long held back the emergence of responsible cabinet government in the antipode. It was this constitutional system upon which the Established Church were able to claim jurisdiction over public education. Furthermore, it was this constitutional system which perpetuated fragmented, sectarian, unaccountable and ‘unscientific’ modes of social administration directed almost wholly by the church and the justice of the peace. Thus, while Foucauldians have emphasised how the emerging disciplinary sciences began to challenge the moral dogma of sectarian education, it also needs to be acknowledged that the catechism was itself linked to a series of constitutional logics that had to be challenged. not only via practices of bio-political governance, but a pervasive constitutional

1 For an account of the stringent recourse to common law property rights during the early nineteenth century see John Pickard, “Trespass, common law, government regulations, and fences in colonial New South Wales, 1788–1828” JRAHS, 84:2 December 1998, 130.

2 For the most detailed account of the overidding power of the Justices see Neal, The Rule of Law in a Penal Colony.
framework tying school administration to a responsible, rational and uniform model of legislative governance. While the historiography argues that educational modernization was held back both by sectarian curricula and a divisive denominational system, historians need also to explain how the latter was implicated in a localized English constitutional tradition that retarded a universally accepted need for administrative and strategic coherence in school and social governance in general.

The Anglican controlled Church and Schools Corporation that initially administered public education in the colony was imbricated within an outdated mode of local self-government carried out under unaccountable processes of self-election and the arbitrary judicial proceedings of the municipal magistrate. Education reformers in the New South Wales colony were not, therefore, only concerned with developing a new bio-political pedagogical strategy, although this is important. In an effort to bring a fragmented and ineffectual system of school governance under the guiding hand of a responsible, efficient and expert legislature, they had also, as will be illustrated throughout the following narrative, to take up Bentham’s challenge to English law and government and shift the constitutional foundation of colonial state building.

2. Establishment control

The constitutional basis of early school governance

Following the ‘National’ educational model extant in Britain, colonial education was, from 1824 until 1830, monopolised by the Anglican clergy and their ‘Botany Bay Tory’ brethren under the mantle of the Church and Schools Corporation.3 Established by Archdeacon Thomas Hobbes Scott after his emigration to the colonies in 1824, the Corporation assumed the conventions of a parish system in which the Church of England was the appointed trustee of state education. “Intimately connected as education is with the Church Establishment”, explained Scott upon his arrival to Australia, “I set out with the principle that they are to be united, and that the affairs of both are to be administered with the same body of trustees.” Scott was, in the words of Smith, “a Tory of the

---

3Established in England in 1811, the National Society for Promoting the Education of the Poor in the Principles of the Established Church was the largest recipient of state funds for education. The National Society was formed in opposition to the British Foreign and National model, set up in 1808, which represented dissenting, evangelical interests, and whose pedagogy employed aspects of the Lancasterian system.
Tories, a kinsman of the Earl of Oxford and a personal friend of Earl Bathurst who was a member of the Tory wing of Lord Liverpool’s Ministry.4 The conservative alliance between the established church, education and the state was typified by the enduring political influence of William Broughton, who replaced Scott as Archdeacon in 1829.

However, while Broughton most often employed the rhetoric of the “the nurture and admonition of the Lord” to justify establishment control of public schools, it was the constitutional link between church and state that ultimately allowed the High Church to buttress their claim over education. This claim was later asserted by William Burton in his 1840 treatise on The State of Religion and Education in New South Wales: “[through] the law of England, the Church of England has been, and is established as the national church; not as a body independent of the state, and in alliance with it, but as part of the state itself.” Burton argued that this relationship had been transposed to the colony since the “establishment of a church in England, and the union of the Kingdom under one Sovereign head, the Church of England has existed as the National Church...And as such was by force of law, before the statute 9th Geo. 4.c. 83, and by express terms of the statute, the established church of the colony.”5 This point was crucial for the maintenance of Church control of education since the “colony was founded on this principle” and “the only public provision made for religion and education rested upon it.”6

Burton reaffirmed the constitutional hegemony of the rule of English law in colonial political culture. The Church and Schools Corporation symbolised, therefore, the political, economic and governing power of the Established church in the colonies. Upon its foundation, the Corporation was to appropriate all land and revenue formerly set aside for education, all glebe lands in use by the Clergyman, and as expressed in the founding charter, “one-seventh part in extent and value of each county should be vested in the Corporation.” From these funds, only two-sevenths were to contribute to educational matters and the remainder was to provide stipends for the clerical hierarchy. As expected, the Corporation consistently faced opposition to such unilateral authority. While the performance of parish schools had long been marked by desultory attendance,

---

4S. H. Smith, A Brief History of Education in Australia (Sydney: 1917), 34.
5Known as the Australian Courts Act (1828), or more specifically, ‘An Act to Provide for the Administration of Justice in New South Wales and Van Diemen’s Land’, it made the colony subject to the sovereignty of the “Laws and Statutes in force within the realm of England”. See N. Simons (ed.), The Statutes of the United Kingdom (London: 1829), 615; cited in Austin, Select Documents in Australian Education, 5.
7Cited in Smith. A Brief History of Education in Australia, 35.
unsatisfactory accommodation and poor teaching standards, these problems were exacerbated by sectarian rivalry. Presbyterians and Catholics continually demanded proportional land grants and protested against Corporation control of the distribution of government grants to religion and education. When J. D. Lang, the leading Presbyterian educationalist in the colony, went to England in 1830, he denounced the Anglican schools, hoping to break their monopoly and establish schools on the British and Foreign School model. But Scott defended the Anglican cause, arguing that the “ill-conducted and thinly-attended Schools” were an effect of the reduced state aid to religion. This line was backed by William Broughton, who, to the chagrin of the powerful Presbyterian lobby, continued to base curriculum, not on the more ecumenical British and Foreign School System, but the ‘High Anglican’ National Society model.

Lang succeeded in influencing the Colonial Office and in December 1830 the then Secretary of State, Lord Goderich, set up a managing committee to wind up the affairs of the Corporation. Six months later, however, the School Corporation was resurrected by the New South Wales Supreme Court through a legal technicality seized upon by Broughton. This illustrated the intimate relationship between the Church of England and the legal establishment. Even Chief Justice Francis Forbes, the liberal and reformist judge, conceded to the weight of conservative largesse on the matter, supporting the rest of the bench in declaring Goderich’s order invalid. This was indicative of the abiding influence of the conservative clique of rural gentry, magistrates, clergymen and Executive Council members over colonial policy; and of the consolidation of English common law constitutionalism in the wake of the 1823 Act for the better administration of justice. The intimate connection between the ‘rule of private property’, the separation of powers doctrine, natural rights theory and administrative localism formed a constitutional bulwark against claims for a more comprehensive, impartial and state controlled governing framework. Thus, it was to these constitutional issues that educational reformers would increasingly have to focus their energy.

**Denominationalism vs nationalisation**

Governor Richard Bourke, who succeeded Darling in 1831, set about making some important changes to the denominational school system. As noted preceding chapters, Bourke, while Governor of the Cape Colony, had contributed to a broader critique of unaccountable, arbitrary and

---

corrupt colonial government initiated by Wakefield, Taylor and Cornwall Lewis. But while moving quickly to reform the administration of justice through his Jury Act of 1833, Bourke's most pressing agenda was education reform, and he set about to highlight the inadequacies of Anglican controlled education. His remonstrations seemed to have the desired effect and in 1833 the Secretary of State, Lord Stanley, found it "expedient to dissolve and put an end" to the Church and Schools Corporation. This was not surprising considering that Bourke was a vocal supporter of Stanley's own national model for educational governance. Indeed, the 'National System' of education established in Ireland by Stanley in 1831 marked a watershed in terms of secular and centralized educational governance in Britain and the colonies. Appropriated in part from centralized models of school administration on the continent, the National System comprised a core Central Board of Commissioners made up of members from the three main denominations. On the face of it, the system was designed to ameliorate sectarian conflict by providing, in addition to local Boards of Patrons made up of lay and clerical members, a system in which children would have access to their relevant clergy for religious instruction. In truth, however, the system was a prototype for administrative centralization - facilitated through a regime of rigorous inspection - which, while not adopted immediately in the colonies, set the tenure for future reform.

Stanley’s system inspired Bourke to propose an education system which would place “upon an equitable footing the support which the principle Christian Churches in the Colony may for the present claim from the Public Purse.” Government funding to the thirty-five parish schools established under the Corporation was to cease and a non-denominational Central Board was to supervise and all elementary schools and a normal institution for teachers training. For Bourke, this was an important step in bridging the state/society divide which, by contrast, had been played up by the Broughton and the establishment clique. Thus, a uniform and secular mode of public instruction would teach the colonists “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.” This view of the inclusive, paternal state was designed to show up a narrow, exclusive Anglican hierarchy who, through institutions such as the King’s School, limited education “to the wealthier part of the

11“Stanley to Bourke”. HRA I: XVII, February 4, 1833. 34.
12In the words of Payne, “Ireland had become the laboratory in which advanced theories of English State Education. which had their origins in Prussia. could be tested.” Payne, “The Management of Schools in New South Wales”, 77.
13“Bourke to Stanley”, HRA I: XVII. September 30, 1833, 224–33. Bourke noted that the charge for the Church of England for that year was estimated at 11,542 pounds while the Presbyterians and the Roman Catholics were to receive 600 and 1500 pounds respectively.
community." Thus, in his despatch to Stanley, Bourke reasoned that "Schools for the general education of the Colonial Youth, supported by the government and regulated after the manner of the Irish Schools, which since the year 1831 receive aid from public funds, would be well suited to the circumstances of this Country...I am certain that the colonists would be well pleased to find their funds liberally pledged to the support of Schools of this description." 14

Bourke’s policy of retracting all state grants to Church of England schools would undoubtedly end establishment supremacy over public education. Accordingly, it drew an immediate rebuke from Broughton, who highlighted the constitutional legitimacy of clerical control: “Though government might tolerate others, it should afford aid to one Church only, namely that which it believed to be the true church.” 15 History shows that Broughton’s rhetoric was, for a time, successful in holding back the tide of nationalisation. However, he increasingly had to fend off some astute educational reformers who, having observed the failure of Anglican control in England, were bent on instituting a more rational, uniform and accountable model of school governance. Henry Carmichael, the radical educator and past acquaintance of Bentham, was not only vociferous in his support of Bourke’s national system, but initiated a sophisticated discourse of school reform which viewed education both as a ‘moral technology’ and a core component of a centralized state apparatus. 16 While educational historians such as Turney and Nadel have noted Carmichael’s enduring influence on colonial education, they have not related his ‘enlightened’ views to a broader constitutional struggle within liberal state theory that was fundamental to any substantive reform of an educational system steeped in eighteenth century constitutional convention. 17

Having left England in 1830 to take up a post at Lang’s Australian College, Carmichael was conspicuous for, on the one hand, his role in the founding of the Sydney Mechanics School of Arts in 1833, and on the other, an educational agenda that contrasted markedly with sectarian educationalists such as William Broughton. 18 When his three-year contract at the Australian College

14“Bourke to Stanley”, HRA I: XVII. September 30, 1833, 231.
15See Enclosures to Government Despatches (ML. A 1267–13), 1215–1223; in Foster, “Education in New South Wales”, 262.
16As Nadel writes, Carmichael “had been an acquaintance and correspondent of Jeremy Bentham” and “was the leading exponent of Benthamite educational ideas in early Australia.” See A. G. L. Shaw & C. M. H. Clark (eds.) Australian Dictionary of Biography, 211.
18In 1832, Broughton opened, in line with his original educational design for the colony, the Kings Grammer
was complete, Carmichael, on hearing of Governor Bourke's despatch to the Colonial Office suggesting the introduction of the Irish National System, abandoned Lang to fight the cause for nationalisation. With Bourke, who believed that the colonial “government should take the lead” in establishing a national system, Carmichael hoped that the Colonial Office would authorise the initiative, thereby avoiding inevitable sectarian opposition. The Colonial Office failed, however, to sanction the measure, with Secretary of state Glenelg insisting that “the details of the measures to be adopted should be 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.”

In the face of consistent opposition to the National System, Carmichael continued to argue that national education would best regulate “our present discordant and heterogeneous population.” His views were crystallised during a well documented lecture at the School of Arts, delivered in 1844, wherein he insisted that the “importance of National Education is now universally admitted”, and therefore, that it is “a duty incumbent on the general government to provide a course of elementary instruction for the whole community.” Carmichael was one of the first Australian educators to link schooling to the “the science and practice of governments”, stressing the “obvious importance that the Educational Order should be recognised by the State as a class of equal rank in the social fabric, with the Ecclesiastical, or Legal, or Medical profession.” Indeed, Carmichael had been an associate, not only of Bentham, but some of his eminent fellow travellers including the Mill’s, John Bowring and Edwin Chadwick. Finding these men “distinguished for their investigation of the principles or their experience in the practical details of education business”, he was keen to transpose their ideas to New South Wales. The Chrestomathic school, a utilitarian update of the School, which was to give the wealthy colonists the opportunity to give their sons a ‘public school’ education. Typically, the school suffered from administrative neglect and after its sole master George Innes died, it closed after only eight months of operation. While the schools fortunes were soon revived, Broughton’s obsession with such a narrow educational project contrasted with Carmichael’s more universal, utilitarian and populist educational vision.

20 “Glenelg to Bourke” HRA 1: XVIII, November 30, 1835, 201.
21 H. Carmichael, Introductory Lecture Delivered at the Sydney Mechanics School of Arts (Sydney: 1844), 11, 18, 9.
Lancasterian teacher-training system concocted by Bentham, Francis Place and Edward Wakefield, had particular pedagogical appeal for Carmichael, and formed the basis for the Normal School, which he attempted to establish on the advice of Bourke, in 1834.\(^{21}\)

When procuring text-books for the proposed Normal School, Carmichael was able to draw on his links with Benthamite educators at home. It was direct from Richard Whately, the Archbishop of Dublin and a Commissioner on the Irish Board of National Education, that Carmichael was given textbooks for this first colonial experiment in secular and utilitarian pedagogy. He promptly sent copies to both Bourke and the Sydney and Australian College's, declaring their dissemination to be in the "public interest."\(^{24}\) As noted elsewhere, Whately was a political economist who was active in the anti-transportation movement, and who worked closely with the systematic colonisers.\(^{25}\) As a Commissioner on the Irish National Board he established contacts with Bourke and was complicit in the push for national schools in New South Wales.\(^{26}\)

\(^{21}\)See Bentham, *Chrestomathia*. Foucault described the ‘normal’ school as a defining innovation in modern technologies of governance. Originating in Prussia and appropriated by the French education system, the normal school was not only integral to the classification and systematization of modern pedagogy, but replaced the legal court as the primary source of social discipline. Teacher training and classification was exemplified by the ‘examination’, the highest form of hierarchical and normalising governance. For Foucault, the ritual of “questions and answers”, of “marking and classification”, embody a set of “power relations that make it possible to extract and constitute knowledge.” The hospital was another site for this examining ritual as the whole system of visits and surveillance became more regular and systematised. Foucault immediately divorces this analysis from the epistemological shift which precipitated the empirical and human sciences. Criminal justice was not reformed through the ideological influence of the enlightenment or the social sciences. It was the actual practice of these disciplinary techniques which prompted a much wider shift in the operation of political power. See M. Foucault, *Discipline and Punish* (London: Penguin, 1975), 190.


\(^{25}\)See R. Whately, *Thoughts on Secondary Punishment, in a Letter to Earl Grey: to which are appended two articles of Transportation to New South Wales, and Secondary Punishments; and some observations on colonization* (London: 1832); J. S. Mill, “Whately’s Introductory Lectures on Political Economy” *Examiner*, June 12, 1831, in *Works* XXII, 328.

\(^{26}\)The Irish National Board was established when Thomas Wyse, the member for Tipperary, having been impressed by the Prussian school system, submitted a draft Bill to Lord Stanley to establish a similar ‘nationalised’ model of school governance. After some consideration the proposal was assented to and a Board of Commissioners was established to manage a national system based on secular instruction. See Cleverley, “Governor Bourke and the Introduction of the Irish National System”. in Turney, *Pioneers of Australian Education*, 30.
Not surprisingly, it was Whately who, the year that the Board was established, advocated a “breaking up the system” in “the convict colony in New South Wales...by removing all the unemancipated convicts”, and by transferring “the seat of government to some place within the colony.” Indeed, self-government, national education, emigration and the ending of transportation were the reform ingredients that Whately shared with the Wakefieldians. Considering the “idle and mischievous” character of the convict population, Whately feared the “appalling spectacle which a few generations hence may be doomed to witness in Australia.”

Imbibed with this apocalyptic zeal, Carmichael challenged the reactionary educational practices that he associated with Lang, Broughton and the denominational school system.

While in Britain, Carmichael had been inspired by the increasing influence of Prussia’s compulsory school model. In this light, the *Sydney Gazette* noted that his proposal for a normal institution had given the colony insight into “the noble amendments in science, art, and morals” which was the “great focus of improvement in Europe.” Carmichael’s innovations were typical of that “excellent translation” by Sarah Austin on Cousin’s *Report on the State of Public Education in Prussia*, a report, which the Gazette recommended, be read “by every person who has even the least power in influencing our national education.”

The wife of John Austin, Austin’s translation was, as noted previously, a seminal contribution to radical educational and constitutional reform discourse. Drawing praise from J. S. Mill among others, Austin had argued that the ‘compulsory principle’, as practiced in Prussia, was paramount to a universal system. But she knew that such as innovation would not be possible in the context of an English constitutional faith in minimal government. In this way, Carmichael understood that centralization asked questions about the limits of state

---

27Whately, *Thoughts on Secondary Punishment*, 203.
28*Sydney Gazette*, June 25, 1835; in Turney, “Henry Carmichael”, 67–68. The Normal School was never successfully established by Carmichael, but he layed the groundwork for the adoption of centralized teacher training in the late 1840s. W. A. Duncan called the normal school the “life and soul” of the national system. In 1850 he described some of its features: “Besides their practical exercises in the school, the seminants (pupil-teachers) attend separate prelections delivered by the Normal master, on the principle of education, the art of teaching, and the whole economy of a school. They are further required to read privately the best works on the subject, and to undergo periodical examinations on all the subjects of the lectures.” Duncan, *Lecture on National Education*, 18.
interference in colonial society. and he insisted that the constitutional fabric of the colony rested on
the paternal relationship between government and education:

In reference to the great field of legislation, and to the multifarious machinery which
constitutes the Government and legal establishment of a country, however much these are
felt to be necessary and important as arrangements productive of the safeguards for the
public weal, the far greater importance, in its bearing on the welfare of the human race,
cannot fail to be acknowledged by every philosophical and reflecting mind, of that high and
humanizing office, whose aim is to circumvent in the individual the sources of social crime
and political disorder; and so train up the human being that government shall become a truly
patriarchal arrangement for the education as well as the protection of the national family, of
which legislation and the administration of law shall form natural and parental provisions. 30

By giving the legislative state a paternal jurisdiction over civil society, Carmichael gave a
Benthamite twist to the conventional liberal theory of the state. While asserting the sovereignty of
legislature as the basis of law and government, he acknowledged that legislation must be firstly
committed to the social and moral regulation of civil society.31 Thus, more than an orthodox society
for the ‘diffusion’ of useful knowledge, the Sydney School of Arts, co-founded by Carmichael in
1833, was firstly an “effectual antidote to the mass of existing vices which so generally prevail
throughout the colony.” “How much happier and better”, reasoned Carmichael, “is that individual
who leaves the halls of such an Institution, fraught with knowledge useful to himself, and beneficial
to his fellow creatures.” 32 This was the epitome of a moral regulation which had a particular
governmental motive. It was what Mitchell Dean refers to as ‘political subjectification’, or more
specifically, “the practical relations between governmental and ethical practices.”33 For Carmichael,
the “drunkard or debauchee” had not only transgressed ethical and moral boundaries, but signified,
in Foucauldian terms, a ‘problem of population’ which demanded the intervention of a central
administrative and regulatory system of governance which could ‘normalise’ such behaviour
through institutional technologies such as the penitentiary or the school.34 Carmichael opposed the

30 Carmichael, Introductory Lecture Delivered at the Sydney Mechanics School of Arts, 8.
31 Tumey said it well, and “the socio-moral implications of the spreading of knowledge, as typically
emphasised by the Benthamites” was integral to Carmichael’s pedagogy. See Tumey, “Henry Carmichael”.
70.
32 Third Annual Report of the Sydney Mechanics School of Arts for the Year 1833 (Sydney: 1836), 15.
34 Third Annual Report of the Sydney Mechanics School of Arts, 162.
clerical pretence of Anglican education because it relied on a moral dogma which had little relation to the construction of civil and political society. It particularly lacked a cohesive method of architectural, pedagogical and administrative design. The didacticism which the Anglican schools applied to the problem of vice and ignorance was neither rational nor empirical in its method. For James Macarther, the arch exclusive and beacon of the colonial aristocracy, education was a means "to check the depraved lower classes by the exhortations and authority of the Anglican Church." By contrast, Carmichael's "well directed course of mental improvement" was a moral 'practice' which was not authoritarian but designed to empower the subject through knowledge. Thus, it is the communication of knowledge, not the inculcation of opinions at all, which constitutes the business of education...when opinions of any sought, whether religious or not, are attempted to be taught, otherwise than as subjects of knowledge, the legitimate province of education is overstepped...My constant aim...is to facilitate, to the utmost of my power, the process enabling each mind to form, on all subjects (and on subjects of religion among the rest) opinions for itself."

This was not simply the language of the moral enlightenment, or what Nadel called “political liberalism, toleration, and religious equality." These pedagogical technologies buttressed the utilitarian challenge to judicial virtue and higher law, whether in a canonical or common law sense. In this vein, Bourke proposed the 1833 Act which allowed criminal cases to be tried by civil juries, and which permitted emancipists to serve as jurors. This was a statutory infringement on the

---

35Quoted in Nadel, *Australian Political Culture*, 188.
37*Australian*, June 14, 1836.
38Nadel, *Australian Political Culture*, 112. While Nadel notes the influence of associationist psychology and the 'social affections' on Carmichael's thought he relates these to individualism and free trade liberalism, on the one hand, and a catholic socialism, on the other, which recognised, as Edward Maitland did in 1858, that "to elevate a nation, it is necessary to improve the individuals who compose it...Every social evil may be traced to ignorance. Wherever there is the intelligence, there will be the power. There the Capital. Educate all, and soon it will flow into the hands of all." Nadel makes little of the impact which this psychology had on the attempt to fortify state control of the school system. Nadel, *Australian Political Culture*, 265–66. See E. Maitland, *The Meaning of the Age: A Farewell Lecture delivered at the School of Arts, Sydney* (Brighton: 1858), 12.
39*An Act to Consolidate and Amend the Laws for the Transportation and Punishment of Offenders in New
power of the common law – Bourke also reduced the flogging for labour offences from 100 to 200 lashes and to avoid arbitrary abuse of authority decreed that two magistrates instead of one had to pass sentence. It was also an attempt to shift the dynamics of governing power in the colonies by breaking the political and constitutional intimacy between the exclusives, magistrates, Episcopacy and the nominated part of the Legislative Council. Bourke liked to challenge men like James Mudie, one of the colony’s largest landowners, a magistrate and well known for cruelty to assigned convicts. In 1836 the Governor withdrew Mudie and thirty-six others from the magistracy in a purging of the judicial system. In turn, Mudie described Bourke’s agenda as “anti-penal, anti-social, and anti-political”, arguing that the colony was headed toward “unbridled crime and lawless anarchy, and...its violent and sanguinary separation from the Empire.” This was an important juncture in colonial political development, and for Blair, the issue “involved the future of the colonial gentry.” Indeed, it would also have a significant impact on the future of a national education system.

Thus, while most historians have focused on the inter-denominational and church-state rivalry that delayed the emergence of national and general education, it was the constitutional foundation of the colonial state which proved to be the most enduring impediment to change. Apart from Carmichael, Roman Catholics like Roger Therry – a Catholic and Council member who later supported Robert Lowe’s push for a national system – and the emancipist press which included the Sydney Gazette and the Australian, Bourke received muted support for a scheme which threatened the exclusive hierarchy. While Broughton was able to unify Church of England, Presbyterian, Congregational,
Baptist and Wesleyan opposition through a committee set up to oppose this 'ungodly' system, Bourke’s most pressing problem was the matrix of constitutional power that Broughton was able to draw upon. With his Attorney-General, J. H. Plunkett, a strong supporter of the national system who later occupied a seat on the first National Board of Education in 1848, Bourke set about dissolving the constitutional foundation upon which the exclusives maintained their governing authority. This was to occur firstly by disestablishing the Anglican Church; and secondly, by restricting the arbitrary authority of the magistrates.

After arriving in the colony in 1832 to take up his post as Solicitor General, Plunkett appeared in over 90 cases for the infirmed Attorney-General, John Kinchela, and his detailed overview of the judicial system was set down in his 1835 publication, *The Australian Magistrate*. As Attorney-General he quickly moved to develop the initiative set by Bourke’s Jury Act. In 1836 he drafted the Magistrates Act which effectively ended summary conviction and private benches. It was this legislation which dissolved Mudie’s magistracy and which corresponded in the same year with the Church Act, a vehicle to disestablish the Church of England under the auspice of religious equality. By dividing state aid between General and Denominational schools, the former being fully funded by the Government, and the latter on the half-half principle – which saw the government match the independent funding efforts of the various denomination schools – Bourke and Plunkett ensured that the Anglicans could no longer claim ‘establishment’ status.

Bourke backed this strategy by trying to shut out the exclusives and shore up liberal influence in the Council. To this effect, in July 1836 the Governor was able to deny Broughton, who was now Lord Bishop, a place on the Legislative Council via a ‘technicality’. This followed, in December 1835, the suspension of the conservative Colonial Treasurer, C. D. Riddell – who latter chaired the Denominational School Board – for his constant dissent and opposition to the Governor’s reform agenda. This had the desired effect, and in August 1836 an appropriation bill providing three thousand pounds for national schools was passed.

What followed was a continuing backlash from the Protestant lobby which saw Lang and Broughton able to maintain, with the support of Secretary of State Glenelg, Anglican and

---

*National Schools* (Sydney: 1836).

**Foster** notes that during a meeting of the General Committee of Protestants, headed by Broughton, held on July 14, 1836 “organized opposition in the country districts was arranged by the formation of twenty-five committees, and Protestant clergyman were asked to preach in the pulpit ‘for the protection and promotion of that Holy Cause which is common to them all’ against the new education.” W Foster, “Education in New South Wales under Governor Sir Richard Bourke” *JRAHS* 47:5, 1961, 269.
Presbyterian schools under the minimum funding provided by Bourke. In the face of such consistent opposition, Bourke decided to leave the implementation of the national system to his successor, and applied to return to England. However, while the Anglican establishment had been able to maintain their hold on the school system, Bourke had nonetheless laid the groundwork for the reform, not only of education, but the arbitrary and outdated mode of juridical governance that defined colonial administration.

It is well known that Bourke’s replacement, George Gipps, was unwilling to commit to a national system, and that the general inaction of the Governor allowed Anglican and denominational control of public education to be further consolidated. It could be argued that, as a colleague of Broughton at Trinity College, Gipps was influenced by the Bishop, and that this fuelled his willingness to cede to the Protestant lobby. In an address to the Council, the Governor made it clear that he would not “force upon the Colony any system which is opposed to the general wishes of the inhabitants; I should deeply, indeed, regret that an attempt to diffuse among the increasingly rapid population of New South Wales the blessings of education, should become the source of division of discord among those who ought to be united in the bonds of Christian Charity.”

Gipps found it difficult to reconcile the competing claims of Roman Catholic, Church of England and Presbyterian interests, and initially hoped that the adoption of the British and Foreign School Society model, with separate funding for the Roman Catholic schools, might reconcile the opposing parties.

This move proved untenable, particular for the Anglicans who, under a British and Foreign System, would forfeit what remained of their tenuous ‘establishment’ status. Thus, with the support of the Council waning, Gipps withdrew his resolution. This meant that the ‘half-and-half’ system instituted after the decline of the Church and Schools Corporation, and which was generally held in place during Bourke’s term in office, would continue. This system was inadequate, not only because the richer Anglican schools would continue to attract a majority of funds, but because it did not provide for any central regulation or supervision. The clergy remained responsible for inspection and an avowedly sectarian curriculum, yet the overriding problem, as described by Foster, was a “woeful picture of overcrowding, unwieldy classes and low salaries.” Broughton himself admitted that “the Rev. W Cowper’s picture in 1834 of the two schools in St Phillip’s

---

46 Gipps Minute August 7 1838.
Parish housing 210 to 230 children in two rooms, calculated to house 100 to 120, was still true of the conditions in the early 1840s.\textsuperscript{47}

Not surprisingly then, Gipps’ sanitised response to the education question drew the ire of the reformist and secular press. During 1841 the \textit{Australian} printed a series of articles which demanded that ‘Government Schools’, under a reinvigorated Irish National System, replace the pitiable denominational system: “We say that government, in its very nature and responsibility as a government, is bound, by every tie, moral and political, to educate these children...It is not possible that any sensible person can, for one moment, deny the necessity which exists for the setting on foot of a national system of education.” The editor was adamant about the immediate need to rescind all support for sectarian education and transfer it to state administered schools: “We call upon him (Gipps) to withdraw those state grants of money from all religious bodies, which have hitherto been given to them for educational purposes, and to devote the same to the carrying out with a little delay as may be of education \textit{by the state}.\textsuperscript{48}” Denominational schools could not placate the “ignorance among the lower classes” because they promoted “difference”, whereas education by the state would be “sound”, “comprehensive”, and “enlightened”.\textsuperscript{49} These exhortations were informed, not only by the wave of progressive liberal pedagogy infiltrating the urban intelligentsia, but by a desire to reform actual governing arrangements, to decrease the authority of the clergy, the magistrates, and the landowners, and to secure accountable and efficient administrative procedures. This point was reaffirmed in 1841: “It is enough to reiterate our opinion, which has often been expressed before, that the whole system, with regard both to the Old and New Schools is radically bad, that the assistance of government should be afforded upon entirely different conditions and that, while it is the clear and undoubted duty of Government, in its very condition as such, to take care that every youth in the community being of sane mind, should receive a sound education. State support should be withdrawn from all denominational schools.” It was clear that the latter obstructed the need for “Government [to] act separately and independently.”\textsuperscript{50} In addition, the assumption of the constitutional union between church and state “is or ought to be confined to matters purely

\textsuperscript{48} \textit{The Australian}, Tuesday, March 31, 1840.
\textsuperscript{49} \textit{The Australian}, Tuesday, March 31, 1840. In 1841 \textit{The Australian}’s constitutional agenda included a commitment to the “equal rights and liberty of the subject” through such reforms as “Free Representative Government, a comprehensive system of popular Education, the abundant and continuous introduction of select British emigrants, and the melioration of the Aborigines.” \textit{The Australian}, July 13, 1841.
\textsuperscript{50} \textit{Australian}, July 13, 1841.
spiritual.” It was no longer appropriate, therefore, that “this predominance be extended to educational questions.”

Once the sovereignty of the secular state was affirmed, the pedagogical technologies of moral regulation could be more uniformly applied. In any system of instruction based on “piety and morality” the question of religion should, argued the Australian, be, as in Holland and Prussia, “entirely distinguished from the business of education.” It was argued that “in the great majority of the existing popular schools, the methods of imparting knowledge are unphilosophical, being opposed to the principles which actuate human nature; and that, moreover, the quality and amount of knowledge thereby conveyed, is crude, meagre, and unsatisfactory.” Reiterating Carmichael’s utilitarian pedagogy, it was urged that education must, rather than “stuffing the head of a youth with Latin and Greek, and Mathematics, and Logic”, be firstly concerned with imparting a “sound discipline to the mind; to develop the students faculties, and to enable him to exert those faculties with facility on whatever subjects demand their exercise; to strengthen the memory; to rectify the judgement; to refine the taste; to form habits of close attention, patient investigation and consecutive thought in relation to all important subjects which come before him.” The shift from classical to Pestalozzian and Lockean social-psychological modes of instruction premised a more active and egalitarian educational state. More and more, the issue of political development was welded to the public education debate:

With the extension of the franchise, it is ardently to be reckoned upon that education, the great political qualifier, will march hand in hand. Grant us but a free and popular assembly,

51 Australian, May 14, 1840.
52 Australian, July 13, 1841.
53 Australian, April 19, 1842.
54 This was part of a broader pedagogical shift identified throughout Britain, the US, Canada and Europe. Hogan, for instance, in his account of the ‘New England pedagogy’ which emerged in the US during the mid-nineteenth century, described a new teaching method which “selectively combined Lockean and Pestalozzian pedagogical principles” to challenge the conventional, Lancasterian “theory of the mind and the learning process...in which the teacher force-fed information into passive minds.” Rather, the New England pedagogues claimed that “the mind was not only a storehouse of knowledge but a ‘garden’ or an ensemble of faculties as well, and that education not only involved acquiring useful information but also developing understanding and cultivating the faculties of the powers of the mind.” D. Hogan, “Modes of Discipline: Affective Individualism and Pedagogical Reform in New England, 1820–1850”, American Journal of Education, November 1990, 38, 42.
and it cannot but, amongst its very earliest measures, provide popular education. The possession of freedom is the truest incentive to virtue. The consciousness of liberty originates an aspiration after knowledge. By the possession of a free man’s right, the mind is imperceptibly ennobled, and begets a generous craving after moral and intellectual enlightenment.\textsuperscript{55}

This argument conformed to the notion of ‘democratical ascendancy’ contained in Bentham’s vision of popular sovereignty. Once the citizen was morally and intellectually imbued within a system of representative government the activities of the absolute sovereign, or a responsible and professional bureaucracy, could be perpetuated by an active and educated public sphere. This was not an appeal to the ‘rights of man’ but an attempt to set in motion a system of codified public policy which relied on the will and obedience of the citizen-individual. Unlike Hobbes’ sovereign, this was not a contractarian political arrangement. Moral education was a practice designed to fit each for the exigencies of innovation and change inevitable in a complex political society. The active involvement of the democratic element in a modern, bio-political schema of liberal governance was in contrast to the art of ‘exposition’ which defined the common law tradition. The latter was a liberalism founded on passive rights rather than the ‘aspiration after knowledge’ and was, like the catechism, an authoritarian ideal dedicated to the preservation of property and territorial sovereignty through negative political power.

Governor Gipps failed to respond to these claims because he did not see popular education as a vital pre-condition for political development. His was a more traditional view of popular liberalism which asserted government action on the basis of the ‘general will’ rather than the ‘general good’. It was the notion of individual sovereignty and the fear of majority tyranny in classical liberalism that motivated Gipps to temper his executive will and seek a compromise which would placate the competing Protestant. Catholic and secular lobbies. Gipps’ reticence was justified, he argued, due to the paucity of public support for national education. In the words of the Governor, “if the people of this Colony wish for a comprehensive system, it remains for them to make their voices heard.” While undoubtedly influenced by the powerful clerical lobby, Gipps held true to his constitutional agenda.\textsuperscript{56} The Church of England were the only public body to petition the government, and for

\textsuperscript{55} \textit{Australian}, May 14, 1840.

\textsuperscript{56} Francis argues that constitutional distinctions were of “practical rather than theoretical interest” to Gipps. The Governor did not vigilantly ascribe to the division of power doctrine and for Francis, “Gipps notion of the
Gipps, their popular ‘rights’ could not be trammelled by the executive. The Australian rejected these constitutional assumptions, reasoning that the Governor has “the will, as, clearly he has the power, of acting firmly and independently.” The executive was being called upon to exercise its sovereign will since “nothing will avail to rouse the Colonists from this disgraceful apathy, or induce them to recognize their best interests.” In such an underdeveloped political society, the ‘duty of state’ to affect the greatest good had become increasingly apparent.  

In July 1842 the New South Wales Constitution Act, which provided for a thirty-six member Legislative Council of which twenty four members were elected, broke up the colony into regional governing units called district councils. These councils were to collect local taxes and rates to fund a variety of activities which included the “establishment and support of schools.” The act also imbued the Governor with the power of veto, and it was left to Gipps to set the tone for education reform under the new political framework. In seeking to avoid a national system which would rely on legislative control, Gipps attempted to pursue a localized system of school administration under the control of district councils. In 1843, the Governor drafted a district councils bill which, in addition to giving district councils powers over taxation, roads and police, proposed to devolve educational responsibility to the councils so, Gipps argued, as to lessen the financial and administrative demands on the central government. This was a token of faith in the ‘self-reliance’ of an English political community, Gipps arguing that if it be “determined to leave the affairs of every district or even parish of this widely extended Country to the management of a Central Authority, that authority, be it what it may, must be a strong one. stronger I would say than any authority can be, which is held under the check of an Elective body...it is only in the establishment of Local Institutions that security can be taken in any part of New South Wales for what Britons are accustomed to regard as good Government.” As described at length in the foregoing chapter, this classical vision of local self-government was, for a number of historical reasons, never able to take hold in the southern colonies. Indeed, district councils were treated with suspicion and contempt by limit of government was not built around a ‘minimal’ protection of the individual as distinct from a ‘maximum’ state theory which ordered every aspect of the subjects life.” Gipps activities regarding social welfare and the colonial budget were for Francis “dominated by expediency not by state theory.” Yet there is a theoretical link between Gipps unwillingness to intervene in education and his support of district councils. Francis himself admitted that “His state theory did, however, offer him precise instructions on the necessity of introducing local government.” Francis. Governors and Settlers, 173-74. 168.  

57 Australian, July 13, 1841.  
58 “Stanley to Gipps”. HRA I: XXII September 5, 1842. 245.  
59 “Gipps to Stanley”, HRA XXV:1, April 29, 1846. 28.
colonists on both sides of the political divide. This revulsion related, on the one hand, to a tendency to associate local government with the ‘old corruption’ of the English municipal corporation. On the other hand, it was increasingly being argued that the central state, not municipal government, was the only form of administration suited to such a dispersed pattern of settlement. Added to this was the real fear that the landed classes would bear a larger tax burden and would lose a large part of their electoral clout under the re-apportioned electoral boundaries.

These assumptions, while contrary to the more representative and methodical vision of municipal government formulated by Earl Grey and Lord Stanley, weighed heavily against any effort to lodge control of education – regarded as the future hope of an economically and socially demoralised colonial settlement – within a local government framework. It was not surprising then that Gipps tried unsuccessfully to increase the mandate of local government. In the Parliament, Windeyer described district councils as “an excrescence of that constitution...which must be got rid of.” Another member objected since public education would be given over to municipal control, meaning a “virtual postponement, time out of mind, of any proper provision for this essential purpose, it being evidently impossible that such a provision could be made by the District Councils themselves.” This view was reiterated in 1847 by the Colonial Secretary, Deas Thomson, who told the Secretary of State that there was “great objection” to making schools “wholly dependent upon the support that the District Councils may be willing to grant to them.” Indeed, “It is the peculiar province of the Government and the Legislature to watch over the Education of the People; and it may therefore be scarcely safe that it should be left contingent upon the narrow views of economy, which may influence merely local bodies.” Thomson went on to argue that decentralization would promote variable curricula and standards. It was imperative, therefore, that a “general and comprehensive plan” be implemented. In 1846, Gipps conceded to Stanley that district councils were unable, due the failure of subsequent ‘enabling’ legislation, to exhibit any practical governing authority.

---

60 As described elsewhere by historians, the 1840s were, until the first gold was found late in the decade, a time of severe economic recession. Accordingly, much education reform debate held up the school as a way out, not only from the taint of convictism – transportation to New South Wales ended in 1842 – but from the economic insecurity exacerbated by geographic isolation and a lack of access to markets.
61 VPLCNSW, July 24, 1844.
63 “Gipps to Stanley”, HRA XXV:I, April 29, 1846, 28.
4. Toward a national system

The constitutional origins of the national system

While the denominational system was consolidated during the 1830s and early 1840s, a centralized and secular mode of educational administration exhibiting the progressive 'technologies' of moral regulation was being founded through broader political and constitutional developments. In this way, progressive educational and political reformers such as Bourke, Carmichael, Plunkett and Thomson, while failing to overcome Broughton, Macarther, Polding and the fierce faith in the 'self-governing' jurisdiction of the church, were able, among other things, to rationalise the justice system through the Jury Act of 1833 and the Magistrates Act of 1836; to delimit the power of local government; and to assert the administrative jurisdiction of a quasi system of parliamentary government. The initial move to limit the power of the magistracy was crucial since it removed perception of an arbitrary and juridical system of colonial administration, and increased the impetus for the Home Government to provide for a self-governing colonial legislature. The attempt to increase the governing capacity of the legislature was in turn linked to the rejection of municipal government. Indeed, the issue of the need for greater legislative 'surveillance' of schools animated a majority in the Council to reject Gipps' proposal for district councils. Furthermore, this was a period when systematic colonisation, while drawing the ire of exclusives and liberals alike for the fixing of a 'minimum price' on freehold land, nonetheless alerted the colonists to the need, if skilled labour was to be attracted to the colony, to modernize the administration of lands, justice, local government and, most importantly, to end the noxious system of transportation that Macarthur, Wentworth and the squatters wanted to continue as a cheap source of labour.64 Thus, while Wentworth hoped to shore up the power of the pastoralists by demanding a self-governing constitution like the one granted to the Canada's, his 'grievance' that the colonists did not share in the disposal of colonial land and revenue, and likewise, his opposition to district councils because they would increase the taxation burden on landowners, were political expedients.65 As described elsewhere, Wentworth was, as evidenced by his proposals for a hereditary upper house and his faith in transportation, the vanguard of a juridical governing tradition that was rapidly being challenged

64 In 1846 the conservative Secretary of State, William Gladstone, suggested that transportation be renewed in New South Wales. The Legislative Council appointed a select-committee to review the proposal and, chaired by Wentworth, it supported Gladstone's proposal. Part of Gladstone's rationale had been to increase the number of female convicts and relieve the imbalance in population but Wentworth suggested that free emigration be encouraged through assisted passage. Clark. Sources of Australian History, 237.

by reformers who, inspired by the constitutional theory of Wakefield and Bentham, wanted to establish an avowedly centralized and legislative system of government.

Historians have not factored in this constitutional shift when explaining the increased momentum toward nationalisation in the 1840s. While Lawry described the way “ideological arguments” concerning the evils of centralization were offset by a belief that local political, geographic and economic circumstance mitigated against municipal control and funding of schools, this gives few clues as to the precise constitutional debates through which ‘local self-government’ was devalued, not only as a site for school administration, but as logic of liberal governance in general. It has also been argued that the push to nationalise education in the 1840s strengthened in the face of decreasing political influence of the clergy. After the Constitution Act of 1842 decreased the number of nominee members appointed to the central executive, the Anglican hierarchy, particularly William Broughton, who as Bishop automatically sat on the old Legislative Council, were conspicuously absent from the reformed legislature. Historians have seized upon this fact to explain the success of the national system. Foster noted that Broughton had “defeated the forces of change” through his influence in the old Council, and therefore, that his absence from the legislature allowed nationalisation to be more easily adopted.

While these political circumstances signal important moments of cause and effect in the emergence of mass schooling in Australia, they need to be contextualized within the broader constitutional, jurisprudential and intellectual framework that defined a newly emerging rationality of liberal government. We need then to come back to the question of how local/clerical control was not only neutered through political circumstance, but how ‘self-regulation’ was reinscribed within disciplinary practices — classification, examination, inspection — and modes of bio-political power that were maintained within the responsible mandate of the sovereign parliament. Such an approach has not, however, been feature of the historiography. Ruth Knight, for instance, while drawing together a comprehensive historical survey of the development of a National Education Board under the guiding hand of the arch utilitarian and ‘illiberal liberal’, Robert Lowe, sets up a typical causal interplay between Anglican and Catholic resistance, Gipps’ willingness to cede to denominational interests, and finally, Lowe’s manipulation of sectarian arguments to ensure the adoption of a secular, national board.

---

66 Lawry, “A Perpetual Struggle for Power”, 49.
68 Knight, Illiberal Liberal, 237–41.
The 1844 Select Committee

In June 1844, with the education system continuing to flounder and Gipps remaining unwilling, or unable, to initiate reform, a concerned Legislative Council appointed, under the Chairmanship of Robert Lowe, a select committee to act on the matter. It was this committee which prompted the first parliamentary grant for public education – in 1845 the Legislative Council voted to commit 2,000 pounds to the support of schools – and while vetoed by Gipps, the resolution was carried in 1847 and a National Board was established the following year. A utilitarian lawyer, Wakefieldian sympathiser – although he opposed the policy of minimum price – and anti-transportationist, Lowe was doubly opposed to the establishment of district councils and any measures which might stifle the centralization of educational governance. District councils, Lowe later argued, were a form of administration created in “barbarous times...to do in a bungling way that business which the government could not do itself.” In this vein, the select committee was not prepared to “recommend the establishment of Local Boards of Education. conceiving that a central Board, with an efficient system of inspection, will produce results more uniform and satisfactory.”

Having drawn a relation between uniformity, efficiency and a centralized administrative framework, Lowe was able to extend these governing characteristics to the political state. Importantly, this state did not threaten individual liberty. Thus, on the question of ‘the right of the state to interfere’, Lowe “deduced the duty of the State to instruct her citizens from the right which she claims to punish them.” But importantly, this ‘right to punish’ should not be viewed in terms of the admonition of the judge, and implied the state’s right and duty to reform and ‘correct’ the criminal through centrally coordinated carceral technologies. During committee debate, Roger Therry concurred with Lowe’s assertion, arguing that while “It was the duty of the State, no doubt, to provide education... it was not less the duty of each member of it, according to his opportunity and means, to promote it.” While this need to actively ‘promote’, regulate and supervise public

---

69 In 1845 Lowe wrote that “When I first came out, like most men fresh from England [He had studied under Herman Merivale at Oxford], I was impregnated with the Wakefieldian theory; but as I acquired colonial experience. I saw its inapplicability to the colony.” Atlas. May 17. 1845.

70 SMH, September 10. 1849.


72 “General Education”, in General Education Vindicated, 40. See also R. Therry, Explanation of the Plan of the Irish National SchoolsI (Sydney: 1836).
education was admitted, the issue of compulsion was still outside the accepted bounds of English constitutional convention. Educationalists and legislators expressed awareness of the success of compulsory legislation in Saxony and Prussia, yet it was feared that such a measure would contravene the ‘liberties of Englishmen’. Lowe was emphatic when he stated that, “notwithstanding the evidence of many witnesses to the contrary, no compulsion will ever be employed to induce their parents to send their children to school. Such a measure is hostile to the liberty of the subject, and would infallibly rouse a spirit of determined opposition.”

Nonetheless, and in the context of the “extremely deficient” state of education in the colony, administrative centralization remained imperative. From a school age population of 25,676, only 7,642 children received instruction in publicly funded schools, and 4,865 in private schools. Thus, over 50 percent of children between 4 and 13 received no education at all. In response, the committee argued that “this deficient state of education is partly attributable to the dissolute habits, and avarice of too many of the parents, and partly to the want of good schoolmasters and school books.” But, as the committee report concluded, “a far greater portion of the evil has arisen from the strictly Denominational character of the public schools.” The problem with the denominational system was largely an administrative one. In some districts there were no church schools while in others four denominations often competed for students. This inefficient apportionment of public funds meant, in the words of the committee, “that the essence of the Denominational system is to leave the majority uneducated.” This problem could only be resolved if the denominational schools were subsumed within a central governing framework. The committee admitted that such interference would provoke the “manifest derangement of the whole ecclesiastical polity.” Such opposition would have to be overcome, however, so that “one uniform system [could] be established for the whole colony, and that an adherence to that system [could] be made the indispensable condition under which alone public aid will be granted.” The Irish National System was to be preferred to the British and National School model since the latter attempted to combine sectarian with moral and literary education. By contrast, the Irish model would combine both Catholic and Protestant catechisms with secular instruction.

Ultimately, the “The key-stone of the [Irish] system”, argued the committee, was its administrative structure. At its centre was “a board composed of men of high personal character, professing different religious opinions. This board exercises a complete control over the schools erected under its auspices, or which having been already established, place themselves under its

73 “Report from the Select Committee on Education” VPLCNSW, August 28, 1844.
management, and receive its assistance." Aid was only to be granted if ordinary school business consisted exclusively of instruction in literary and moral education; and if one day a week was allotted to religious education as conforming with the denominational preference of the parent. The National Board was to have attached to it a permanent secretary—a prototype of a permanent and professional civil service—who was to administer all funds applied for the purpose of education.74 This radical innovation received the approbation of the Legislative Council, with the initial vote for a national system carried 22 to 5.75 Still, the final legislation opted for a dual system, managed by separate Denominational and National boards, so as to placate the consistent opposition from the denizens of the establishment clique including Broughton and the Sydney Morning Herald.76 The shift to a fully national and state controlled system would therefore rely on a broader shift, not only in the governing rationalities of the colonial state, but the constitutional mechanisms of responsible cabinet government. In this way, until the principle of the fusion of legislative and executive authority had been established, and indeed had suffused itself throughout the broader rationalisation and codification of the justice system, municipal government, bureaucratic organisation and so on, the colonial state would not yet be ready to take complete control of popular education.

The events of 1848 did, however, produce an important prototype for educational governance which, in constitutional terms, laid the foundation for a fully centralized system. Lowe consolidated an emerging discourse of educational governance which, on the one hand, was founded on the accountability, uniformity and rationality of a ‘responsible’ central authority, and on the other, an avowed opposition to ‘irresponsible’ parents and local boards. While historians of education have picked up on aspects of this discourse they have tended to focus on Lowe’s anti-denominational rhetoric. Knight, for instance, emphasised how Lowe manoeuvred “witnesses who favoured sectarian religious instruction into the admission that, nonetheless, a general system was the only one suited to rural areas.” Since it was clear that Broughton would refuse to yield on the “religious principle”, and further, “refused to consider any innovations at all”, Lowe seized “every opportunity to publicise abuses of Episcopal authority, evidences of which occurred with increasing frequency as Broughton, under mounting pressure from within himself and from those around him, acted with less discretion than he perhaps either intended or realized.” These abuses need to be analysed in relation to a broader constitutional critique of common law government. Thus, when

74 “Report from the Select Committee on Education” VPLCNSW, August 28, 1844; in General Education Vindicated (Sydney: 1844).
75 VPLCNSW, December 17, 1844.
76 See SMH, September 3 & 4, 1844.
Lowe singled out Broughton’s arbitrary use of church authority – the Bishop dismissed a young clergymen before submitting the case to due process – it was a typically Benthamite response to the ‘arbitrum’ of judge-made law:

I verily believe, that if Faith, Hope, and Charity themselves were empanelled as a jury, they could not acquit the judge who delivered such a sentence... The supreme court would grant a criminal information against the Lord Bishop of Sydney, on representation of these proceedings, for corrupt conduct as a Judge... I know nothing in history comparable to the proceedings of this trial.\textsuperscript{77}

While Lowe exploited Broughton’s indiscretion to gain political leverage, he was also speaking as a utilitarian lawyer and legal positivist.\textsuperscript{78} It was this jurisprudential and constitutional logic which was transposed into a education reform debate that had increasingly resolved to bring localised and sectarian school administration within a codified legislative framework. Soon after it was established in 1848, the National Board expressed confidence that “such means will be afforded by the Colonial Executive and Legislature, as may be deemed requisite for the eventual extension of this System throughout the Colony.” In a despatch to the Commissioners of National Schools in Ireland, the Board described how a “general feeling seems to be that no other System can be so advisable for our vast pastoral districts, where the population is very thin, scattered and of various religious persuasions.”\textsuperscript{79} Even Lang had been converted to the national system, expressing a desire to “atone as much as possible for the opposition I had given to the establishment of Sir Richard Bourke’s system.”\textsuperscript{80}

The failure of the dual system

\textsuperscript{77}SMH, September 9, 1844. VPLCNSW, August 7, 1849; in Knight, Illiberal Liberal, 238.

\textsuperscript{78}This emerging constitutional schism was played out on a number of levels. Referring to Broughton and his “old regime of Tory Despotism”, the Australian campaigned against the latter’s support of the test acts (laws against freedom of the press); “commercial and agrarian monopoly laws in favour of certain classes...to the legalised plunder of all other classes”; and “ignorant, barbarous, and war-begeting tariffs, from the abominable corn and sugar laws, downwards, by which the starving poor of the United Kingdom have been compelled to pay for their bread and sugar...at extra high prices. Australian. December 17, 1846.

\textsuperscript{79}Board of National Education to Commissioners for National Schools in Ireland” March 22. 1848; in Historical Records of Australia 1: XXVI, 377.

\textsuperscript{80}Lang, An Historical and Statistical Account of New South Wales, vol. II, 514.
By the early to mid 1850s the failure of the dual system was becoming increasingly apparent. Problems of low attendance, poor literacy rates, unsatisfactory conditions and inadequate teacher remuneration were quickly associated with the ambiguous sharing of authority between the four main denominations. W. A. Duncan, an educator and editor of the radical *Weekly News*, emphasised the inherent incapacity of such a fragmented governing framework.

Instead of having in this country one Established Church, as most other countries have, we have four Churches supported by the State, and, consequently, at least *four* kinds of public schools, in which different doctrines are taught at the publics expense. It follows from this unprofitable waste of labour that the large sum annually voted for education, when divided among a very scattered population, and again subdivided among four different Churches in each locality, afforded so paltry a remuneration to the teachers, that none but persons in the lowest ranks of society...would accept the office...This state of things...is multiplied ten-fold in this thinly-inhabited colony. In hundreds of places there is no school at all. In scores of places there are four times the number that ought to be.\(^{81}\)

In the wake of reforms of 1848, the colonies continued to appropriate the worst excesses of England’s sectarian and localised tradition of education governance. Exacerbated by a thinly populated and scattered pattern of settlement, reformers increasingly demanded that the sharing of authority between the denominations cede to a unified administrative framework. This was by now an old idea, with Bourke initiating the move to state control almost twenty years earlier. What was important at this moment was the realisation that the clerics, magistrates and the justices of the peace who carried on control of education, social-welfare, policing, public works and so on were able to maintain their governing jurisdiction, not merely through legislative apathy, but a constitutional tradition that warded against any excrescence of executive power. For this reason, Robert Lowe, commenting on the 1850 *Australian Colonies Bill*, asserted the need for a more ‘absolute’ system of political authority in the colonies:

> I do not overstate the general feeling when I say it would be more acceptable to the Australian colonies if the governor of each colony were armed with absolute executive and legislative power – that such a government, if attended with delegation of full authority to settle at once upon the spot all local questions, would be more acceptable than the freest

---

\(^{81}\)W. A. Duncan, *Lecture on National Education* [Delivered at the School of Arts, Brisbane. June 1850] (Sydney: 1850), 5.
system of government which the ingenuity of man could devise, clogged with the restrictions, and hampered with the interventions, to which the present mode of colonial administration is subject.82

Lowe denounced the outgoing imperial system of colonial government in which administrative accountability was ambiguously shared between local and imperial authorities. As described in the preceding chapter, Lowe wanted to retain the veto power of the Crown to ward against the potential for Wentworth and the Squatters to take control of the new parliament. For this reason he insisted that a bicameral parliamentary model with an elected upper house be adopted to facilitate unified majority government. Lowe argued that an upper house made up of Crown nominees, which had been proposed under the advice of Wentworth and the conservatives, tended to “bring the action of the home government into collision with the colony, to disturb the action of the constitutional system, to throw discredit upon public men, to introduce discord into public councils.”83 While this constitutional logic failed to initially reach fruition in New South Wales, it nonetheless affirmed the idea that parliaments, education boards, municipal councils and the various apparatuses of liberal governance must, if they are govern a complex population with maximum efficiency, be framed around a single, unified and ‘absolute’ sovereign power. As described elsewhere, it was this idea that informed Lowe’s ‘Revised Code’ of 1861 which attempted, with varying degrees of success, to imbue English education with a highly centralized, codified and bureaucratized administrative framework.

Guided by the theory of legislative absolutism, Lowe’s schema for colonial government still had to contend with the fact that it contravened the hallowed ‘liberty of the subject’. While this would weaken the particular, juridical rights of the propertied classes, it was also an affront to the normative foundation of English law and government. Between 1848 and the establishment responsible government in 1856, no significant legislation for education reform was brought forward in New South Wales. Indeed, the failing efforts to centralize English education, as evidenced by virulent opposition to Lord Russell’s 1852 Education Bill and John Pakington’s 1855 Borough Education Bill, highlighted some inherent normative barriers to change. These debates resonated in the colonies, with the Empire running a series of articles, published in the Leeds Mercury under the editorship of the avowed voluntarist, Edward Baines. documenting the...

83 Lowe, Speech on the Australian Colonies Bill, 6–7.
“astounding...failure of government management” of education. Referring to Pakington’s proposed legislation, which, like Russell’s Bill, would provide for central board of education, a centrally regulated system of teacher training, centralized curriculum guidelines and the abolishment of state funding for non-government schools, the Mercury described the “introduction of an unprecedented number of measures into the Legislature for bringing the education of the people more completely under government control.” It was argued, as the ‘establishment’ in the colonies would continue to argue, that government intervention represented a distrust of the “energies, the intelligence, and the virtues of the people themselves...placing no reliance on the generous influence of freedom or the stimulus of competition.” The idea that “the panacea of our national ills, is to be found in taking the education of the people under the care of the Government and the Legislature” via “an Act of Parliament, compulsory powers of taxation, and a vast Governmental machinery”, contravened a British constitutional model founded on individual rights, local self-government and saxon self-reliance.

This salvo against government intervention aligns with a Foucauldian theory of bio-political governance predicated on a “liberal critique of too much government.” To overcome this normative conflict, liberalism seeks to employ non-central and discursive ‘routines’ and ‘practices’, as opposed to overt ‘sovereign power’, designed to nurture the naturalness of economy and civil society. This is true to a point. Yet, on the one hand, disciplinary power, as indicated by the attempts to improve the capacity for schools to examine, classify and objectify the child via an ‘all-seeing corpus of knowledge’, could not emerge, in the context of the English and colonial constitutional tradition, without the guiding hand of state sovereignty. On the other hand, the voluntarist discourse detailed above, which espoused minimal government and the principle that as “long as schools are independent and voluntary, the freedom of education is perfect”, was opposed to the regulatory mechanisms of disciplinary power, arguing that “Every Government inspector is essentially a dictator.” Thus, in the particular context of English and colonial political culture, the success of disciplinary power depended on the subversion of a theory of rights which long served as a prop for divided government. In this way, to focus on the ‘practices’ which characterised the ‘governmentalised of the state’ in the nineteenth century misses the constitutional mechanisms which, contrary to the Foucauldian formulation, were not “external”, but ‘internal’ to the “institutions of formal political authority.”

84 Dean, Governmentality: Power and Rule in Modern Society, 82.
85 Leeds Mercury: in Empire, November 1855.
86 This contradicts Deans premise that bio-politics is the “government of certain processes conceived as
Education and the sovereign state

To appreciate the governmentalization of the educational state in the colonies, it first needs to be acknowledged that the normative premises upon which the economic autonomy of the individual had been maintained were rapidly subordinated to the idea of a single and absolute sovereign. Bentham had long argued that liberalism, if it was to develop a truly modern system for governing populations, had to break away, not as the Foucauldians would have it, from the legal-totalising forms of eighteenth century raison d’État, but more particularly, the ‘primeval fiction’ of the English common law tradition. Thus, what we see in the following educational debates is an acknowledgment that the ‘liberty of the subject’ was a hangover of the separation of powers and a rights based juridical logic which blocked the passage of unified and positive law as exercised through the sovereign parliament. In this vein, when G. W. Rusden, the first Inspector of Schools in NSW, in 1853 questioned the need “to flee to the government for help in the formation of schools”, he argued that it was no longer a priori that “society help itself” since the sovereign state was best equipped to guide and regulate civil society with maximum efficiency: “Government is nothing more, I reply, than a machine set in motion by society for the performance of society’s work, and is then best discharging its duty, when it does most to contribute to the moral well-being of the people over whom it is appointed to rule.”

By definition, the liberal state must govern any “system usually called general or national education” since education was “the common right of all”, it should be “defrayed from the common fund”, and “supplied to all in common, without distinction of favour, party, or creed.” Rusden then attempted to “decide upon the technical theory of administering that universal good of which the necessity has been admitted.” He concluded that

The State is not bound to encumber itself with the giving of any education which may reasonably be given by other means than a charge upon the public purse; but I think it is susceptible of proof that it is bound to give facilities for such an amount of education as will enable a subject to read and understand the formularies of his faith, and the laws of the land.

---

88 Rusden, National Education, 196.
However, while convinced of the “duty of the State”, Rusden still found it difficult to “trench upon the still more solemn duties of the parent and the clergyman.”

Still, he signalled a shift in the perceived limits and jurisdiction of the liberal state. The state not only ‘represented’ some territorial, linguistic and economic entity, but was called upon to tune and balance the vicissitudes of the social body. The individual, the father, or the priest remain responsible for our moral and economic subsistence, but the state has a further responsibility to remain active, to correct aberrations, to guide the ‘universal good’.

The need to justify the active, sovereign state within a liberal concept of educational governance would of course rely on the broader rationalisation of the parliament, municipal government, the justice system and so on. To this end, the continuing failure of a local/denominational school system would highlight the contrasting imperatives of, on the one hand, impartial, accountable and centralized government; and on the other, the arbitrary, inefficient and fragmented routines of local self-government. This important juxtaposition would be pursued with great tenacity by William Wilkins, the long serving Chief Inspector of Schools in New South Wales. Appointed, at only the age of twenty-seven, by the Board of National Education in March 1854. Wilkins, after first inspecting the national schools, concluded that “the majority are in a most unsatisfactory condition and...unless rigorous remedial measures are speedily adopted to raise the character of the schools they will become...positive evils to the cause of education.” Wilkins believed that such deficiencies were the result of the neglect and incompetence of clerics and local patrons who played a quasi-supervisory role in the day-to-day running of the schools. In response, he wanted to take “the power of the local patrons and place it in the hands of an inspector”, and to “mould the education of the country in accordance with enlightened principles, independently of local assistance.”

Wilkins represented an emerging group of liberal and ‘enlightened’ educational reformers who were bent on delimiting the power of local patrons, and of local self-government in general. The 1852 Commissioners of the National Board, which included committed reformers such as Plunkett, who was Chairman, Charles Nicholson, Roger Therry and G. K. Holden. Chairman of the National Board between 1858 and 1856, were quick to highlight the “slow advance of national education”

89Rusden, National Education, 200–205.

that could only be overcome through a more regimented central inspectorship.\footnote{\textit{Fifth report of the Commissioner's of National Education in New South Wales for the Year 1852"}, \textit{VPLCNSW}, May 7, 1853. The report of a Victorian select committee on education echoed the conclusions of the New South Wales report. Even for one Anglican laymen, whose evidence was included in the report, a unified system was necessary because it was "the duty of the state to expend the public funds for a common purpose." Once state schooling was the "law of the land", the "public principle [would] be preserved, school efficiency secured, and public funds economised." "Report from the Select Committee on Education", \textit{VPLCV}, 1852; in Austin, \textit{Select Documents in Australian Education}, 119--121.} It was at this time that Henry Parkes — editor of the liberal \textit{Empire} newspaper, elected to the Legislative Council in 1854 and a key player in the ultimate establishment of a ministerial department of education in 1880 — began also to emphasis the need for central control: "With regard to the great question of education, I have already declared myself, as the systems at present stand, in favour of the national system. But so much importance do I attach to the work of mental training as the foundation of every social virtue, that I should be prepared to support any modification or alteration of that system which would more adapt it to the peculiar wants of the remote, thinly populated, and scattered districts in the colony."\footnote{Quoted in Parkes, \textit{Fifty Years in the Making of Australian History}, 166.} By highlighting the inapplicability of localism in colonial political culture, Parkes was able to fuel existing discontent with local and clerical supervision. In this vein, as editor of the \textit{Empire}, Parkes wrote in 1851 that "It is true that a Central Board has been established, but with the exception of providing more books, the Board has done absolutely nothing. The Clergyman, now as before, command unlimited control over the teachers."\footnote{\textit{Empire}, January 22, 1851; cited in Relton, "Failure of the Dual System", 138.}

Through a series of historical processes — the discovery of gold, the growth of colonial capital, urbanisation, industrialisation, the establishment of a specialized labour force — described in great detail elsewhere by historians, political power in the colony began, during the mid-nineteenth century, to move from the previously ascendant landowning/exclusive clique to the liberal, urban middle classes. This rise of the urban mercantile liberal power structure was consolidated around the anti-transportation and democratic movements of the late 1840s and early 1850s. Central to the movement was the Constitutional Association, formed in 1848, with members including Henry Parkes and E. J. Hawksley, the editor of the \textit{Peoples Advocate}. The Association’s populist agenda included the extension of the elective franchise; representation by population; reform of the administration of public lands to encourage intensive agricultural rather than pastoral land use;
responsible government; and the extension of the right of petition. Underlying this agenda was a rejection of imperial government. Thus, if the colonists were to enjoy "the great immutable principle of universal liberty", they must rid the colony of the "mal-administration of the Colonial Office" and obtain for the people "the entire management of their own affairs." The liberal reform lobby began to attract men such as Charles Cowper who, while initially regarded as a Loyalist and political conservative, became a close associate of Lowe and pivotal to the anti-transportation movement and opposition to Wentworth's 1853 Constitution - with William Thurlow, Cowper was the only other liberal to sit on Wentworth's constitutional select committee. Chairman of the Australian Anti-Transportation League in 1851, Cowper banded around him a group of liberal-radical politicians, mercantilists and professionals who, amongst other capital projects, wanted to establish a state-wide rail system that importantly would provide transport infrastructure to support population and industrial growth. Significantly, these men believed that such capital projects must come under a significant amount of legislative regulation and control. Powell notes that during the early to mid 1850s, it was Cowper who "patiently shepherded most of the company incorporation bills through the legislature" and, by extending "his social contracts with the urban middle classes", ensured that the latter "took the place of landholders on the boards of social, charitable and church organisations."

This liberal-radical lobby were soon able, therefore, to consolidate their political influence within a self-governing, responsible and democratic parliament, and thus bring the benefits of legislative government upon a society beginning to jettison its penal, authoritarian and juridical origins. By the 1850s it had become a maxim, in the words of Macintyre, that "good government could not apply

---


95 *Objects, and Regulations of the Constitutional Association*, 8.


97 The independent committees set up in the late 1840s suffered irreversible jealousies and conflicts which saw Cowper set up a parliamentary select committee to bring the matter under legislative control. The Sydney Railway Company set up in 1848, whose major shareholders included Robert Lowe and Charles Nicholson, came under purview of government appointed directors with the state now injecting a majority of the capital. In 1855, Cowper succeeded in consolidating government control of the public transport system.

98 Powell, *Patrician Democrat*, 52.
while Australia was a dumping ground for convicts.” Indeed, the securing that “the securing of a representative legislature, a responsible executive and participatory procedures” would not only subvert outdated modes of colonial rule, but more importantly, would ensure that “government could promote social progress.” Such progress was still dependent on the outcome of a broader constitutional struggle within British liberalism. The liberals continued to attack bastions of local-juridical rule – an 1849 select committee, which included Cowper, and was chaired by Lowe, sought, for instance, to abolish the Sydney City Corporation for corruption and gross neglect of office. While there was much contradictory opinion on this matter, particularly since the corporation was an elected body, Cowper succeeded in having the Council abolished in 1852. Replacing the Council with paid and professional commissioners, Cowper was drawing on a discourse, initiated by Chadwick, Mill and Russell during the passage of the 1835 Municipal Corporations Act, bent on legislat ing out of existence the ‘rotten borough’ and the culture of local self-government that supported it.

When the incoming Governor-General of New South Wales, Sir William Denison, in 1854 proposed that educational funding should be increased via a local levy, he attracted a litany of opposition that went to the heart of an emerging constitutional shift away from the common law tradition. In a letter to George Rusden, who by now had taken over the national education board in Victorian, Denison argued that the “funds for the full development of an education system” should be “supplied by a special rate or tax in preference to an annual vote from the general revenue.” The amount raised would then bear a “constant ratio to the population and the educational wants of the community.” Furthermore, “if a school is supported by a local rate the people who pay that rate have a right to a voice” in the management of the local school. This policy followed, on the one hand, the failed education bills which he presented to the Tasmanian Parliament in 1849 and 1852, and on the other, his abiding constitutional reactionism. Denison tended to placate Anglican interests, but it was his constitutionalism which dictated that the state should remain separate from civil institutions like the school, and that the individual should have a ‘right to a voice’ in public schooling. Driving his latest push for a local rate, these constitutional assumptions illustrated how far Denison had drifted from the prevailing wisdom.


In a letter to the *Empire* responding to Denison’s proposal, it was argued that a “poll-tax for educational purposes is not only hateful in itself – it is unjust in principle.” Indeed, such an imposition would be “incompatible with the age of progress and enlightenment.” Alternatively, the *Empire* suggested that “the sums raised might just as well be added to the general revenue, and expended under the direction of the Legislature.”101 A local tax would barely cover teacher salaries let alone gratuities, books and school-building projects. If the people were better educated then schools “might be left to local communities”, however, school administration would remain unaccountable and unprofessional. In addition, the writer claimed that a central authority would be more objective than a local committee in the appointment of teachers. Finally, in asking “How are the educational wants of the country to be met?”102, the writer asserted that “the question is an exceedingly grave one, and is not to be hastily disposed of. How the funds indispensable to the carrying out of a complete system are to be raised, the character of the instruction and the mode of its communication, and the machinery required to be brought into operation...demand legislative attention.” It was suggested that while voluntary education, “unaided by the state, may, in years to come, be adequate to the task...it is not so yet, nor will it be for many years hence.” Voluntary contributions could only avoid “self-interest and parsimony” if benefactors remained “responsible to the central authority.” In this circumstance, all willing to share this responsibility, including the local committee, could, with the inspector, be “entrusted with the supervision of the school.”

**The 1855 Commission**

In the lead-up to the establishment of responsible self-government in the colonies, such an increasingly sustained critique of localism typically argued that the sovereign legislature, the lodestar of efficient and enlightened government, must reign in the arbitrary self-interest of localised authority via centralized funding, inspection and so on. While community and voluntary input into the system is an important aspect of a ‘governmentalized’ education framework – indeed, this idea has been emphasised most recently through the devolutionary and neo-liberal reforms of the 1980s and 90s – any such contributions must be carried out under the ‘permanent gaze’ of a responsible central authority. This constitutional logic was prevalent throughout the findings and recommendations of the 1855 Report from the Commission of Inquiry into the State of Schools in New South Wales. The report described a school system suffering from “great indifference on the part of parents”, and the “altogether inadequate” level of state funding. Combined with an absence

---

101*Empire*, October 5, 1855.
102*Empire*, October 5, 1855.
of properly qualified schoolmasters, the commissioners argued that “the time has arrived when the subject of education must be taken up energetically by the Government, and a system devised which will not only provide for the present wants of the people, but will also carry within itself such a principle of expansion, as will enable it to adapt itself to the state of things when the population be multiplied to any extent.”\textsuperscript{103} This readiness to use the “power of Government” would allow the imposition of a compulsory rate, thereby providing a pecuniary incentive for parents and increasing revenue relative to population growth.

The commissioners argued that public education could not improve unless the state imposed greater control over attendance levels. Parents often preferred their children to earn an income rather than attend school, and it was asked whether “such a state of things does not call for Legislative interference.”\textsuperscript{104} This was not an expression of ‘social control’, but was consistent with the constitutional logics of accountable, efficient and responsible public administration. It had become imperative that “the condition of the schools should be brought clearly before the government and the legislature, and public opinion be thus brought to act upon them.”\textsuperscript{105} This would be achieved by appointing inspectors who were to report yearly on the condition of each school. Thus, local administration could only be fostered under the guiding hand of the sovereign state apparatus:

The central authority should be empowered to establish and carry on schools under the immediate supervision of the inspectors, in the event of local boards being inefficient. But as this tendency to centralisation is objectionable in the minds of many persons, the germ of local organisation could be provided so that when a more healthy and energetic spirit rose in the district, the management of the schools could be deputed to the local committee.\textsuperscript{106}

Again, we find the education reform debate having to reconcile a broader conflict within liberalism concerning the contradictory imperatives of centralization and the ‘liberty of the subject’. This is

\textsuperscript{103}'Education' - Proceedings of Executive Council, with Report from the Commission of Inquiry into the State of Schools in New South Wales" \textit{JNSWLC}, June 20, 1855, 2. The most pressing problem was the “children of profligate parents, who exercise neither control over, nor care for them, and not a few are entirely deserted. Should they be allowed to continue in this way of life, in a few generations there will have arisen a class of Australian lazzaroni, dangerous to the peace and security of the community.”

\textsuperscript{104}Report from the Commission of Inquiry into the State of Schools, 1855, 18.

\textsuperscript{105}Report from the Commission of Inquiry into the State of Schools, 1855, 5.

\textsuperscript{106}Report from the Commission of Inquiry into the State of Schools, 1855, 2.
resolved, not, as the Foucauldians would argue, by moving away from sovereign power and focusing on disciplinary techniques which act 'silently' on the individual, although this is part of the strategy; but rather, by embracing sovereign power as projected through the rational and impartial mechanisms of responsible cabinet government. In this way, the individual is not given rights, but is provided 'security' through a constitutional framework which ensures that government will not succumb to the caprice of ecclesiastic and judicial law. At all times, the sovereign legislature remains a unifying force whose constitutional and mechanical perfection ensures that government at both the macro and micro level cannot be corrupted or made irrational. Accordingly, the 1855 Commission was able to argue that governing authority could, and should, be devolved to parents and local authorities, but that the latter first had to be made 'healthy and energetic' through legislative surveillance and regulation.

This constitutional logic of positive law and unified sovereign power – as opposed to a 'rights' based logic of divided or negative power – became the underlying rationale for reform of the dual system. In this way, a letter to the Empire argued that “What we want is one good system that shall effectually supersede the present jumble, and incomparably surpass it in the benefits conferred, in cheapness, in administrative consistency, and responsibility.” Similarly, an anonymous pamphlet stated that

the grand defect of the system is the absence of unity both of design and operation. Instead of a comprehensive scheme embracing the whole of the population in a common system of education irrespective of private differences in matters with which the government has no proper concern, an attempt is made to subserve the purposes of various religious bodies by combining instruction... To this attempted combination we attribute the failure of Governmental Education in New South Wales.

This emphasis, in a semiotic sense, on the contrast between that which is divided and unified, jumbled and consistent, corrupt and responsible, had the effect of marginalizing and devaluing localized modes of governance that lay outside an ascendant logic of unity and efficiency. While Foucauldian analysis provided by Vick attributes these 'dualisms' to 'normalising' discourses that

107 Empire, August 6, 1855.
defined a ‘good’ education as a “distinct conceptualised field”, he emphasises how this discourse shifted the ground of governing power from overt political authority to neutral and technical ‘practices’. But the deployment of these binary oppositions was also aimed at giving constitutional legitimacy to a new vision of liberal state power. Thus we see the mantra of ‘efficiency’ applied across the range of liberal apparatuses of governance. As a critique of common law government, these oppositions found consistent voice when combating the ‘arbireum’ associated with the administration of justice. Even the Sydney Morning Herald, which by the mid-1850s had adopted a more liberal editorial tone, approved of a suggestion for a bill designed to enforce the ‘efficient’ administration of justice since it would allow the “Government [to] place upon the representatives of the people the whole responsibility of providing such machinery as will simplify, cheapen, and accelerate the administration of justice among their constituents.”

This logic of unity, efficiency and responsibility strengthened the attack on the dual education system. In this light, the 1855 Commission remarked that

> Although some educationalists have pointed to the competition of systems as a great good, our experience has failed to detect a single benefit...this Report will have demonstrated the necessity of a united effort against the prevailing ignorance...the rivalry of systems tends to divide, and consequently weaken, every endeavour for the promotion of Education. It has prevented the introduction of a uniform mode for conducting schools, and rendered a unity of purpose impossible.

As an antidote, Robert Dunlop, Headmaster of the Wesleyan school at Newtown, recommended that the two boards be united under a Council of Education; that four full time inspectors be appointed; that the central board establish a training school for teachers of all denominations; that in a locality where no school is in receipt of government aid, subject to approval from the central board, that aid be granted to such a school, and that children whose parents cannot afford to pay the prescribed rate be instructed gratuitously; that all schools under the board, and in receipt of aid for teacher salaries or towards the building of the school, shall be open to the public and subject to the rule of the central committee; that the words “Public School” be printed on the door of every school under the

---


110 SMH, July 16, 1855.

111 “Education: Final Report From the School Commissioners – December 6, 1855” in VPNSWLA, May 27, 1856.
authority of the central board; and that the central board set the school fees which the local committee has no power to lower or alter.\textsuperscript{112}

This overarching model of centralized school governance was both unified and comprehensive, reaching into all aspects of school funding, teacher training and pedagogical design. Indeed, one of the overt side-effects of an administrative system lacking any ‘unity of purpose’ was the variegated application of pedagogical method. Various pedagogical models, including the individual, monitorial, Scottish parochial, collective and mixed systems, had been imported into the colonial schools without being filtered through a standardised pedagogical framework. As a consequence, the commissioners described the “condition of the Schools as regards instruction” as “deplorable in the extreme.”\textsuperscript{113} The monitorial system which dominated teaching practices failed to conform to emerging ideas about the political economy of classroom organisation, and in this sense, failed as a vehicle for disciplinary power. In response, William Wilkins, who largely authored the 1855 report, reiterated the Pestalozzian pedagogy which had influenced him as a student under Kay-Shuttleworth at Battersea College. His pedagogical vision was a ‘moral economy’ which stood in distinct contrast to the moral dogma advocated by sectarian educators. The continuing use of corporal punishment in schools worried Wilkins because it was a form of discipline which tended to “aggravate the offence it is intended to subdue.” For Wilkins, this was “one of the worst features observable in the management of schools in the Colony, particularly in towns, where, as a general rule, the discipline of the schools seems to exercise no salutary influence upon the characters of the children.” When he said that “moral influence is never resorted to as a means of controlling children”, Wilkins lamented the need for a panopticized approach to school discipline.\textsuperscript{114} This moral economy was fundamental to the pedagogical theories of the influential early nineteenth century educator, Joseph Lancaster, who, as noted by David Hogan, believed that “the teacher as inspector-general had replaced the teacher as sovereign master.” For Hogan, this signalled a pedagogical shift from negative and juridical sovereign power to a ‘bio-politics’ of self-policing subjects:

In replacing the authority of the teacher with the authority of rules, he rejected the ritualized exercise of sovereign power and substituted an anonymous and functional power that was not so much personal, negative, and direct as positive, impersonal, individualised, affective, and constitutive. Lancaster used power to construct new forms of subjectivity, not simply to

\textsuperscript{112}Empire, September 4, 1855.

\textsuperscript{113}Final Report From the School Commissioners – December 6, 1855, 12.

\textsuperscript{114}Final Report From the School Commissioners”, December 6, 1855. 21.
intimidate students into compliance: pedagogy should be constitutive rather than imperative, disciplinary rather than repressive.\textsuperscript{115}

It needs to be remembered that Wilkins' moral economy, while social-psychological and 'reformatory', depended on a uniform governing framework that would ensure that such pedagogical design was used consistently across all schools, that teacher training conformed with such methods, and that students were 'compelled' to attend government schools utilizing these constitutive pedagogies. Ironically then, the move away from ritualized and absolute methods of teaching could only be achieved via an absolutist model of central political power. Progressive pedagogy was not simply adopted through a denouncement of the clergy and local patrons, therefore, but, to reiterate the point, depended on a wider constitutional shift away from the separation of powers, natural rights and local self-government. Thus, when the 1855 Commission stated that "the system of Local Boards has failed utterly in the object for which they were constituted", such a 'failure of the dual system' did not, on its own, catalyse the move to a full state takeover.\textsuperscript{116}

Historians of education have grasped this point indirectly. Payne, for instance, noted that Wilkins was "a devoted disciple of Shuttleworth so it is quite understandable that he brought to Australia a deep suspicion of the Patronage system which in England and Ireland then implied clerical management to the detriment and organisation of the state."\textsuperscript{117} While Payne does not expand on the point, such hostility to the 'Patronage system' was central to a broader critique of English law and government which, in the colonies, was played out through the debates surrounding responsible cabinet government. The latter was crucial because it gave colonial educators and social reformers the opportunity to weld public governance to an accountable, rational and scientific legislative apparatus. Like Payne, Relton provided some indication of the constitutional processes that inspired the diminishing faith in local control, arguing that the increasing link between education and the state was inherent in a


\textsuperscript{116}Final Report From the School Commissioners - December 6, 1855, 22.

\textsuperscript{117}Payne, "The Management of Schools in New South Wales", 77.
nascent political and social democracy that predicated that the State was best served when all its members were able to play an equal and responsible part in its affairs. This social bias merely strengthened the belief that the State should provide education, because it was both the organization with the most adequate resources and the body which represented the people collectively. This belief had grown steadily in the colony and by the mid-nineteenth century was accepted without question.118

While Relton picks up on the important linkage between education reform and a growing faith in the ‘collective’ capacity of the liberal state, it is not enough to argue that such a state evolved out of an egalitarian vision of ‘political and social democracy.’ The latter wrongly makes assumptions about a ‘rights’ based theory of classical liberalism which was in fact disembodied by the colonial constitutions. It is important then to provide a more thorough and nuanced analysis of liberal constitutional theory when explaining how state control was justified.

Returning to the 1855 Commission, we note that many of its disciplinary and ‘normalising’ initiatives were welded to a broader constitutional agenda. Singling out the Church of England clergy for their arbitrary dismissal of teaching staff, the commissioners were able to emphasis the higher rationality and accountability of a national system whose guiding light was the sovereign legislature. While the National Board was directly responsible for the appointment of teachers within its jurisdiction, the Denominational Board reserved appointments for the sanction of the Bishop. Citing the “Rules for the Church of England Schools”, the commissioners remarked that the system was “bad in every respect” and that “it may lead (and frequently led) to great abuse of power on the part of the clergy, and at the same time, it virtually deprives the Central Board of all control over the school.” The axiom that public administration remain in the control of accountable and qualified public officers had been fortified by the emerging doctrine of responsible cabinet government. With strong rhetorical flourish, the commissioners described the arbitrary power of the clergy as “depressing in the extreme.” Administered by despots, teachers were denied “that healthy independence of thought and action so essential in those who have to form the minds of others, and degrades his position to a menial.”119 Uniformity rather than localism was, therefore, seen as a governmental technique through which ‘healthy independence’ could be sustained.


119Final Report From the School Commissioners – December 6, 1855, 23.
While the commissioners argued that the salaries of denominational teachers were "exceedingly small", it was nonetheless true that the National Board teachers received a similar remuneration. The point for the commissioners, however, was that salaries, if they are to nurture, in a bio-political sense, 'ethical self-improvement', had to be regulated by a uniform governing apparatus. Remuneration was dependent upon the qualification of teachers, as judged by a written examination, and an inspection of the school. Alternatively,

In Denominational Schools, the locality, and not the ability of the teacher, nor his length of service, seems to determine the amount of salary which is fixed by the clerical authorities, and not by the Central Board. The latter indeed appears to have retained little or no control over the schools in any way. Under such a system there can be but little inducement for teachers to aim at superiority, seeing that there is no reward for their exertions.

While a uniform, regular and rationally prescribed system of teacher payment - as a fiscal 'regime' which induces teachers to fulfil the requirements of the central curriculum - acts as a fundamental 'self-regulatory' mechanism of liberal governance, such a regime is bound to abuse unless it forms part of an interlocking and codified governing network that emanates from the sovereign legislature. Accordingly, the 1855 Commission complained that legislative initiatives "appear to have no connection with each other", and the "Colony possesses no system of education at all, in the proper sense of the word... This piecemeal character of the means of education is a serious defect."

Education under responsible government: toward a model of legislative control

With the establishment of responsible self-government in January 1856, the 1855 report prompted an increased call for government action from those with a greater faith in the governing capacity of the colonial parliament. In theory, the self-governing parliament could now legitimately embark on a codified body of rational legislation aimed at managing, not only a penal colony, but a modern population. As the following narrative describes, such a vision took a long time to reach fruition. However, while factional politics dominated the initial years of self-rule to the detriment of strong party government, the logic of the higher administrative rationality of the sovereign parliament had nonetheless been established. Most important was the early fusion of executive and legislative

---

120 The national teachers received 168 pounds per annum compared the denominational salary of 163 pounds.
121 Final Report From the School Commissioners, December 6, 1855, 24.
122 Loveday and Martin give the most detailed account of governing factions who, while assuming the
power. Wettenhall notes that under the new constitution, the legislature was formed, not as a body designed to check and balance executive power, but as a governing force working in tandem with the executive. The principle that executive and legislative power should be fused in the cabinet was most ably articulated by the Colonial Secretary, Deas Thomson, who, as noted in the last chapter, wanted to include a Minister of Public Instruction in his administrative blueprint for the new executive. As part of his radical prescription for ministerial offices accompanied by paid and professional public service, this move was unprecedented throughout the Empire. The Minister of Public Instruction was to preside over an extensive administrative apparatus whose jurisdiction included the National and Denominational schools, all grammar schools, the Protestant Orphan and Roman Catholic Orphan schools, the Institute for Destitute Children, the Schools of Arts and Sydney University. Thomson was able to give the executive this comprehensive mandate over elementary, secondary and tertiary education by ensuring that the minister was supported by an extensive and efficient bureaucratic apparatus. Through ‘subordinate’ civil service departments that, unlike in England, would control the day to day running of departmental business and leave the minister to focus on policy and legislation, the technical capacity of the parliament to govern could not be impeded by factional strife and ‘changes in Administration’. Furthermore, civil servants were to be paid, and could only be appointed upon undergoing competitive civil service examinations. This was a radical departure from the original constitutional act which, following English precedent, proposed that civil servant heads be nominated by the Legislative Assembly.

In a general sense, this mechanism of ministerial responsibility layed the constitutional groundwork for a ‘science of legislation’ guided by principles of uniformity, efficiency and accountability. In support of these principles, Thomas Holt, the Chief Justice and Colonial Treasurer in the Donaldson Ministry – the first under responsible government – in 1856 launched a sustained attack on the irresponsible and unaccountable management of public funds by the two education boards. Describing “the abominable neglect and utter disregard of order and efficiency in the expenditure of that large amount of the people’s money voted each year for educational purposes”, Holt noted the inability to hold these boards to account: “As usual, that ubiquitous individual ‘nobody’ is to blame

conventions of executive responsibility, failed to facilitate a cohesive system of cabinet government in the initial years after responsible government. In this way, legislation was often introduced by private members rather than as part of a systemic policy framework contrived by the majority party. Loveday & Martin, *Parliament, Factions & Parties*, 4–5.

124 Administrative Arrangements - *VPNSWLA*, October 30, 1856, 881–82.
for all this wretched mismanagement.” The denominational board in particular failed to “consider that any responsibility attaches to them for the mismanagement of schools.” It was this irresponsibility and unaccountability which perpetuated low literacy levels in the colony, with Holt noting that of 80,283 people between the ages of seven and twenty-one in New South Wales, 31,555 could neither read nor write.

Since the governing logics of accountability, uniformity and rationality were, in theory, endemic to the system of parliamentary government newly established in the colony, it was imperative that schools, and the school aged population, come under the direct and constant purview of the sovereign legislature. This idea was replicated across other sectors of social administration including health and prisons. In December 1856, the committee appointed to “inquire into and report upon the best system of prison discipline” concluded that the present system was defective due to a lack of “uniformity”, and therefore, that punishment was “unequal and uncertain.” In addition, prison discipline was not calculated to reform prisoners, but, on the contrary, affords them the opportunity of corrupting each other... little or nothing has been attempted beyond the safe custody of the prisoners, which depends more on the height of the walls, and the strength of the building, than on management.

In recommending a replacement, the committee suggested the American Auburn or Silent System that had been popular among Benthamite reformers in England. A panoptic design which used architectural methods of surveillance to enforce moral practices, the silent system was seen as an antidote to the moral and physical contagion which limited the reformatory value of the criminal code. The Auburn system forced prisoners to work together in silence, to eat in separate cells, to maintain strict regimes of order and cleanliness, and to resist any form of communication. This was an extremely utilitarian response to the problem, drawing on Beccaria’s idea of institutional ‘certainty’. After experiencing the order and regularity of routine surveillance and inspection, inmates would replicate a ‘moral virtue’ which would lessen the chance of recidivism. To support

126 T. Holt. Two Speeches on the Subject of Education: Delivered in the Legislative Assembly, on the 2nd and 3rd December, 1856 (Sydney: 1857), 16.

127 The Board was commissioned on June 27, 1855. VPLANSW, December 16, 1856.

128 The importance of uniformity and certainty for ‘reformation’ was explained in the original ‘Description of the Auburn or Silent System’: “There is little doubt that the habits of order, to which the prisoner is subjected for several years, influence very considerably his moral conduct after his return to society.” Inquiry into
this assertion the Board quoted from Mr Hill, who had served for fifteen years as Inspector of Prisons in England and Scotland:

The object of punishment being the prevention of crime, that punishment cannot be well fitted for its purposes which, after its infliction has terminated, allows an offender to be let loose again upon society, without regard to the cause of his offence or to the fact whether such cause has been removed, — without reference even to the possibility that the offender may have been hardened or rendered worse by the punishment itself, or to the fact that the loss of character may occasion difficulty in procuring employment, and consequent danger of the criminals committing new offences; well-devised punishments for the cure of bad habits, with the attendant seclusion from the world, and with frequent periods of complete solitude, together with enforced industry, early rising, and abstinence, are necessarily productive of great pain, and if such punishments as these were always inflicted, and effective means taken to ensure that they should follow offences with rapidity and certainty, few would choose a life of crime in preference to one of virtue.129

The Beccarian and Benthamite notion of disciplinary power made important assumptions about political organisation. These progenitors of the modern prison and school importantly departed from the kind of contractarian constitutional logic which maintained localized and desultory modes of public administration. Once it was proved that the management of police and prisons by relatively autonomous local magistrates and justices of the peace had failed to conform to an emerging technology of disciplinary power; or in the case of the 1855 schools commission, that local boards had failed to adequately supervise teachers, the attack on classical liberalism and local self-government could begin in earnest.

To this end, we note, by the mid-1850s, the first sustained debate over the merits of compulsory state schooling. While in 1844 Robert Lowe still believed that compulsory legislation would compromise the 'liberty of the subject', the conferral of responsible self-government gave education reformers the pretext to embrace legislative absolutism. Forcing a parent to send their child to a


state school could no longer be regarded as a contravention of natural right because it was part of a governmental strategy which viewed rights and particular interests, in the words of Bentham, as a ‘fiction’ which obstructed the passage of unified and positive law. Citing Charles Nicholson, a member of the National Board, who stated that “it is a duty incumbent upon the Legislature, if possible, to make Education – primary Education, at all events – compulsory”, Holt provided an extensive justification for compulsory legislation. His argument was further backed by J. S. Mill, who said that “It is an allowable exercise of the powers of the Government to impose on parents the legal obligation of giving elementary instruction to children.”

Holt acknowledged that “an Anglo-Saxon recoils from the idea of being compelled to anything”, and that while “the State would best perform the paternal office, any interference of this kind would raise an uproar of opposition.” But Holt had the scent of a quite different concept of English liberalism. It was to the radical jurist, John Austin, that he turned to explain a new and interdependent relationship between the individual and the state: “It is not less incumbent [of the state] to forward the diffusion of knowledge, than to protect their subjects from one another by a due administration of justice, or to defend them by military force from the attacks of external enemies.” It was in his 1860 publication, Lectures on Jurisprudence or the Philosophy of Positive Law, that Austin would sharpen this definition through a command theory of law describing “commands set, as rules of conduct, by a Sovereign to a member or members of the Independent Political Society wherein the author of the Law is supreme.”

This ability to justify compulsion as a legitimate exercise of liberal government allowed protagonists in the education debate to increasingly argue, as did this anonymous writer to the Empire, that there must be “one general system, and a compulsory one.” In this vein, Henry Parkes pointed out that “The law as it stands enforces many social duties, and why should it not

---

130Cited in Holt, Two Speeches on the Subject of Education, 7.
131Holt, Two Speeches on the Subject of Education, 8.
133The aforementioned writer described “three classes” for which compulsory legislation was necessary. These included the “wealthy and negligent, the ‘virtuous poor’ and the reckless and depraved.” The first, which now constituted the largest demographic in New South Wales, were described as “careless or indifferent about sending their children either to public or private schools.” While the second class needed less “compelling” to educate their children, “their means might be too limited to bear the cost, consequently it must be paid for by the State.” In the case of the ‘reckless and depraved’, this reasoning further justified the enforcement of free and compulsory education. Empire. August 27, 1855.
compel the performance of one of the greatest, namely the education of children.”\textsuperscript{134} But if compulsion and administrative centralization was to become the means by which a comprehensive public education system could be established, the normative faith in the local self-government would still have to be resolved. In a leading article titled “Centralized and Localized Education”, the Empire asserted that

centralization in every form and kind of administration is an indubitable evil, since it creates a patronage to which there is no adequate check, and takes out of the hands of the parties interested the management which ought to be vested in them chiefly or alone. Local self-government is necessary in every branch of the social system, and wherever it is wanting the people become too paralysed and apathetic to profit by anything which a centralized government may do for them.

Nonetheless, adherence to the principle of ‘self-reliance’ was futile in the context of colonial education. Local control of denominational schools had been “mischievously ineffective, or so viciously wrong, as to call for the immediate erection of some central authority to apply power and control, and to take care that the funds set apart for them be no longer wasted.”\textsuperscript{135}

The people must remain active...but they cannot, on their own, be trusted

This local-central dilemma can be understood, in Foucauldian terms, by appreciating liberalism’s attempt to exercise regulatory power as a “self-regulating domain subject to its own laws, forces and tendencies which depend for their operation on the activities of free, rational and prudent persons.”\textsuperscript{136} While Foucauldians argue that this project was achieved by separating “government from sovereignty” and developing a “notion...of government as an activity, or an ‘art’. that is plural and immanent to the state”. this fails to come to terms with the way ‘government’ also emerged as an adjunct to sovereign state power, not only in a neutral or technical sense, but as an overt form of legislative authority.\textsuperscript{137} ‘Arts’ of government were not only neutral practices, but were borne of particular constitutional assumptions which, in the context of the English tradition of arbitrary government, decided that the ‘self-regulating domain’ must be located within the ‘all-seeing’

\textsuperscript{134}Empire, May 5, 1855; in Morris. Henry Parkes. 164.

\textsuperscript{135}Empire, December 6. 1856.

\textsuperscript{136}Dean & Hindess, Governing Australia, 2.

\textsuperscript{137}Dean. Governmentality, 82.
jurisdiction of the legislative state. While liberalism wants to nurture a rigorous local public sphere, it acknowledges that individuals are prone to inefficiency, irrationality and irresponsibility unless they fall under, not only ‘practices’ of examination and inspection, but a mechanically constructed web of sovereign power. At this point individual rights are transferred to a central parliament whose architectural, technical and constitutional capacity to provide responsible, expert and professional government will ensure that the ‘greatest good’, or indeed, the ‘life-conduct’ of the population is harnessed.

But again, in historical terms, this new rationality involved the difficult rejection of a constitutional tradition long entrenched within English liberalism. Thus, the *Empire* acknowledged that “This is one of the difficulties – a political one – and it must be admitted that it is not of very ready solution, while, until it be solved, it is not very easy to let the present jumble to be effectively superseded.”

Yet, while individual autonomy remained important, it could not exist under its current arbitrary form. Thus, the governing efficiency and responsibility of the central legislature had become fundamental to the future health of the education system:

> Public funds given in trust for a certain object imply responsibility to a competent power; and where the funds are taken out of the whole taxation of a community, the general Government must of necessity be that competent power, itself being in the further resort amenable to the Parliament that votes the funds. If then, it is to be the final plan, that the money support of general education shall be granted by the Parliament out of the general revenue, it necessarily follows that we must have a system with a central authority directly dependent on the general government. And it must be admitted, that this plan will remove the preposterous incongruities which now attach themselves to the public education of this community.

However, while the Parliament alone possessed the governing rectitude to manage public funds and correct the ‘preposterous incongruities’ of localism, this idea was still at variance with a continuing, albeit fragile, faith in the “self-action of the people.” It was not then acceptable “for the good government of a country, that the people should have their suffrages sought for to support a central power – the people must have and exercise the power themselves.”

This line had been taken by Parkes a few months earlier when he asked whether it was legitimate for authorised schools to be funded to the detriment of the private school or instructor. In a leading article in the *Empire*, he remarked that although “public interests are always to be preferred to private ones, we must
reconcile self-regulation and legislative control, and thus to instil the self-regulating domain with the logic of legislative responsibility, it was suggested that a centrally coordinated model of municipal government, which was in essence the progeny of the central parliament, be established as an inspectorial body that would replace the loose network of clergy and local patrons. Drawing indirectly on a science of municipal government evident in the Municipal Corporations Act of 1835, and in the colonial context, in Earl Grey's infamous 1847 despatch, this mode of local governance was to operate under far more stringent routines of accountability that the English tradition of independent and corrupt boards which had long been criticized by Bentham, John Mill and the philosophic radicals. As Bentham said, 'Boards are screens' which obstruct accountable and efficient government, and in this vein, the Empire insisted that "There are local boards, patrons, and trustees now who will not do, and cannot be made to understand, their duty. The fact is that they are not legal authorities in the genuine sense of the word, as duly constituted municipalities would be." 139

The attempt to maintain some form of local participation in public administration was fundamental to a system of liberal governance which relied on the subjective will of the individual. Accordingly, William Wilkins wanted to replicate the establishment of non-vested schools within the Irish national system, reasoning that isolated communities would exhibit more zeal in the provision of education if some private benefit was attached. When property remained the ownership of the

nevertheless assert that equity is in all cases a public interest, and that an undue interference by State forces with private enterprise, is the violation of a most important principle in political economy." The principle of free trade was still close to the heart of the urban middle-class, and the Empire confirmed that the "idea of making the whole education of the community subject to government...is too grotesque to be entertained." For this reason, Parkes did not want to have private teachers "interests rudely violated" by regulatory legislation. However, while it was not easy to reconcile free trade and state control, Parkes saw that if there was to be "trained teachers, sufficient salaries, and rent-free school houses...There must also be responsibility, and a liability to be called into account, with a due independence of parental caprice...without a National System we may see no way in which these advantages can be secure." Empire, July 10, 1856. This overidding faith in the 'responsibility of the state' over and above 'individual interests' was mimicked by the left-wing of the Sydney Press. The Peoples Advocate, edited by the educator and radical, E. J. Hawksley, was a conspicuous agitator for vote by ballot and universal suffrage, yet on the matter of education argued that the state "has a perfect right to demand from parents a participation in the formation of the mind and heart of those who are to become the electors and citizens of the state." Peoples Advocate, June 21, 1856.


140Empire, December 6, 1856. The Peoples Advocate, June 21, 1856.
schoolmaster or community the latter would be more likely to contribute their labours and pecuniary funding to maintain and provide infrastructure. This would of course benefit an incipient state with limited revenue and administrative experience. But the sanctioning of local control stopped there. Indeed, Wilkins did not trust the ability of local patrons to regulate teacher practices independently of state inspection:

It would, of course, be requisite that Local Patrons should be appointed to the non-vested Schools, and on this head some difficulty may be anticipated. The local patrons would, in a majority of cases, be personal friends of the teacher, and they may be disposed to exhibit more leniency in their construction of the manner in which he discharges his duties than is desirable. This defect could only be obviated by frequent inspection; and if a large increase in the number of National Schools took place in consequence of the admission of non-vested Schools, a corresponding increase in the means of inspection would thereby be necessitated and justified. 141

The liberal press continued to back Wilkins' line, describing the denominational system as a “jumble of all sorts of contradictory practices.” Again, the lack of any “principle of unity” was the common complaint, and it was argued that public money should only be voted “for a system of which unity and comparative uniformity are the chief points, and for a system which does with efficacy what it undertakes to do, there being supposed to be no obstructions thrown in its way.” The “compound of heterogeneous absurdities” which characterised the Denominational system was, therefore, an “unfit object of Government patronage, and unworthy of Government support.” 142 This reasoning was not only evident in the parliament and press. The national school teachers themselves came out, in the face of criticisms from supporters of the Denominational system, arguing that the latter, while failing to uphold “civil and religious equality”, also failed to commit to the important business of professionalising education. 143 Thus, it was by now “very generally recognised by enlightened educationalists, that a long and careful training is required to prepare a person to engage successfully in the teaching profession.” The national teachers hoped, therefore, that a normal

142 Empire, May 23, 1856.
143 National Education: A Series of Letters in Defence of the National System, Against the Attacks of an Anonymous Writer in the Sydney Morning Herald (Sydney: 1857), vii. For the series of letters denouncing the national schools as 'godless' and 'anti-religious' see SMH, February 18, 24, 26; March 2, 1857.
school would be established, in preference to the current reliance on a pupil-teacher system, so that teaching practices could be homogenised and regulated in line with centrally prescribed curriculum and pedagogical method. Importantly, the professionalization of teaching had to be supported by a centralized network of 'expert' inspectors. This point was potently argued by Joseph Kay in 1850:

We require...a body of men who, by constant attention to all the subjects of instruction and to all the minutiae of school management, and by constant attendance at, and examination of the best normal, model, and parochial schools, should be well-versed in all that is necessary to the perfection of a school, and should thus be able — in conjunction with the clergy and ministers of their different districts, — to advise and counsel the teachers; encourage them to persevere when in a right course, and to check them when pursuing a wrong one; to prevent a school from being ruined for want of superintendence and surveillance; to stimulate the teachers to renewed exertions by reporting all those who deserved honourable mention, and by thus drawing the attention of the public upon them.

This effort to nurture teacher agency and 'self-government' via the “approbation of the sovereign” was the classic statement of governmentalized power acting through the absolute authority and rationality of the legislature. Thus, “the country can have no security against the negligence or ignorance of local authorities, until government has the surveillance — I do not say the direction but the mere surveillance — of all primary schools in this country, and a veto on the appointment and dismissal of all the teachers in the country.”

Shuttleworth’s inspectorial regime had been, in part, appropriated by the National Board, who were compiling dossiers on the appropriation of school fees by teachers along with the age, birthplace and marital status of each teacher. Such information was open to legislative scrutiny. A teacher working in the national schools complained, in a letter published in the Herald, that “every information relating to the public schools has been laid again and again on the table of the House”, and that this infringement of the “liberty of the subject” posed the question as to “whether the Assembly is to be turned into an inquisition, or to be what it has not been lately, a deliberative body.” While this asked questions about the right to privacy and teachers rights in general, a respondent urged that “the Assembly must be inquisitorial if the education in the public schools of

---

144Empire, May 12, 1857.
145Kay, The Social Condition and Education of the People, 495–497. 524.
146SMH, March 29, 1859.
this colony is to be improved.” This avowed faith in the absolute authority of legislative ‘surveillance’ was justified since current administrative practices were likened to “olden times in England previous to the appointment of Government Inspectors.” Such opinion was vindicated by another teacher who joined the debate. “There is great room for improvement in our primary schools, and I hope that the Legislature will make a good use of our returns when they have got them”, wrote the contented employee. It was argued that schools should be heavily superintended since “it is well known that many of the directors, managers, committee men, or local patrons of schools, are totally unfit either by education or moral conduct to properly discharge the duties they take upon them.” What followed was a ringing endorsement of the governing rectitude of the sovereign legislature: “If the serious damage done to schools, teachers, and their families, from this cause, were made known, it would imperatively call for the abolition of local boards, and the appointment of a Minister of Instruction, with a suitable staff of inspectors and subinspectors, and I hope that the returns now called for and being sent in will convince our Legislators that nothing short of this will do.” Thus, while the governing rationality of the governmentalized state had rapidly gained credence among educators who had become enamoured in the ‘routines’ and ‘practices’ of an incipient disciplinary regime, all that remained was for the legislature to appropriate the constitutional mechanisms through which it could extend its surveillance, not just over the educational provision, but the social, economic and political minutiae of civil society.

4. Toward the Public Schools Act

Legislative intervention

By the late 1850s the factional chaos that marred the initial years of responsible government continued to negate any telling legislative response to the ‘education question’. This was exacerbated by the priority given to issues of land reform, electoral reform and public works – due largely to the liberal strategy of constricting conservative power in terms of land and electoral influence. The marginalisation of education reform debate was soon to change, however. Between 1859 and 1866, when the Public Schools Act abolished the dual system and established the Council of Education, four separate education bills were presented to the House. Historians have commonly focused on the failure of the initial bills in the context of “an acrimonious violence which has

147SMH, May 29, 1859.
148SMH, April 5, 1859.
compromised the dignity of the legislature.” But it was precisely this failure to enable the constitutional mechanisms of responsible cabinet government, not only in education but across the expanding jurisdiction of the population state – health, social-welfare, prisons, the administration of justice – which animated a commitment to uniformity and unity of purpose in public administration. The following debates indicate that the logics of legislative sovereignty had attained theoretical and strategic coherence in the face of the lingering ‘arbitrum’ of independent boards and local inspectors. Indeed, these ‘screens’ needed to be removed, not only to gratify the voracious regulatory appetite of the central state, but to provide the disciplinary conditions, or the ‘apparatuses of security’, through which the self-policing subject was able to exercise both its will and obedience. Thus, while the ‘techniques of government’ described by Foucault had, at their theoretical level, been consolidated, it was left to provide the constitutional and sovereign framework through which they could be realised.

While factionalism held back the tide of reform, it did not subdue the overriding notion that the sovereign legislature, through the constitutional mechanisms of responsible cabinet government, must maintain direct surveillance over the education system. Thus for all the important work carried out by the National Board, the fact remained that its Chairman was not, in the cabinet sense, directly responsible to parliament. For this reason, Cowper could not countenance the ‘independent’ actions of the National Board Chairman, John Plunkett. In February, 1858, the Premier dismissed Plunkett under the pretext that he had published correspondence from the National Board without first bringing it before the Governor-General and Executive Council. While Plunkett and Cowper had previously fallen out after contesting the seat of Sydney in 1856 – from which Cowper emerged victorious – this conflict was not simply about shoring up political influence and has much broader constitutional implications.

By publishing, in the Herald, a statement from the Board which prescribed that the Commissioners of National Education would only give support to non-national schools if they enforced a system of instruction that conformed with the national model; and that aid to such schools would be limited to salary and books to ensure that “While the appointment and removal of teachers in non-vested schools will rest with the local patrons or managers, the Commissioners will require to be satisfied with the character and competency of the teacher so appointed as a condition to the payment and

---

149 Fraser Magazine, June 1858, 66; in Clark, Select Documents in Australian History, 540.
continuance of salary", Plunkett moved to consolidate ‘normalising’ techniques of examination, classification and inspection in the operation of colonial education. But while these ‘Regulations’ also specified that the “Commissioners and their officers shall be allowed to visit and examine the schools when they think fit”, and shall “reserve to themselves the power of altering, or revoking any of the foregoing regulations”, Cowper made the constitutional diagnosis that such a disciplinary regime was an unconstitutional exercise of power since it was derived from an ‘irresponsible’ board. In this way, the governmentalized educational state could not utilize bio-political ‘techniques’ of governance if it did not act within the sovereign mandate of the responsible legislature. As such, these ‘practices’ would be exposed to potential ‘irrationality’ if not given ‘unity of purpose’ via the constitutional mechanism of the fusion of executive and legislative authority in the cabinet. Plunkett’s ‘autonomous’ actions served then to seal the exclusion of unaccountable boards from the enlightened realm of legislative governance. Thus, while the Herald believed, in a reversion to the independent authority of the English board, that Plunkett’s removal was unconstitutional, the Empire remarked that Plunkett’s demise signalled the end of “old abuses and mouldy shams; of... Government by social family compacts; of...irresponsible pluralist’s, who would govern a country according to the traditions of a penal settlement.”

In 1859 Charles Cowper introduced an Education Bill which was unanimously rejected, and which resulted in the resignation of his government. While many of Cowper’s allies voted against the Bill, the 58–7 defeat said more about the need to consolidate mechanisms of parliamentary government than opposition to national education. Much of the press’ response centred around the prevailing

151 “Regulations for the Establishment and Conduct of Non-Vested National Schools in New South Wales”, *JNSWLA*, December 14, 1857.

152 *Empire*, February 17, 1858; *SMH*, February 8, 1858. This was an expression of the perceived failure of the National Board. In a letter which questioned Plunkett’s success at extending education “to the poor people of the colony”, it was shown that such claims were “illusive from the fact that the system has had the fostering care of the legislature for upward of nine years, having heaps of money spent on it, and large grants of land and buildings.” The Commissioners Report of 1856 showed that only 5,503 of the 37,000 youths making up the school age population were on the role of the National Board, that 2,251 of that number were to be found in Sydney, and therefore, that the system had not sufficiently extended the provision of public instruction. *Empire*, March 18, 1858.

153 While Cowper had increased his support base among the urban liberals after the successful carriage of his Electoral Reform Act in 1858, which further took power from the conservatives by changing the electoral boundaries to favour population rather than property, he attracted increasing opposition from the ‘democratic’ liberal faction which included past supporters such as Parkes and Dan Deniehy. The latter disputed aspects of
culture of political expediency and the attendant practice of ‘cobbling together’ a governing majority. Premiers of the day relied on unstable majorities made up of members who carried little in the way of party allegiance, and who often, for various exigent reasons, rejected legislation initiated within their own faction. “Why are appointments made so disgraceful and dangerous”, asked the Herald, replying that the answer is found “in the necessities of the administration...They cannot be true to their own convictions...They must keep on terms with men whose desertion would embarrass or overthrow them, and so long as the state of things exist it is vain to hope that judicial or magisterial appointments...will be made for the public service, and not in subservience to parliamentary influence.” Cowper’s defeat would, argued the Herald, place the onus on future governments to appoint cabinet officers for reasons of policy rather than politics. The only other means that government could implement regular and unified legislation would be to postpone any questions evoking antagonism or to somehow conciliate a bi-partisan approach to policy. While the Herald hoped for a “more perfect development and distribution of parties”, the problem reflected the inevitable ‘teething’ problems that followed such a rapid, and indeed radically modern, shift in governing arrangements.154

Cowper had wanted to abolish the dual system and replace it with the Privy Council system which operated in England.155 Both national and denominational interests objected to the measure. Parkes

Cowpers land reform agenda and the intention to tax tea and sugar to fund education reform. However, while Parkes had legitimate objections to the proposed bill, he used the occasion, which had taken precedent over two land bills tabled by Robertson in September 1859, to consolidate his own political ambitions and bring down the Cowper ministry. Cowper had been given strong support by the House member, Richard Lewis Jenkins, in an lecture at the Mechanics’ School of Arts, titled Universal Education, which was published as a pamphlet. Addressing the likes of Charles Nicholson, Professor John Woolley of the Sydney University, Parkes, Plunkett, W. A. Duncan and James Macarthur, Jenkins urged that school fees should be abolished and that the tea and sugar duties be retained “provided the revenue from those sources be set apart as a distinct fund for the support of public education.” Realising, due to the tenuous state of Cowper’s governing majority, that the upcoming Bill ‘for the promotion of public education’ was unlikely to be passed, Jenkins pressed home the need for reform, especially in the light of the 1856 census which showed that barely one-fifth of the population were literate. Jenkins went on to invoke the commonly made connection between illiteracy and the “unfortunate creatures...growing up in filth, idleness and all kinds of vice.” Thus, the high cost of policing the population could eventually be reduced through free and compulsory education. with such precedent having been set by the centralized and free systems of education in Germany. R. L. Jenkins, Universal Education (Sydney: H. Bancroft, 1859), 5.

154SMH, October 22, 1859.
155“A Bill to Promote Public Education”V PLAN SW, September 23, 1859. The bill stipulated that “The
was adamant that an original proposal to derive an Education Board from the Executive Council should be honoured – the Assembly rejected this measure due to the tenuous political standing of the executive. For Parkes, “the English scheme was no education system at all”, being simply a plan by which a committee of the Privy Council administered the funds voted by parliament for educational purposes. Owing to what Parkes called the “complications of English society” – meaning, the continuing use of patronage and localism in the administration of national policy – this was merely an expedient since it was “impossible to establish any definite and complete system suited to the wants of the English people.” In New South Wales such “class objections” did not exist and a comprehensive system was suited to the social and political circumstances of the colony. The Empire reiterated Parkes’ official opposition, fearing that Cowper might institutionalise local/denominational control.

Much of this debate was fought on technicalities, and political manoeuvring, which belied the prevailing idea that parliamentary control must supersede irresponsible boards. The undue complexity of school administration under the board system was surmised by a teacher, Maxwell Thompson, in a letter to the Herald:

I have applied to every party, and have been referred from one to another. I apply to the church, and they say go to the Local Board; I apply to the Local Board, and they say go to the General; and they to the Church Committees Convenor. The parties who claim a right to interfere, are, the members of the Synod and Presbytery, say 16; 5 Trustees; 3 Local Board: 3 General Board – 27 in whole. Besides the Members of alleged Educational Church Committees and their Convenors and the Government Inspectors – making a grand total of, probably, forty...They have all, as they claim, the right to pull me about, although they do not exercise it...they will not exercise to attend to any grievance when urged; but..propose alterations to the mode of teaching...to dismiss at pleasure...to imperil a teachers official existence.

Members of the Executive Council for the time being shall be a body Politic and Corporate under the name and style of the Public Education Board”, and that the National Board and Denominational Board of Education would be dissolved.

156 VPLANSW, October 19, 1859.
157 Empire, October 27, 1859.
158 SMH, October 1, 1859.
While such heterogeneity could only be corrected through a unified governing apparatus, it was argued that centralization conformed to “the principle of self-interest”, and therefore, was paramount to nurturing a ‘self-regulating’ teaching domain. Through a comprehensive and uniform administrative framework in which teachers are employed, not via patronage, but according to the “quality and quantity” of their work, the “competitive principle may have full play.” For the Herald, this principle was most clearly elucidated by Adam Smith. By adhering to standardised levels of salary and competence teachers could, argued Smith, “execute a certain quantity of work at a known value.” Thus, where the “competition is free, the rivalship of competitors, who are all endeavouring to jostle one another out of employment, obliges every man, to endeavour to execute his work with a certain degree of exactness.” Even in 1776, Smith was worried that teacher salaries are “derived from a fund altogether independent of their success and reputation.” He further criticised the culture of patronage and tenure which defined University appointments - “In the University of Oxford the greatest part of the public professors have, for these many years, given up altogether the pretence of teaching.” Following this line of reasoning, the Herald remonstrated that teachers of “course, base, profligate character” were common in “schools associated with churches.” The competence of teachers should then be ascertained by a “high authority” and not “given by ecclesiastical authorities.” While the clergy should be “trusted implicitly” it was no longer acceptable to “confide to them the discretion of determining the questions of qualifications, except as to religion.” The employment of teachers should be administratively rigid; it should have the quality of “permanence” and be a “system defined and invariable.”

This was the classical statement of a bio-political strategy of governance that Foucauldians such as Burchell, drawing on Adam Smith, describe as “the objectification of a naturalness specific to man’s spontaneously self-regulating forms of coexistence.” Smith’s attempt to provide the governing conditions through which the teacher will instinctively ‘endeavour to execute his work with a certain degree of exactness’ was further elucidated by the eighteenth century political economist Adam Ferguson:

Man are tempted to labour, and to practice lucrative arts, by motives of interest. Secure to the workman the fruit of his labour, and give him the prospects of independence or freedom, the public has found a faithful minister in the acquisition of wealth...The statesman in this, as in the case of population itself. can do little more than avoid doing

159SMH, October 1, 1859.
160SMH, October 1, 1859.
mischief...Commerce...is the branch in which men committed to their own experience are least apt to go wrong...If population be connected with national wealth, liberty and personal security is the great foundation of both: and if this foundation be laid in the state, nature has secured the increase and industry of its members.\textsuperscript{161}

But again, the administrative conditions of ‘permanence’ through which the self-propelling industry of the individual would be maintained were not, in the context of the lingering influence of an eighteenth century constitutional tradition, easy to establish. While the regulation of teacher salaries was an important inducement to ‘self-government’, foremost in the mind of reformers such as Cowper was establishing the principle of “direct responsibility to parliament.” Cowper opposed the dual system because each of the boards administered parliamentary grants “without any power of interference by the Government, and independent of the Parliament.” One of the prime virtues of Cowper’s Education Bill, therefore, was that it would distribute education funding via a parliamentary board.\textsuperscript{162}

Cowper had carefully considered the best means to realise this principle, deciding on the Privy Council model in light of the perceived failure of the National System in Ireland. Richard Whately, the most conspicuous commissioner on the Irish Board, had recently stated that the Irish model was “deteriorating” because the Board was too “numerous” and was not regularly accountable to parliament. For this reason, the Premier argued that the creation of a Public Education Board on the lines of the English system would give parliament the authority to interfere with, inspect, and control education in line with popular opinion. Plunkett agreed that, since Whately had resigned in 1854, the Irish system had been less effective. However, he maintained faith in the perfectibility of the National Board model.\textsuperscript{163} While, as Parkes had demonstrated, the Privy system was bound by the ‘complications’ of English localism, Cowper implied that colonial political conditions would be amenable to the scheme. Parkes continued, however, to insist that education should be administered by a directly responsible body.

Cowper’s scheme may have been a half-measure for some, but many still believed that it accorded too much power to the executive. In the Assembly, Murray complained that the “representatives of

\textsuperscript{161}Burchell, “Peculiar interests: civil society and governing the system of natural liberty”, 137; Adam Fergusson,\textit{ An Essay on the History of Civil Society} (Edinburgh: 1986), 143–4.

\textsuperscript{162}\textit{VPLANSW}, October 5, 1859.

\textsuperscript{163}\textit{VPLANSW}, October 5, 1859.
the people” were to “delegate the most important functions to the Executive Government”, and “to leave it to them to decide upon what principles our children were to be educated.” Leaving education to the whim of the executive was unconstitutional in the eyes of a whig like Murray. But Robertson argued that the proposed public education board fulfilled the principle of ministerial responsibility since the four board members, who were to be gleaned from the parliament, were to be subject to the “will of the representatives of the people”, thus providing a “check against favouritism and corruption.” Robertson reiterated that the present boards were not responsible to parliament and this was the fundamental fault of the dual system. The issue of executive power dominated debate, with Forster contending that “it would be quite easy, under the enormous powers entrusted to the Executive Government by this Bill, to appoint any minister of a religious denomination in this colony to head teacher.” Considering Cowper’s previous membership on the Denominational Board, nationalists such as Plunkett and Forster wondered whether the Bill would be used consolidate denominational power. But it was the issue of executive tyranny and a resilient faith in the separation of powers that animated opposition to the Bill. A notice at St Mary’s Cathedral in Sydney, for instance, declared that the “said bill proposes nothing clear and definite, but leaves, in fact, absolute power in the hands of the causal Executive of the day.” This outgoing constitutional logic continued to be parried by the idea that boards, as a symbol of divided and inefficient government, would have to cede to what William Cox, a prominent liberal and education reformer from Victoria, called “a central directive power.” He continued that while “the principle of unpaid boards is a favourite hobby of Englishmen and their descendants”, experience in the eastern Australian colonies showed that “unpaid and irresponsible gentleman are not to be trusted with work which requires a minute acquaintance with a great amount of information.”

Over the next two years, the primary focus for the legislature was land reform. In 1861, Robertson, in conjunction with Cowper, introducing a Land Act that effectively abolished the squatters’ security of tenure over pastoral leases and gave fundamental control of crown land back to the government. A devastating blow for the conservatives and a victory for the small holder, free selector and urban property speculator, the parliamentary liberals were rapidly withdrawing the last vestiges of power from the colonial gentry. This strategy was combined with an Elective Upper

---

164 VPLANSW, October 5, 1859.
165 VPLANSW, October 5, 1859.
166 SMH, October 18, 1859.
168 See VPLANSW, May 9, 1861.
House Bill which, long countenanced by Parkes, Robertson and Cowper, was designed to strip the upper house of its conservative majority—until 1861, the upper house had been led by the High Anglican, William Burton. While Cowper had successfully manipulated the nominated upper house for his own ends, and for a time postponed the passage of the legislation, the move would have far-reaching repercussions for the modernization of the colonial state. Though the effort to delimit the power of the establishment hierarchy was supported with several, though failing, state aid abolition bills—Cowper’s Anglicanism forced him to reject the bills—the other defining legislation during this period was the centralisation of the police force.

The proposal to establish nine separate police districts, each responsible to the central authority, would effectively strip the magistrate of his arbitrary control of law and order in the locality. The greatly increased cost to the government was justified by Cowper in terms of a more efficient and accountable system of law and order—indeed, by linking the mechanism of ministerial responsibility to the management of law and order, the codification of civil and criminal law could be more fully implemented. With both the liberals and the *Sydney Morning Herald* in unanimous agreement with centralization, the founding legislation for a modern police force in New South Wales was passed in 1862. This was a defining moment, and for Hirst, a centralized police force signalled the death-knell of localised magisterial authority. Thus, while the numbers of justices of the peace and police magistrates continued to rise throughout the century, their judicial and administrative autonomy was severely diminished. In the former case, their duties became purely ceremonial. The bureaucratisation of the police force in 1862 meant that the central government would henceforth have a salaried official in each district. For Hirst, “the magistrates were losing their position as administrators and being confined to judging...As fences were built, the contentious issues of impounding, trespass and stock theft were heard less frequently. Masters and servants legislation was not invoked so regularly because employees were not working under long-term contracts. A bad worker was simply fired, instead of being taken to court. There were fewer people drawn into the magistrates jurisdiction.”

---

169 Walker noted that the liberals opposed state aid to reduce the power of the Anglican Bishops, while Powell argued that “this was a continuation of the process begun by Robert Lowe’s attacks on Broughton in the 1840s.” R. B. Walker, “The Abolition of State Aid to Religion in New South Wales” *Historical Studies* 10:38, May 1962, 169–70; Powell, *Patrician Democrat*, 113.

170 *SMH*. December 4, 1861.

By 1863 the liberals, led again by Cowper, were ready to re-embark on education reform and in July Cowper’s second Public Education Bill was presented to the house for debate. Not surprisingly, the legislation provided for a single, government appointed board: while denominational schools could receive funds if four hours of secular instruction was taught each day. Cowper, having lost government in 1859 on the basis of his Privy Council model, was not as keen to implement full parliamentary control, and took a conciliatory line by making the proposed board responsible to the Executive Council. In light of the heavily factional political climate, the issue of the administrative construction of a ‘responsible’ education system was subject to compromise and political expediency. Importantly, however, the bill set limits on the number of schools, prescribing a minimum number of students and a minimum distance between schools to counter the tendency for small, inefficient denominational schools to multiply in the same district.

For our purposes, it was not the sense of compromise, and indeed the ultimate failure, of the 1863 bill which is important, but the continuing emergence of a constitutional discourse which set the tenure for the later shift to full ministerial control. In this sense, William Forster, an active protagonist for electoral reform in Cowper’s 1857 ministry, weighed into the debate by blaming inefficiencies associated with the dual system on “Anglo Saxon prejudices in favour of the system of parliamentary government” based on “progression by antagonism.”[12] This important rejection of divided government and negative power would open the way for a professional and non-partisan educational bureaucracy. Such reasoning inspired Holt to demand that a ministerial department of education displace the incumbent board. “In order to ensure the highest proficiency amongst the teachers, to stimulate them to maintain the most efficient schools, and encourage them to procure and maintain the largest number of scholars”. Holt believed it “expedient to remunerate them by fees, fixed by scale, according to the number of scholars, and the instruction imparted by each.” A central inspector would be appointed to regularly examine teachers and “submit a full report of these examinations to the Secretary for Public Instruction.” Holts first amendment drew instant support, with Geoffrey Eagar, the member for West Sydney and a factional opponent of Cowper, insisting on “constitutional grounds” that an “irresponsible” board could not, unlike a parliamentary minister, maintain “peace, order, and good government.”[13]

In the face of this gathering momentum for full cabinet control there remained a lingering, albeit fading, faith in the constitutional principle of individual right. To this effect, J. D. Lang reminded

[12] [PLANSW], July 23, 1863.
[13] [PLANSW], July 23, 1863.
the House of debate in the English parliament over Lord Russell’s 1852 Education Bill, especially the opposition put up by Edward Baines and Toulmin-Smith to centralization. These advocates of voluntarism had, in the words of Lang, insisted that “education should be left entirely to the people themselves.” Quoting Samuel Laing, who had written a critique of centralized systems in Germany and Denmark, Lang reignited the issue of ‘free trade’ in education:

It is the duty and wisdom of government to remove all obstacles of a material kind, such as taxes on knowledge, but not to stimulate that progress to a more rapid pace than society requires, and to leave education and the choice of teachers to the people themselves. Freedom of education, freedom from encouragement as well as restriction by the state, or the Church, or any educational body or department, will bring out the schoolmaster just on the same principle as it brings out the artisan, the tailor, or the shipwright, in proportion to the natural demand for this kind of work: and bounties or privileges to teachers, as a peculiar incorporation or class, are useless, as well as dangerous, and are opposed to those very principles of free trade, or free social action

Lang agreed that education should be left to individual endeavour but admitted that under the colonies “existing institutions” state intervention was a necessity. The extent of this intervention remained ambiguous and Lang was not ready to advocate free and compulsory state education. Firstly, gratuitous instruction would destroy the ‘Anglo-Saxon energies’ of the people. Secondly, compulsion created, as was evidenced by the system of mass compulsory schooling in Prussia, a bureaucratised administrative class which might subjugate the sovereignty of the people, and in turn precipitate the kind of revolutions experienced throughout Europe in 1848. Arguing that the administrative prowess of the Prussian ministry of public instruction was less potent than commonly claimed, Lang quoted Baines and Laing, avoiding the raft of treatises written by Matthew Arnold, Kay-Shuttleworth and others in support of continental systems of centralized education. He therefore opposed Holt’s demand for a Minister of Instruction since it mimicked

---

174Samuel Laing, “Observations on the social and political state of Denmark, the duchies of Schleswig. and Holstein in 1851”, VPLANSW, July 23, 1863.

175Baines’ seminal anti-continental work was Prussian Primary Education – Its Organisation and Results (London, 1856). For the pro-continental position see M. Arnold. A French Eton (London: 1861): A Letter relating to Education by Edwin Chadwick. Esq., ordered by the House of Commons to be printed. 21st March, 1862 (London: 1862); Joseph Kay, The Social Condition and Education of the People in England and Europe, vol. 11 (London: 1850); R. Pemberton An Address to the People. On the Necessity of Popular Education, in Conjunction with Emigration, as a Remedy for all our Social Evils (London, 1859); T. Carlisle,
the Prussian model. Lang insisted that New South Wales adopt the American system in which school boards provided a balance of local and state interests.\textsuperscript{176}

While Lang liked to argue about the abstract right of the state to interfere, Raper argued that “expediency” demanded state interference. Assuming that “ignorance is the father of crime”, it followed that education is the best form of “police.” Comprehensive public instruction would give the rising generation a “knowledge of the laws”, and thus should be free and compulsory. The fact that New South Wales possessed one of the most uniform taxation systems in the world bolstered the claims for a state system. The labouring classes were the greatest contributors to the public revenue, thereby giving them a direct claim to state provision of education expenses.\textsuperscript{177} Similarly, at a public meeting held in Sydney to debate the Education Bill, it was argued that education was a “common right to all.” Furthermore. “All had that right because all contributed to the consolidated revenue; the consolidated revenue being built up on the sweat and toil of the working classes. As they all contributed so they ought all to share in the distribution for educational purposes. Every man has a right to have his children educated by the state when the state supported a general system of education.” In conclusion, the meeting insisted that “no system whatever of general education can ever be acceptable to this community which does not, as one of its main features, provide for the entirely free education of the people.”\textsuperscript{178} Education was a ‘right’, not in the sense of natural or property rights, but in terms of the enlarged responsibilities of cabinet government.

This was a demand for the kind of positive legislation that contravened the negative freedom inherent in contractarian modes of liberal governance. However, the many historians who have described this seminal period of educational development as a process of political compromise tinged with bourgeois ideology have left few traces of this constitutional discourse. For Ely, the call for educational centralization reflected a political culture of ‘social mobility and statism’ in which

Conflict was forged into compromise; ideology transmuted into pragmatism; confrontation translated into consensus; radicalism transferred into bourgeois conservatism; and the

\begin{itemize}
  \item \textit{Lectures and Addresses in Aid of Popular Education.} (1852); Carlisle, \textit{Primary Instruction: the Want and the Right of the British People} (London: 1857).
  \item \textit{VPLANSW}, July 23, 1863.
  \item \textit{VPLANSW}, July 23, 1863.
  \item \textit{The Sydney Mail}, July 25, 1963.
\end{itemize}
aspirations of the lower orders of Australian society partially gratified by educational opportunities made available through the development of centralized state bureaucracies.\textsuperscript{179}

The account conforms to the dominant narrative of ‘interest, expediency and circumstance’ that, as described in chapter two, has dominated educational, political and social history writing in Australia. But while pragmatism, compromise and an urban bourgeois clique who were able to console working class demands through ‘state socialism’, were immediately observable in the mid-nineteenth century political debates through which education reform was played out, there is much important sub-text in these debates which has been missed by historians. Thus, when returning to debate over the 1863 education bill we observe the intense jockeying over the constitutional mechanisms underpinning colonial state formation. In this vein, William Forster insisted that the difficulty of removing existing evils in educational administration was an endemic and “peculiar feature of boards.” Foster, a past Premier, and no stranger to expediency and factional disloyalty, in this instance was exhibiting a committed constitutional view which related to a far broader ‘problematic’ of liberal governance. To reiterate an earlier point, this can be traced to a discourse of rational, responsible and legislative government, popularised by J. S. Mill, which continued to decree the evils of ‘irresponsible’ boards. It was this principle which drew a negative response to Cowper’s proposed extra-parliamentary board which only promised “indirect” responsibility. This contrasted with Holt’s amendment, which promised to bring education under full parliamentary control. Holt presaged the long held view that true responsible administration would best be facilitated through permanent civil service officers who would sit in the cabinet.\textsuperscript{180}

While Foster voted against the Bill, Cowper ended up with the support of Lang and the vote carried with relative ease through the House. However two months later the Cowper ministry lost office and the bill never made it to a third reading. But while Cowper’s reform attempts were immediate failures they opened up an important ‘problematic’ concerning the constitutional mechanisms through which modern school systems should be governed. While previous debate had established the fundamental ‘right’ of the sovereign legislature to impose a system of disciplinary surveillance over teacher training and performance, curriculum, school building and so forth, this commitment would be dependent on a broader need to settle on the governing conventions of responsible cabinet government. While, as signified by reforms in police, the administration of justice, land reform, the abolition of state aid and electoral reform, the process of political modernization had begun in

\textsuperscript{179}Ely, \textit{Reality & Rhetoric}, 29.
\textsuperscript{180}\textit{VPLANSW.} July 23, 1863.
earnest, it was left to resolve how the primary logic of the governmentalized state — the ‘direct responsibility to parliament’ — was to work, both as an exercise of accountable, rational and efficient state power, and as a vehicle through which the self-regulating ‘naturalness’ of the population could be harnessed.

**William Wilkins and the discourse of the absolutist educational state**

By the mid-1860s the dual system of educational governance in place for almost twenty years had done little to forward the goal of a comprehensively diffused public school system. As evident in the foregoing debates, centralization and a greater ‘unity of purpose’ accorded through direct legislative control was commonly viewed as an ameliorative for low attendance levels, minimal improvements in literacy, variable pedagogical methods and an inadequate system of clerical and local supervision. In his seminal review of the national system, William Wilkins lamented that legislation for a centralized system, “although expected for the last ten years, has not yet been reached.” While Wilkins has been most often placed at the centre of the ‘great men of history’ view of educational development, or has been singled out for his highly bureaucratised and ‘disciplinized’ educational philosophy, there is fertile ground for exploring the Wilkins phenomena in the light of the broader constitutional debates that underpinned his attempt to bureaucratize and centralize school governance. This unexplored terrain is the missing link in post structuralist analysis which places Wilkins as the main protagonist in consolidating ‘normalising’ techniques of examination, classification and inspection. Thus, while Vick provides important insight into the normalising codes that regulated teaching methods at Wilkins’ Fort Street Model School, and how teachers internalized these norms through a moral economy of ‘ethical self-improvement’, we are still to find out how these technologies were ultimately diffused across the entire school-aged population. To understand this latter move, it has to be acknowledged that by implementing central regulation, Wilkins was not only attacking the clerics and local patrons, but a constitutional

---

181. These were in fact endemic to both boards and in debate over the 1863 Public Education Bill Forster noted that the Assembly had heard more complaints about the National than the Denominational board. *VPLANSW*, July 23, 1863.


183. As described in detail in chapter one, it was Clifford Turney who provided the classic account of a man who created an education system ‘in his own image’. Turney. “William Wilkins — Australia’s Kay-Shuttleworth”, 102. Similarly, political historians including Brian Dickey have given pre-eminence to Wilkins as the guiding light of nineteenth century education reform. Dickey. “Responsible Government in New South Wales, 238.
tradition of divided government entwined throughout the complex strata of colonial law and administration. The problem then was not only to develop an ‘inspectorial regime’ which, in Hunter’s words, would function both in terms of “surveillance and self-activity, obedience and spontaneity, the middle class desire for a governable population and the radical wish for a self-governing one”; but, in addition, to create a responsible, rational, unified and sovereign governing framework through which these dual rationalities of liberal governance could develop without falling prey to faction and self-interest.  

The great virtue of a centralized and truly national system of education was, for Wilkins, the principles of unity and comprehensiveness. School governance should have the character of “unity in its aims, in its laws, and in its administration. It is emphatically one system – not an aggregation of systems. It demands but one code of laws applying to every school, and but one organisation to carry them into effect. On this account, it is more readily supervised, more effectively controlled, and...more cheaply administered.” This was not an expression of egalitarian ideology. Wilkins’ ‘one code of laws’ corresponded with Bentham, and Hearn’s, attempt to rewrite the common law, codify it through statute, and set in place the higher rationality of the absolute legislature. When Wilkins described a system “intended to benefit all”, and that “recognises no distinctions of rank and wealth,” admitting all to its “privileges upon equal terms”, this was not merely democratic posturing. More importantly, this rhetoric was the means through which liberal state interventionism could be justified, and therefore, by which Wilkins could embark on the codification and centralization of educational administration. The inalienable ‘right’ to education related, continued Wilkins, to the “simple fact that they are citizens forming part of the body politic, and contributing to the resources of the State.” In this sense, centralization does not contravene liberal state theory, and in fact, “fully accords with the political maxims...expressed as to the limits of state action.”

Wilkins introduced a number of administrative reforms that would ensure – discounting the anomalous activities of the local patrons – that school practices were, in Foucauldian terms, ‘normalised’. His Table of Minimum Attainments was to become the great regulator of teacher

185 Wilkins, The National System, 23.
187 The duties of local patrons included the maintenance of school buildings; the supply of furniture and book; the collection of a school rate; the supervision of teachers; the inspection of school registers and records; and
standards, and was designed, in Wilkins’ words, to enforce “systematic teaching, the previous study of lessons, and the observance of correct principles in the classification of the scholars.” Serving as the prototype for a systematic class-age hierarchy, the Table was “constructed with express reference to the powers of children in different stages of intellectual development.” Specifying the order of lessons, the time allocated to each subject, and the relative importance of the branches of knowledge, this ‘all-seeing corpus of knowledge’ was the classic statement of a disciplinary pedagogy which would form the core of the Australia’s modern system of teacher training. Appropriated in large part from Shuttleworth, and indirectly Bentham, these techniques were first employed when, under the chairmanship of Wilkins, the 1855 Commission recommended the classing students according to age, sex and ability, and departmentalising the school between boys, girls, and infants. This was an improvement on the monitorial system since it allowed a greater division of labour in teaching and, therefore, a more systematised and specialized pedagogical framework. Not surprisingly, Wilkins preferred large schools since they would promote a more “exact classification” of pupils.

Descended from a lineage of English radical educators who faced consistent opposition to their plans for reform, Wilkins’ disciplinary discourse was similarly concerned with a need to reverse the old stave about the ‘limits of state interference’. It was important then to define the limits “within which in this country the action of the State, to be legitimate, must be restricted.” Wilkins’ utilitarian theory of the liberal state did not then dwell on the need to balance and separate power so as to uphold individual interests, but drew on the idea that the state acted for the universal interest, and to this end, governmental power must be unified within the legislature in the service of the common good. Thus, the state, Wilkins argued, is “the embodiment of the will of the whole people, and deriving its resources from all, can rightly apply the funds with which it is entrusted to such objects only as are universal benefit, so that all may alike participate in the advantages arising from public expenditure.” Wilkins was then able to argue that voluntarism was not “sufficient to

to regularly report to the commissioner’s and ensure that the central boards regulations are observed.

189 “Report from the Select Committee on Education – December. 1855.”
190 From this, Wilkins deduced that the failure of the denominational system, or what he called the “religious difficulty”, was due to an inability to understand the “the function of the school” in its “relation to the state”. The erroneous assumption that church and state, and indeed school and state, should remain separate, had “thwarted the state in the performance of its legitimate duty.” This failure also explained why “such a sect (the Anglican Church) should be allowed to die out from its inherent feebleness and lack of vitality.” If schools were to be ruled by religious design then they would not be civil but ecclesiastical institutions. It was
provide the means of education”, explaining that the “laissez-faire principle” did not conform to the theory that “an agency endued with higher powers and greater resources, possessing a more perfect organisation, and working with more efficient instruments, is required to carry out the work of national education.” It had become a maxim that the “only power adequate to the task is, indeed, the State.” While admitting that this absolutist model of educational governance was a departure from the traditional English theory of minimal government, Wilkins believed that “some amount of evil is inseparable from the vast aggregate of good resulting from State education.”

But, as a disciple of disciplinary power, Wilkins was keen to show that this ‘aggregate of good’, while not based on individual, juridical rights, would nonetheless sustain a self-regulating domain of subjective power. Wilkins was able to argue that the national system did not always “tend to centralisation” since important facets of school governance were devolved to local committees nominated and elected by parents. It was only through cases of negligence, insisted Wilkins, that local patrons would have to cede to the central authority. This was a classic technique of ‘ethical self-improvement’, however in many cases Wilkins observed that local communities themselves “resolved to discontinue the office of local patron and to leave the supervision of the schools entirely to the Central Board, being moved to that course by the feeling that local disputes and personal jealousies, in a small community, allowed but little scope for the exercises of choice in the selection of suitable individuals, and would destroy all hope of an effectual discharge of its duties.” It was true that suitable local administrators were often difficult to find, particularly in the scattered districts; while this situation was compounded by the continuing intransigence of the clergy when asked to inspect national schools. Wilkins was sure that these problems could be overcome through state supervision. Importantly though, legislative control would, in time, while always having to maintain a ‘harmonising and coordinating’ role, nourish the spontaneous agency of the local administrator:

we hope to witness the coming of a time local management will no longer require the check or the stimulus of the central power, but will have gained the faculty of vigorous, wise, and spontaneous action. When each school district has attained this condition of voluntary activity, the necessity and usefulness of the central power whether for the purposes of

important to remember that when funded by the public revenue schools “become liable to public, that is State, control and interference.” Wilkins, The National System, 2–6.

191 Wilkins, The National System, 32.
restraint or stimulus, will have ceased, and its duties will be limited to harmonising and coordinating the proceedings of the various local authorities.\(^\text{192}\)

This passage was also cited by Ely, who argued that Wilkins’ “backward worried glance over the shoulder” was resolved when parents, teachers, inspectors and central administrators, through “trial and error”, realised that their interests could best be “achieved through a centralized system.” Interestingly, Ely notes that when colonial politicians attempted to establish a central framework “the main principle invoked for the legalizing and supervision of their educational enterprise was not the ‘ancient British system of municipal government’ but the emerging nineteenth century British principle of ‘ministerial responsibility’.”\(^\text{193}\) While Ely has a scent of the important constitutional shift taking place here, she regards it as an expedient that was used to pursue the higher goal of ‘social advancement.’ There is, however, an internal, self-replicating constitutional logic at work within this push for ministerial responsibility that, beyond serving the short-term interests of educational actors, would foster the infusion of bio-political strategies of governance across the whole civil body.

**The Public Schools Act**

In the months following Wilkins’ detailed exposition on nationalised education, the recently formed Parkes-Martin Ministry introduced a Bill which would attempt to unify educational governance under a single parliamentary board.\(^\text{194}\) It could be argued that Parkes appropriated, or at least agreed with, Wilkins’ idea that the ‘unity of purpose’ endemic to the central parliament was the ‘perfect instrument’ of school governance.\(^\text{195}\) Thus, for Parkes, the evil of ‘diversity’ could only be addressed by ensuring that all teachers are trained “under the direction of the State”, putting “a stop

---

194 Parkes’ push for a single board was given important momentum when he joined James Martin in a coalition government. Martin, a past member of the National Board and the Senate of the University of Sydney, had been active in the cause of popular education. Parkes observed that while he and Martin had “held opposite opinions on several public questions, including questions of taxation and electoral reform; on others we were in cordial agreement, and our agreement embraced the question of education, management of destitute children, [and] prison management.”
195 While not argued in these terms, Tumey nonetheless proposed that Wilkins, who had corresponded with Parkes, greatly influenced the tenure of the Public Schools Act. Tumey, “William Wilkins – Australia’s Kay-Shuttleworth”, 102.
for ever to the interference of the clergy in school-management."196 Such faith in the unifying and rationalising domain of legislative surveillance had, by 1866, been helped by the fading influence of that bastion of local self-government, the High-Anglican Establishment. With its stake in the political realm gradually receding, particularly after the abolition of state aid and the expropriation of church and school lands, the Establishment had, in the words of Parkes, withdrawn "from the conflict and accepted the new system."197 Any other hope of fortifying localism through municipal government was also dwindling. In 1866, a meeting of municipal delegates in Sydney was to decide "how a common purpose may be realised without a total surrender of local authority", and "how without interfering with the principle of self-government there may be a larger delegation of powers, and therefore a framework admitting higher distinction."198 Ultimately, in the face of continued opposition to local self-government observed initially in the rejection of the Gipps' district council proposals in the early 1840s, the passage of the 1867 Municipal Act was blocked in the House, and it would not be till 1906 that a modern system of municipal government would be established in New South Wales.199

Historians have most often focused on Parkes' political adroitness when explaining the passage of the Public Schools Act.200 But Parkes' political acumen, while effective in getting at least some of his legislative agenda through the New South Wales political minefield, was matched by a faith in the constitutional construction of responsible and unified mechanisms of legislative rule. The most important feature of the Public Schools Bill was the creation of a Council of Education which unified the denominational and national boards and served as a prototype for a bureaucratised department of state. The constitution of the Council, while not a strictly cabinet department, followed the doctrine of collective ministerial responsibility. In his well-documented speech on the Public Schools Act, Parkes described the constitutional foundation of the Council:

the Council of Education should have independent and absolute authority in the matter of education, subject to the control and correction provided by the Constitution, as all other

196Parkes, *Fifty Years in the Making of Australian History*, 166.
197Parkes, *Fifty Years in the Making of Australian History*, 199
198*SMH*, May 1, 1866.
200Martin, for instance, draws his analysis of the education question in the mid-1860s around Parkes' factional manoeuvring, arguing that it was pivotal to the establishment of the Council of Education. A. W. Martin, "Faction Politics and the Education Question in New South Wales" *Melbourne Studies in Education 1960–1961* 1, 27.
departments of the Government must be. If the Council should so far forget its duty as to abuse its high powers, it is open to the Executive to remove its members; and I hope the Executive will at all time be alive to the fact that it is its duty to remove the members the moment there is any abuse of the kind. But so long as that body acts within the law and discharges its important functions within the letter of the law, its authority is absolute and independent; and it was intended by the Legislature that it should not be crippled by interference whatever.\textsuperscript{201}

Parkes was initiating a prototype system of full ministerial responsibility over education. The Council of Education was given the authority to frame regulations which “will be as much law as any part of the statute.” This was a classic application of Baghot’s fusion of executive and legislative authority. The legislature was to confer the “most absolute and independent power” to this body, and “though responsible to the Executive Government for any dereliction or abuse of power, and responsible to Parliament if Parliament should see anything in the law which requires remedy”, the Council possessed the power to “do anything in the most independent way for the promotion of education.”\textsuperscript{202} These powers included a duty to define the course of secular instruction; to provide for and ensure the training, examination, and classification of teachers; to administer the examination of students; and to establish a system of discipline.

Such appeals to the virtue of accountability and ministerial responsibility informed the \textit{Herald’s} response to the “large administrative discretion” in the proposed Public Schools Bill. It was argued that such a concentration of authority was not to be feared since “a check upon any abuse of this is provided in the compulsion to lay all regulations before parliament.”\textsuperscript{203} Parkes was quick to draw on the rhetoric of the paternal state, asserting “the duty incumbent on the government to do something for the purpose of extending to those who do not possess the advantage of education.”\textsuperscript{204} In moving the second reading of the bill, Parkes referred to Lord Macaulay’s justification for a state controlled system in England. Firstly, it was “the duty of the Government to protect our person and property from danger. The gross ignorance of the common people is a principal cause of danger to our persons and property. Therefore, it is the duty of the Government to take care that the common


\textsuperscript{202}Parkes, “The Public Schools Act and the First Years of its Administration”, 280.

\textsuperscript{203}SM\textit{H}, September 10, 1866.

\textsuperscript{204}V\textit{PLANSW}, September 12, 1866.
people shall not be grossly ignorant." Macaulay was propounding the need to reform the bloody penal code of the eighteenth century through means of re-socialization such as education. If the chief end of government was to ensure order and the maintenance of individual interests then it had as much a "right to educate" as a "right to hang." This notion of an active state providing security for civil society through interventionist legislation, most particularly in regards public education, was starting to dominate policy debate. A public meeting to debate the Education Bill asserted that "If the present Bill becomes law, the funds of the state would be devoted to the spread of education for the good of all." For a Mr Lucas, "By manhood suffrage the people had become the source of all power in the state... it is the first duty of government to qualify them by education to exercise their franchise with intelligence."

When the Public Schools Bill was being debated the legitimacy of centralized institutions was expressed on both sides of the political divide. The clergy of the Church of England, while hostile to their potential loss of educational authority, were amenable to the need for central administration. The Reverend John Wooley, the inaugural Principal of Sydney University, was privy to the educational philosophy of Arnold and Shuttleworth and, in the words of Turney, "was a far-sighted advocate of a unified and coordinated secular state system of education under the control of a responsible minister." Rather than debate the loss of their own power, many ecclesiastics were more concerned about the lack of a systematic moral basis that could uphold the integrity and 'order' of 'good government':

We are at a loss to imagine on what principle it is assumed that the state has a mission to educate the children of the people in reading, writing, arithmetic, and the like, and there to stop short—refusing to aid in imparting to the youthful mind those principles of Christianity which are the foundation of public morality, and conduct most of all to peace, righteousness, good order, and good government."

Similarly, at a Roman Catholic meeting to discuss the Education Bill, it was resolved that children, through public instruction, "were made acquainted with the social duties of life; without it they

---

205 Quoted in "Public Schools Bill", VPLANSW, September 12, 1866.
206 SMH, October 11, 1866.
207 VPLANSW, October 10, 1866.
208 Turney, Pioneers of Australian Education, 5.
209 VPLANSW, October 11, 1866.
would become anything but good citizens.” However, the Roman Catholics believed the secular provisions within the Bill to be “subversive of our rights as citizens of a free state”, and unlike the Anglicans would maintain consistent opposition to centralization. By contrast, at a public meeting to discuss the public education bill, a Mr S. Cook stated that “the present system of Denominational instruction was objectionable on constitutional grounds, involving, as it did, a wasteful expenditure of public money for a purpose entirely foreign to any legitimate object of responsible government.” Indeed, while a compromise in terms of direct ministerial responsibility, the debate over the Public Schools Bill served to entrench the idea that education, if it is to be conferred among the whole population, must remain a “legitimate object of responsible government.”

5. Toward the establishment of full ministerial control

The consolidation of the cabinet

The 1866 Act passed with little opposition. Robert Lowe wrote to Parkes from London, praising the legislation: “I am very glad to see that education is at last taken up in earnest in New South Wales. It is the only antidote for the evils (as you must permit me to call them) of universal suffrage.” This was the classic application of Bentham’s theory of popular sovereignty. Democracy was not meant to imply natural or inherent rights but was the basis of a political relationship which relied on obedience and vigilance. A uniform course of public instruction would allow the citizen to ‘obey punctually’ and ‘censure freely’, to engage in a positive relationship with the sovereign state. The liberal-democratic state best functioned when the democratic element identified with and interacted in the institutional routines and moral ‘practices’ of the political system. Thus, if the individual lived a life of unchecked and unregulated enterprise the permanence and progress of the modern state could not be assured. This point was made with urgency during debate over the 1872 Victorian Education Bill:

---

210 Sydney Mail, July 17, 1866.

211 “Education Bill – Meeting at Newtown” SMH, October 9, 1866.

We have obtained manhood suffrage, and what we want now is that it will be properly used. Our future political prosperity depends upon the educated insight and forethought of the people. Our liberty is susceptible of abuse, and will be fatally self-destructive in hands unfitted to use it; and if a large percentage of the youth of the country are permitted to grow up uneducated, I have no hesitation in saying that then manhood suffrage will be worse than a mistake, it will be a curse. But if, by a liberal education, their minds are early developed—if they are early taught the duties, responsibilities, and obligations attaching to them as citizens—then may they early be entrusted with political privileges.  

William Hearn backed this reasoning as part of his broader constitutional faith in positive law and legal positivism, stating that education must became irreversibly “compulsory, free, unsectarian, and bureaucratic.” It had become an axiom that, since “every child must be instructed...the State accordingly undertakes to provide schools being naturally under the control of some responsible, minister.”  

By the 1870s the governing jurisdiction of the legislative state, while now universally admitted, continued to be held back by the failure to fully adopt the constitutional mechanisms of collective ministerial responsibility and majority party government. While, on a normative level, educators and political reformers had embraced the absolute sovereignty of the legislative state and rejected a common law constitutional logic based on the doctrine of the separation of powers, the social contract and natural rights, uniform and rational government would continue to be hampered unless authority was properly fused through the mechanism of cabinet government. In this context, the organisation of factions and parties had to be rationalised. Not surprisingly, this sentiment was most fervently expressed by George Higinbotham, the Victorian parliamentarian and education reformer who presided over the Victorian Education Act of 1872 which was the first legislation to both enforce compulsory schooling and establish a responsible ministerial department of public instruction. 

When considering the merits of an 1867 bill that pre-empted the 1872 legislation, Higinbotham urged that “until the public acquire a different sense of the relations of political parties, and exercise a more direct and stern interference in the discharge of political duties by members of the  

---

213 Speech by J. James, October 1, 1872, Victorian Parliamentary Debates 1872, vol. xv, 1600–3; in Clark, Sources of Australian History, 367.

214 W. E. Hearn, Payment by Results in Primary Education (Melbourne: 1872), 7.
legislature. I shall not expect any improvement in the condition of parties in this country; and as long as the present relations exist, I don't desire to see the duties and responsibilities of the Government increased.\textsuperscript{215} For Higinbotham, the “great disadvantage of the present system is, that there is no responsibility”, and the constitution of the Board of Education was a “means of concealing responsibility between a number of individuals, none of whom are responsible.” Educational governance would be best served by placing authority in one person “who would have a sense of individual personal responsibility, who would discharge his functions in public, in the presence of the representatives of the public, and who might be removed from his office for misconduct by those representatives.” In the present political climate the appointment of a Minister of Public Instruction was futile since “under the accepted system of government by party – or government by faction, as I prefer to call it...it is very unwise to increase the labours or the responsibilities of Government.”\textsuperscript{216} Importantly then, a centralized and unified governing framework could not be utilized unless the mechanism of ministerial responsibility was in place. It was this acknowledgment which, it will be shown, delayed the push for full ministerial and bureaucratic control of education in New South Wales.

The final decline of localism

While the issue of direct ministerial control continued to simmer, the ‘large administrative discretion’ exercised by the Council of Education caused some to argue that it had overstepped its jurisdiction. Alexander Gordon, the mouthpiece for the Anglicans in the Lower House, complained that the Public Schools Act has been, and is now being, worked in a manner unnecessarily hostile to particular classes of persons and schools; that the whole course of its administration during the first two years of its existence was needlessly vexatious and oppressive towards those persons and schools; and that the present administration of the law is in no respect as liberal as the Act would authorise, and the merits of those who are taking an important share in public education would justify.\textsuperscript{217}

\begin{footnotes}
\item[215] Public Instruction: Speeches by the Hon. George Higinbotham (VPLA V, May 7 & 30, 1867), 24.
\item[216] Public Instruction: Speeches by the Hon. George Higinbotham, 23.
\item[217] SMH. January 1, 1870.
\end{footnotes}
Earlier, Parkes defended his administration of the Act: "the public will suspect that the unsupported allegations of an 'oppressive' administration of the Act, which have been so freely made, are nothing more than so many disguises for the 'denunciations' which it is not prudent just now to hurl openly at the 'oppressive' law itself." To argue that education was administered partially in an attempt to strengthen the common schools was not an exaggeration. Non-state schools could only secure public funds if they conformed to the standards of centralized curriculum, teacher training and appointments. The Council of Education often refused to give aid to denominational schools, as the Roman Catholic Bishop Quinn, who attempted to establish fifteen Catholic schools in the Bathurst district, testified. In that instance the Inspector, who was the 'eyes, ears, and arms' of the central authority in the country, made the discretionary judgement that the denominational schools in question did not warrant state aid. This aggrandizement of state power encouraged increasing efforts to secularize public instruction. In November 1869, William Forster, the member for East Sydney, was as bold to propose that all religious instruction be discontinued from the school curriculum.

The suggestion that the Public Schools Act be repealed, made by the last denizens of Roman Catholic, Anglican and localised control, drew a quick response from centrists. John Stewart – member for Illawarra, advocate of the abolition of state aid to religion, and promoter of 'moral enlightenment' and the self-education of the labouring classes through an 8 hour working day – challenged Gordon and the Catholic Archbishop Polding to find proof of "mal-administration, or dishonest administration." He argued that "Whoever is compelled to observe a law which is adverse to his wishes, or against his wishes, or against his interests. must feel somewhat oppressed, especially when he finds that he can neither bribe nor bully the administrator, as in times past." Stewart was making the point that the Council of Education was a state appointed body responsible to Parliament, and that the Catholic lobby wanted a return to a system of public administration characterised by arbitrary, inefficient and self-interested government. This was a further vindication of a new constitutional order founded on the idea of a codified system of parliamentary rule. Only days after Stewart’s altercation with the denominationalists, the *Herald* affirmed the difference between English and colonial constitutionalism:

---

218 *SMH*, December 24, 1869.
219 *SMH*, January 4, 1870.
220 *V PLAN NSW*, November 30, 1869.
221 *SMH*, January 6, 1870.
In England the Constitution is the growth of custom, and Parliamentary practice is by that practice counted in as a part of it. But here the Constitution is the creation of statute, and the right of parliamentary custom to annul any portion of any statute has not been recognised. Parliament is responsible both for the law and the practice, and is responsible, therefore, for any incongruity between them.222

The centralization initiatives contained in the 1866 Public Schools Act were at best tenuous, and by 1873 there was calls to introduce legislation which would further strengthen the national system. In January 1873, Forster, the then Colonial Secretary, tabled a motion for a Bill that would, via the discontinuance of state aid to denominational schools, “provide for the extension and stricter enforcement of the principle of secular instruction.” Parkes amended the wording of the motion by adding that the “experience of the last six years fully justifies the policy of the Public Schools Act of 1866, and that any interference at the present time with the operation of that Act, and the valuable system of public instruction established under its provisions, would be impolitic and prejudicial to the best interests of the people.”223 There was little doubt that the Council had gone a long way in secularising the operation of public schooling. In 1866 their were 259 National Schools in New South Wales, accommodating 19,500 scholars. Six years later there were 639 National Schools instructing 46,614 children. In the same period, the number of denominational schools had diminished from 368 to 310 (this was reduced to 158 by 1880). This consolidation of the national system did not reach, however, to normative issues regarding the right of the state to monopolise public instruction. Parkes and Foster were well aware of this, and were not ready to rest on the merits of the current Act. The powerful Roman Catholic lobby continued to resist a state monopoly – the Catholic priesthood had the sympathy of one-third of the colonial population – and there was a general feeling that the current arrangement met the educational needs of the colony.

The Catholic case was bolstered by the recent revelation that the Council of Education had illegitimately refused a certificate for the maintenance of a Roman Catholic School at Grenfell in central-western New South Wales. The issue aroused heated debate in which the Council was accused of being discriminatory, and therefore acting contrary to the provisions of the extant Act.224

The Herald, under proprietor and former member of the Council of Education, John Fairfax,

222SMH, January 18, 1870.
223VP LANSW, January 17, 1873.
224VP LANSW. January 17, 20, 1873.
supported the Council, reasoning that “it was bound to spend the public money to the best of its judgement [and] could not consistently adopt a principle or establish a precedent which would involve so large a waste of public money, and cause so serious a deterioration in the quality of teaching.”225 When enrolments at the Roman Catholic school at Grenfell fell below thirty, the minimum requirement for state funding, the Council ordered that it be closed. The Legislative Assembly, under the direction of Parkes, who was facing an election, then reversed the decision, arguing that the Council was under the jurisdiction of the Colonial Secretary. Fairfax and the Herald opposed this move, believing that the authority of the Council had been compromised, and further, that it strengthened the educational authority of the church. But Parkes was introducing an important precedent, using the issue of responsibility to legitimise executive fiat in matters of school administration. Still, the Grenfell case succeeded in deflecting the momentum of Forster’s Bill, stalling full secularisation for another 7 years.

Days after Forster’s motion was tabled, the House went into committee of supply to consider a vote of 120,000 pounds for public instruction. David Buchanan, the political radical who advocated, among other things, the complete secularization of public education, the abolition of all state aid to religion, the liberalisation of divorce laws, and a federal republic, wanted to reduce funding to the Council, believing that too much of the money would end up in denominational schools.226 Buchanan argued that Parkes, the then Chairman of the Council and Colonial Secretary, overly subsidised church schools and had committed an about-face on the matter. His vehement attacks on ‘the Papists’ and Catholic dogma in education caused some conflict within the education reform lobby. After supporting Parkes until 1872, Buchanan was now a sometimes bitter opponent and attempted to hijack funding to the Council.227 While the estimate was ultimately passed, this division was a portend for the conflicts which would continue to stifle the passage of educational change.

The Catholic lobby were further strengthened when Archbishop Vaughan, the anti-secular crusader and past Superior of St Joseph’s Missionary College in London, arrived in Sydney to assist Archbishop Polding in protecting Catholic jurisdiction over school governance. Polding emphasised that Vaughan’s mission was to “protect the education of the rising generation from the blighting

225SMH, January 21, 1873.
influence of anti-Christian secularism." This rankled the progressive and largely Protestant 'free thinkers', who were frustrated by Parkes' inability to quash the denominational cause. In June 1874, Rev. James Greenwood, the past Baptist pastor, future member for East Sydney and staunch advocate of a unified educational state, convened a meeting of Protestant clergy and layman to consider "the propriety of establishing a more efficient and unsectarian system of public instruction." The purpose of the meeting was to canvass the establishment of a Public Schools League, and after its founding in August, the League released a blueprint for "making primary education national, secular, compulsory and free." Upon securing the patronage of Fairfax and the Herald, and prominent politicians including John Stewart, Greenwood was able, under the banner of the League, to publicise "the introduction of sectional prejudices and religious bigotry even into our primary schools, at the expense of the state." For Greenwood, the important work of state building was being jeopardised by sectarianism. The founding manifesto of the Public Schools League argued that one-third of the school age population were receiving no education at all, and that since "these children will become citizens...it is neither fair to them nor safe for the State to let them grow up in ignorance." If education was to embrace "all children of school age in the colony", then administrative authority must be centralized in a parliament which would "determine both what the standard must be and what are the constitutional ways in which the power to compel can be equally and efficiently applied."

Compulsion, ministerial control and the direct responsibility of parliament

---

228 SMH, January 3, 1874.
229 SMH, June 23, 1874.
230 SMH, September 22, 1874.
231 See A. R. Crane, "The New South Wales Public Schools League 1874-79" Melbourne Studies in Education 1964, ed. E. L. French (Melbourne, 1965), 201-205. Crane noted that most historian's of Australian Education, including Austin and D. C. Griffiths, have given scant attention to the League, with the later author's failing to include the League's manifesto in their source document collections. This is not surprising since members of the League did not figure directly in the progress of the 'great men' of Australian educational history. Greenwood, however, was at the time believed to be the founder of compulsory and secular education when it was legislated in 1880. A. G. Austin, Selected Documents; Griffiths, Documents on the Establishment of Education in New South Wales.
232 SMH, September 22, 1874. See New South Wales Public Schools League for Making Primary Education National, Secular, Compulsory and Free (Sydney: 1874).
As a pretext for initiating compulsory legislation, Greenwood and the League argued that it was imperative that educational governance be welded to the sovereign legislature. The parliament, as the body which both initiates and executes rational law, must then take control, through the twin mechanisms of legislation and ministerial governance, of an education system that had become a fundamental technology of liberal government. Compulsion was, therefore, a means to bring education, via the mechanism of cabinet government, within the ascendant governing logics, not of negative power and individual right, but responsible, rational, uniform and certain government. In Britain, Arnold, Shuttleworth. Russell and the like knew that compulsion would invariably draw an insurmountable backlash from the denizens of saxon self-reliance. But in the colonies, and as evidenced by the early move to compulsion in Victoria, a cross-section of education reformers had, via a peculiar process of state formation heavily influenced by English radicalism, embraced legislative absolutism as the unifying constitutional mechanism through which bio-political strategies, aimed at inducing self-regulation, could be realised.

Political expediency dictated that the League could not gain the support of Parkes, who did not want to fight the coming election on the education question, and who declined the significant support which these ‘men of one idea’ had generated. The hope was that the new leader of the Assembly, John Robertson, would initiate reform. But like Parkes, Robertson was wary of staking his political survival on education, maintaining most of his energy in an on-going struggle for land reform. In February 1876 Robertson finally introduced an amended Public Schools Bill but the motion was thrown out of the House after the second reading. The Bill did not include clauses for compulsion or full ministerial control. Its central platform, raising the minimum attendance required for state funding to denominational schools from thirty to forty, appealed to neither the secular nor Catholic factions. Apart from Buchanan’s continuing demands for complete secularisation, the failure of the Bill marked a hiatus in the push for more substantive reforms.233

This debate was played out shortly after Buchanan proposed an amendment to the Public Schools Act which would more strictly enforce secular instruction, and end all state funding to church schools. Buchanan’s opening speech employed heavy rhetorical effect to move the House into action. He noted that between 40 and 70 000 school aged children were still without a proper education, and that

233 State aid to sectarian schools must be abolished, Buchanan argued, since it was an axiom that “the money of the state is collected from the whole people, and can only justly spent for the good of the whole people, or, in other words, for national and not for sectarian objects.” See SMH, July 18, 24, 25, 1877.
this great question of education, which was at the present time in almost all parts of the world getting itself settled on sound and truthful principles, remains here clouded and overshadowed by a pernicious sectarianism, at a variance with our past legislation, non-consistent with the progress of the age...Under such circumstances it is hoped that the people of this country would shake off their lethargy, and rouse themselves to an earnest effort in this great cause, aiming at the establishment of one uniform system of secular instruction.\textsuperscript{234}

The honourable member, F. Suttor, representing the Government, responded by arguing that the size of the public school system had increased rapidly since 1866. He was prepared to admit, however, that the Council faced some difficulties, particularly when obtaining sites for school buildings from the Department of Lands. This was a point which augured well for the appointment of a ministerial department. The latter would, due to its political and bureaucratic status, not encounter what Suttor described as “delays in connection with surveys and occasioned by office routine [which are] so great as to retard the operations of the Council.”\textsuperscript{235} While such defects in the present administrative framework would influence latter debate, Buchanan’s immediate motion was quickly defeated 23-6.

This rejection gave hope to the remaining opponents of ‘free, compulsory, and secular’ education. Jabez King Heydon, a conspicuous Catholic liberal who edited the \textit{Freeman’s Journal} in 1856–60 and was an early defender of colonial democracy through membership in the Constitutional Association, continued to promote free trade ideals through a pamphlet condemning centralized school governance. In his 1877 treatise, \textit{Civil and Religious Liberty in Education}, Heydon wrote that

\begin{quote}
As a community, we profess to act upon free-trade principles: we insist upon them indeed so far, that our government dare not obtain our iron rails from our own mines, or construct locomotives in our own workshops, or import immigrants to do our work, lest the proclivities of our merchants and work-men electors be offended...And yet, at the same time, we are not so inconsistent as to set up a gigantic State monopoly to redress our own
\end{quote}

\textsuperscript{234} \textit{VPLANSW}, May 22, 1877.
\textsuperscript{235} \textit{VPLANSW}, May 22, 1877. T. L. Suttor wrote \textit{Hierarchy and Democracy in Australia} 1788–1870.
selves in the performance of one the most sacred duties of parentage. and, by it, to handicap heavily all those private teachers whom we prefer to entrust with that duty.

Heydon was at the centre of a battle between free traders and protectionists within colonial politics. However, while he argued that the principle of free-trade remained ascendant on most issues, it was nonetheless apparent that the central state had, in the face of the overriding legislative neglect of the 1860s and 70s, made increasing interventions in important areas of the colonial economy such as tariffs, labour regulation, the construction of railways and assisted immigration. But while the first raft of factory legislation was introduced in 1873, government intervention in labour and capital would not begin in earnest until the 1880s and 1890s.236 This was true also for centralizing legislation in public health and social welfare. It this way, the consistent efforts to consolidate the 'direct responsibility of parliament' over education was an important test case for the latter emergence of 'state socialism'. Free traders such as Heydon were quick, therefore, to head off the push to give the legislature an indelible constitutional mandate over public schooling. Invoking the logic of minimal government and the 'liberties of Englishmen', Heydon asked why we should ‘not have free trade in education as in all things?’ State interference was thus “inimical to British liberty”, having allowed the colonists to “acquire a habit of looking to the government for everything” and to assume that “the State is all and the individual nothing.”237

Heydon signalled the important consolidation of the logics of legislative absolutism within the discourse of education reform. In the months after Heydon launched his defence of common law constitutionalism, James Greenwood, in February 1878, tabled a motion in the House which moved

1: That, in the opinion of this House, the existing provision of primary education in this colony is not adequate to the requirements of the public welfare. 2. That as early as possible a measure should be introduced by this government providing for the compulsory attendance at State schools, within a reasonable distance, of all children not physically or mentally incapacitated, between the ages of six and fifteen years, unless receiving suitable instruction elsewhere, or able to read or write; and for the abolition of fees for all subjects of instruction included in the compulsory standard; and for discontinuance, after due notice, of aid from public funds in support of Denominational schools.

236 See Butlin. Investment in Australian Economic Development 1861–1900.
The importance of Greenwood’s speech was that he shifted debate from the issue of secularization to one of administrative efficiency. The Parliament was soon to be asked to vote 320,000 pounds for expenditure by the Council of Education and Greenwood wondered whether “we ought to have some guarantee that the number of those benefited by the vote was proportionally increased.” At one-quarter of the annual taxation revenue, the proposed vote should be administered by a more accountable and bureaucratically efficient governing body. Between 1873 and 1878 the educational grant, per head of population, had increased three-fold, yet enrolments had increased only 2%. While only 7.22% of the population attended the Council’s schools in the first year of the Act, this increased minimally to 8.42% by 1878. In Victoria, where, as noted above, compulsory attendance was legislated in 1872, recent figures showed that 27% of the population attended public schools, while the average enrolment was maintained at 13%. This was ahead of the United States, whose public schools enrolled 24.5% of the population. While these figures strengthened Greenwood’s argument, they failed to account for proportionally large increase in the NSW population. The exaggerated account of the Council’s performance thus failed to induce immediate legislation. It did, however, provide ammunition for the growing push for direct parliamentary control.

Analysis of this debate shows the increasing attempt to present compulsion, not as a contravention of liberal right, but as a fundamental strategy of legislative governance. In this way, independent local functionaries, including the parent, were prone to ‘irrationality’ and incompetence, and the rising generation must, therefore, be brought under the direct purview of the higher governing rationality of responsible cabinet government. While self-regulation would then follow, legislative surveillance must remain constant and absolute. Accordingly, Greenwood argued that since parents had failed their duty to send their children to school, the state had to enforce compulsion. But this idea was not yet unanimous, and the Herald, while supporting the measure, noted a continuing failure to come to terms with full state control: “The chief grounds on which compulsory education has been opposed by those who have seriously considered the subject are, – that it is an interference with the liberty of the subject, that it is un-English, that it lessens the sense of parental responsibility, and that it tends in some instances to coerce individuals in a direction in which they have conscientious scruples.” This reasoning failed to appreciate that compulsory education was, by providing the constitutional mechanism through which bio-political strategies of governance could be sustained, an affirmation rather than renunciation of the ‘liberties of Englishmen’. The fact

238 *VPLANSW*, February 12, 1878.

239 *VPLANSW*, February 12, 1878.

240 *SMH*, February 21, 1878.
that the masses had been given the vote, and were the constituent part of the sovereign legislature, meant that their civic responsibility must be cultivated via a common course of public instruction. The *Herald* quoted Robert Lowe to further justify compulsion:

I was opposed to centralization. I am ready to accept centralization. I was opposed to an education rate; I am ready to accept it. This question is no longer a religious question, it is a political one. From the moment you entrust the masses with power their education becomes an absolute necessity, and I believe that the existing system is one which is much superior to the much vaunted continental system. But we shall have to destroy it; it is not quality but quantity that we shall require. You must place the government in the hands of the masses, and you must therefore give them education. You must take education up to the very first question, and you must press it on without delay for the peace of the country.

Speaking as the Minister for Education in Britain, Lowe was expressing the need to quash the Privy Council system, upon which the Council of Education was partly modelled, and establish a responsible department of state which had the authority to enforce compulsory instruction. This was a difficult but necessary innovation, as the *Herald* emphasised:

No one likes compulsion anywhere; but little as we may like it, we have to resort to it in some form or other in almost every department of public affairs... Those who remind us of the evils of compulsory education would do well to ask whether we are not likely to get more serious evils without it. Nothing has been more clearly established than the fact, that where schools have been multiplied and fees have been abolished, and everything else has been done to carry instruction to the districts where it is most needed, some form of compulsion is required to bring a certain class to receive it.\(^{24}\)

\(^{24}\) *SMH*, February 21, 1878. Note the proliferation of debate about the merits of greater state interference in civil society. In an article, published also on February 21, describing the unsanitary and lawless condition of the poor in inner city Sydney, it was shown that calls for remedial legislation were “often met by that dread at over legislation which finds expression in the doctrine of Laissez-faire. Which is the right solution for this problem – action or inaction? Is there substantial ground for judicious legislative action, or is it wiser, because it is easy to push State interference too far, to abstain from action altogether?” The *Herald* decided that their was “sufficient ground for the legislation proposed” since the government had a duty to ensure public health and safety, even if the public have to “pay the price of surrendering a certain amount of their individual liberty.” *SMH*, February 21, 1878.
The problem with public education was not the existing Act itself. Greenwood was adamant that current legislation gave the Council sufficient means to expand the provision of public schooling. The problem then was that "the Council had not gone far enough." This deficiency might be averted if education was headed by a "Minister of the Crown." It seemed to Greenwood "anomalous that a Public School Board, however good and distinguished they might be, should have the control of large sums of public money: it should be a Minister responsible to the Parliament." Without a seat in the Government, Greenwood could do little to effect such change. If, however, he gained a seat in a newly elected Ministry he would introduce a bill which would establish a Ministry of Public Instruction and facilitate "the duty of the state to educate the people."242

By 1879 the issue of ministerial responsibility gained further momentum when in March Richard Bowker, the member for Newcastle, moved that the Government place "the educational matters of this colony in the hands of a responsible Minister, instead of their being managed, as at present, by the Council of Education." Reasoning that the money "voted by the people was spent by persons who were not at all responsible to those who voted the money". Bowker insisted, in a statement of legislative absolutism, that the present arrangement was "contrary to the constitutional rights of the people."243 F. B Suttor, the Minister for Justice and Instruction in Parkes' 1877 ministry, responded on behalf of the Government by describing the able and efficient activities of the Council, and by arguing that the issue of a responsible Minister had never been brought before the electorate in any significant way. Reminding the House that there was a proposal in the 1866 Bill for the Colonial Secretary to be ex officio president of the Council, Suttor showed that the notion of a single minister directly responsible to parliament had been thrown out by a large majority who wanted the Council to be controlled by the whole parliament. Suttor voiced the objection of the Parkes government to such piecemeal legislation, wanting a more substantial Bill to be introduced in a later session.

This point was rejected by Michael Fitzpatrick – the member for Yass, a prodigy of Henry Carmichael at the Australian College, an ebullient supporter of the Public Schools Act and a member of the Parkes' faction between 1872–77 – who insisted that "it was impossible that the vast and intricate questions arising out of the Public school education of the colony could be dealt with by an unpaid board in three hours of the week." Reiterating earlier discussion on the inability of the Council to liaise with other departments, and most particularly the Department of Lands. Fitzpatrick promised that a full-time Minister could act immediately and efficiently. Both Parkes and F. B.

---

242 VPLANSW, February 12. 1878.
243 VPLANSW, March 4. 1879.
Suttor interjected, stating that the Council were waiting to build schools on the promise of a grant. Hungerford, the member for Northumberland, believed the appointment of a Minister would destabilise school administration since government mandates were usually based on thin ruling majorities. The resolution was supported by Gray, who argued that a responsible Minister could make “decisions based on uniform principles.” Greenwood also supported the measure but hoped it would be more comprehensive, lamenting the lack of support from the incumbent Government.

The Premier, Henry Parkes, again could not advocate the resolution, insisting that the issue had not yet attracted consistent broad base support. While admitting that the Council was not, constitutionally speaking, a responsible body, he reminded the House that the sixth section of the 1866 Act rendered the Council, in practical terms, accountable to the sovereign legislature. When drafting the 1866 legislation, Parkes was particular about asserting the ‘virtual’ responsibility of the Council, and section 6 specified that the central body should be “subject to the like control of the Governor and the Executive Council, as any other department of the public service.” The introduction of a responsible minister would not, Parkes insisted, “work the miracle that the hon. member for Yass seems to think it would.” Parkes wanted more comprehensive change to the system of teacher training, and to this effect he knew that boards, like the Council, would have to be established in addition to a department of state.

In the months after Bowker’s Bill was defeated, Parkes’ reform agenda underwent a sudden paradigm shift. It was in November 1879 that Parkes, in the wake of forming a coalition government with John Robertson, introduced a Public Instruction Bill that, in addition to replacing the Council of Education with a responsible minister, was to enforce compulsion for all children aged between 6 and 14, and withdraw all state aid to the denominational schools. After vehemently opposing previous attempts to enforce compulsion, or to abolish the Council in favour of a political minister, Parkes was no longer prepared to defend the existing legislation. The difference now, argued the Premier in a somewhat spurious manner, was that the denominationalists had themselves turned upon the public schools. Archbishop Vaughan, for example, attacked the national schools as “Scavengers Daughters” and “seed-plots of immorality and infidelity.” Such divisiveness prevented the Council from “carry[ing] out the intentions of the Act of 1866 to their full fruition.”

---

244 VPLANSW, March 4, 1879.
245 VPLANSW, March 4, 1879.
246 VPLANSW, February 18, 1879.
addition to severing ties with the denominations, Parkes believed it expedient to bolster the authority of the central body.

During debate in the Assembly, Parkes had to fend off critics who questioned such a sudden policy shift. The Premier argued that the motion made no substantive changes to the centralized system implemented in 1860. He pointed out that the outgoing Council had forced all religious schools in receipt of state aid to "submit to the same inspection, to the same discipline, to the same regulation, in fact to use the same books as the public schools, and that the religious instruction given was not given at the expense of the State, but was added to the course of instruction prescribed by the State." This was true enough, and while the "disciplinary" characteristics of the education system were in place, it was left to ensure that these techniques of "inspection, discipline and regulation" could, via a responsible and professional department of state, be more systematically diffused.

The Bill was passed in the House during February 1880 and was presented to the Legislative Council in March. where John Robertson was charged with pushing the legislation through the committee stage. Much of the debate in the Council again surrounded the issue of a responsible minister, and served to qualify the constitutional basis upon which public instruction should be administered. In practical terms, many were still dubious, considering the factional chaos that marked responsible government in the colonies, that parliamentary control would necessarily inspire a non-partisan, professional and rigid system of school governance. Professor John Smith, foundation Professor of Chemistry at the University of Sydney, a former National Board of Education member and nine-time President of the Council of Education, told the parliament that a Minister of Public Instruction would be "more political than educational [and] more pliant than the Council to the importunity of electors." While this was a partisan view, others such as Alexander Campbell, the prominent mercantilist who had supported national education since his entry into the Parliament in 1860, agreed that "Political influence and not fitness for duties will affect some appointments." Dalley concurred, urging that "a ministerial office is certainly not in agreement with the policy of English governments... It has never been in our country regarded with favour that we should make any advances towards a system which would give a political management to our schools."

217 "UPC NSW", February 18, 1880
245 "UPC NSW", March 11, 1880
211 "UPC NSW", March 10, 1880
In addition, Campbell noted that the Council of Education’s “administration of public instruction...has been faultless...We have had fourteen years of the most efficient management that could possibly be devised for this educational scheme.” He was probably right, but the point of appointing a responsible minister was not merely an expedient. Rather, it was a critical part of the broader evolution of cabinet government, and of a move away from the patronage and inefficiency identified with boards and unaccountable administrative bodies. The argument, expressed again by Professor Smith, that a “Minister will [not] be able to give much more time to actual school administration than is now given, for he will be at the mercy of interviewers, and will be subjected to influences tending to warp his judgement”, failed to appreciate the constitutional significance of centralizing school governance via a minister of state.

The opinions of Campbell and Smith were not normative objections to centralization per se, but exhibited a practical concern about the administrative competence of a responsible minister. This was an important consideration, particularly since the culture of government by faction, which had predominated in New South Wales since the 1856 constitution, had failed to deliver anything like majority party government. The latter point was the key to Parkes’ and Robertson’s recent decision to embrace ministerial rule. The fluid political landscape of the 1870s hijacked any attempts to utilise the authority of the sovereign legislature, and while, as Loveday and Martin have pointed out, factions prided themselves on fulfilling their executive responsibility, and were often effective instruments for political action, the facts show that legislation lacked any strategic and systematic foundation and was usually introduced by private members as opposed to ministers who considered the measures in concert with the rest of the cabinet.

This was to change once the Parkes-Robertson ministry, which enjoyed the strongest ruling majority since 1856, were able to operate according to the conventions of modern party government. Nairn described how, during its four years in office, the “new government repaired more than a decade’s neglect of pressing legislation”, and “saw an unprecedented rate of introduction and success of public bills by ministers.” Suddenly, Robertson was an active defender of ministerial control of education, arguing that “those who think it right to caste aspersions on responsible Ministers as such...[will find] the establishment of a Minister of Public Instruction...quite as upright, and quite as honest as the Council of Education has been.”

---

250 VPLCNSW, March 17, 1880.
251 Loveday & Martin, Parliament, Factions & Parties, 4-5
252 B. Nairn, “Sir John Robertson”, in Australian Dictionary of Biography
went to pains to highlight the fact that “If a Minister is in charge of the department, both he and the department to which he belongs are liable to expulsion from office for wrong-doing.” This was not possible under the constitution of the Council, where members were arbitrarily appointed, and where “No one can tell the reason of their actions.” The new legislation, by making all teachers, inspectors and officers civil servants of the Crown, ensured that those employed in public education, including the minister, remained professional and responsible servants of the people. The Herald was also ready to support ministerial responsibility, arguing that while the latter might not conform to principles of “reverence and unquestioning trust” it had become central to any modern public school system.

6. Conclusion

On April 6 the Public Instruction Bill was overwhelmingly passed through the Legislative Council, and the political constitution of public education has changed little since. While some might have believed, like Dalley, that a responsible minister would be a short-term expedient, it has proved an enduring symbol of liberalism’s attempt to overcome negative law and divided power and lodge disciplinary strategies of governance within the ‘all-seeing’ constitutional mechanisms of modern parliamentary government. Guided by the logics of positive law, legal positivism and the fusion of executive and legislative power, the legislature could codify, unify and maintain the coherence of these disciplinary strategies. The important discourse of normalisation, as typified by Wilkins’ Table of Minimum Attainments, that was consolidated during the mid-nineteenth century, and which has been well elaborated elsewhere by neo-Foucauldian historians such as Vick, did not therefore succeed as a bio-political strategy of surveillance until a much broader constitutional model of surveillance was constructed. In this sense, the ‘irrationality’ of clerics and local patrons was not only a fault of outdated pedagogical method but was immanent in the early modern foundations of English law and government. The constitutional debate that dominated educational reform discourse in the late 1870s was then the final and crucial move in the push to ‘governmentalize’ the public education system. It was this move that served as the prototype for the accretion of bio-political governance across the social and economic minutiae of civil society. The unprecedented levels of legislative activism that followed throughout the 1880s and 1890s, and which accorded New South Wales government the mantle of state socialism, was thus a direct outgrowth of an enduring shift in liberal constitutionalism. This process was not an isolated one, and as the following chapter describes, was replicated throughout the Australian colonies.

VPLCNSW, March 17, 1880

SMH, March 18, 1880
Chapter 7

The Development of Centralized Educational Governance in Tasmania: 1830–1885

1. Introduction

Arthur, the rule of law and denominational school governance

In 1838, as part of a series of pamphlets on convict management written for the Colonial Office, and read as evidence to the Molesworth enquiry into transportation, Alexander Maconochie, the astute penal reformer and personal secretary to the recently enthroned Governor of Van Diemen's Land, John Franklin, produced a damning account of *Colonel Arthur's General Character and Government*. For Maconochie, Arthur's thirteen "deleterious" years as head of the island colony (1824-36) was a "display of arbitrary will and authority" discordant with the business of modern government. As an antidote, Maconochie suggested that "almost every law on the island requires revision...for in every one the scope assigned to magisterial and government discretion is too great, and takes away precision from both punishment and offence." While primarily concerned with the reform of the criminal law, Maconochie concluded his missive by arguing that a constitution must be given to this colony which will compel its Government to reason with the people, and bear and forbear, not merely command, in dealing with them. The intelligence of the people, stimulated by intelligence and confidence on the part of Government, would soon remove misconceptions on both sides; and passion, and its exciting causes, would go to sleep together.

---


2. Maconochie, *Colonel Arthur's General Character and Government*, 21, 22. To this end, Maconochie
The ‘despotic’ administration of Governor George Arthur is well documented. Maconochie proposed to reform an arbitrary, corrupt and ‘imprecise’ system of governance that appropriated the worst aspects of the constitutional tradition under which transportation to Van Deimen’s Land was conceived. Following the 1823 Act for the ‘better administration of justice’ in the colonies, which accorded Van Deimen’s Land full administrative and judicial independence from New South Wales. Arthur took control of the island colony in 1824 and was given unprecedented authority to commute sentences handed down by the Chief Justice and a five member military jury. While Chief Justice John Pedder held tight to common law prescription, Davis notes that 260 executions, 103 of which occurred during 1826 and 1827, were carried out under Arthur, representing over half of all executions commuted in Tasmania. It is true that the Governor paid lip service to Bentham’s pleasure-pain principle in the administration of punishment to convicts, however he layed greater faith in the spectacle of the public hanging as a deterrent to future wrong-doers. But more than just a deterrent, the ritual of the public execution, conducted in front of the Hobart Town gaol and within view of the Supreme Court, inveighed the faithful with the inalienable sovereignty of English law on the island. This claim to sovereignty was graphically illustrated by the ‘Black War’ between colonists and indigenous Tasmanians that continued throughout most of Arthur’s term in office. Thus, the final

suggested that the executive council be transformed into an upper house of a legislature, and that the Governor’s Council of Advice, while retaining seats in both houses of the legislature, become “ministers to the head of local Government...on the plan of the Cabinet Council in England.” See also “Thoughts on the Introduction of Representative Government into the Penal Colonies in Australia”, in Thoughts on Convict Management and other Subjects Connected with the Australian Penal Colonies (London: 1839). While Maconochie disagreed with some aspects of Wakefield’s emigration scheme based on a minimum price due to the lack of available capital in the colonies he was an active advocate of systematic emigration. See Captain Maconochie, Emigration, with Advice to Emigrants; Especially those with Small Capital (London: 1848). The pamphlet was part of an address to the ‘Society for Promoting Colonization’.

Giblin, for instance, noted that Arthur’s administration was “over-centralised” and “misrepresented.” Accordingly, Arthur failed to conform to reforms in parliametary government: “in the political arena he seemed to suffer from a kind of paralysis or complete incapacity to read the signs of the times and adapt himself to changing conditions.” R. W. Giblin, The Early History of Tasmania (Melbourne: Melbourne University Press, 1939). See also W. D. Forsyth. Governor Arthur’s Convict System: Van Deimen’s Land 1824–36 (Sydney: Sydney University Press, 1935) 1970 edn. For a contemporary account see H. Melville, Two Letters Written in Van Deimen’s Land, Shewing the Oppression and Tyranny, of the Government of that Colony (London: 1835).

While trial for capital offences were conducted in the mother colony before 1823, independent courts of civil jurisdiction were created in 1817 under the Governorship of Sorell.

excommunication of the natives from the island symbolised the triumph of the institution of private property, the rule of the common law, and the spiritual and moral hegemony of the Established Church in the southern antipode.  

First and foremost, Arthur considered himself a penal administrator, "a Tory", in Clark’s words, "who was always looking for a system of discipline which could curb the depravity in man." But this was more than a story about penitence and the redemptive power of harsh labour. Arthur’s system of discipline formed part of a broader tradition of law and government dedicated to preserving the property interests of the individual, and in Tasmanian context, the 'family compact' of pastoralists, magistrates, clerics and landed gentry who had gained the patronage of the Governor. Accordingly, the Chief Police-Magistrate, who also sat on the Executive Council, and meted out legal jurisdiction on civil matters to a network of magistrates and justices of the peace, carried discretionary authority to punish any threat to private property, be it in the guise of Aboriginal attack, stock theft, bushranging, or the negligence of convict labourers. A.W.H Humphrey, the Police-Magistrate during the initial years of Arthur’s rule, "believed till his death in 1828 that it was perfectly proper to hang a man for stealing a single sheep." The authority of the Tasmanian gentry class was aided, in contradistinction to the 'mainland' colonies, by a compact landmass that allowed a more integrated system of localized rule. To this effect, Tasmania’s demographic reach was not such that an overarching central body was required to unify and govern a geographically discordant population. This was reflected in the early political culture of the colony. Throughout the 1830s, the Courier, the

---

6 While the Governor, imbued with a sense of enlightened humanitarianism, considered himself a conciliator and protector of the Aboriginals, history shows that he contrived a ‘final solution’ to native resistance that would see hundreds of armed civilian and military men encircle the remaining black population, and, according to official records, relocate the survivors to islands on Bass Strait. While not initially successful, the Line was part of a policy of systematic dispersal of Aboriginal Tasmanians. See H. Reynolds, 

7Clark draws on the deeply religious aspects of Arthur’s character that informed his colonial policy, describing how the Governor, "While reading the scriptures...begun to be weighed down with guilt and the knowledge that the heart of every man was desperately wicked." M. Clark, History of Australia (Melbourne: Melbourne University Press, 1993), 122–3.

8It could be argued that Arthur propped up the claims of the landowners by ensuring that the island remained a repository for criminals, and therefore, a cheap supply of assigned labour. For this reason, he opposed the principle of systematic emigration designed to attract small capitalists.

9Davis, Tasmanian Gallows, 12.
mouthpiece of the landowning and Anglican clique, was the most influential paper Tasmania, and worked hard to bolster the claims of Arthur’s patronage network.10

In accordance with this heavily judicial and arbitrary mode of penal governance, early Tasmanian schools were ambiguously administered by private, benevolent and denominational interests. Reeves notes that the ex-convict, Thomas Fitzgerald, who had been disqualified him his original position as a magistrates clerk due to frequent insobriety, was the first to procure government aid for teaching, receiving 25 pounds from Governor William Sorrell in 1818.11 Arthur soon moved to bring the few schools in existence under the authority of the Chaplain of the Church of England, who was given exclusive control of an annual government grant (3500 pounds) to establish and maintain a denominational school system. Claiming to be the ‘Established’ church on the island, the Anglican hierarchy promoted an aristocratic theory of law and government that held jealously to the institution of local self-government and the civil authority of the church in the locality. Public schools therefore relied on the very irregular supervision of the ‘visiting’ clergy into the early 1850s, a situation blamed for low attendances, unqualified teaching staff and inadequate accommodation in the colonial schools. Yet in the context of the lingering authority of the ‘Arthur faction’, and the entrenched common law administrative system upon which the latter maintained their power and privilege, colonial reformers such as Maconochie understood that educational, economic and political modernization would first require a significant shift in the constitutional construction of the colonial state.

While early Tasmanian government was characterised by a strong gentry class that held a close affiliation with English constitutional convention, the reality of economic downturn, geographic isolation and a protracted history of transportation gave birth to a lineage of radical reformers keen to assert innovations in government that could alleviate the islands social and economic woes.12 Viewed by many as a microcosm of Britain’s faltering system of social administration, the island colony had become a kind of social laboratory through which philosophic radicals,

---

10 This perception followed the Courier into the 1850s, with the liberal Hobart Guardian describing the paper as “an organ of the clique” Hobarton Guardian, November 20, 1850.
11 Reeves, A History of Tasmanian Education, 7.
12 Throughout the middle decades of the century, a continuing state of social and economic foment inspired a rich and adversorial political culture. Townsley noted that in terms of “cultural activity Hobart bid well to be the premier city of Australasia”, with one of many newspaper and journal publications greeting its daily reader with the utilitarian plea for “The greatest happiness of the greatest number.” Townsley, The Struggle for Self-Government. ii. The paper in question, The Daily News, was considered the most radical journal of the 1850s.
systematic colonizers, political economists and constitutional theorists could test their ideas for reform. The volumes of tract and pamphlet which drew on the Tasmanian experience to expose the ‘stain of convictism’ that had infected the empire, was in turn appropriated by Tasmanian reformers mired in judicial corruption, sectarianism and, for all the efforts at ‘deterrence’, an increasingly recidivist convict class. In addition, and in accordance with the broader demand for representative government and reform of the administrative of justice, a comprehensive system of public education was held up as the antidote to the ‘moral pestilence’ that had infected this “CESSPOOL of the Empire”, and through which the future prosperity of a struggling island economy could be secured.\textsuperscript{13}

As noted in our earlier chapter on responsible government, Tasmania witnessed occasional, if not sometimes stilted, moments of radical constitutional change that strengthened the relationship between the secular, bureaucratised state and civil society. Intersecting with debates surrounding transportation, the justice system, lands policy, emigration, municipal government, bicameralism, state aid to religion, and the administration of hospitals and prisons, this chapter will show how the centralization of Tasmanian school governance was dependent on a constitutional shift away from judicial, arbitrary and unaccountable systems of governance toward a legislative, professional and codified mode of public administration. It is not enough to argue that centralization marked the triumph of democracy, egalitarianism and ‘moral enlightenment’ over the Tory ideals of a despotic colonial aristocracy; or that it was the tool of a new bourgeois economic order. While these ‘meta’-narratives are a part of the story, they miss the particular ‘disciplinary’, governmental and constitutional strategies that underlay this new form of social regulation. While post-structural and Foucauldian scholarship has provided much insight into the bio-political practices that, in contrast to the territorial and mercantile concerns of this eighteenth century raison d’etat, moved to secure a self-regulating population, such analysis is largely devoid of substantive constitutional and state theory.

This study aims to give a full rendition of the multiple linkages between the emergence of centralized schooling in Tasmania and the evolution of a peculiar model of responsible cabinet government that rejected negative, contractarian and ‘rights’ based theories of the liberal state, invoking an active and interventionist conception of state power. It has been argued that state control was more easily established in Tasmania due to the authoritarian legacies of a penal colony which, as the primary site for convict transportation in Australia, was ruled in the guise of a military autocracy. Such analysis, however, misses the constitutional reactionism which\textsuperscript{13}\hspace{1em}This was a reference to the social ill-effects of a continuing and increasingly unpopular system of transportation. Anonymous (probably published by early manifestation of the Anti-Transportation League). “Sir William Denison and the Colonists of Van Deimen’s Land”, (Hobart: 1849), ML/103.
initially limited the influence of the state over public schools. Thus, while the progress toward a centralized system was a tenuous one, the lasting influence of nineteenth century legislation for secular and compulsory schooling in Tasmania points to the rejection of the ‘rule of private property’ as the primary constitutional logic of Tasmanian state formation. This is why Maconochie, a penal reformer who also advocated a national and secular system of public schooling, understood that such reform would require a reconstruction of the laws and constitution of the colony. This was achieved via a long running polemic, exacerbated by the extremes of political culture in the southern antipode, concerning the constitutional limits of the liberal state, the administrative relevance of local self-government, and the nature of ministerial responsibility. Indeed, the Tasmanian educational state was often at the cutting edge of educational change, having adopted, in 1853, the first non-denominational system of school governance in the Australian colonies, while the 1868 Public Schools Act was also a landmark in terms of legislation for compulsory state education.

The Anglican Ascendancy: 1830–50

The initial years of Tasmanian educational governance conformed to the voluntarist and church administered system prevalent throughout Britain and its colonies. With the support of Bishop William Broughton and Governor Arthur, the Colonial Office sanctioned an Anglican monopoly that saw government grants taken up exclusively by the ‘High Church’. This monopoly was rarely questioned during the initial years of settlement, especially in a penal colony that had a negligible free population. However, with the steady stream of urban and pastoral settlers that descended onto the island during the 1820s – 46 ships carrying free settlers arrived on the island between 1817 and 1824, serving to double the population during that period – questions began to be asked about a small and poorly administered school system. Managed under the discretion of local clergymen who were more often distracted by the complexity of parish work, revenue raising and so forth, elementary and primary schools were, in general, poorly attended, under-supervised and mired in a sectarian dogma which did little to enhance the vocational or intellectual capacity of the ‘rising generation’.

The indomitable Governor Arthur was himself anxious about the failure of the clergy to adequately administer the public schools, and in 1833 he lobbied both the Home administration and Broughton for permission to appoint school instructors from outside the established church. Arguing the impracticality of a full commitment to the exclusive system, Arthur, in the words of Austin, “saw clearly that the conditions in his colony demanded religious and educational

14GO 1/21/47. January 12. 1837. 49.
services which his own church could not provide.”

The educational failings of the Anglican parish caused Arthur to invite dissenting denominations, particularly ministers from the Wesleyan Mission in Hobart, to assist in the removal of what Arthur termed “that convict taint, the extinction of which, as regards the rising generation, cannot, I submit, be purchased at too costly a sacrifice.” In the same dispatch to then Secretary of State, Lord Glenelg, Arthur stated his “conviction that some Establishment is necessary; but I do not think that the support of an exclusive system was at any period wise; and not only impolitic, and defeats the end aimed at, but at the present day I conceive it would be impracticable to support it without such opposition as would shake the church itself.”

Despite Broughton’s friendship with the Lieutenant-Governor, the former refused to support requests for non-exclusive chaplains and schoolmasters in Tasmania. The Secretary of State also denied a further request for an increase in the number of Chaplains, but for different reasons, believing that the adoption of an education model based on the Irish National System might yet be an appropriate solution for reform. Signalling the growing sentiment for a national system among members of the Home Government, particularly Lord Stanley, Lord Brougham, and the philosophic radicals, Glenelg rejected the Governor’s request since, he argued, a “new system is in contemplation” which would “tend to the rapid increase of the means of instruction in the Colony.” Glenelg was therefore “unwilling, by making a considerable permanent increase to the Clerical Establishment, to involve the Government in an obligation to secure for the additional Clergyman a future provision independently of the arrangement which I hope to see carried into effect for this purpose.”

Having been denied support from both the Archdeacon and the Colonial Office, Arthur was forced to consider an alternative system and late in 1833 he appointed a select committee to report on the state of colonial schools. The report recommended the adoption of the National System but Arthur, who faced pressure to reject both systems from Broughton and the incoming Archdeacon Hutchins, preferred the British and Foreign School model.

Arthur’s attempt to transgress Anglican control was in part a response to anxiety within the liberal, middling and upper ranks of Tasmanian society. This group feared, in the words of the Van Deimen’s Land Monthly Magazine, a “race of degenerate successors without education or principle” that would be “accompanied by insecurity of property and the wreck of everything holy and virtuous.” The threat of vice and ignorance was particularly strong within a community considered by most to be a dumping ground for the criminal and insane.

The free, educated

---

17 GO 1/21/47 January 12, 1837. 54.
18 As noted by Hartwell, transportation brought 60 000 convicts to Tasmania between 1817 and 1850, while only 20 000 free settlers arrived during the same period. R. M. Hartwell, *The Economic*
and middle class emigrants to the island considered a comprehensive public education system indispensable to the reform of the convict and emancipated classes, and ultimately to a thriving colonial economy. Thus it was “one of the primary duties of a state to advance the spread of useful learning, to provide for the ignorant and unfriended, the assistance necessary to enable them to fill the station allotted them.” Advancing the discourse of social economy popularised by Edwin Chadwick and partly realised in his Poor Law Amendment Act of 1834, the Monthly Magazine rejected England’s “pauper relief” system based on “perverted poor laws” for having perpetuated cycles of “ignorance and vice.” As a repository for the pauper, indigent and criminal class, Van Deimen’s Land was therefore a “strong illustration” of a failing regime of social governance at home:

Look at the body of children who are worse than orphans! Facts which shock humanity are disclosed from the Female Penitentiary. Hordes of Boys actually landed here from the Parent Country with minds contaminated, and constitutions diseased, injured to deceit, falsehood and crime! These are some elements of our future population! It is with them the state must work.19

The importance of public education as a moral technology designed to prevent the ‘contamination’ of the minds of the colonial youth inspired reformers to bring schooling within a uniform and centrally administered institutional framework, a move which resulted in the diminishing influence of judicial and localized control.

The suggestion that the colonial state should override the educational jurisdiction of the clergy did not sit well with a Governor enamoured in the mercantilist tradition of colonial administration. Arthur’s colonialism was primarily concerned with enforcing the sovereignty of English law, and it was for this reason that he was not initially concerned with implementing trial by jury and representative government. Accordingly, teh Governor had to respond to ‘liberal’ critics such as Henry Melville, who, having been imprisoned by Arthur for refusing to give evidence over a disputed land grant, was intent on berating the office of the Police Magistrate, and with it, the administrative failures of government by patronage.20 Throughout

---


the early 1830s, anti-Arthur newspapers such as the *Tasmanian* and Melville’s *Colonial Times* criticised the Governor’s ‘system of torture’ and the unprecedented use of capital punishment since, as penal reformers from Beccaria through Bentham, Romilly and Macaulay had argued, these tactics acted neither as a deterrent nor a method of reform. While Arthur believed his penal system would deter future crime via a strict regime of punishment administered in the guise of terror and hard labour, this contradicted the panoptic notion of ‘reform’ devised by Bentham, sanctioned by the Molesworth Committee, and followed through by theorists such as Alexander Maconochie until transportation was abolished in Tasmania in 1853. As we will elaborate below, the latter ‘social-psychological’ notions of reform were central to the modern science of pedagogy which rejected corporal punishment and promoted ‘affection’ and a ‘love of learning’ as the basis for moral discipline. These issues were interlinked, however obliquely, to Melville’s support for Wakefieldian immigration since such policy would, through increased government revenue and the diminution of unproductive land grants, furnish the means through which public schools could be better funded. Melville argued that land jobbing, the means through which Arthur extended his patronage to the pastoralists, deterred emigration, and that the failure of large landowners to pay property tax siphoned funds away from civil infrastructure such as schools. In response, he proposed that “certain portions of land should be set aside for the purpose of defraying the annual expense of a College.” For Melville, there was “no reason why a tenant should not pay rent for the maintenance of a Public School equally the same as he would do for the sole advantage and benefit of a private landowner.” The need


21 Arthur’s governorship signalled the period when systematic colonization significantly influenced land and emigration policy in the Australian colonies: As described by Forsyth: “The emigration of free owners of capital was in full swing when he [Arthur] arrived in 1824; the Letter from Sydney appeared in 1829; the Swan River colony was begun in the same year; the Colonization Society was formed in 1830; in the following year the Rippon Regulations for the sale of land were sent out and the Emigration Commission was formed; the Wakefieldian South Australian Association came into being in 1833: Arthur gave evidence before the Transportation Committee on his return to England in 1837.” Forsyth, *Governor Arthur’s Convict System*, 67. The themes contained in Wakefield’s “Letters from Sydney” were debated in the *Tasmanian*, May 7 and May 14, 1830. Wakefield had a decided influence on Tasmanian political, economic and constitutional reform, as A. L Meston observed in an address, concerning the development of responsible government, given to the Royal Society of Tasmania in 1927: “Wakefield’s value to Australia cannot be overestimated. Men began to consider emigration as a cure for social ills...Instead of a land exploited by capitalists for their own advantage, filled with cheap coolie labour when the supply of convict labour failed, to which responsible self-government could never have been given, we find a stream of free immigrants bringing with them a hatred of oppression and tyranny.” A. L. Meston. “The Growth of Self-Government in Tasmania”, *Royal Society of Tasmania* 1927, 184.

to increase the taxing and revenue raising power of the state, and in turn bolster the educational provision, was an issue further linked to emerging claims for responsible self-government and ‘taxation with representation’.

In an effort to create some vestige of English civil infrastructure, Arthur, with the support of Bishop Broughton and the Courier, moved in 1833 to establish a Collegiate Institution designed to facilitate the higher learning of the landed and privileged classes. The collegiate was to be controlled by the clergy with assistance from the central revenue as per the Church and Schools Corporation. When addressing the Legislative Council on the issue, Arthur remarked on the “growing desire for the blessings of education and religious instruction...The almost universal appeal which has been made to the Government by the most respected and influential part of the community for the foundation of a college, with a pledge of the most liberal assistance, afford satisfactory evidence of the sincerity with which the sentiment is avowed.” Arthur proposed the appropriation of £500 for the establishment of the college. However, when Broughton arrived in colony, he advised that a grammar school should precede the development of a college. Broughton gave intention to open The Kings School, which would be headed by a clergyman of the Church of England, and which would ensure that students and teachers attended services in the Established Church each Sunday. Yet while Broughton successfully lobbied for a Kings School to be built in Sydney, the Secretary of State failed to authorise the appropriation of money for a grammar school in Tasmania.

The Governorship of Arthur thus signaled faltering attempts to improve the operation of Anglican controlled public schools, and to fortify establishment control of the education system through the founding of an exclusive college and grammar school. It was in the area of primary schooling that the failure of the Anglican system under Arthur was most apparent, with up to 70% of the primary school aged population failing to receive instruction from the denominational schools. Arthur’s educational legacy bolstered the mandate of the incoming Lieutenant Governor, Sir John Franklin, to initiate the far-reaching reform of educational administration. As noted by Macrae, Tasmania “acquired a reputation for being a most advanced colony educationally” under Franklin’s stewardship. While historians such as Austin have described the liberal, progressive and ‘humanitarian’ qualities of Franklin’s education policy, especially his ongoing efforts to assert these principles in the wake of an archly

137. Meiville owned the Colonial Times in the mid-1830s and carried on the work of Andrew Bent who established the paper as a mouthpiece for opposition to the ‘tyranny’ of George Arthur.
23Hobart Town Gazette, August 30, 1833.
24 See Reeves, History of Tasmanian Education, 23.
conservative Anglican Church, few have contextualized his ideas in terms of a broader struggle within English and colonial constitutionalism.\(^{26}\)

Franklin, along with the likes of Thomas Macaulay, was part of a progressive movement within the Church of England that championed the idea of religious equality, and which had become mindful of the declining political and constitutional relevance of the Establishment fraternity.\(^{27}\) With Alexander Maconochie, Franklin's personal secretary who would revolutionise penal discipline throughout the Empire, the Lieutenant-Governor engaged in a progressive Whig critique of colonial government.\(^{28}\) While Maconochie's hitherto referred to exposition on *Colonel Arthur's General Character and Government*, along with his radical schemes for penal reform, were initially viewed by many in the Executive Council and the Colonial Office as impudent and over-zealous, increasing the pressure on Franklin to finally dismiss his close friend, the Governor himself challenged the patronage and corruption characteristic of Arthur’s thirteen year reign, describing colonial government as a “family compact”, and hoping to promote members to the Council who would represent “the independent and liberal sentiments of the country.” “It was equally my object”, continued Franklin, “to represent as much as possible the interests and sentiments of all the respectable classes of society, and to counteract the too prevailing influence of one family and its partisans.”\(^{29}\)

The attempt to limit the power of the Arthur clique over civil administration was most notable in the area of public education. Franklin quickly establishing a committee of enquiry into public schools which recommended the establishment of a central education board was established to

\(^{26}\)For a critique of Frankins strategy to secularise public schooling see W. Hutchins. *A Letter on the School Question* (Hobart: 1839).

\(^{27}\)Along with his wife Lady Jane Franklin, Franklin was prominent within the quaker social reform movement, among the Frys and Wolstencrafts who were instrumental in promoting state education as a corrective for the indolence and 'moral contagion' that had 'infected' the industrial and pauper classes. See Fitzpatrick, *Sir John Franklin in Tasmania*, 32–33.

\(^{28}\)In England, the *Times* noted that “The principle that the convict should be detained until by industry and good conduct he has earned his right to be free was first enunciated by Archbishop Whately; but it was developed into a system, and thus rendered capable of practical application, by Captain Machonochie.” A. Maconochie, *Prison Discipline* (London. 1856). See John Vincent Barry, *Alexander Maconochie of New Norfolk Island* (Melbourne: Oxford University Press, 1958).

\(^{29}\)J. Franklin, *Narrative of Some Passages in the History of Van Diemen's Land. During the Last Three Years of Sir John Franklin's Administration of its Government* (Hobart: 1845), 10. Francis argued that “Franklin naively relied upon a political language which dealt only in good and evil influences [and] had no philosophical or juridical tools with which he could distinguish between his own good influence and the malign influence of his opponents.” Francis, *Governors and Settlers*, 6–7.
expand the capacity of central state supervision. While Franklin initially attempted, like Governor Bourke in New South Wales, to introduce the Irish National school system into Tasmania, the British Foreign and School model instituted under a Board of Education in 1839 was a significant departure from a system ruled haphazardly by parochial Anglican interests.

Established in 1839, the Board of Education was to impart religious instruction without ecclesiastic or sectarian influence, thus promoting the idea of religious liberty integral to Thomas Arnold of Rugby’s philosophy of education – Arnold was Franklin’s friend and confidant on educational matters in the colony. As described by Phillips, the Board marked “the first attempt to place control of education in the hands of the State and the first statement by Government that Education should be provided for all children regardless of class, denomination or remoteness.” While the Board was originally to compromise members of the judiciary, magistracy and clergy, and was to be under direct ecclesiastic control, with a Church of England having a significant majority over the other denominations, the Board was reformed in May 1839 with the past members being replaced by a smaller Board made up of the Colonial Secretary, Solicitor General and Colonial Sheriff. As a concession, the clergy, police and magistrates were to assist as special visitors. Teachers were to be registered upon passing a Board examination, and were to be paid in the hope of attracting a “better class of teachers.”

The implementation of state directed teacher examination was, in a Foucauldian sense, a radical attempt to ‘normalize’ and regularize both curriculum and pedagogy. However, to effect such reform, Franklin would first have to challenge the constitutional mandate of the established church.

This later point explains why the *Courier* was quick to criticise the non-denominational character of the Board, the paper describing the “destitution of all control established by the Board”, and illustrating the need for superintendence by the clergy who were the most ubiquitous and hierarchically organised administrative body in the colony. The Episcopacy were most likely to ensure “gradation, order, law, and certainty” through constant superintendence from the Archdeacon through to the inferior brethren. It was true that the Board did not as yet have such a comprehensive administrative network. relying on the delegation of supervisory authority to police-magistrates who, while the “friends and neighbours of the clergy”, could not give sufficient attention to school governance; and dissenters, whose fractured political structure would give the Board the characteristic of “confusion, intrusion, irregularity, and chance.”

---

31 *Regulations for Government Schools*, *VPLCVDL* 1839, 28–29.
32 *Courier*. November 7, 1839. Earlier, Archdeacon William Hutchins also opposed the new Board in his *Letter on the School Question*.
in the face of continuing reaction from the conservative Bishop Nixon, the Board successfully increased the public school population from 785 in 1839 to 1493 in 1844. In addition, the Board introduced curriculum from the Irish National Schools to complement the British and Foreign School texts.\textsuperscript{33}

In 1843, as part of an attempt to denigrate the standing and performance of Franklin’s system, the clergy released the controversial and politically charged \textit{Account of the Introduction and Effects of the System of General Religious Education Established in Van Deimen’s Land in 1839}.\textsuperscript{34} Attributed to J. D. Loch but believed to originate from the pen of the Puseyite H. P. Fry, the \textit{Account} included a condematory speech from Bishop Broughton. Interestingly, Loch used the language of centralized and uniform administration to critique the government schools, arguing that “the system was established, and has been conducted, without any prescribed system of regulations, and without any fixed principle”, and therefore, “that it provides no efficient control and supervision of the schools.”\textsuperscript{35} Claims that the non-denominational schools suffered from general mismanagement, and had failed to inculcate satisfactory religious teaching, were countered when the Board reported that government schools were irregularly inspected due to the apathy of the clergy and visiting patrons. In the words of the Board, “the private inhabitants do not generally take any practical interest in the subject of education”, thus perpetuating “the absence of the advantage of local inspection at most of the schools.”\textsuperscript{36} In an earlier report, the Board again backed its commitment to reform by requesting “more efficient” and “well trained” teachers, and by attempting to fix minimum competency standards in reading, writing and arithmetic.\textsuperscript{37}

The efforts of the Board were vindicated in a series of petitions supporting government schools.\textsuperscript{38} This did not dint the efforts of the clergy to regain establishment control. In late 1843.

\textsuperscript{33}``Report of the Board of Education” \textit{VPLCVDL}, July 22, 1844.
\textsuperscript{34}J. D. Loch, \textit{An Account of the Introduction and Effects of the General Religious System Established} (Hobart: 1843).
\textsuperscript{36}Report of the Board of Education” \textit{VPLCVDL}, July 22, 1844.
\textsuperscript{37}``Report of the Board of Education” \textit{VPLCVDL}, November 14, 1843. As described by Philips, Tasmanian reformers had been influenced by the 1833 grant to public schools in England, and by the 1834 Poor law Amendment Act. which “became the cornerstone of a massive edifice of nineteenth century British social welfare policy.” See Philips, \textit{Making More Adequate Provision}, 13.
Chief Justice Pedder presented a petition to the Legislative Council from Bishop Nixon and the Diocese of Tasmania which proposed that “the funds for the promotion of education may be distributed in proportion to the numerical amount of the various religious denominations.” The *Hobart Town Advertiser* agreed that the “Clergy of the Established Church” were best qualified to provide a “sound and Christian education” and that the present system is “perfectly inefficient.” Nixon argued that it was not only the duty of the state to provide education but to train the “rising generation to be a God-fearing Christian people.” He believed that the established church should not be regarded as sectarian, but that the Apostolic principle was enshrined in a Saxon tradition which, unlike Roman religion and law, upheld the union of the ‘national’ church and state. This argument carried deeper constitutional repercussions since Roman law was the foundation for legal positivism, legislative absolutism and the codification of statute law as advocated by John Austin and William Hearn. Roman jurisprudence would effectively subsume much of the administrative jurisdiction of the common law, and with it the office of the parish and justice of the peace. The following passage from Justice Burton’s *State of Religion and Education in New South Wales* was then used to rebuke the dissenting claim that there were three established churches in the colony: “From Magna Charta to the first chapter of which contains a solemn recognition of the National Church, to the period of the Reformation, and from then, to the present time, the various statutes which have been made respecting public worship and religion, whether for its uniformity, or its relief of dissenters from the established Church, all contain constant and ample recognition of that church as a fundamental part of the state.” As described in the previous chapter, Burton had attempted to forge the symbiotic link between church and state as a means to preserve ecclesiastic authority within an expanding state apparatus. In this way, Burton argued that “The State...stands in relation of parent to all children within it...Like the parent, it becomes the State to determine ‘whom it shall serve’, and having made this determination...it cannot be doubted that its duty is, like that of the parent, to teach that which itself receives as truth to the children of the State.”

Constitutional justification for establishment control of the school system served to entrench education debate within a broader conflict surrounding English state theory. Fending off the claims of secular and centralized government, Nixon assumed that if “all the laws solemnly recognise the Established Church to be the Church of the State in England, Ireland, and New

---

39 *VPLCVDL*, October 24, 1843. The day that Nixon was due to speak in the Council another petition was forwarded from Mr Proctor to establish a secular College on the model of the London University.

40 *Hobart Town Advertiser*, October 31, 1843.

41 *VPLCVDL*, December 31, 1843.

42 Burton. *The State of Religion and Education in New South Wales,* x.
South Wales, then it is equally so in Van Deimen's Land." The Advertiser concurred, arguing that the educational claims of the clergy had been upheld during recent debate in England. In May 1843 John Roebuck presented a bill in the Commons proposing "That in no plan of education, maintained and enforced by the State, should any attempt be made to inculcate peculiar religious opinions." Roebuck's motion for a system of secular state education was unanimously rejected by 156 to 60 votes. For the Advertiser, this proved that "whilst the Church of England was the established church of the country, no compulsory scheme of education could be adopted without founding it on the tenants of that church." In response, Tasmania's incumbent Attorney-General, Alfred Stephen - the most liberal member of the council who carried an ongoing war of attrition with the arch conservative, Justice Montagu - observed that the Church Act of 1836, which divided colonial religion by sect and repudiated an established church, was still in force.

The Colonial Times, a paper originally owned by Henry Melville and which continued to convey liberal, anti-establishment sentiment under the proprietorship of J. C. Macdougall, supported the view that the Church Act had 'dis-established' the Anglican church, thus revoking Anglican claims to an educational monopoly. In addition, the Times argued that the English Church and Schools Act had been legislated in response to the failure of the 'visiting' clergy to adequately inspect and administer local schools, and that a General Secretary and Inspector, as established under the act, should be employed in Tasmania to report on the progress of schools. Even the Courier found it difficult to support Nixon's petition, arguing that the marginal sects would not have the adequate resources to fund and administer schools. The former continued that Nixon's justification for such a starkly sectarian system was spurious at best, and furthermore, that the Anglican critique of the Board, as embodied in Loch's Account, was somewhat "inaccurate." Suggesting a reformation of the Board, the Courier defined the problem as the "cumbersome and inoperative machinery of a controlling board of officers, gentleman of various pursuits and opinions, without individual responsibility, or anything to

---

43Quoted in Hobart Town Advertiser, November 7, 1843.
44Hobart Town Advertiser, November 7, 1843. The Advertiser was also opposed to the "theoretical disciples of the Wakefield School", and deplored the political economy of the systematic colonizers. See Hobart Town Advertiser, November 14, 1843.
45VPLCVDL, December 31, 1843. The Attorney-General (who?) believed that this constitutional diversion was a departure from the wording of the original petition. He argued that the Legislative Council could not have contemplated this claim when it ceded to Nixon's extra-ordinary request to be heard in the legislature.
47Courier. November 3, 1843.
stimulate their interests in the duty allotted to them.” A multi-denominational board should be made up of qualified, accountable officers displaying a “zealous temperament.”

This argument signalled a shift in the political economy of education reform at both ends of the ideological spectrum. Arbitrary, unaccountable, non-professional and localised modes of school governance were isolated as the cause of a deficient education system. As it was, the Board was essentially an amateur body which lacked the administrative fortitude of a trained bureaucracy, relying on local patrons and visitors to manage and inspect the schools. However, this lack of administrative professionalism and uniformity would be exacerbated by an Anglican system enamoured in the constitutional ideal of minimal government. While far from effective in this early stage of educational development, the idea of a government appointed Board conformed to the broader project of political modernization which the colonial reformers, philosophic radicals and urban liberals increasingly believed to be an essential component of long-term educational change. It could be argued that this logic informed the opinions of Franklin's successor, J. E. Eardley-Wilmot, who rejected the protestations of the clergy, arguing that the Board had operated for five years without undue complaint and that the number of schools had increased substantially under its tenure.

These debates of course centred on state primary schools, and as yet, no secondary instruction was funded by the central government. After Broughton's failure to establish the Kings School, Franklin successfully lobbied the Secretary of State, Normanby, for authority to procure funds for a superior school to be named the Queens School, and for the establishment of a collegiate institution to be known as Christ's College. His intention was to found a “superior school on such a system that it may at a future period become a college, and be a means of affording a liberal education to the sons of Colonists and of preparing them for entering upon the study of the Learned Professions.” Franklin was keen to introduce the progressive pedagogy and institutional technologies associated with his friend and mentor, Dr Arnold of Rugby. He supported Arnold's assertion that education, while possessing the broad principles of Christianity, must be egalitarian and avoid the sectarian dogma “calculated to perpetuate religious or civil distinctions between members of the same community.” Franklin was then attempting to utilize Anglican funds within a non-exclusive system of secondary schooling, thereby working towards a more uniform and centralized public school system.

48Courier, November 17, 1843.
49Colonial Times, November 28, 1843.
50VPLCVDL, September 2, 1839.
51VPLCVDL, September 2, 1839.
In addition to opening a superior school, Franklin intended to establish a "Normal School, in which may be instructed, from amongst the native youth, young men who will, in their turn, convey the benefits of education, and moral and religious cultivation, to the most remote districts of the land." For this Franklin sought Arnold's help in acquiring a Head Master of the calibre of Henry Cannichael, the utilitarian educator — 'it is the communication of knowledge, not the inculcation of opinions at all, which constitutes the business of education' — who since the early 1830s had attempted to establish a normal school in Sydney. The prototype of the modern teachers college, the normal school was, as Foucault has argued, the centre piece of progressive attempts to regulate and 'normalize' teaching standards, and ensure the uniform and efficient implementation of centralized curriculum. Henry Barnard, the Superintendent of Common Schools of Connecticut, following from the example set in Prussia, Holland and France, provided a comprehensive model for the professionalisation of teaching which was influential among educators in the colonies. Barnard described a "Normal School, or Teachers' Seminary, [as] an institution for the training of young men and young women...the best mode of reaching the heart and intellect, and of developing and of building up the whole character of a child." Written in 1851, this inculcation of the 'best mode' of pedagogical methodology had, by the early 1840s, already influenced educational policy both in Tasmania and New South Wales.

Arnold soon complied with Franklin's request, and John Philip Gell sailed to the colony in 1839 to undertake his appointment as headmaster of the Queens School. Gell was Arnold's prodigy at Rugby and replicated his political position on state education, hoping to reduce sectarian conflict by not getting ordained. This conformed with Franklin's stipulation that the college be "as little exclusive as possible", and that there be "no religious tests, no interference with the conscience of either teacher or students and no notice taken of the distinction between different classes of Christians." In his original proposal for a collegiate institution, Gell argued "that we shall hope in vain for a professional education unless...the schools of the colony give sufficient preparatory instruction." However, when state support for the Queens School and the Queens Orphan School was withdrawn by Franklin's replacement as Governor, J. E. Eardley-Wilmot, Gell sided with the Anglican establishment. Wilmot believed that Gell's salary as Headmaster of the Queen's School, whose attendance had declined to less than 20 pupils, was excessive. Gell then closed the school in protest. When Wilmot failed to find a replacement Headmaster he

52See H. Barnard. Normal Schools, and other Institutions, Agencies, and Means Designed for the Professional Education of Teachers (Hartford: 1851).
53VPLCV DL, September 2, 1839. The effort to avoid sectarian rivalry faltered when the foundation stone which was laid at the opening of Christ's College in 1840 was overturned a day later. This pre-empted the closure of the college in its first year of operation, a move forced through lack of patronage.
retracted all government funding. There had been considerable public opposition to the closing of the secondary college, even though Wilmot justified the closure in the light of an economic depression. One petition argued that the public schools of the colony should form one system of which the “Queens School is the head, and the subordinate schools the members; and that they ought to form the different parts of the one body – of one constitution, acting under the same influences and directed by the same principle.” The hope that these Anglican yet non-sectarian and government funded secondary schools could form the basis of a comprehensive system of state secondary instruction was over-zealous in the context of the sharp political and religious divisions which continued to polarise the education reform process. While Franklin, who was a close friend of Archdeacon William Hutchins – a more liberal minded clergyman than the incoming zealot, Bishop Nixon – attempted to unify secular and religious interests within a unified state educational model, Wilmot’s action reflected a more divisive attempt to limit the influence of the clergy, and of local self-government, in the operation of school governance.

Having realised that his future was in Anglican supported schools, Gell agreed to be ordained in 1846. In October he was appointed Warden of the re-founded Christ’s College, with Bishop Nixon acting as visitor. The college was linked to the recently established superior schools, the Launceston Church Grammar School and the Hutchins School in Hobart. Bishop Nixon offered the College as an example of ‘national education’, but the non-Anglican press, including the Colonial Times, quickly denounced it as a “private affair” which could not be considered of a “national public character.” The Times asked why “the ‘public’ property is to be bestowed upon it”, while the Guardian attributed the College to the “sectarian virulence of designing Mercenaries, who care not for the public, but for themselves.” Furthermore, the founding of grammar schools by the “Clerical and Scholastic Aristocracy” was an attempt to obstruct the “free progress of a popular liberal education amongst all classes”, limiting “enlightenment to the privilege select few, at the expense of the vast Majority.” The secondary schools were consistently pilloried as a symbol of aristocratic and reactionary government which had failed to adopt the administrative technologies vital to modern school organisation. This related to the

---

55. Mr Gells Report to His Excellency upon the New College”, VPLCVDL, August 15, 1840.
57. Guardian, September 8, 1847.
fact that the schools were expensive, even compared to the English grammar school, meaning that government funds were wasted on an exclusive rather than comprehensive and egalitarian model of secondary schooling. Nevertheless, this remained the defining period in the Anglican ascendancy, illustrated most forcefully by the fact that the privilege of a grammar education was not successfully complemented with a government high school until the end of the nineteenth century.58

By the mid-1840s, the Anglican hierarchy was having less success when attempting to dominate the provision of primary school education. Dissatisfaction with clerical involvement in the state schools was typified by the Board of Education Report of July 1844. The latter continued to “regret the absence of the advantage of local inspection at most of the schools”, a situation due in most part to the neglect of the visiting clergy.59 Such concern was manifested by ongoing attempts to establish Anglican schools outside the Board of Education. This practice drew strong opposition, particularly from the secular and dissenting press. The issue came to a head when the Clergy of the Deanery of Longford presented a petition which demanded government aid for an exclusive Anglican school. This proved to be a pivotal moment in the decline of local/clerical control since the clergy currently instructed more of the children in the ‘scattered districts’ than the Board. Therefore, if the Longford petition succeeded the Tasmanian diocese might have challenged the educational authority of the central government.60 The Observer called the petition the work of “Puseyites, bigots, and sectarians”, arguing that by requesting separate grants the Longford petition was a “scheme to build chapels at the public cost, under the name of public schools, and to pay Catechists, under the title of Schoolmasters.”61 The Courier responded by evoking the liberal and utilitarian pretensions of the clergy: “Whether it is sectarianism to seek the greatest advantage of the greatest number, and to consider it a duty, as the Church of England does, to provide for and to do good to all within her reach, without resting in those factious supports by which sectarians are sometimes enabled to uphold their sects”62

58 As Powell noted, it was seventy years before another state secondary school was established in Tasmania. P.A. Powell, “Bishop Nixon and Education in Tasmania”, 181.
59 Board of Education Report, Minutes LCVDL, July 17, 1844.
60 Petition to His Excellency in Council from the Clergy in the Deanery of Longford, v'PLCVDL, August 4, 1845.
61 The Observer, August 26, 1845.
62 Courier, Wednesday, August 20, 1845.
This rhetoric increasingly failed to counter the belief that the clergy represented an archaic model of irresponsible, unaccountable and inefficient government. Accordingly, the Observer cited Dr Arnold's opinions on the need for improved 'church government':

"Before he could feel any hope for the Church, there must be signs in it of real church government...one which was vested in the church and not the clergy..." One thing I see, that if attempts be made, to make the power of the Bishops less nominal, than it has been, there will be all the better chance of our getting a really good church government; for irresponsible persons, irremovable, and acting without responsible advisers, are such a solecism in government, that they can only be suffered to exist so long as they do nothing; let them begin to act and the vices of their constitution will become flagrant."

In this light, the secular-liberal press, led by the Observer, vehemently opposed a petition that was not only "hostile to the public schools, and intended for their ultimate overthrow," but would bolster aristocratic government. Thus, the constitutional claims of the clergy were again repudiated via reference to the Church Act: "by the law of the colony, Van Diemen's Land and the Anglican Church are distinct." The Observer reiterated this point by referring to debate in England, where Dr Arnold and the Archbishop of Dublin had been able to illustrate the advantages of the secular Irish National system. This caused Lord Stanley, the Duke of Wellington and Earl Grey to rebuke a petition, presented to the Commons and signed by 1306 clergymen of the established church, which was opposed to the introduction of a national system. The Observer hoped that the colonial government would concur.

The pressure to resist exclusive claims for independent control of schools was felt strongly throughout the Governorship of J. E. Eardley-Wilmot (1943-1947). Historians have commonly approached this period of Tasmanian educational history by focusing on the efforts of the Anglican establishment to dissolve the Board, particularly through their appeals to the incumbent Secretary of State and then High-Church Tory, William Gladstone. However, to focus on Wilmot's inexperience, and his ultimate dismissal in the face of sustained sectarian

---

63Quoted from the Edinburgh Review, April, 1845: in The Observer, September 19, 1845.
64The age long debate between church and state was being played out over the issue of the authority of the ecclesiastic courts. The Observer opposed the common law authority of ecclesiastic courts on the grounds that "the union of civil and ecclesiastical coercion is injurious to all, whether within or without the Anglican Church." The Observer, August 8, 1845.
65The Observer, October 21, 1845.
and political conflict, does not take into account the constitutional tensions which were central to the debate. Soon after taking up his Governorship in Tasmania, Wilmot agreed to address the subject of public education, suggesting a general enquiry into the system to the then Secretary of State and founder of the Irish National System, Lord Stanley. When reporting back to Stanley, the Lieutenant-Governor acknowledged the limitations of a Board made up of part-time members. It was suggested that a government department be established with a full-time superintendent of public instruction at its head. Even the Courier had recognised the inherent antagonisms resulting from denominational influence within the Board:

No patching or alteration is likely to render the Board a suitable instrument in the hands of government for promoting concord in education. Is it worthwhile then to burden the colony with a mass of crippled machinery, when simpler means would produce a far better result.

Accordingly, Wilmot issued a subsequent dispatch to the recently appointed Secretary of State, William Gladstone, proposing that the current board be replaced by a ministerial department of education. Gladstone responded by giving “the greatest weight to the opinion of the clergy”, arguing, however spuriously, that the schools run by the clergy were less expensive since they had, before the introduction of Franklin’s general system, demanded less of the state revenue. The issue of expense was bolstered by the fact that the 25 Anglican schools currently in operation outnumbered the 22 schools controlled by the Board. Gladstone outlined a scheme in which the government would contribute a penny a day for each child attending school. This would minimise the financial demand on the state and encourage local fund-raising.

Two months after Gladstone rejected Eardley-Wilmot’s education proposals he dismissed the Governor for maladministration. This aroused significant debate both in England and the colony. While Earl Grey believed that Gladstone had sufficient grounds to dismiss Wilmot, John Roebuck attributed the recall to the “prudish feelings” of the Secretary of State. Press

---

67See Austin. *Australian Education*, 83.
68Stanley had been conspicuous for ‘progressive’ contributions to education policy, overseeing the first state grant to English schools in 1833, the year the Irish National System was established. Eardley-Wilmot to Stanley, no. 17. January 22. 1844. C. O. 280/167/155; Stanley to Eardley-Wilmot. no. 283, August 24, 1844, C. O. 408/24/277.
70*Courier*, November 18, 1846.
72*Times*. June 4, 1847; cited in *SMH*. October 8, 1847.
coverage of the dismissal focused on the private morality of Wilmot, who had been accused of adultery and other moral indiscretions. In addition, while Wilmot had supported more progressive education reform he had been unpopular among the liberal ranks of Tasmanian politics, particularly over the issue of convict management, and the intention to levy direct taxes which provoked the infamous walkout by the 'Patriotic Six' in the Legislative Council.73

A closer look at the despatches surrounding the dismissal show that Gladstone's actions were enamoured in the link between education reform and an ongoing struggle to redefine the constitutional basis for colonial government. While Wilmot accepted the power of the Chief Magistrate in a penal colony, and the power of the landowning clique who formed the backbone of an agricultural economy, his attempts to invoke educational and institutional reforms, particularly through centralization and the formation of ministerial departments, could not be countenanced by a conservative Secretary of State facing continuing pressure to expand legislative government both at home and in the colonies. In this light, Gladstone's opposition to education reform, and his ultimate dismissal of Wilmot, must be considered, however tacitly, as a defence of the matrix of common law functionaries - including magistrates, the clergy, and the landed gentry - who wanted to preserve their authority within British and colonial administration.74 Accordingly, Gladstone was part of a group of Tories who in 1838 had taken control of the National Society, the bastion of Anglican educational hegemony, and proposed sweeping reforms that would, explained a concerned Kay-Shuttleworth, bring public schooling under "a purely ecclesiastical system of education."75 This might explain why Gladstone sent

73 In 1846 Wilmot attempted to introduce state taxes to make up deficiencies in the estimates for that year. Thomas Gregson and the non-official Council members (the 'Patriotic Six') left the Council, partly due to the principle of taxation without representation, the fact that the Taxation Bill was to raise funds for the maintenance of police and gaols, and partly because of Wilmot's assertion that he had a legislative monopoly from the Crown.

74 The constitutional tension between Eardley-Wilmot and Bishop Nixon, and the latter's influence on Gladstone, was drawn on by Fitzpatrick to explain the dismissal. In her words, Nixon "saw himself as a Becket of the Southern Hemisphere, protecting the church from the encroachment of the secular power, in the form of the governor. He appears to have been constitutionally incapable of grasping that...instead of one established church there was three, whose ministers were all paid from the colonial revenue." K. Fitzpatrick, "Mr Gladstone and the Governor: The Recall of Sir John Eardley-Wilmot from Van Deimen's Land, 1846" Historical Studies 1:1. April 1940, 35.

75 Cited in Selleck, James Kay-Shuttleworth, 145. Gladstone did, however, acknowledge the limitations of the sectarian system, initiating a major administrative overhaul of Anglican school administration which seemed to appropriate some of Shuttleworth's own ideas about educational governance. The creation of boards, inspectors, and a centralizing training school was a significant shift from a system founded on the discretion of the local clergy.
William Denison, who supported Anglican control and was a proponent of local self-government, to replace Eardley-Wilmot as Governor of Van Deimen’s Land.\(^76\)

Upon taking up his Governorship, Denison moved to dissolve the central Board of Education and the British and Foreign School model instituted under Franklin, proposing in 1848 to establish a system of local boards funded through a poll tax. This was an unpopular decision since the outgoing system, in the words of the *Colonial Times*, had the “concurrence of the general community.”\(^77\) Denison justified decentralization by arguing that “the expenditure under this system [has] been found to be very large in proportion to the number of children receiving benefit from the outlay.”\(^78\) This idea was contained in Denison’s 1848 Education Bill, which proposed a district rate to pay schoolmasters for elementary education and the operation of a normal school. The grant to the Board of Education would be diminished, reasoned Denison, because local supervision could not be maintained without some pecuniary incentive.\(^79\) The reality was that Denison had ceded to pressure from the episcopacy to regain control of the public school system through a scheme that relied on localized authority. Denison argued that the revenue of the colony was inadequate to fund a system monopolised by the Board. While a practical measure, this was also a defence of ‘free trade’ and local self-government:

such a system of dependence upon Government is an evil of great magnitude, – it cramps the energies of the people, rendering them indifferent to those benefits, to which, if purchased by their own exertions, they would attach a real value. It necessitates the adoption of some definite system of government which, while it may be sufficient for the wants of one District, may be altogether opposed to the wants and wishes of the inhabitants of another; and it is certain to place the Government at a variance with one or another, if not with all of the religious bodies which take an interest in the subject of education.

Denison hoped that his Bill would, “by placing the whole control in the hands of the people themselves. relieve the Government from a responsibility which it ought never to have been

---

\(^76\) Denison’s complicity in Anglican controlled education was shown by his appointment, in 1852, as patron of the Tasmanian Missionary Society, an Anglican group dedicated to the “conversion and civilization of the Australian aborigines, and the conversion and civilization of the heathen races in the islands of the Western Pacific.” Cited in N. B. Storey, *A Year in Tasmania* (Hobart: 1854), 134.

\(^77\) *Colonial Times*, July 20, 1849.

\(^78\) *VPLCVDL*, August 9, 1849.

\(^79\) *VPLCVDL*, March 9, 1848.
called upon to support." By adhering to the free trade principle, the expense of district schools would be “thrown upon the inhabitants for whose benefit they exist.” Responsibility to collect and control local funds was to devolve upon a Committee annually elected by rate-payers. The Committee was to nominate schoolmaster, design the curriculum and have a general veto over school policy. While the Lieutenant-Governor was required to sanction any dismissal of a schoolmaster, appropriate funds for a normal school, and appoint an inspector to check any “glaring misconduct” on the part of school committees, this was to be the limit of central control. Unwilling to levy a property rate which would, like the poor rate in England, put the greater burden for funding on large landowners, Denison suggested a uniform tax which would be specifically devoted to the ‘Establishment and Maintenance of Schools’.

However, with the instalment of Earl Grey as Secretary of State, the Home Office displayed less confidence in the operation of local government in the colonies. Grey agreed in principle with the concept of local management but doubted “the expediency of creating a multiplicity of local divisions and local authorities...considering the indisposition of...municipal administration in Van Deimen’s Land.” Having experienced the consistent opposition to District Councils in New South Wales, Grey had reworked his approach to colonial political development. While he hoped to transpose the municipal reforms embodied in the 1835 Municipal Corporation Act, the Secretary of State had since become mindful of the peculiarity of Australian political culture. Responding to Denison’s proposal to devolve administration to local communities in the Education Bill, Grey responded by urging him to “combine...Municipal functions under the same office” since “any division of labour that may become necessary will be easily provided for by the appointment of separate committees.” Therefore, it should only be necessary to “create some local authority independent of the general government.” This faith in administrative fortitude of ‘general government’ would, as will be illustrated below, continue to subsume the claims of municipal and local self-government.

80 VPLCDL, March 9, 1848.
81 VPLCDL, March 9, 1848. Denison was to hold to his belief in the efficacy of a local rate. Writing to George Rusden in 1853, Denison stated that the “funds for the full development of an education system” should be “supplied by a special rate or tax in preference to an annual vote for the general revenue.” The amount raised would then bear a “constant ratio to the population and the educational wants of the community.” In addition, he reasoned that “if a school is supported by a local rate the people who pay that rate have a right to a voice” in the management of the local school. ‘Denison to Rusden’. G. W. Rusden – Letters Received. August 16, 1853. ML Doc 2293.
82 Lieutenant Governor’s Inward Despatches. December 25. 1848 (TSA, v. 84, 439).
Denison's proposal for a local levy was ultimately rejected in the Council, causing the Governor to opt for Gladstone's penny-a-day scheme. This fuelled increasing opposition to Denison's policies, particularly from centralists who argued that teaching salaries would decline, as would the quality of instruction, curriculum and general inspection. Thomas George Gregson, the prominent parliamentary and education reformer, was the main actor in the ensuing denunciation of a system he called “penny wise and pound foolish.” When addressing the legislature on the 'vexatious' education question, Gregson claimed that “it is the deliberate opinion of this Council that the existing school arrangements are not calculated to meet the condition and wants of the community; and that no system of public education which contemplates giving instruction in particular or sectarian religious doctrines, can be generally beneficial or acceptable.” This was, in addition, an attack on Bishop Nixon and the Clergy who had employed convicts as schoolmasters and who Gregson linked with convictism and the increasingly unpopular system of transportation.

The acrimonious transportation debate helped to catalyse the constitutional fissure occurring within Tasmanian political culture. The intention of the Colonial Office to maintain the island as a 'gaol for the Empire' was shown when the 1842 Act creating a two-thirds elected Legislative Council in New South Wales was not extended to Van Deimen's Land. This served to inflame anti-transportation sentiment, and to turn Tasmanian liberals to the discourse of penal reform, constitutional reform and systematic colonisation as expressed by Maconochie and the 1838 Molesworth Committee enquiry into transportation. Describing the two main characteristics of “Transportation as a punishment” as “inefficiency in deterring from crime, and remarkable efficiency, not in reforming, but in still further corrupting those who undergo the punishment”, the committee argued that these “qualities of inefficiency for good and efficiency for evil” were “inherent in the system, and therefore “not susceptible of any satisfactory improvement.” In its place, anti-transportationists began to demand a reformatory system of penal discipline which would utilise emerging institutional technologies of moral regulation such as the penitentiary and a comprehensive system of public education. Throughout the middle century there was a

\[83\] VPLCVDL, August 30, 1849. Arriving in 1821 as a free settler Gregson then lobbied for the administrative separation of Van Deimen's Land from New South Wales which occurred in 1824. A fierce critic of Arthur, the magistrates, and the clergy, Gregson lobbied for trial by jury and representative government, especially through his newspaper the Colonist. His assiduity led to Arthur's recall back to London in 1836. After gaining the respect and patronage of Franklin. Gregson was appointed to the Legislative Council in 1843 and consistently campaigned for free, secular, and compulsory education.

\[84\] VPLCVDL, August 27, 1849.

\[85\] Transportation Committee of the House of Commons. 1838. 272.

\[86\] See Mathew B. Hale. The Transportation Question: or. why Western Australia should be made a reformatory colony instead of a penal settlement (Cambridge: Macmillon & Co., 1857). 11, 35.
profusion of literature that argued, in relation to the reform of the criminal code, that only “compulsory State Education [could] stay the moral pestilence which now threatens to become confluent amongst us.”

As the head of the Norfolk Island penal colony and observer of the ill-effects of penal discipline in Van Deimen’s Land, Alexander Maconochie developed a comprehensive critique of the British criminal law that ranked him, along with Beccaria, Bentham and Richard Whately, as one of the most influential nineteenth century theorists on penal reform. The Mark System of prison discipline devised by Maconochie was designed to give “prisoners an interest in their industry and general good conduct, thereby giving them beneficial thoughts and habits” by conferring marks or wages for punctuality, obedience, attention, usefulness and so on. Maconochie’s ideas held a particular attraction for Tasmanian theorists, legislators and educators. Frederick Maitland Innes, for instance, the prominent journalist and politician who devoted considerable energy to the reform of public education and prison discipline, digested much of Maconochie’s theory of convict management, expounding these ideas in a treatise titled Secondary Punishments, published in Hobart in 1841. Therein, Innes addressed the problem of “how to punish so as to do good; to punish with a just measure of severity so as to reform the

Paraphrasing the very ‘enlightened’ Lord Brougham, Hale insisted that it was “the duty of the Government to provide more ample means for reforming criminals. The gaol must be considered as a moral hospital, and its inmates treated rather as patients than as criminals.” From the Times, August 2, 1856: printed as an abstract of a paper read before the National Reformatory Union.

In England, the Times noted that “The principle that the convict should be detained until by industry and good conduct he has earned his right to be free was first enunciated by Archbishop Whately; but it was developed into a system, and thus rendered capable of practical application, by Captain Maconochie.” A. Maconochie, Prison Discipline (London, 1856). Maconochie opposed the “severe suffering” and “vindictive” punishment employed by Arthur, arguing that “Reform” and “Self-Command” could occur through the “exercise and cultivation of active social virtues.” A. Maconochie, General Views Regarding the Social System of Convict Management (Hobart: 1839). While undoubtedly influenced by Bentham’s ideas of penal reform, Maconochie was keen to improve what he believed to be outdated aspects of Benthamite penology. This is a complex debate, and it could be argued that Maconochie misread some of Bentham’s work when he said that the later considered criminals “objective agents, capable of being acted on to any extent by the external impulses...rather than highly subjective agents, with strong wills and passions of their own.” Bentham’s influence had therefore caused “improvements in discipline” to be “identified with improvements in accommodation and superintendence.” This was due to the fact that Bentham “considered his subject in the abstract, and in carrying out his principle disregarded the friction to which in practice it would be subjected.” A. Maconochie, Comparison between Mr Bentham’s views on punishment, and those advocated in connection with the Mark System (London: 1847).

Maconochie, Prison Discipline, 25.
criminal and prevent the repetition of the crime.” Having worked initially at the Courier upon his arrival in Tasmania from Scotland in 1837, Innes also wrote for the more liberal Observer, the Cornwall Chronicle and the Tasmanian, which was established by Henry Melville, and which enjoyed the patronage of Maconochie. Previously, Innes promoted the need for secular, state administered education in the publication of a Mechanics Institute lecture On the Advantages of the General Dissemination of Knowledge (1837). After serving on the Southern Board of Education in the late 1850s, Innes was also a member of the Council of Education, a commissioner on the 1867 Royal Commission into Education, a guardian of the Queens Asylum, prominent in the Ragged Schools Association, and commissioner on the enquiry into the New Norfolk Asylum. 90 The interest which Innes and Maconochie – along with Gregson, who openly consorted with the latter in opposition to the ‘Arthur faction’ – shared in public education showed that while prison discipline was the final link in the chain of reformatory governance, the first and arguably the most important would be the school. Maconochie suggested that comprehensive state schooling would, in addition to resulting in an “improved character...diffused amongst the population and increased power gained by the Government in recovery from crime”, be “best met by a liberal encouragement on the part of the Government and the Legislature extended to infants schools of all denominations.”91

Maconochie’s dual prescription for penal and education reform was reflected within simultaneous debate over the education question, transportation policy, labour reform and the ‘struggle for self-government’ in mid-nineteenth century Tasmania. Since disciplinary reform would require a significant re-invention of institutional and governmental organisation, these issues were linked to broader constitutional debates which are not reducible to an economic struggle between the urban liberals and the colonial gentry. Yet the latter view predominates within the historiography. Townsley, Robson, Roe, Hartwell and others generally concur that the Whiggish rites of enlightened political philosophy found voice among the independent farmers and ambitious merchants who, under the rhetoric of ‘no taxation without representation’, vilified the ‘Whitehall autocracy’ of the nominated Legislative Council and demanded control of colonial revenue.92 Interest in representative government was not therefore linked to abstract constitutional matters, and reform of the colonial state was an expedient designed to appease the economic or ‘moral’ demands of a new liberal order. Of foremost concern was the need to increase administrative independence from a Colonial Office bent on

90 See C. M. Elliot, “Frederick Maitland Innes; a study in liberal conservatism” (B.A. Hons Thesis, University of Tas., 1964).
91Maconochie, Prison Discipline, 28.
92This was the rallying cry of the Patriotic Six who opposed Lieutenant Governor Wilmot’s attempt, in 1845, to improve trade by imposing direct taxation. Townsley, The Struggle for Self-Government, ii.
ensuring that Tasmania remained a repository for the criminal and pauper classes. From this perspective, constitutional debate was limited, in the words of The Cambridge History, to “obtaining self-government in local matters [rather] than in establishing the principle of ministerial responsibility.”

Hartwell notes that while transportation was morally reprehensible, it was also rejected for economic reasons, with the free labourer opposing the increased competition of convict workers since it diminished wages and reduced opportunities for employment. Indeed, it was Maconochie, writing in 1838, who argued that “Free labouring immigrants have been almost universally disappointed. They have found the openings to useful and profitable exertion few, and very difficult to enter.” Accordingly, transportation would have to cease in an effort to quell the population drift from the colony caused by the low price of labour. Like NSW, Tasmania’s urban middle-class had become as conscious of its economic disadvantages and of its political subordination to the conservative Legislative Council.

Of course, the latter were keen to continue transportation to complement Tasmania’s depleted cheap and free labour market, but also wanted self-government to abolish Crown control of land and revenue. Yet, while liberal sentiment ultimately prevailed, the emergence of centralized education, the ending of transportation and the establishment of responsible government would not have been possible without the rejection of contractarian and rights based theories of government. Maconochie, Melville, Innes and Gregson, while each attempting to combat imperial and establishment authority, were ensconced in a broader debate surrounding the foundation of colonial law and government. The reform of secondary punishment, of schools, or municipal government, demanded that the secular state eschew theories of minimal government and the separation of powers and embark on a more positive and integrated relationship with civil society.

The transition towards an interventionist, ‘absolutist’ and centralized theory (and practice) of parliamentary government can be isolated within the some of the literature bent on discrediting the transportation policy of Governor Denison. Warning the “fellow-colonists of Van Deimen’s Land” not be “duped” by the Governor’s argument favouring transportation, one pamphlet argued that it was “To him you owe it that your fair Island is still pointed at by the nations as THE CESSPOOL OF THE EMPIRE.”

Following a decade of economic depression, the ‘stain’


95 This sentiment is well described by Irving in the context of NSW: see T. H. Irving, “The Idea of Responsible Government in NSW before 1856”.

96 “Sir William Denison and the Colonists of Van Deimen’s Land”, 1849.
of convictism served to entrench the social and economic status of the island. The pamphlet expressed particular contempt for Denison’s constitutional worldview as contained in his dispatch to Earl Grey of August 14, 1848:

A conviction, I have reason to believe, is gradually forcing itself upon the minds of the population, that an alteration must inevitably take place, not only in the system which has hitherto been pursued by the government towards them, but also in that by which they have been accustomed to regulate their actions as members of a community. The government having had, till very lately, means of one kind or another at its disposal, either labour or money, has been in the habit of affording assistance to the settlers in a variety of ways; the consequence is...the people have become so accustomed to look to the government to help them in every case which involved the expenditure of money or labour, that they have nearly lost their habits of self-independence which are most essential to their prosperity, and without which it WILL BE DIFFICULT, if not IMPOSSIBLE, to carry into efficient action those FREE INSTITUTIONS for which they have been so anxiously petitioning...All matters of a local nature should be left entirely to the efforts of those people whose interest it is to carry them into operation. The government only exercising such a general supervision as may be necessary to provide against the waste of time and means which may be caused by the ignorance and incompetence of the agents.97

In an effort to justify a greater delegation of local control, Denison bemoaned the juxtaposition of a diminishing culture of Saxon self-reliance and increasing demands for government action. This conformed to Denison’s opposition to majority, democratic government and his advocacy of a nominated upper house that would guard against ‘mob rule’. Denison’s dispatch of November 4, 1848 specifically warned against giving the franchise to “a lawless and immoral population” since the “difficulty of governing and controlling the colony will be enhanced ten fold.”98 This was a very mercantilist notion of colonial administration, advocating laissez faire government under a dispersed system of judicial and municipal control. However, as the 1853 report on the new constitution was to affirm, constitutional reformers, dominated by the liberal faction of educational centrists and anti-transportationists including Gregson, T. D. Chapman, H. S. Chapman and Innes, were bent on establishing a system of party or cabinet government that could not be frustrated by a nominated and largely conservative upper house.

97 ‘Denison to Grey’, August 14, 1848, in “Sir William Denison and the Colonists of Van Deimen’s Land”.
98 ‘Denison to Grey’, November 4, 1848, in “Sir William Denison and the Colonists of Van Deimen’s Land”.
Returning to Gregson’s critique of Denison and his penny-a-day scheme, the former was quick to argue that reliance on local fund raising lowered teaching standards, not only due to the want of government inspection, but the “penurious” salaries that were often generated. While Gregson had been a member of the ‘Patriotic Six’ who walked out of the Council in opposition to a Eardley-Wilmot’s taxation bill designed to raise funds for the maintenance of police and gaols, he supported direct taxation under a the tutelage of responsible parliament if the funds were to directed to state schools, and particularly teacher salaries. He continued that the general absence of literacy and numeracy among the convict and emancipated population put a heavy demand on the Tasmanian school system, meaning that “If any children of the world required the fostering care of the state, they were the children of this colony.” Accepting that the British Parliament would not fund colonial schools, Gregson proposed a system of school management which would avoid sectarian conflict and ensure a comprehensive system of ‘moral, physical, and intellectual’ training. On the matter of curriculum and teaching, Gregson proposed that the British and Foreign School Society model be re-introduced and that a normal school be established and funded from the public revenue.  

Denison responded by arguing that the government could not afford to increase teachers salaries, and that the penny-a-day system should be further supplemented through parental contributions rather than from the general revenue. In response, Gregson launched into an extended Council address which lauded the cosmopolitan status of national and secular schooling: “The subject of education has for a very long period engaged public attention, and it is now one of the principle topics of the day in the great world. There is scarcely a state in Europe indifferent to the subject, and I know no more gratifying or instructive occupation than pursuing the various and enlightened reports upon elementary or early moral education which are constantly issuing from the press.” These reports had affirmed “the abundance of evidence” in Tasmania “which points out clearly the sad consequences of the neglect of early moral culture.” Quoting Locke, Gregson was able to confirm the social-psychological benefits of ‘comprehensive’ instruction, and to demonstrate the need to deny the convict class, who instead of trained and qualified teachers were used to fill a dearth of school instructors, any role in public schooling: “The little or almost insensible impressions of our tender infancy, have very important and lasting consequences; and there it is, as in the fountain of some rivers, where a gentle application of the hand turns the flexible waters into channels that make them quite contrary courses.” This invocation of Lockean empiricism had become a central tenant in the justification for state control. and illustrated the influence of philosophical radicalism in the

---

99 *VPLCVDL*, August 27, 1849.

100 *VPLCVDL*, August 30, 1849.
colonies. For Gregson, the inadequacies of social and political development in the mid-nineteenth century were largely attributable to the educational neglect of the child. The mind of the colonial youth had “not been made obedient to discipline and pliant reason, when at first it was the most tender, most easy to be powered” due to the irregular provision of public instruction. Thus, the only means to ensure the proper social and moral regulation of the rising generation was to unite all classes in the one great cause of elementary education...Education ought everywhere to be a matter of state policy, in order that proper methods and qualified teachers should be attainable. The elementary parts of it should be accessible to all orders of the people without money or price – payable in our present circumstances from the colonial revenue...Elementary education, with moral tuition, ought to be entirely free, because by no other method can the whole of the community be brought to school, and because without the whole of the community being educated, the great end of education, as a system of moral police, would be defeated.

This speech continues to hold a central place in the annals of Tasmanian education reform, having been published as a pamphlet soon after it was delivered in the Council. It remains an impressive attempt to traverse issues of state theory, and of a social economy concerned with the problem of population as opposed to individual right. While purveyors of local self-government in Britain such Toumlin-Smith, Baines and Unwin had successfully stifled any attempt to turn the British state into a ‘system of moral police’, Tasmania’s unique history of social and political development gave particular force to the notion that a centralized, accountable and rigorous state apparatus should administer the moral and intellectual ‘building blocks’ of a liberal society. If it could be assumed that “education ought everywhere to be a matter of state policy”, reasoned Gregson, then “surely this colony, of all others, has the strongest claim upon the parent state for support.” Tasmania was thus a microcosm of the moral and physical evils that had torn at the fabric of British society, and it had become the model social, political and constitutional laboratory.

\[101\] *VPLCVDL*, August 30, 1849. Gregson’s Legislative Council speech was published as a pamphlet. See *Speech of Thomas George Gregson, in the Legislative Council, on the State of Public Education in Van Diemen’s Land* (Hobart: 1850).

\[102\] *VPLCVDL*, August 30, 1849.

\[103\] *VPLCVDL*, August 30, 1849.
The Advertiser, an avowed supporter of Denison, was wary of the centralizing implications of Gregson’s speech, arguing that the Council should not “prevent the majority of the people carrying out their own views as to the education of their children.” The former dwelled on the “danger of neglecting the influence, and despising the precepts of religion”, hoping that Denison would respond to the weight of Anglican sentiment. This line of reasoning, which projected a ‘negative’ concept of state power, was losing momentum in face of the increasing tendency to link political modernization to state controlled education. The importance of this link was outlined in a letter to the Colonial Times:

Considering the democratic republic as the most perfect form of legislature and government when men are prepared to receive such a boon, but the most accursed when the populace are ignorant, immoral, prejudiced, and ferocious, it necessarily follows that more a nation becomes educated, and raised, in the scale of human kind, above vice and consequents, the nearer they may safely be permitted to approximate towards the acme of political freedom.

The argument that modern democratic government was built on a well-educated citizenry demanded a reformulation of classic rights theory. Thus, in the same letter to the Times, it was argued that the individual, having “surrendered a portion of his savage rights” and having the remainder “secured to him in perpetuity”, should determine by aggregate “what measures of security ought to be adopted, and who should be entrusted to carry them out.” In this way, an elected and responsible government should ensure the ‘general good’, or the ‘security’ of the ‘aggregate’ population through the provision of a centralized educational apparatus. The state makes this decision in its role as the ‘guarantor’ of personal liberty rather than simply was ‘protector’ of their individual or ‘savage’ rights.

3. The decline of localism: towards a ‘secure’ system of educational governance

These constitutional ideas, while contained in the sub-text of complex debates surrounding education, transportation, municipal government and parliamentary reform, layed the broad framework through which ‘irrational’ modes of rule such as the penny-a-day scheme could be devalued and reformed. The catalyst to such constitutional and institutional change was often the expert and accountable opinion of extra-parliamentary committees and reports. Thus, the

---

104 Advertiser, September 14, 1849.
105 Colonial Times, July 17, 1849.
106 Colonial Times, July 17, 1849.
107 The influence of the parliamentary select committees as vehicles of modern technologies of
re-introduction of a secular Board of education in 1853 was in large part the outcome of the 1852 Report of the Inspector of Schools. Authors by Thomas Arnold ‘the younger’, the son of Thomas Arnold of Rugby, who was employed by Denison as the first Inspector of Schools in 1849, the report replicated the conclusions of Chief Inspector William Wilkins in New South Wales, observing that the penny-a-day schools were poorly attended; school buildings were in a state of disrepair; teaching standards were low; and that the ‘visiting’ clergy and local patrons irregularly inspected and supervised the schools. Arnold described how in the “relatively large” town schools the “daily government penny furnished a moderate provision”, however in the “thinly populated districts the grant was a mere starvation pittance.” Furthermore, “as there was no local management (except that of the clergy), there was little local interest; a clergyman of arbitrary temper could lead his teacher the life of a dog, while a weak clergyman would overlook the teachers sending in doubtful returns to the Government.” Arnold suggested that school infrastructure be entirely funded by the state, and that a non-denominational central board be established to oversee the system in the hope of avoiding sectarian disputes. Arnold’s report inspired a Select Committee on Education whose recommendations to establish a Board of Education, to abolish the penny-a-day system, to renounce aid to denominational schools, and invest all public funds in a general system—were adopted without debate or dissension in the Legislative Council in 1853.

As described in our earlier historiographical critique, scholars such as Macpherson, Reeves, Howell, Axon and Bertram have generally focused on the relative importance of ‘seminal’ figures such as Denison or Arnold when describing this pivotal period of educational reform. As a result, broader intellectual and constitutional debate has been relegated to the periphery of a story about individual character and influence. While Macpherson represents the most recent attempt to ‘revise’ Thomas Arnold’s hegemony within the annals of Tasmania’s liberal educational heritage, we are still to garner insight into the interrelation between education and liberalism as a system of law and government. Furthermore, how is this relationship educational governance—utilized most ably by educational pioneers such as Kay Shuttleworth—has been detailed by Ian Hunter. See I. Hunter, Rethinking the School (Sydney: Allen & Unwin, 1994), 70.


Report of the Inspector of Schools, 1852’, Minutes—LCVD, 1853, no. 45


For him, it was Denison who responded most effectively to the changing educational needs of the colony. The fact that Bishop Nixon and the episcopacy were becoming politically divided, that the Secretary of State Earl Grey was less amenable to the Establishment cause than Gladstone, and that the
replicated in the development of mid-nineteenth institutions such as banks, hospitals and prisons. Each of these social and moral ‘technologies’ required a re-invention of the science of government away from its predominant concern with the social contract, the sovereignty of English law, and in the Tasmanian context, the narrow focus on penal administration.

By the mid nineteenth century, this notion was being expressed across the political spectrum. In 1850 the ostensibly conservative Courier complained that “the art of government may be acquired without a specific training”, relying purely on having an understanding of the “common business of society...The main official business of this colony is purely convict. When this department expires, public matters will subside into a narrow compass.” The same editorial began to acknowledge that the political and constitutional relevance of the established church was in decline. Indeed, there had been a “revolution” in British policy, meaning that the “relations of the State have been greatly modified.” The Anglican press admitted that “The grand idea of an establishment, as a recognition of certain principles able to make men wise to salvation, have been cast into the lumber room of antiquities.”

Eschewing the constitutional linkage between church and state which underpinned Denison’s system, it was proposed that the “pitiable” penny-a-day scheme be replaced with a well structured and politically accountable system of municipal school administration. The former attempt to regulate teachers salaries failed to induce suitably qualified school staff and it was suggested that the collection of a local cost of maintaining independent schools had become prohibitive, points to the fact that the church schools atrophied through circumstance and not some “anti-Anglican plot” perpetrated by Arnold. It was Denison’s controversial transportation policy, and not Arnold’s vision as an inspector, which, argues Macpherson, more likely precipitated the establishment of a central board. In 1852 Denison had forwarded an Education Bill which included his earlier proposals for a local levy. Macpherson believes that it was rejected, and a centrally funded system put in its place, because Denison’s pro-transportation stance made education “the public beating stick” through which the vigilant anti-transportation lobby could deride the Governor. It was only out of spite that the anti-transportation lobby in the Council came “up with a viable scheme of its own.” Macpherson, “Thomas Arnold the Younger”, 34 & 37.

Educational centralization was complicit, therefore, in a proliferation of social and moral technologies aimed at securing the working and ‘industrious’ classes against the taint of disorder that stemmed from a constitutional tradition of minimal government. Thus, the primary goal of the Hobart Town Savings Bank, first established in 1845, was the “encouragement of frugality, prudence, and industry in the community, and more particularly to enable the working classes to improve their circumstances.” The saving bank was a means to obtain “due self-respect and independence of character”, thus promoting self-government and moral regulation through institutional practices. “Hobart Town Savings Bank Deposit Book 1860”, Cox Papers (TSA. NS 1640/6).

114 Courier, May 15, 1850.
113 Courier, May 29, 1850.
school rate would solve this problem. Referring to the district system in the United States, the *Courier* argued that public officers responsible for education would be held accountable through local-democratic procedure: “He convoked the freemen of the district—states the necessity for a school in a given locality...a rate is agreed upon—every man pays his share—every child is entitled to the benefit; and in no country in the world are there so few native born children destitute of education as in the older American States.” This was an attempt to justify some level of municipal yet secular control, the *Courier* urging that “Schools will never be effectually established until they are the work of the people.” It was argued that the state could not afford to provide all funding for public schools, and furthermore, that Denison’s proposal to build a Normal School was as yet impracticable.\(^{116}\)

By proposing a compromise system of local yet secular governing bodies, the *Courier* embodied an increased willingness to diminish Anglican control in the lead-up to Denison’s 1852 Schools Bill. It was not surprising then that, when drafting the latter legislation, Denison was willing to repeal all state support for religious schools and place it under the exclusive discretion of the Board of Education. Archdeacon Davies responded by emphasising the importance of the educational efforts of the Church of England. The statistics showed that 49 out of 72 public schools in the colony, educating 2182 out of 3352 children, were immediately connected with that church. Davies added that no public expression of dissatisfaction with the management of these schools had been presented in the form of a petition to his Excellency or the Legislative Council.\(^{117}\) Yet the assiduity of anti-denominational sentiment was increasing apparent, not merely due to inadequate teaching salaries or school accommodation, but a concerted attempt to make education an integral component of the legislative state.

Denison’s Bill was to give school districts discretion over the content of instruction and the appointment of teachers, and the management of a local tax to fund the schools. The urban liberals and anti-transportationists including Thomas Chapman, Richard Dry and Gregson opposed the clause for a broad poll tax because it would breach the principle of taxation with representation. The fact that the police magistrate would be responsible for the collection of these taxes was a further disincentive since the efficiency and accountability of the magistrates was in question.\(^{118}\) In addition, Chapman, as an expression of the diminishing support for local

---
\(^{116}\) *Courier*, May 29, 1850.

\(^{117}\) Cited in “Reports and Proposals Relating to an Education System for the Colony 1853–55” (TSA, CB 3/2).

\(^{118}\) William Gunn, once the Superintendent of Convicts and now the Police Magistrate of Launceston, was singled out for misconduct in the Report of the Select Committee of Grievances. See the *Guardian*, March 26, 1851.
administrative units, wanted to amend the legislation so as to avoid the creation of school
districts, arguing that a convoluted system of police and electoral districts already existed.
Those retaining faith in self-governing schools, such as Adam Turnbull, the Chairman of the
Land Board, opposed Chapman's amendments to the Schools Bill on the grounds that it
contravened the "principle that education should be conducted under the influence of a system
of local administration." Turnbull considered it indispensable that schools should be
"supported by local imposts", believing in the efficacy of a local tax since "nothing could be
more injurious to the community than to support such schools permanently from the public
revenue." Education should not be left entirely in the hands of the state, argued Turnbull,
because

in all such matters the people should be taught to rely on themselves – to teach them to
look to the government for aid under such circumstances, was to strike at the root of that
feeling of independence, and that energy of character which, from the commencement
of its settlement in Britain had distinguished the Saxon race...men became energetic and
self-relying because they had to draw from their own resources, and not from those of
the State, and such was now the duty of the colonists.

Speaking at length of the evils of absolute monarchies in Europe, Turnbull pre-empted the
Levianesque potential of colonial state formation: "Look at Austria, for instance, where
government out of its own funds, supplied the means of education and consequently controlled
it." The affect of centralization on the continent had been to establish a paternal relationship
between the state and citizen. The affect of this was "to do away with the spirit of liberty in that
State – to destroy the energies and the independence of the people." Turnbull urged the Council
to reproduce the "British character" and avoid a situation where "Government is everything; it
controls all, it regulates all." To look to the government "to do everything" would be to threaten
the permanence of British institutions and it was "repugnant to the feelings of every British
subject to compel any man, as in the despotic States, to send his child to school." This
orthodox faith in the minimal government was replicated in England in a pamphlet written in
response to John Russell's Education Bill of 1852: "[Can] any measure for promoting education

\(^{119}\) VPLCVDL, July 21, 1852. Turnbull had a contrasting political career and while he initially supported
Denison in the continuance of transportation he ultimately sided with Henry Samuel Chapman. Both
resigned their office yet Denison refused Turnbull's resignation and he was forced to vote with the
Lieutenant Governor in a motion to stop cessation. Turnbull consistently supported the doctrine of local-
self government and he worked closely with the Campbell Town community as a founder of St Andrew's
Presbyterian Church and the superintendent of its Sunday school.

\(^{120}\) VPLCVDL, July 21, 1852.
by compulsory support – be it in the form of local rates locally levied and applied – or of grants of public money – be instituted, without invading the freedom of the individual, the responsibility of the parent, and the proper functions of obtaining the governing power...shall we, in this age of centralisation and institution-mongering, abandon all at once our self-reliance?" Yet, while proponents of local self-government ultimately succeeding in blocking these early attempts to establish legislative control in Britain, the argument against 'institution-mongering' was having less influence in the colonies.

Thomas Daniel Chapman gave evidence to the Council about his experience as a member of the Board of Education, particularly the failure of local communities to cooperate within administrative districts. Turnbull did not agree that this argument justified centralization, believing that “more diversified forms of administration” were possible under local taxes that would induce parents to hold local administration to account: “By calling upon everyone to contribute, every man is taught that it is his duty to promote education.” In response, Gleadow insisted that local supervision was inadequate because education had become a “national matter” and, accordingly, schools should be funded it from the general revenue. Gleadow also disagreed with the opinion of the Attorney-General, Valentine Fleming, who argued that the education question should be decided by majority opinion. If the opinions of the majority were binding on the minority, then the Church of England would again control schools and the educative demands of the ‘general good’ would not be fulfilled. Gleadow here exhibited a

121 Charles Robertson, *Objections to a System of Free Education for the People* (London). EP SLV: not dated but most probably a reaction to Russell’s Bill of 1852
122 John Gleadow, a lawyer and the member from Launceston, was prominent in his agitation for responsible government, his anti-transporation stance, and his influence in ending state aid to religion. An agriculturalist and philanthropist, Gleadow was complicit both in the expansion of transport infrastructure – the development of roads, docks, and wharfs constituted a large portion of legislative debate and was supported most prominently by the urban merchants and liberals – and the development of secular state education. He held a place on the Northern Board of Education between 1857 and 1861.
123 This conception of government by the majority was implicit in Fleming’s contractarian view of a liberal state that should only act to uphold individual property rights. Thus, the “general revenue [is] raised for the purpose of securing the general objects for which all government existed – the protection of person, property, and rational freedom, which all have a right to enjoy.” Since “education is in the nature of a local object, [it] should no more be supported from the general revenue than objects of a municipal character, such as paving, lighting, &c.” *VPLCVDL*, July 21, 1852. Fleming, had supported Denison over the transportation issue and on the Lieut.-Governor’s advice was appointed Chief Justice in 1854. The anti-transporation and education reform lobby opposed the appointment and Gregson drafted a petition in protest. As Chief Justice, Fleming presided over the Hampton case and found in favour of the Comptroller-General.
utilitarian approach to policy making, exhorting reformers to first think in the national interest under the advice of professional and paid bureaucrats rather than the unconsidered impulse of majority caprice.

The arguments against localism were most ably supported by the recently installed Colonial Secretary, Henry Chapman. The expediency of school districts may have been applicable in England, but in a colony with shifting divisions of land and population, the scheme was unworkable. Further, while Chapman wanted to avoid the past excesses of autocratic rule, and agreed in principle with the idea of localism, it was nonetheless the duty of a responsible parliament 'to do for the people what they would not do for themselves'. A precursor to his pamphlet on parliamentary government, Chapman sharpened the constitutional dimension of the debate. If the government was to interfere in education it should only act in terms, not merely of a numerical majority, but the common good. While Gleadow argued that the majority should not have the power to coerce the minority, this was an expedient designed to ensure that Anglican interests would not have overriding influence over the legislation. Chapman, however, keeping faith with the conventions of responsible cabinet government, insisted that 'the act of the majority is the act of the whole.'

These efforts to deny the constitutional legitimacy of the Established Church were in part a reaction to the prolific spread of church controlled education. By 1851, the clergy had founded a primary and a Sunday schools in each of the settled districts and established grammar schools in Hobart and Launceston, causing the educational influence of the high-church to outstrip the state. However, by the mid-1850s the status and influence of Anglican education quickly receded. According to Powell, most Anglican primary school were closed by 1854, the Christs College at Bishopbourne went bankrupt in 1857, and by 1863, the year that Bishop Nixon resigned, only one-third of the Sunday Schools remained. This sudden decline was understandable since in the period 1847-53 "not one leading layman was won to the denominational cause." It was also a lack of political opportunism which, argued Powell, allowed the standard of Anglican education to stagnate after Gladstone and Denison had revived church influence within the public school system. As Chief Inspector of Schools, Thomas Arnold continually reported on the poor quality of Anglican instruction. Added to the

124 Chapman had a close relationship with Thomas Arnold, with the latter securing subsidies for the establishment of the Watchorn Street Ragged School in 1855. This followed Chapman's central role in founding the Hobart Town High School in 1850. See P. A. Howell, "Shovelling out", 65.
125 VPLCVDL, July 21, 1852.
continuing use of convicts as schoolmasters, the infrequent school visits by the clergy and the inferior standard of accommodation, these schools suffered an inevitable demise. While this is a point which historians of Tasmanian education have vigorously documented, the failure of denominationalism does not in itself explain the ultimate centralization of educational governance. Powell, for instance, gives little away about the conflicting constitutional discourses which framed the local/central debate.

It is important, therefore, to understand the decline of denominational schooling within the context of the general failure of municipal government, and the corresponding attempt to supersede laissez faire government with the idea an active and interventionist liberal state. While there was still hope that municipal institutions could be successfully introduced into the Australian institutional framework, it was generally understood that any system of local control should conform to a hierarchical and codified administrative system. When debating the 1852 Municipal Corporations Bill, the editor of the Guardian held onto the "Municipal principle", hoping it would ensure, not only that "rational liberty is fostered, and individual responsibility enlisted, but, also, that the whole governing body, being complete in its various details, the social, moral, and political organisation of society has a basis capable of resisting personal, or any sudden aggression upon its dearest privileges, and is thus essential to the consolidation of society, which should ever be constituted to the good of all." The great feature of the British constitution was that the due admixture of the various elements in the governing body sufficiently checks the growth of any one division to a preponderating degree: and in like manner the Municipal Institutions of the country are founded so as to regard the various interests of society; and each being duly represented, though the parts are separated, there is still an entirely and practical union so that the objects for which those institutions are intended succeed." 128

This apparent faith in the notion of checks and balances and the separation of powers was less an expression of local self-government than the need to implement an ersatz Municipal Corporations Act. It was hoped that municipal reform would contribute to a restructuring of a corrupt and largely unaccountable justice system since, as resolved by a series of public meetings regarding municipal government, it was proposed that an elected Mayor and fifteen alderman "should be the Chief Magistrate of the Peace for this island, and should possess and exercise within its limits all the powers of a Justice of the Peace for this island, and of a Police Magistrate." 129

128 Guardian, August 14 & 21, 1852.
129 "Municipal Government: Resolution of Public Meeting to be presented to the Legislative Council".
Following the lead of Earl Grey, the *Guardian* thus hoped to supersede the arbitrary authority of the local magistrate through an elected and accountable municipal body which formed the final chain of command down from the central executive.

Anticipating the adoption of a reformed Legislative Council through the Australian Colonies Government Bill – Tasmania was to gain constitutional parity with New South Wales whereby only one-third of the old nominee council was to be nominated by the Crown and two-thirds by the people – the liberal press hoped that the “New Assembly” would re-invigorate the organisation of police and “adapt it more satisfactorily to the wants and condition of the free community.”\(^{130}\) The “efficiency of the Magistracy” was also being questioned, yet the *Guardian* was not sure how yet to remedy “the great evil” of a system which maintained the arbitrary authority of the justices.\(^{131}\) While a strict regime of municipal accountability might placate these judicial abuses, the administrative localism which persisted in other state institutions like the hospital were to be resolved through direct centralization. On the matter of the public health, the *Guardian* objected to church control and argued that “as the Colonial Hospital is, in a manner, public property, we think the public ought to have some concern in its management.” It was suggested that a public commission of enquiry be established so that, “as regards an Institution of this important character, the utmost publicity be given to the mode in which its conduct and management are carried on.”\(^{132}\)

Concern about the ‘mode’ of government and its relation to the public sphere was typical of the general reaction to the 1852 Schools Bill. The issue of popular education had transcended issues of religious equality or clerical incompetence per se. and the debate became focused on the constitutional legitimacy of governmental organisation. Accordingly, a letter in the *Courier* written in response to the removal of government funding in the Bill argued that the “revenue is but the purse of the people” and “the Government is but the trustee.” The writer objected to the argument that local management of “this most difficult complex subject” would arouse “Saxon energies now dormant here, and be of good service to the right use of civic institutions.” Such a precept assumed that “the more a people are deficient of a sense of this great duty of education, the less the State should interfere in order to stimulate exertion and induce self-reliance”; or, put another way, it could be presumed that the “more ignorant and unenlightened” the lower classes

---

August 3, 1852. Cited in the *Courier*, August 4, 1852.

\(^{130}\) *Guardian*, March 26, 1851. Under the present system constables were appointed by the nominee council and appropriated half of the fines imposed for offences.

\(^{131}\) The *Guardian* published many accounts of arbitrary and over-zealous magisterial conduct, especially by the notorious police magistrate in Launceston, William Gunn. See August 4, 1852.

\(^{132}\) *Guardian*, July 28, 1852.
the “less they should be taught.” In conclusion, the writer opposed the Education Bill because the proposed uniform poll tax failed to account for income and class distinctions. By contrast, general and incremental taxation and the subsequent redistribution of wealth from the public revenue would allow the state to direct funds according to the national interest.\textsuperscript{133}

The force of this view inspired the\textit{Courier} to reject its earlier commitment to democratic localism, searching for compromises that would facilitate Anglican influence within a government controlled system. In a distinct turnaround, the\textit{Courier} declared that education “needs the vigilant inspection of the State.” Reacting to the clause for local taxation, it was denied that “you must supply a motive which does not exist; you must inflict a direct personal tax in order to create an interest in the subject.” Firstly, it was argued that such a system would compromise uniformity: “in one district you will have one system, – in another a different one, and the defeated parties will withdraw all inspection.” While local control was untenable, opposition to a uniform system funded from the general revenue meant that denominational schools, under the prescriptions of the Church Act, would be the best compromise. The\textit{Courier} then argued that Nixon’s original proposal to fund denominational schools according to the number of scholars attending would be the most equitable and efficient system. The former also urged the Council to re-examine the Anglican schools so that members could “discover the groundlessness of the complaints which have been raised against them.” Still, the Anglican press had recognised the obsolete and irreconcilable place of local self-government in Australian political development. If the church were to retain their institutional power they would have to join the program of political modernization. While in the 1840s the Episcopacy had demanded strict clerical and local control of education, the church establishment was now willing to assert that schools were “the province of the state.” Denominational school governance might retain autonomy on issues of general maintenance and administration, however, the central state should ensure, through a system of ‘vigilant inspection’, that all schools conform to centralized curriculum and funding arrangements. Mindful of this fact, the\textit{Courier} attacked the local taxation measures in the Education Bill through a parody of British political culture. Thus, Denison’s attempt to excite “our saxon energies” would require the “tax-gatherer knocking at our doors and polling our households at five shillings a head, to the great gratification of our Anglo-Saxon pride and the depletion of our Saxon purses.”\textsuperscript{134}

In late July 1852 the Education Bill was referred to a select committee, whose findings proved inconclusive. Thus, a fresh committee was appointed the following March, upon receipt of the 1852 Report of the Board of Commissioners, to formulate legislative changes. The outcome of

\textsuperscript{133}Letter to the Editor – \textit{Courier}, August 7, 1852.

\textsuperscript{134}\textit{Courier}, July 28, 1852.
the original Education Bill debate was well surmised in a Letter to the Courier: “it seemed to be the general, if not the unanimous opinion of the members of the Council, that public education is a matter of state concernment, and ought not to be given over to the operation of the ‘voluntary principle’.” The need for government intervention in Tasmania had become self-evident. Arguments which invoked the “bugbear of State interference”, as typified by the oft quoted Edward Baines, could not be justified in a penal colony most in need of comprehensive moral and vocational instruction for the rising generation. The letter then suggested that if the “principle of centralization is so far admitted, the following questions arise: 1. What shall be the central organ? the Governor acting by Inspectors – or a director of Public Education – or a Board of Education? and if a Board, how shall it be composed? 2. Shall the central organ, however constituted, be bound to administer all the schools on any one particular system... Or shall it be invested with large discretionary powers, to administer different systems according to different local exigencies?” Such concerns were a portend for the rapid deterioration of local autonomy. Accordingly, another letter to the Courier encouraged state interference and talked of the futility of local self-government:

would it be wise to require from a dispersed and disunited people, unpracticed in any local administration, or municipal privileges, who, it is alleged, have proved themselves by the school experiment utterly deficient in self-reliance, who look for help from the state when they should act for themselves, more than is required from our enlightened and better practiced brethren at home? To call upon them to carry on the superstructure of the social edifice before the foundation be laid – to expect from their unpractised hands the most elaborate and difficult work.

Debate concerning the relative merits of educational centralization was simultaneous throughout the eastern colonies. In March 1853, the month that a second Tasmanian Select Committee on education was appointed, a Victorian Select Committee released a report which addressed questions including the relevant benefits of the Denominational and Irish National systems; the

---

135 See E. D. Baines, Letters to the Right Hon. Lord John Russell, First Lord of the Treasury, on State Education (London: 1846). Baines feared that Russell’s Education Bill would take the “Education of the people into the hands of Government”, and furthermore, that “the Government undertakes to do for the people what they are able to do better for themselves. In each case, the effect of that government protection is to impair the exertions of individuals and classes. In each case, the habit of leaning on the government entails other unforeseen evils.”

136 Courier July 31, 1852.

137 Courier, August 14, 1852.
continuance of two distinct boards versus their amalgamation; and the “propriety of abolishing these separate and rival schemes, and substituting some other in their stead, which might appear to be better adapted to the wants and wishes of the colony.” Opinion as to the performance of the rival systems suggested that neither had successfully administered the schools under their control, and the report recommended that both systems be demoted from the annual estimates. As in New South Wales, the rivalry and hostility created by the dual system retarded the provision of uniform curriculum and inspection, a situation magnified by the fact that these boards were not wholly ‘responsible’ to the popular legislature. In an effort to correct this constitutional deficiency, the select committee recommended the adoption of a model of secular state schooling as outlined by the Committee of the Queen’s Privy Council. The latter described the model as follows:

The only system established by Government with regard to education is a system of inspection and pecuniary aid; schools founded and conducted upon the opposite principles are assisted by grants from the Committee of Privy Council on the easy terms of admitting the visits of Her Majesties Inspectors, and adopting such principles of management as shall secure their responsibility to the public without interfering with their independence: to this impartiality, or studied indifference with regard to modes, plans, machinery, and system, may be ascribed the acceptableness of the Government measures, and their efficiency in stimulating the patrons and agents of popular Education, in increasing its extent and improving its quality.

---

128 A pamphlet published in Melbourne supported a system based on the Irish National system “because it is systematic, proceeds on a well-defined plan, uses a given set of books, observes the same order and mode of selection of branches of instruction in every locality in Ireland, extending the course of instruction to new subjects according to the importance of the school or its proficiency.” Educational Pamphlets (Melbourne: 1857), 10. Indeed, there was a profusion of literature at this time extolling the benefits of a national system, and of the comparison between the Irish model schools, the French lycee and the Prussian schools. Cooke, for instance, also noted the virtue of the Irish system in terms of administrative responsibility: “The educational agency of the state is entrusted, in Ireland to a Board of Commissioners, appointed by the Crown, and responsible to Parliament for the due exercise of their functions... responsibility is regarded as the primary element in the right discharge of administrative functions, and such responsibility no voluntary association can ever have.” W. Cooke Taylor, Notes of a Visit to the Model Schools of Dublin, and Reflections on the State of the Education Question (Dublin: 1847). Among other works. Cooke also authored Report of the Industrial Schools of France.

129 Francis Murphy (Chairman). “Report of the Select Committee appointed July 8, 1852... upon the working of the present systems for the instruction of youth in this colony” (Melbourne: February, 1853).
The Privy council hoped to vicariously impose a more accountable, responsible and secular school system by making government support subject to “efficiency in imparting a sound literary and moral education, and the absence of compulsory rules for the attendance of religious teaching.” This liberalisation of state support was to be administered by a centralized Board of Commissioners of Education which would supervise all matters concerning public instruction, and conduct “the sole management of the funds voted by the legislature for that object.” In addition, the Board was to employ a chief inspector, three subordinate inspectors, and distribute aid on the satisfaction of conditions stipulated by the board – i.e. masters were to be paid according to performance and ability, funding was dependent on the continuing efficiency of instruction, and aid for building required that the property be vested in the board. 140 These measures were a forerunner of the highly utilitarian ‘Revised Code’ proposed by Robert Lowe and adopted by the English Parliament in 1862. Indeed, the revised code was the model appropriated when a central Board of Education was established in Tasmania in 1863. In this way, the notion that schools should be based on a professional, accountable and highly regulated system of governance were rapidly gaining currency in a colony whose scanty educational provision remained restrained by localised and irresponsible modes of social and political organisation.

The conclusions of the Victorian Select Committee added to the apprehension surrounding the second Tasmanian committee report, with the public and press vigilantly debating the preferred system to be adopted. The Courier, following its recent commitment to a national system, asserted that schools should be funded from the public revenue rather than a local rate, stating its “earnest protest against conceding to the parents of the children to be educated any control over the educational machinery.” Any such concession would “be fatal to the carrying out permanently of an efficient system.” Invoking the ‘duty of state’ and the paternal responsibility of the parliamentary sovereign, the Courier concluded its plea for a centralized system: “we urgently command this whole subject to the attention of the Legislature. They have too long avoided it. It is to be trusted, for the credit of the colony, that another session will not be suffered to pass away without the establishment of such a broad, uniform, and effective scheme as will remedy the lamentably inefficient state of things.” 141 By giving this concession to the state, the Anglican establishment, while in a reformist mood, was unlikely to have presaged the significant constitutional changes which accompanied these subtle shifts in educational administration.

140 Report of the Select Committee appointed July 8, 1852.
141 Courier. March 5, 1853.
After official receipt of the investigation of the Board of Commissioners, the Select Committee Report on education was released on September 28, 1853. Evidence supporting the failure of local and parental 'self-reliance', as evidenced by the Board report, was strongly emphasised:

Our recent enquiries have convinced us more than ever of the indispensable necessity of government taking an active part in providing the means for carrying out an effective system of primary education. The visiting of schools has been, with few exceptions, confined to clergymen; and the parents generally seem to take no interest either in visiting or in enquiring after the progress of their children; indeed in a large majority of instances they are precluded by their own want of education from taking any intelligent interest in that of their children.

For this reason, the Commissioners averted to the importance of centralization, finding it advisable to “re-construct the central department, to which the administration of the new system would be confided, in such a manner to give the greatest weight to its authority.” Superintendence of public education should then be entrusted to a central board consisting of members of both Houses of the recently formed Legislature. In addition, the committee advised that while attaching “considerable weight to the reasons which have been urged in favour of a Local Rate for the support of education, your Committee have, upon mature consideration, preferred to recommend that the necessary funds should be taken from the Public Revenue, and that 10 000 pounds per annum should be set apart for that purpose.” 142 These recommendations were embodied in the final Select Committee Report, which also proposed to enforce uniform and standardised curriculum and teaching methods through the certification and professionalisation of teaching staff and a scaled standard of remuneration. As an accountable and responsible administrative body, the Central Board could justify paying for these improvements from the general revenue.

Reference to the failure of localised and church based control contained in the report resounded throughout the liberal and anti-establishment press. The Launceston Examiner remarked that education, while a “subject of primary importance in every well-regulated state”, had in Tasmania succumbed to the “vested interests and priestly supremacy” which are the “greatest obstacles to enlightenment.” An outspoken critic of Denison and the High Church, the Examiner, under the ownership of John West, argued that the school system was a “wreck” due to “ecclesiastic interference”. “The plea of religion is a placable subterfuge; the real object sought is power, by the extension of denominational peculiarities. All this produces unnecessary strife and sectional divisions, which militate against the well-being of society.” If education was

142 “Report of the Schools Commission” VPLCVDD., August 17, 1853.
in the "hands of the people themselves", meaning a democratically elected parliament, then "schoolmasters would be maintained in the most suitable localities." As it was, the failure of ecclesiastic control left the onus on the parent who most often lacked the means to impart basic instruction.

The Examiner retained some faith in the traditional tenants of liberal individualism, advocating the 'municipal' control of school governance that predominated in the United States. Another virtue of the US system was the influence of progressive pedagogical techniques which, unlike Tasmania's culture of discipline based on terror and moral dogma, promoted moral regulation through the 'self-governing' capacity of the individual. Appropriating Pestalozzian ideas about 'affective' pedagogy, most of the eastern states in the US had outlawed capital punishment in the school. The Examiner remarked that "By his exemption from arbitrary power the boy acquires feelings and habits which abide with him through life." Furthermore, by allowing the child to learn through a process of emulation and 'self-government', the US school would facilitate the "perfection of national as well as individual character." This Lockean pedagogy had also begun to influence teaching methods in Tasmania. In a pamphlet titled The Schoolmaster in Van Diemen's Land, published in 1834 and dedicated to Thomas Gregson, Henry Murray remarked that the "prevailing" errors in school tuition have been "the adoption of too rigorous a system, thus rendering a youth's studies his detestation, instead of his delight, and cherishing in his breast a latent disgust to study, instead of what is so essential to his advancement, a love of learning." Corporal punishment was of course anathema to the project of

143 The Examiner's constitutional orthodoxy was typified by the former's hope to abolish the Normal School since it made teachers reliant on state funding and instruction. While these calls for reform — in addition to being motivated by animosity harboured toward Denison and the exclusive church — displayed a more orthodox adherence to traditional liberal theories of the state, they contained the seed of a more radical need to reform civil administration through more 'positive' and active notions of state power. Launceston Examiner, August 30, 1853.

144 David Hogan also noted the link between what he called "affective individualism" and pedagogical reform in nineteenth century America. Accordingly, the 'New England pedagogues' organized "pedagogical practices around the interests and pleasures of children, the substitution of affectionate authority for corporal punishment and fear, and the instrumental use of education to promote usefulness, happiness, and virtue of American children." Citing Lyman Cobb's The Evil Tendencies of Corporal Punishment as a Means of Moral Discipline in Families and Schools (1847), Hogan showed how the new pedagogy insisted that teachers and parents must first "secure the LOVE and AFFECTION of his children and pupils" before they can secure "an unlimited control over their minds and conduct." D. Hogan, "Modes of Discipline: Affective Individualism and Pedagogical Reform in New England, 1820–1850", American Journal of Education. November 1990, 38,42.

145 Launceston Examiner, August 30. 1853.
“awaken[ing] in the mind a desire for knowledge”, and Tasmanian teachers had erroneously assumed that a “child can be tortured into a love of duty and literature.”

Pestalozzian theories of instruction had become prominent among Australian educators exposed to the ideas of progressive Scottish and American pedagogues. James MacGowan’s *The Science of Instruction*, for example, published in Adelaide in 1854, invoked Pestalozzian ‘Laws of Nature’ to guide teaching practices. These laws were specified as follows: 1. Knowledge cannot be acquired without Attention. 2. Attention cannot be given without sufficient Motive. 3. The only sufficient motive to attention is Pleasure. 4. The only kind of pleasure that can be safely connected with instruction is the pleasure which nature has made inseparable from the Gratification of Curiosity.” Thus, the moral results of teaching in accordance with the Science, are perhaps more important than the intellectual. The old system of syllables and words, by continually outraging nature, trained up the pupils in habits of resistance to the teacher’s authority, and, as a natural consequence, to all other authority. But the endeavour to gratify curiosity, leads necessarily to a kind and considerate treatment of children, and thus to gaining their affection, as well as their attention...The teacher thus gains an influence by which he can train children to virtuous habits, [meaning that] much can be done toward the prevention of crime throughout the community.

This educational theory was typical of the ‘Scotch System’ of school tuition that made a distinction between “education” and “instruction”, the “former addressing itself to the heart – to the moral nature, while the latter enlightens the mind merely...what we aim at, is this, first, the education of the heart, without which there can be no good; and then, as superadded, that ‘knowledge’ which Bacon says ‘is power’.”

As affirmed in the conclusion of the 1853 Tasmanian Select Committee, modern pedagogical technologies could not be implemented within a fragmented, localised or municipal system of governance. Anachronistic teaching practices based on corporal punishment rather than the

---


147 J. Macgowan, *The Science of Instruction; or the Laws of Nature on the Subject of Teaching* (Adelaide: 1854). Macgowan was Licentiate in Divinity at the University of Edinburgh and was an ‘author of school books in accordance with the Science’.

148 Mrs Ponsonby (Principle of Scotch College for Young Ladies, Eastern Hill, Melbourne), *Education: The Scotch System; What it is* (Melbourne: 1861), 3.
'love of learning' required paid and certified teaching staff along with a uniform curriculum supervised within a rigorous system of central inspection. Nonetheless, this rejection of unaccountable forms of localized rule based on the arbitrary authority of the church, parent or magistrate did not preclude the need to devolve administrative authority. Local management, while involving itself in 'petty' administrative and supervisory matters, was an integral part of a hierarchal model of school administration. This not only reflected the lingering institution of local self-government, but the need to shore up the authority of the secular state in the locality. Local authority could not be effective if reliant on the desultory routines of the visiting clergy. For this reason, the 1853 committee, mimicking a policy advocated earlier by Franklin and later by Thomas Arnold, proposed that lay local school boards be appointed by 'responsible' municipal corporations to oversee this local supervisory function.149

The influence of municipal authority within a centralized school system remained a contentious question, reflecting the broader rejection of municipal government within Tasmanian political culture. The reasons for this were varied. Firstly, the imposition of a local municipal tax was intolerable to many Tasmanians because it would promote 'taxation without representation'. Secondly, the corrupt and inefficient police-magistrate system introduced by George Arthur remained the most vivid memory of town and council government. And thirdly, the highly statist nature of military rule in a penal colony meant that local institutions were denied autonomy from a central executive unwilling to devolve its taxing or police powers. In a study of the establishment of municipal government in Tasmania, Michael Roe described how this statist tradition was culturally entrenched, causing a general public apathy toward the creation of decentralized governance.150 While the late 1840s and early 1850s were a time of significant political agitation over issues such as transportation, emigration and public works, there was little popular mobilization on the subject of local administration.151 Ultimately, the growing complexity of colonial government demanded that the urban centres of Hobart and Launceston incorporate municipal councils in 1858 to deal with matters of sewerage, public works and general maintenance. This followed the Municipal Act of 1852, which provided for non-

149 See Launceston Examiner, August 30, 1853. This point has been made by several scholars including Reeves, A History, 44; Howell, Thomas Arnold the Younger, 30; and Thody, Learned Incapacity, 11.
151 Roe described how in the colonies the idea of a municipal corporation was “exported badly”, a situation confirmed by Earl Grey’s hesitation to extend municipal government to the colony. This was in part related to the influence of “‘Benthamite liberalism’. a doctrine ‘passionate for uniformity and contemptuous of medieval survivals’ and therefore ‘hostile to the old corporations.’” Roe, “The Establishment of Local Self-government”, 21.
The patent failure and inapplicability of local self-government was one of many issues and debates which helped to strengthen the claims for centralization made by the 1853 education select committee. Coinciding with the ending of transportation, the establishment of a Select Committee to debate the new constitution, Henry Chapman's dismissal from the Executive Council, and debate over Lord John Russell's Education Bill in Britain, the release of the 1853 report marked a confluence of historical debate concerning, on the one hand, educational provision throughout the liberal-democratic world, and on the other, the nature and jurisdiction of an emerging model of responsible cabinet government. As noted elsewhere, H. S. Chapman's dismissal for his support of an anti-transportation petition took the form of a constitutional crises, the Colonial Times calling it "an act of sheer despotism" since it deprived the executive members their "constitutional right to complain and protest." The editor of the Times opposed the view, most often expressed by the Advertiser, that executive officers are not analogous to ministers of the crown, the former arguing that "The ministers who cannot command a majority resign", and that "colonial officers hold their office in contempt of the House...when they choose to defy its majorities." It was not the legal power of the Governor which was being disputed but the "exercise of that power", meaning that Denison had usurped the principle of responsible government when using unilateral means to dismiss the colonial secretary, who had the support of the elected members whom, since the 'better government of the colonies act' of 1852, made up two-thirds of the Legislative Council. While the Lieutenant-Governor considered the executive a 'council of advice', the Times insisted that it was a responsible body

months following responsible government three ministries had come and gone. This caused a great deal of legislative inaction on the 'pressing' issues of the day, including transport, public works and education, allowing both the liberal and conservative press to lose faith in the new guard of responsible ministers who had not performed much better than the old 'convict officials'. The point made by the Tribune was the inability to form stable, party government, and the tendency to place personal opinion and allegiance before the 'public good'. For this reason, the Tribune believed that Henry Chapman should have been dismissed by Denison because he impugned the convention of voting with the leader of the cabinet. Yet, this misses the attempt by T. D Chapman and Gregson et al. to take this opportunity to unseat the Governor, and with it, Establishment and common law control over public administration. Such seeming contradiction is replete within any account of colonial politics. As a result, analyse must remain focused on the transcendental constitutional debates which often contradict political and interest group conflict. Thus, the Tribune opposed the Chapman’s fiscal policy, who remained Treasurer throughout much of the 1857-63 period, particularly his reliance on customs duties to fund the colonial revenue: "Under a system of high duties and comprehensive tariff [Chapman was dubbed 'Tea & Sugar Tommy' because of the duty placed on these goods] trade is crippled and the consuming capacity of the tax-paying community reduced to a minimum." Tasmanian Tribune, May 25. June 24. 1875.

155Colonial Times, September 15, 1853.
incorporated councils but only gave them power to obtain fees from markets, cabs and waterworks – taxation, policing and the right to approve municipal works were to remain with the executive. The sanitised powers conferred on municipal councils was replicated in the token authority given to them in terms of school administration. In 1862, during debate over the Rural Municipalities Bill, the Mercury suggested, in line with municipal impotence over revenue raising and law and order, that it was “for the government to consider to what lengths any powers vested in these local representative councils should extend.” While it was noted that “in many of the districts of the colony the municipal system is already established,” and it was therefore “natural that the district councils should aspire to succeed to any functions connected with the management of public schools within their borders”, the Mercury recommended “that the nomination of teachers and the direction of the course of studies in our public schools shall continue to be vested in the Board of Education”, while “the management of minor details together with the assessment of fees and the levying of rates be entrusted to some local organisation.” This typified the increasingly hierarchical relationship between central and local administrative units, particularly after a responsible, cabinet style executive was raised to the apex of power in 1856. Accordingly, a centralized state apparatus could later devolve authority to local boards of advice and school councils while maintaining strict standards of regulation and inspection. Furthermore, the ill-faith in municipal government, as shown by the reduction of government grants-in-aid to municipalities by the Chapman-Dry ministry in 1862, served to entrench the culture of localised patronage and corruption. In 1875, the Tasmanian Tribune argued that the rural municipality had again become a “close boroughs, under the complete control of a few large landed proprietors, who rule the unrepresented but taxed residents of the district just as they please.”

152 “Public opinion accepted the Act”, in Roe’s words, with only “a little criticism.” Morgan, a Launceston Alderman, was one of the few antagonists, believing that throughout the Act, “justice is made way to the expediency of keeping the Municipal body mere instruments in the hands of the convict authorities.” M. Roe. “The Establishment of Local Self-government”. 31.

153 Mercury, July 9, 1862.

154 Tasmanian Tribune, January 18, 1875. Interestingly, the Tribune criticised the way Denison, Young, Hampton and the official members of the Old Council were dethroned by Chapman, the first Colonial Treasurer under responsible government, and Gregson, the Secretary for Lands and Works, liberal men who were consumed by the “dire work of retaliatory vengeance.” Indeed, the Tribune supported Chapman’s political philosophy. arguing that it had been compromised by his imperious ministerial style: “no Ministry he has ever been connected with could ever manage to reconcile the representatives of those advanced popular opinions, and extreme principles of politics, of which, when out of office, he had been the most uncompromising representative and apostle.” Thus, the “mis-government” of the Chap-Chapman ministry was vindicated by the fact that it lasted only three month, beginning in December 1856 and ending in February 1857. This began a trend in highly unstable governing majorities. Thus, in the six
imbued with the authority of a legislative majority. For this reason, the latter insisted that the British government should restore the dismissed officers. This view was given expression in the upcoming Report on the New Constitution, which, through the convention of an elected upper house, and the formation of electoral districts based on ‘population’, would ensure that government eschewed the convention of political patronage, working instead under the direction of accountable executive majorities. These debates together helped to secure the ending of transportation, a policy which had long propped up the landowning aristocracy and the institution of localized patronage by providing a cheap source of agricultural labour.

Debate over Chapman’s dismissal was coupled with close coverage of the 1852 Education Bill being debated in the British Parliament. Predicably, a majority of the English press repudiated the centralizing tendencies of John Russell’s proposal for a state education committee since it was inimical to English constitutional tradition. Edward Baines remained the most vocal opponent of a bureaucratised system of school governance, arguing that the Bill would centralise school management in the government, rendering popular control mere make-believe; that the extension of Government patronage will be prodigious, comprising 50 000 teachers and assistant teachers dependent on the annual certificate of Government officers; that it will sow the seed of interminable dissension in Municipal Boroughs; that it will operate perniciously in the matter of religion; that crying injustice will be done to all of those who do not receive public aid; that the results will be seriously pernicious to education itself; that it will tend materially to impair, and, perhaps in the end destroy the spirit of self-reliance among the people; and that it will double the taxation of boroughs.157

The attempt to certify teacher training within uniform state guidelines, to create a central board of education, and to abolish sectarian instruction may not have been acceptable within a political culture still ensconced in the separation of powers and the ‘spirit’ of individual right. However, as the conclusions of the Tasmanian Select Committee was to show, these measures were being demanded by the bulk of colonial reformers who were more fully exposed to the inadequacies of arbitrary and localised modes of public administration.

The Legislative Council delayed its response to the select committee report, making the public and press increasingly anxious about the need for reform. “Surely the Hon. gentleman”, urged the Courier, “must feel that a system of sound educational improvement of the masses lies at the

157 See VPLCYDL, October 4, 1853.
157 Colonial Times, October 20, 1853.
root of all rational advancement in Tasmania." Enforcing the point that coming constitutional reforms had to be welded to any reformation of the school system, the editor questioned the worth of providing "liberal franchises and establishing free constitutions for the masses, if they are not educated up to the standard by which they may properly and safely use them."

Accordingly, it was argued that "National systematic and, if need be, compulsory instruction lies at the base of the future welfare of the island", and the current neglect of the "social, moral, and mental" welfare of the people demanded immediate legislative attention.158 This was in stark contrast to the voluntarist lobby in England, with the latter still wielding enough influence to refute the idea of state intervention.

In the wake of increasing support from the public and press, the Legislative Council moved, without censure or debate, to appoint a secular Board of Education on October 21, 1853. A unanimous vote in the Council resolved that "The object of government in appointing the Board is to establish a system under which the benefits of a sound education may be ensured to those classes who have it not in their power to combine to provide adequate instruction for their children."159 By conferring education on 'all classes', the new Board would possess administrative jurisdiction, particularly in terms of inspection, over all government funded schools. Accordingly, all government grants to church schools were to be withdrawn, while funding of the general schools was to be managed by a central board made up of elected and nominee members of the Executive and Legislative Council. Notably, teachers were to be certified via a board examination, the first successful attempt to centralize regulation of teaching output in the colonies. This innovation would allow the new Board to diminish the influence of local patrons. The 1854 regulations of the Board stipulated that "Visitors were to be given free access to any public school, but as spectators only, not having the right to ask questions or to interfere in any way with the business of the school."160 This begun a continuing effort to reduce the substantive influence of local school authorities. Angela Thody notes that while "Voyeurism was replaced by a return to quasi-inspection" when the Public Schools Act of 1868 established dedicated local boards of education, these "were clearly marked as acting on behalf of the state", carrying out limited supervisory duties such as ensuring that school buildings conform to Board rules and regulations, reporting schools that failed to open on usual school days, evidence of teaching misconduct and so on.161

---

158 _Courier_, September 28, 1853.

159 _VPLCVDL_, October 21, 1853.

160 Cited in Reeves, _A History of Tasmanian Education_, 57.

The establishment of a secular Board of Education followed the 'Report of the Select Committee on the New Constitution', released on October 4, which, as noted in chapter five, also marked a radical departure from orthodox constitutional practice by proposing an elected upper house, and in effect, securing the legitimacy of a paid, elected and responsible sovereign legislature. Chaired by the ardent anti-transportationist, Thomas Daniel Chapman, it recommended that the upper house be elected rather than nominated since “it would be wrong in principle and destructive of the best interests of society, to vest in a privileged and irresponsible class those powers which are inherent in the people.”\(^{162}\) This attempt to wrestle political power from the nominee members of the ‘convict council’ was replicated in the establishment of a secular education board. Thus, the early to mid 1850s witnessed synonymous opposition from landed and exclusive interests to constitutional and education reforms which effectively aggrandized the authority of the bureaucratic state. Opposition to the shift in focus from the ‘particular’ interests of the propertied classes to the aggregate needs of the population found voice in a petition, signed by Nixon and the Church of England Clergy, which complained of their exclusion from the Board of Education. The liberal press were quick to rebuke claims that the condemnation of the denominational schools was ‘ill-founded’. The Launceston Examiner offered a brief history of the penny-a-day system to emphasise the ill-effects of church control:

The clergy and Sir William entered into a conspiracy against the British and Foreign plan – a penny a day was made the rule, the competent masters were starved out, and the real friends of education, disgusted at the treachery, desisted from further efforts, convinced that the crafty would be caught in their own snare. The Anglican clergy have brought public education into such a condition that it is offensive to their own sight, and abhorrent to the view of others. Without a single syllable from the people, become indifferent on account of the deceit of the executive, the council, after inquiry, have been compelled to rescue the interests of the young from those who have traded on their wants. This is a succinct history of the education question in the colony.\(^{163}\)

The idea that the legislature could ‘rescue’ education from the incompetence of denominational control was a relatively recent innovation which would be strengthened by the onset of responsible cabinet government.\(^{164}\) While Denison and the Clergy remained reticent about a non-denominational system, Archdeacon Davies supported the Report of the Board. This was a

\(^{162}\) VPLCT. October 4, 1853.
\(^{163}\) Launceston Examiner. November 17, 1853.
\(^{164}\) As Governor-General of New South Wales. Denison later wrote a comparative account national education which seemed to soften its stance on state intervention. Sir William Denison, Systems of Education: A Lecture to the Young Mens Chrirstain Association (Sydney: 1860).
considerable change in policy considering that 75% of current schools were denominational, and that most of these were controlled by the Anglican church. This shift was irrevocable now that teacher certification was to be implemented in addition to competitive, state-funded teaching salaries. In the short-term, the Board still had to search for qualified teaching staff in Victoria and Britain, with teachers from Britain arriving in 1855. Importantly, however, the state could forthwith regulate teaching standards. The biggest remaining problem was local inspection, with the clergy unlikely to be co-operative under a general school system. The problem of local incompetence and failing attendance would ultimately demand greater state supervision and inspection, and a most particularly, compulsory legislation.

4. *The Right of the State to Interfere* — Toward the 1868 Public Schools Act

After the appointment of the new Board of Education, and innovation which, as noted earlier, marked the first establishment of a wholly secular government controlled education board, the 1850s would witness few additional innovations in educational governance. The history of education during this period was limited to continuing church/state frictions and occasional but unsustained demands for reform, despite continuing evidence of mismanagement. The inactivity of this period was due largely to an ongoing economic depression that caused parliament to focus their efforts on fiscal affairs, especially the need to balance the budget in an era of declining exports. The only stable source of colonial revenue came from wool production, which served to maintain the political influence of the landed classes. This depression continued into the early 1870s. Robson described how “Economic stagnation persisted and the policy of the government was little more than negative retrenchment and the raising of money by debentures — the politics of poverty.” Economic recession was coupled with highly unstable legislative environment. In the six months following the establishment responsible government three ministries had come and gone. This led to a great deal of legislative inaction on the ‘pressing’ issues of the day, including transport, public works, emigration and education.

165 See McRae, “Educational Controversies in Van Deimen’s Land”. 83–84.
166 In this vein, Townsley described how “In comparison with the somewhat placid years that followed the establishment of responsible government the years of struggle that led up to it were seething with excitement and political strife.” W. A. Townsley, *The Struggle for Self-Government in Tasmania 1842–1856* (Tasmania, 1951), i.
167 By 1854, and with the end of his Governorship approaching. Denison complained of the continuing low standard of education and hoped to send his sons to England for a public schooling. “Letter to Colonel Jebb” (Lieutenant Governor of Western Australia), August 1854 (TSA, NS 538/1).
Accordingly, both the liberal and conservative press began to lose faith in the new guard of responsible ministers who had not performed much better than the old ‘convict officials’. The initial failure of the new constitution to inspire a unified and innovative system of cabinet government was in part due to the lingering history of a colonial executive limited to the rudimentary concerns of imperial rule. The administrative intervention of the old executive council did not extend far beyond military matters, the granting and leasing of crown land, state aid to religion, policing and transportation. From a total of 98,716 pounds spent on civil administration in 1850, nearly 40,000 went to police and gaols, while only 800 was invested in public education. Attempts to expand the administrative functions of central government were generally discouraged by the Home Office, a fact illustrated by Gladstone’s unwillingness to cede to Wilmot’s request for a secular board of education. Townsley described the executive before self-government as a “mere blunted weapon. There were few executive actions that could not be performed quite adequately by the Chief Executive alone. To make policy was even less its business.” Furthermore, the authority of the Lieutenant Governor was “paralysed by the financial stringency to which he was subjected by the home government”, which remained the primary source of revenue and authority.

The problems of political factionalism, economic decline, and a history of minimalist executive government aside, the Board of Education went about its work with relative success, increasing the number of public schools from 43 in 1853 to 63 in 1855. In June 1855, an Assistant Inspector, Murray Burgess, was appointed to share Arnold’s increasing workload, a situation exacerbated by the failure of local inspection. This followed the 1855 Report of the Board of Education which suggested that Tasmanian school governance be modelled on the ‘Bureau’ system which operated in Prussia and France. Under such a scheme “ample funds were placed at the disposal of a department to provide for school inspection, training and payment of teachers”,

169 The fiscal crises that accompanied the depression of the early 1860s was blamed on insufficient executive responsibility and representation, the Mercury calling upon the “Ministers to summon the Parliament in order that the means may be provided for making good the present deficiency.” The executive were further urged to introduce “such reforms in the constitution as shall give the people that which they have never yet possessed -- a faithful, equal, and adequate representation.” Parliament was described as “a legal farce...Responsible Government exists among us but in name...If the people had been represented, or if they had only believed themselves to be represented, we have no hesitation in saying that the Colony would have been in a less lamentable position than it now is.” Mercury, January 19, 1860.  
while the “department had also the power to make such arrangements as it might deem expedient for promoting local supervision.”\textsuperscript{173} These suggestions, while not initially countenanced by the legislature, illustrated the increasing pressure to increase the ambit of the central board. Following the disestablishment of the Board of Education during the changeover to responsible government in 1856, and the subsequent resignation of Thomas Arnold as Chief Inspector, there were consequent calls for the establishment of two separate administrative bodies to whom would be delegated the work of managing schools in the north and south of the state. Based in Hobart and Launceston respectively, the Southern and Northern Boards of Education, comprising of members of both the upper and lower houses, were established in early 1857 to administer public schools in concert with the system introduced in 1853. In addition, an independent, non-political Council of Education was formed in 1858 to oversee the granting of secondary school scholarships and to assist in the formation of a university.

It was in debate concerning the constitutional basis for colonial law and government that it is possible to isolate the inspiration for the sanctioning of compulsory attendance, and increased state control, in the Public Schools Act of 1868. In the face of ongoing sectional and economic strife, the onset of responsible self-government in 1856 imbued Tasmanian political culture with a view that the legislature was the supreme arbiter of public policy. Having fulfilled the principle of taxation by representation, the colonial state was the legitimate manager of the public funds, and in this sense, delineated rather than received policy from individuals, communities, educators, magistrates and so on. This pro-active and positive relationship between state and civil society signalled the imminent decline of \textit{laissez faire} government. In 1856 the \textit{Tasmanian Daily News} described this relationship in terms of the educational state:

\begin{quote}
Having thus entrusted money raised from the common taxes of the people, to the hands of men who profess to spend it in the teaching of people’s children, the State requires that the school so assisted should be open to Government inspection, in order that it may be certified that the children are duly taught; in other words that the money granted is expended on the objects contemplated by the Legislature which voted it. The State does not set up for a schoolmaster.\textsuperscript{174}
\end{quote}

Responding to Protestant and High-Anglican opposition, expressed most often by Bishop Nixon, to the Romanism of Thomas Arnold, who had joined the Catholic Church in 1856, the \textit{Daily News} expatiated on the constitutional issues which formed the basis of much of the politico/religious conflict in the colony. Arnold was a paid and responsible servant of the

\textsuperscript{173} Reeves, \textit{A History of Tasmanian Education}. 59.

\textsuperscript{174} \textit{Tasmanian Daily News}. January 31. 1856.
souvern legislature and, according to the Daily News, his apparent apostasy could only be judged in terms of actions which would be injurious to the administration of state education. While the Anglican lobby were justifiably concerned that Catholic doctrine might influence the public school curriculum under Arnold's inspectorship, Nixon's failure to solicit much response from the Assembly showed that the power of patronage once elicited by the Established Church was declining. While the Courier continued to use the rhetoric of "Popery" to demand Arnold's resignation, it was for the legislature, in concert with the 'national interest', to decide who would manage the 'common taxes of the people'.

The proprietor of the Daily News, Maxwell Miller, was a progressive and radical liberal who supported, with his close friend Thomas Gregson, the accretion of state power through direct income tax, and who was a prominent advocate of Premier Francis Smith's 1858 Bill to create a Council of Education for the administration of superior schools. Outspoken advocates of radical constitutional reform such as Miller and Gregson faced consistent criticism from the conservative press, particularly when they contested seats for the first parliament under responsible government. This conflict can again be used to contextualise the Courier's use of the rhetoric of 'Popery' to demand Arnold's resignation. Arnold, like his brother Mathew Arnold, who by now was a consistent advocate of the compulsory and ministerially controlled school systems operating in France and Prussia, was increasingly opposed to church administration of public schools, and as outlined above, suggested in his 1855 report that schools administration be subject to the 'bureau' system operating on the continent. In this vein, the Chief Inspector was able to argue that the citizen cannot maintain and develop a sense of civic virtue without the 'imposition' of educational policy from the state:

For the certain part of its education the English people is sufficient to itself...But there are some things which...the mass of the people [cannot] have by nature, and these things Government can give it. They can give those simple but invaluable and humanising acquirements without which the finest race in the world is but a race of splendid barbarians. Above all, Governments in giving these may at the same time educate a people's reason, a people's equity. These are not the qualities which the masses develop for themselves.

To argue that 'reason' and 'equality' should be imposed and managed by an interventionist state apparatus was a radical departure from an orthodox, contractarian theory of the liberal state.

---

175 Courier. January 19, 1856.  
176 Courier, August 5, 1856; Mercury, September 3, 1856  
177 Quoted in THA 1883 paper 70, Report of the Royal Commission on Public Education, xiii
Such a view had become common among a lineage of radical educators including Kay-Shuttleworth, Mathew Arnold, Edwin Chadwick, John Stuart Mill, Henry Carmichael, William Wilkins and so on. James Simpson, described by Ian Hunter as a “member of the Edinburgh bar, child of the Scottish enlightenment, admirer of the Prussian school system and author of works on education reform”, was an early progenitor of the view that, while a central “directive power would have almost unlimited control” in a state school system, there indeed “must be a sacrifice of public liberty for the general good.” His argument followed that: “There is no good without some evil: but such an evil is immeasurably the least of the two, when compared to the consequences of the ignorance which at present prevails in the great body of the people, and the mischiefs that thence result.”

Considering both Arnold and Simpson’s cosmopolitan theoretical heritage, their stance might not be surprising. Yet such faith in the need to ‘sacrifice public liberty for the general good’ had travelled well to the colonies, with political opinion in Tasmania ready to deride the ‘humbug’ of free trade and Saxon self-reliance. The Mercury, by now the dominant source of editorial opinion in the colony, was constitutionally conservative on many issues, however much of this rhetoric was contradictory, and was influenced by political allegiances between House members and the owner John Davies. Close analysis of the constitutional theory expounded by Mercury show that it was becoming less doctrinaire on the issue of the relationship between state and civil society. “There are a false and a true philosophy on this subject of government.”


179 When John Davies incorporated the Mercury in 1854 it superceded the recently purchased Guardian newspaper. By 1860 the Mercury had absorbed four other papers including the Colonial Times, Tasmanian Daily News, Daily Courier and the Hobart Town Courier. The dominance of the Mercury was pronounced, with competing dailies such as the Evening Mail achieving a circulation of as low as 300. In the early 1870s the Mercury was Hobart’s only newspaper. Throughout the mid-1870s, however, a battle ensued between the Mercury and the more radical Tasmanian Tribune. the latter despairing that “The Hobart Town press, in the estimate of numbers, consists of a single journal, and that is styled the Hobart Town Mercury.” The Tribune argued that the Mercury was the “hired and dependent creature of the party led in the House of Assembly by Mr Chapman”, a claim bolstered by the Mercury’s ongoing monopoly over government printing contracts – John Davies resigned from the House of Assembly in 1862 due to a petition which exposed this ‘conflict of interest’. Furthermore, J. D. Balfe, the editor of the Tribune, had previously been dismissed as editor of the Mercury after refusing to ensure that editorial did not contradict the policies of the owner, John Davies, the then member for Franklin. See Tasmanian Tribune. January, 10, 1873.
interference — and the two are often confounded”, began an article, written in 1860, which considered the evolution of ‘Political Institutions of Australia’. The editor continued that while classical liberalism considered it “a virtue of government to interfere as little as possible in the processes of commerce, the adventures of enterprise, and the freedom of individual and family life”, so too “We have entrusted to government the protection of our persons from injury, and of our property from waste... We have entrusted to government the management of our postal system, upon the apparently sound principle that a central authority is in a better position for making arrangements for carrying our correspondence with safety, with regularity, and with rapidity, than either individual effort or private association.”

Indeed, British constitutionalism had by now drawn “a line between the legitimate functions of government and the just liberty of individual action”, meaning, in utilitarian terms, that it was not bound by some inalienable principle but had “taken a practical view.” For this reason, “the nation has not run into the absurd extreme of emasculating the executive and robbing it both of the power and the right to act for the public good.” The public good could be best fulfilled through “the utmost efficiency of administration” and while not to demand “what the French people expect at the hands of their rulers”, the colonial governments “administrative sloth” had resulted in a “failure to discharge well the plain practical work of government.”

The notion that the role of the state was more, in Mathew Hale’s terms, than ‘simply a great hangman’, and was the medium through which the ‘public good’ could be best maintained, signalled the imminent decline of common law constitutionalism in the colonies. Yet while the basis of legal positivism had been laid, the constitution of the ‘practical work of government’ remained confused. Increased calls for legislative intervention were apparent across most sectors of the parliament, public and press, yet few were sure about the relative dispersion of administrative jurisdiction between local and central authorities, the status of appointed public officers within a responsible department of state, and indeed the level to which individual rights should be forfeited under an absolutist theory of legislative authority. While the Mercury made a solemn commitment to parliamentary activism on a host of ‘pressing issues’ such as the construction of a mainline railway between Hobart and Launceston, the need for tighter government control of waste lands, the better management of public hospitals, and the administration of the New Norfolk Asylum, this commitment was qualified and later

---

180 The Mercury, June 7, 1860.
181 The Mercury, June 7, 1860.
182 By the late 1860s debate surrounding the development of the educational state remained vigorous. Between May 1 and 6 no less than eight articles were published in The Mercury on issues relating to education such as expenditure on free scholars, industrial schools, the compulsory education question, and the opinions of J. S. Mill as to religious influence in education.
contradicted on the issue of compulsory state education, state aid to religion and public orphanages, and electoral reform. On the latter issue, the *Mercury* questioned the validity of J. S. Mill’s support of Hare’s reformed electoral system—which was gaining popularity among Tasmanian liberals who wanted to reduce the electoral power of the landed members of the upper house—in his recent essay on ‘representative government’. Meanwhile, as Chairman of the Committee on Charitable Institution, John Davies, the owner of the *Mercury*, argued that the committee “condemn the extravagant, and as it appears to them, needless expenditure of the money, in the erection of new buildings” for the Queens Asylum for destitute children. It was at this time that the state aid distribution bill was being debated, ensuring the final excommunication of the church from state administration. Davies, a close friend of the Anglican Clergy, predictably opposed the retrenchment of state aid, as he did compulsory schooling, because, it was argued, such a measure would contravene the rights of the parent.

This seeming conservatism contrasted with a rejection of *laissez-faire* state theory and increasing demands for executive action. In 1860, a year when a factious and unproductive legislature had failed to initiate substantive policy reform, the *Mercury* was quick to argue that “None but a most superficial student of history, could say that the great English colonies owed their early vigour and rapid development to the fact that their natural growth was not interfered with by an active government.” The progress of the colony was not more attributable “to the enterprise of the free people who now inhabit them, than to the energy displayed by their early governments in doing a full measure of the work now belonging to them.” In contrast to the more orthodox constitutional faith in the separation of powers and natural rights theory, a minimal government subject to the whims of the free market was vehemently opposed by the mainstream press:

> We must protest then against the doctrine that a government that does nothing, but leaves all social and industrial interests to develop themselves without help or direction, is one of the best adapted to the growth of an English community, as false and opposed to all history...The colony has drifted very near to ruin under the administration of men smitten with admiration of this false doctrine... ‘Gentleman’ they say to us, with their hands in their pockets in the most approved *laissez-faire* fashion, ‘don’t you see that we are only doing you good by not interfering with you?’...we reply, that we see nothing of

---

183 *Mercury*, September 11, 1862.
184 *THA*, Oct 3, 1862
185 On the state aid debate see *THA*, Sept 10, 1862.
186 *The Mercury*, June 11, 1860.
the kind...that we want a government that will turn to with a will and do our work for us.\textsuperscript{187}

Governmental action should not be guided then by the “profound mistake” that “the art of governing well is to do nothing.”\textsuperscript{188} Such passionate opposition to laissez-faire governance, while indirectly admitting the need for a ‘self-regulating’ domain of governing power, was both a historical and theoretical response to the perceived inaction of the legislature on a range of issues including the economy, transport, emigration, employment, and of course education. The \textit{Mercury} blamed high unemployment and inadequate water and drainage on an executive who did not proceed with “the buildings for which money had already been voted by Parliament”, and who had “trembled to face the representatives of the people”, deferring the meeting of Parliament to transfer funds for public works because of a “selfish frigidity.”\textsuperscript{189}

This view inspired the appointment, in 1860, of a Royal Commission to ‘Inquire into the State of Superior and General Education in Tasmania’.\textsuperscript{190} The report argued that the “true object of public education” should be to “influence the whole body politic; to raise the standard of

\textsuperscript{187}The Mercury, June 11, 1860.

\textsuperscript{188}The Mercury, June 11, 1860.

\textsuperscript{189}The Mercury, June 11, 1860. Increasing calls tighten the constitutional link between state and civil society related to the increasingly complex nature of Tasmanian economy and society. Between 1840 and 1847 the Tasmanian population grew by 50% and while many were transported felons, 75% of these were within 5 years classed as free. Furthermore, while the population grew Tasmania experienced two significant economic crises in the early 1840s and 1850s, causing the state to be viewed as a necessary regulator of social and economic life. After the second wave of recession in the early 1850s, caused largely by the gold rushes on the mainland and the over supply of cheap convict workers, there was a significant exodus of skilled labour from Tasmania, with the central government called to expand emigration. Previously, the revenue from land sales was directed almost solely into policing and gaols, while after the cessation of transportation there was little attempt at redressing the paucity of labour, especially the skilled workers required by the urban middle-class merchants and entrepreneurs. Moreover, the colony remained reliant on the British capital for economic growth. This was apparent in the failure of a ‘free market’ to regulate interest rates, thus demanding closer government control of fiscal policy. With the discovery of mineral resources in the 1850s and 1860s, Tasmania was ripe for speculation. This inflated interest rates and during recession loans could not be repaid. Throughout the forties these problems were in some way placated by subsidies from the Colonial Commissariat through the issuing of treasury bills. While the merchant middle-class were not yet ready to abandon the political economy of Ricardo, landowners like Fenton were keen to introduce a Usury law to control the rate of interest. As this demand for state intervention increased, the status and authority of local institutions controlled in large part by the rural parish and justice of the peace began to decline.

\textsuperscript{190}See THA, paper no. 28, 1860.
intelligence among the people”, and to “raise the State itself, as a whole, to the highest possible condition of moral and intellectual excellence.” One of the primary means to attain such lofty aims was “Justice and liberality to all classes and all persons – no sort or condition of the people being exclusively favoured or protected.” The Commission remained uncommitted on most questions, including compulsion, free education, and the right of state interference. Indeed the latter was an issue, argued the Commissioners, “upon which much difference of opinion exists.” In this vein, Northcott notes that “No real defence or examination of the question [of state interference] was made except the vague assertion that Government, when it did commit itself, should do so according to principles ‘sound, well-digested and clearly defined’.”

While apprehension remained about the comprehensive nature of education under current arrangements, particularly on the issue of attendance, the unified and secular system operating in Tasmania was held up as a model to other states. In March 1862, the Argus noted that “In Tasmania, the ‘religious difficulty’, which is here supposed to constitute so formidable an obstacle in the way of a comprehensive scheme of education, does not exist.” This was attested to by correspondence from the Northern Board of Education in Tasmania. The latter remarked that while the Tasmanian system was “defective in many respects”, the religious difficulty which “hitherto has prevented amalgamation in New South Wales and Victoria” was a “mere bugbear” on the island colony. Consequently, “our schools are attended by children of all denominations, and that the injurious competition of three or four schools in one village, which I have often seen in Victoria and New South Wales, is a thing unknown.” The veneration for the Tasmanian system held by the Victorian press illustrated the radical nature of the educational innovations of 1853.

In 1863 reforms were made to bring the Tasmanian system in line with the English Revised Code implemented by Robert Lowe in 1861. While not appropriating the system of payment by results – which was to limit public funding to a yearly grant calculated on the level of attendance and the results gained in annual exams for the 3 R’s, with one-third of the grant withheld for each subject failed – the Tasmanian Parliament agreed to introduce Irish National reading books, to introduce elementary knowledge of grammar, geography, to enforce minimum standards for promotion to all classes, and to subsume the Northern and Southern school boards into a single Board of Education. This aroused little debate about the issue of compulsory and free education, or the need to improve local supervision which, as

192THA, paper no. 28, 1860, 10
193Northcott, The Tasmanian Compulsory Education Question, 2.
194Argus, March 21. 1862.
demonstrated in the reports of the Southern and Northern Boards for 1861, remained arbitrary and inefficient.195

The call for a more centralized and compulsory system of education did not gain real momentum until the appointment, in 1867, of a Royal Commission to “enquire into and report upon the present system of Public Education in this Colony, and the best mode of reducing the Government expenditure under that head, and at the same time of securing the greatest amount of benefit from the advantages placed at the disposal of the community for Educational purposes.”196 Initiated under the Premiership of Sir Richard Dry, who, after forming a ministry in November 1866, was looking for ways to reduce public expenditure in the face of continuing recession, the initial goal of the Commission was to reduce spending on public schools. As the following account illustrates, the need to retrench public expenditure played only a nominal part in the final report. Instead, the Commission, lead by some of the leading education reformers in the colony, presented a fully blown exposition of the relative merits of central and localized educational governance in the colony.

From the outset, the Mercury opposed the idea of a Royal Commission, arguing that “the appointment of commissions in these cases is manifestly an abnegation of the legitimate function of government”, and that “the constitution of these commissions is not likely to be such to warrant the expectation of beneficial results, either in the way of economy or efficiency.” This line was taken by the editor, James Allen, who, as a witness to the Royal Commission, would emerge as devils advocate and opponent of the centralist policies countenanced in the final report. His was a classical argument in that ministers, the direct representatives of the people, had “promised at the close of the session that they would undertake themselves what they are about now to remit to the commissions.”197 This view missed the fact that the Commission was the product of a progressive shift in the ‘science’ of legislative government. As such, the Commission was a direct appropriation of the 1861 Commission of Inquiry into Education in England established by Edwin Chadwick and Nassau Senior, and which marked the first detailed examination of public education in the Empire. Chadwick had institutionalised the commission as a central technology of the science of legislation, transforming the latter from a ‘fiction’ based on ‘artificial reason’ to a rational, scientific and utilitarian code. With Henry Taylor, Chadwick argued that legislation should

195See Courier, January 1, 1863.
196Royal Commission 1867, v. This commitment to the reform of state funded social institutions was reflected in the simultaneous appointment of a Royal Commission into the administration of the Queens Asylum.
197The Mercury, May 25, 1867.
result from a process of scientific induction, and that extra-parliamentary commissions of inquiry were, unlike the 'multifarious' business of parliamentary debate, the best means to maintain focus and objectivity when conceiving new legislation. 198

The first challenge faced by the 1867 Royal Commission was the need to reconcile greater centralisation with voluntarist and free trade ideas about the limits and jurisdiction of the liberal state. Considering the make-up of the Commission — Frederick Maitland Innes, an avowed supporter of state control since the 1830s, was appointed as Chairman, while centrists including John Gleadow, Philip Fysh, Alfred Kennerley and the Henry Butler, the current head of the Board of Education, were also prominent on the six member panel — it was not surprising that the report erred on the side of greater state intervention. Personal opinion aside, the case for a diminution of local control was comprehensively argued through a detailed investigation that drew heavily on continental and British debates, and which tended to favour the arguments of Kay-Shuttleworth, Mathew Arnold, Edwin Chadwick and John Stuart Mill, the latter by now having become an apostle of the new political economy of educational governance. 199

In “reviewing the evidence we have received bearing on the questions of the abstract right, and the practical expediency, of State interference in the matter of education”, the report began with the opinions of the arch voluntarist, James Allen:

It is much beyond the functions of government to interfere with the education of a people as it is to interfere with their religion. It is opposed to all the principles of free trade, and in its ordinary exercise leads to protection in some of its worst forms. John Stuart Mill, although an advocate of Government interference in such Matters, would only have it exercised under peculiar circumstances. He holds it to be the duty of Government to give such pecuniary support to Elementary Schools as to render them accessible to all children of the poor, either freely, or for a payment too inconsiderable to be sensibly felt. But he goes no further. If not for leaving the spread of education

198 Cadwick argued that when legislation was prepared using a closed cabinet it limited the scope of inquiry and that parliamentary committees resulted in a “divided attention with other parliamentary duties.” It was only when legislators become full-time Commissioners of Inquiry that the “discursive attention of multifarious objects” could be abandoned for an in-depth and inductive examination of factors relevant to the legislation. E. Chadwick. ‘Address’ at the Society for the Amendment of the Law (London: 1859) in B. W. Richardson, The Health of Nations: A Review of the Work of Edwin Chadwick, 129–31.

199 See J.S. Mill, “On the New Educational Bill”. in Sessional Proceedings of the National Association for the Promotion of Social Science, III (March 10. 1870), 261–84; in Works, XXIX.
exclusively to the voluntary efforts of the people, he cannot be claimed on the other side. 200

Throughout the lead up to the Commission, rarely a day would pass without some editorial comment from Allen on the issue of state funding, the latter arguing that, in comparison with other colonies, a far greater proportion of public revenue was spent on schools, and therefore, that revenue should only be expended on schools for the deserving poor. 201 Yet, while the Mercury enjoying a virtual monopoly in the popular press, Allen was struggling to find support for his voluntarist principles. Referring to the recent report of a Victorian commission on education, through which Higinbotham had proposed a compulsory and ministerially controlled system, Allen noted a submission to “centralisation in its worst and most degrading forms.” After reviewing systems of mass compulsory operating in Prussia, Denmark, and Saxony, the Victorian Commission concluded that “Whilst fully admitting the divided state of opinion in reference to this subject, as well as the serious practical difficulties that beset it, we have resolved to submit the recommendation that a law rendering instruction imperative should be adopted in Victoria.” 202

In light of this national momentum toward compulsory and state controlled instruction, Allen fronted the Tasmanian Commission with renewed vigour. 203 He claimed that “Government interference with Education...has failed to do more than the people would have done for themselves if left to their voluntary efforts.” The Commissioners disagreed, stating that “we are not disposed to admit that the principles of free trade have any application to the education of a people.” Firstly, they, like Allen, honoured “Mr Mill’s opinions”, “but at the same time interpret[ed] them in a different manner from the witness who has cited them.” 204 Citing Mill, the report argued that education was something of the “worth of which the demand of the market is by no means a test.” Education did not serve individual wants but was a means to

200 Royal Commission 1867. 16.
201 The paper noted that “The population of South Australia is nearly double that of Tasmania. Yet the total amount spent on education there in 1865...was 14,250 pounds.” In Tasmania, the educational votes for that year were almost 12000 pounds. The Mercury. May 1. 1867; Mercury. May 16, 1867.
202 Cited in Mercury, May 17, 1867. See May 20 & 22, 1867.
203 Allen was also busy deflecting suggestions that a Chadwickian style poor law administration be adopted in Tasmania. Allen argued that the benevolent societies should continue to administer the poor and that a non-professional board be established to oversee their operation. Mercury, May 22, 1867.
204 Royal Commission 1867. v.
raise the character of human beings.... The uncultivated person cannot be competent judges of cultivation... It will continually happen on the voluntary system that the end not being desired, the means will no be provided at all; or, that the persons requiring improvement having an imperfect or altogether erroneous conception of what they want, the supply called forth by the market will be anything but what is really required.

Echoing the view set forth in his speech supporting the 1870 Education Bill in England, Mill went on to argue that education “is one of those things which is admissible in principle that a government should provide for the people.” However, careful not to deride the ‘liberty of the subject’, the author reiterated that “It is not endurable that a government should, either de jure or de facto, have a complete control over the education of the people. To possess such a control and actually assert it, is to be despotic.”

Such ambiguity allowed the Report to oppose a minimalist constitutional model. The Commissioners could now draw on history to validate their theoretical assertions, claiming that in all civilised and free States, without a single exception, in recent times, when the prevalent political theories have generally tended to circumscribe state functions, something like a rivalry of nations has been exhibited to rescue Education from the uncertainties of chance supply, and chance quality in that which is placed within the reach of the people.

This was illustrated “as strikingly in France or Prussia with their strong centralised Governments, as in democratic America.” While Allen instanced England as an example of a successful voluntarist system, the Commissioners set forth the arguments of the mother countries pre-eminent educator, Sir James Kay-Shuttleworth, who in 1861 as Secretary to the Committee of the Privy Council on Education avowed the “necessity of legislative assistance” if the “children of the humbler classes were to be rescued from ignorance.” Local schools continued to be “meagrely furnished with the apparatus of instruction, and the teachers were generally unskilful, ill paid, and over-worked.” Kay-Shuttleworth portrayed a system which was badly managed, under-resourced and financed, and hence overburdened: “In all School Committees, whether of the Church or of Dissent, the necessity of resorting to continual efforts to sustain the income of the School by public meetings, examinations, sermons, bazaars... canvassing by letter, and similar expedients. were confessed to entail a scarcely

\(^{205}\)Cited in Royal Commission 1867. v-vi.

\(^{206}\)Royal Commission 1867, vii.
tolerable burden of humiliating exertion on the promoters of the Schools.”207 Similarly, in
defence of state managed education under attack from laissez-faire educationalists, Kay­
Shuttleworth argued that the “free state [should] render the establishment of a national system of
education...an indispensable function of government.” Furthermore:

We are prone, in this country, to even an exaggerated confidence in the principles of
self-government, having discovered how little the Government can do for enterprise in
trade, there is a cry for free trade in education. Yet there are many things in which self­
government needs the aid of central intelligence and will. Parliament and the Executive
Government confer on our municipal corporations the powers necessary to light, sewer,
and pave our towns; to provide an adequate water supply, markets, and a borough
police. Without the central will and intelligence, we could not act in a corporate
capacity.208

Professional educators such as Shuttleworth believed that advanced administrative technologies
could not be implemented within a contractarian and negative model of the liberal state. While
agreeing with the principle of minimal government in regards the market, Shuttleworth argued
that the state was fundamental to modern institutions like the school, the prison, or the hospital.
‘Central will and intelligence’ described a bureaucratic rationality which was made possible
through the fusion of executive and legislative authority within a unified, codified and
interventionist model of educational governance.

The need to refute a contractarian theory of the state was taken up directly in the Commission
Report, particularly in relation to the question of whether state intervention should be limited to
the poorer classes – Allen argued that “it is the imperative duty of State to provide for the
education of those whose parents are not able to educate them”, and that “the State oversteps its
proper functions the moment it begins to interfere with the education of any other class of
people.” “Are not all classes in a community entitled to share in the benefits, of whatever
description, which are dispensed at the cost of the Revenue to which all contribute?”, responded
the Commissioners.209 While Allen’s argument was premised on the “reasons usually urged for
a contracted theory of State functions”, the Commissioners favoured a “theory according to

207J. K. Shuttleworth. “History of Four Periods of Public Education”, cited in Royal Commission 1867,
vii.
208James Kay-Shuttleworth, “Popular Education”, in D. A. Reeder (ed.) Educating our Masters (Leicester
68.
which the relation of a citizen to the State is that of a member of a co-partnership applying the aids which cooperative association provides – 'a partnership in all science, in all art, in every virtue, in all perfection'. The voluntarist notion that "the function of Government in respect to education is not a primary or inherent one, but one imposed upon it by the existence of exceptional classes in society, and legitimate only in so far is necessary for the sake of those classes", did not consider that

the exception is based not on the exceptional rights of any class, but in the interests of society generally...is not society quite as liable to be injured by the absence of moral and intellectual training amongst classes possessed of adequate means to pay for such training, but without the inclination to apply their means to that object...Recurring then to the principle of the general good as that which justifies the interposition of the State to provide Education for the children of paupers...that principle involves the further obligation of providing Education also for those classes who can but will not provide it...compelling them to do so, rather than suffer them to grow up without an education.

The utilitarian appeal to the general good was pitted against the Blackstonian conception of natural right as a justification for the imposition of state education on ‘all classes’ of civil society. The state had a duty to intervene in the general education of the masses in order to secure the interests, not of the individual, but of the whole population. Denominational, voluntarist and free market modes of school governance had failed to provide for the vocational and moral instruction of the rising generation, forcing the state, in its ‘corporate capacity’, to intervene, to ‘compel’ and regulate the educational life of each citizen. Accordingly, J. S. Mill could no longer countenance the ‘rights’ of the voluntarist lobby, arguing that ministerial or centralized board control of education was imperative due to the neglect of district boards of guardians: “if the board of guardians had done their duty, we should not at this time have had an education question, or if the duty had been taken out of their hands and assumed by the State, as Mr Chadwick, thirty-five years ago, proposed...we should at this time be at the end rather than at the beginning of the work.” State control had become a principle of “popular government”, meaning that the latter should not be ruled by the assumption that “public men should fling down all the great subjects among the people, let every one who liked have his word about them, and trust that out of the chaos there would form itself something called public

---

210 Burke quoted in “A French Eton, or Middle-Class Education and the State,” by Mathew Arnold, 1864, in Royal Commission 1867, ix.

211 Royal Commission 1867, ix.
opinion, which they would have nothing to do but carry into effect.” This view was well heeded by Tasmanian Commissioners who had embraced the enduring political responsibility of an absolute sovereign. Thus, “the state accepts a position of responsibility in respect to the education of the people, whether it undertakes the direct responsibility of providing Education, or that of making others provide it, who in turn are accountable for the fulfilment of this duty.” Issues of ministerial or board control aside, the legislative state would remain a bureaucratic lodestar from which uniform administrative controls could be emitted. The paternal bond between parliament and local school organisation would be forged via a centralised inspectorate. As the Commission Report implored, “The office of School Inspector is intermediate between local instrumentality and centralised direction or authority.” By affording the state a legitimate duty to utilize its bureaucratic capacity in terms of schools provision, the Commissioners laid the groundwork for compulsory legislation which, in principle, was to be enforced via a network of state inspectors who, in Foucauldian terms, would attempt to comprehensively classify, grade and organise the school aged population.

The diminishing faith in a contractarian theory of the liberal state was exacerbated by the failure of local supervision. The report noted that the appointment of “Special Visitors” as a “check or stimulus thus contemplated is feeble and capricious in its operation.” Visits were desultory and the negligence of teachers was rarely reproached. Comparative problems were noted in England, the Educational Commissioners of 1861 describing “the want of local interests and of proper local support as the leading defect in the present system.” In addition, the Report averred to the poor record of local administration in NSW and Victoria under the dual system. The Senior Inspector of Schools in NSW for 1865 described how “local supervision...was indifferent to the interests of the school”, while the ‘Fifth Report of the Board of Education in Victoria for 1866’ noted how “petty jealousies often interfere with harmonious action.” In response, the Commissioners urged that “the Board of Education must rely for detailed information as to the condition of the Public Schools, the efficiency of the Masters, and the progress of the pupils, principally on the periodical reports of an official Inspector, whose appointment it already has been shown was made from the first a leading feature in the present educational system.”

213 Royal Commission 1867, xii.
214 Royal Commission 1867, xix.
215 Quoted in Royal Commission 1867, xviii.
216 Quoted in Royal Commission 1867, xix.
217 Royal Commission 1867, xix.
Localized authority that remained independent of state regulation and inspection was inimical to a comprehensive education system since "Convenient or indispensable as local agency may be in supervising the routine of a system, immobility, if not degeneration, is the natural characteristic of systems entirely local." This was illustrated by the advances made through centralised state efforts to direct and regulate local governance in a range of modern institutions from the school to the prison:

The influences which in the present century have wrought an entire change in the parishes of England in respect to the relief of the poor, extinguishing a system that was demoralising and burdensome; or those which are improving the police in counties and boroughs; or which have to a great extent supplanted gaols that were nurseries for criminals; or have abolished nuisances that abridged the average duration of human life; or introduced methods of teaching based on correct philosophy and fitted to promote human progress, did not originate with the Poor Law Guardians, County Justices, Borough Magistrates, or Parish Schoolmasters.\(^ {218}\)

For the Commissioners, local barriers to the advance of progressive state institutions was most felt in America:

In the affair of Education, no experience more pertinent could be quoted in illustration of the consequences of a fragmentary system – one exclusively local in its machinery – than that of America. It is the experience of States which, from their birth, recognised the duty and importance of providing instruction for the rising generation, but failed to appreciate beforehand the consequences of the absence of centralised authority in connection with the Schools which they established.\(^ {219}\)

Quoting the *Edinburgh Review*, it was noted how "The Common School system of Massachusetts...has fallen into a state of general unsoundness and debility." The *Review* believed that two centuries "of administration...of the common schools, by the public themselves, without the aid of any controlling, advising, or enlightening central power, is highly instructive." It went on to describe the "overwhelming and irresistible" evidence that "public Education was rapidly declining" in Britain "under the management of mere local Committees."\(^ {220}\) The report contained a plethora of primary sources depicting the atrophied state of local educational governance throughout the liberal-democratic world. In a *Letter*

\(^ {218}\) Royal Commission 1867, x
\(^ {219}\) Royal Commission 1867, x
\(^ {220}\) Royal Commission 1867, xx.
relating to Education by Edwin Chadwick, Esq., ordered by the House of Commons to be printed, 21st March, 1862, the “course and inferior” education of the “Northern States of America” was compared to that provided by the “French Commune and the English Parish.” Chadwick duly chastised local government as sectional, unaccountable, parochial, close-minded and in “default of the administrative principle.” It was “In that state of fragmentary isolation, whether of sect or of district, which fanaticism or sinister interest praises under the name of independence, success yields no example for imitation, failure no warning for avoidance.” Citing personal correspondence from Horace Mann, former Secretary of the Massachusetts Board of Education, Chadwick backed his own rhetoric:

In this Commonwealth there are about 3000 Public Schools...These Schools are at the same time so many distinct, independent communities, each being governed by its own habits, traditions, and local customs. There is no common superintending power over them; there is no bond of brotherhood or family between them. They are strangers and aliens to each other. The teachers are as it were embedded each in his own School district; and they are yet to be excavated and brought together, and to be established each as a polished pillar of a holy temple. As the system is now administered, if any improvement in principles or modes of teaching is discovered by talent or accident, by one school, instead of being published to the world it dies with the discoverer.221

While American political culture trumpeted minimal government and local association, Mann, a keen observer of educational change on the Continent, was aware of the barriers to progress, uniformity and unity of purpose under a fragmented and voluntarist system of school administration.

The Royal Commission also reported on the subject of a local levy or school rate which would replace or supplement central funding and provide an alternative to the perceived evils of direct taxation. Firstly, it was affirmed that the question “must be made imperative by the Legislature, not left to the local option.” In support, the Commissioners cited evidence from the 1866 ‘Commission on the Common School System of the United States and Canada’:

a rate-supported system of Schools. whatever may be its apparent superficial uniformity, really exhibits all the inequalities of a voluntary system, and labours besides under certain special difficulties of its own. The subdivision of Townships into School districts (which brings the School under the control of narrower local influences) is considered in all the New England States as the most mischievous step ever taken in educational

221 Royal Commission 1867. xx.
legislation. In cities, where public spirit is higher and public opinion more enlightened, the evil is not felt so much...But in the country all the short-sighted parsimonious motives have full play.\textsuperscript{222}

Here we see localism constituted in archaic opposition to constitutional theories which came to define centralism. Local control was narrow, short-sighted, parsimonious, non-egalitarian, undemocratic, and in contrast to the ‘enlightened’ rationality endemic to the central state. The Report did give a token voice to continuing local participation in school governance, yet this would be limited to rudimentary maintenance and supervision. While it was “inexpedient to devolve such a liability” as local school rates, the commissioners were “impressed with the desirability of enlisting greater local interest in the Public Schools.” Since one-third of the cost of new buildings had to raised by subscription, it was proposed that the cost of repairs to schools and the supply of fuel should be locally funded. These duties would be attended to by a ‘local board of education’, whose activities would in turn be supervised under the “enlightened influence” of an Inspector.\textsuperscript{223} This hope to still a moral economy of ‘ethical self-improvement’ was important dimension of liberal governmentality; but again, the ultimate success of such strategies would rely on the ‘approbation’ of the sovereign legislature.

Both the Anglican and Catholic churches had by 1867 accepted the limited applicability of local control. When Rev. W. J. Dunne, the Vicar-General from Richmond, was asked by the Royal Commission whether he was “in favour of local rates in Country Districts”, he replied that “I would not be in favour of local rates. A great outcry would be raised against them. It would lead to considerable evils if appointments and removals of masters were left to local Boards. Such appointments and removals should be vested in a central authority.” Dunne also believed there to be a “great lack of interest in the Country Districts on the subject of education”, arguing that municipal supervision of schools should not extend beyond special visitors.\textsuperscript{224} Dunne has been held up as a symbol of Catholic opposition to secular instruction, having favoured separate Catholic schools which would conduct religious instruction in the hour after normal lessons.\textsuperscript{225} Yet Dunne also supported a constitutional system of school governance – embodied in the Irish National System – which would remain uniform and centralized. Consequently, Dunne argued that all-Catholic schools could remain under the influence of state inspection and teacher certification, and therefore did not have to be denominational. It is this model which has

\textsuperscript{222} Royal Commission 1867, xxiii.
\textsuperscript{223} Royal Commission 1867, xxv.
\textsuperscript{224} Royal Commission 1867, 30.
ensured that ‘independent’ Catholic and Anglican schools have continued to remain under the
direction of centralized curriculum and inspection.

The abstract right of central administration had been established but the question remained
whether this authority should consist of “a Minister of Education holding office by political
tenure, or a permanent head of an Educational department, or a Board.” In regards a political
appointment, “the objections were obvious”, since “Special fitnesses are required” and were
“not nurtured in a political arena, and not likely to be acquired in the usually brief period of
official existence on a political basis.” Unease about the conferral of the full ministerial
authority was common in colonies exposed to the uncertainty of factional government. This was
a feature debate in New South Wales, with Henry Parkes unwilling to countenance ministerial
control until a cohesive cabinet working under a strong system of party government had been
secured.

While a political appointment was not yet suitable, the Commissioners were neither willing to
establish a permanent, bureaucratic head since it would not command the necessary authority:
“no matter how unimpeachable the discretion exercised by a single functionary...might be, we
are persuaded that he would fail to command that acquiescence which is indispensable to
harmony and success.” Accountability and outside influence was another problem, the
Commissioners wondering whether a permanent head could “withstand that temporary clamour
to which...an individual is apt to succumb.” Consequently, government boards were regarded as
the “safest depositories of interests exposed to the sinister influence of ignorance, prejudice, or
transient disrepute”, although it was acknowledged that “they are also sometimes the refuge of
obsolete theories and superannuated systems.” Still, “the defects of administration by
Boards...may be overcome by...entrusting a judicious discretion with a properly selected
Chairman.” From this, the Commissioners concluded that “the necessary constitution of the
central authority in connection with public Education is that of a Board.” Once established,
“The duties which devolve upon the central educational authority require that it should be
invested with large discretionary powers.” This was particularly relevant for the Tasmanian
colony since “local conditions are of a less settled or definable character, and consequently less
susceptible of being classified and provided for according to fixed rules.” While the
Commission had resolved the normative issues concerning the ‘right of state interference’, and
in principle supported ministerial responsibility, the ‘less settled or definable’ status of
Tasmania’s representative institutions caused the Commissioners to favour the ‘imperfect’,
though less radical, model of an appointed and responsible central board.

226 Royal Commission 1867, xxvii.
227 Royal Commission 1867, xxviii.
This unwillingness to adopt full ministerial rule was contradicted by many giving evidence at the Commission. Mr. A. Ireland, an educationalist of 15 years, prefaced his call for responsible ministerial control by stating that “Public Schools are now considered absolutely necessary, alike to supply the labour market, to raise up industrious and intelligent servants, maintain wealth, and for the maintenance of law and order in society.” Considering the fact that “the greater proportion of our revenue population are receiving no education at all”, and that the amount expended by the Council and Board of Education is “extravagant”, Ireland proposed “a system of education to be established by a special Act of Parliament, and to be under the management and control of a responsible Minister of the Crown.” The leading features of this enactment would be compulsory attendance between the ages of five and thirteen; moderate fees to be paid to the central authority, and free education for the deserving poor.

In summary, it might be argued that the Commission, while initiated by the moderate Richard Dry, in the name of retrenching public expenditure, was exploited by extremists such as Innes and Butler to consolidate a more rigorous system of state control over the school system. This was not simply a lucky turn, but the partial resolution of a long-running polemic concerning the

---

\[ Royal Commission 1867 31 34 \]

\[ The Premier, Sir Richard Dry, affirmed his ‘moderate’ position on state interference. \]

If reformatories were to be strictly under the control of government, they would not work advantageously. To be successful they must spring from the Christian charity of the people and be conducted by the people, not the government; they must have the active assistance of the outside public.

Dry had been conspicuous for his role in the Patriotic Society, the Anti-Transportation League, and the establishment of responsible government; however, he still based faith in the institution of local self-government. Dry recommended the adoption of the Great Britain and Irish system which left the management of reformatories to private individuals. While the government were to maintain regular inspection and financial assistance, the bulk of the funding and administration was to be provided by local committees through donations and country rates. This was in contrast to the system recently established in Victoria where reformatories were to be funded by the central revenue and administered by a central board. See Minutes, August 5, 1867.
constitutional construction of the liberal educational state. As debate in Britain had shown, the normative question concerning the absolute authority of the state to ‘compel’ the education of the masses had superseded the waning principle of local, voluntarist, or denominational organisation. Accordingly, Henry Butler was given the opportunity, through the coming Public Schools Bill, to translate emerging techniques of modern school governance into legislation – including compulsion for all school-aged children, teacher certification, an expansion of the central inspectorship through the appointment of truant officers, the replacement of special visitors with dedicated local boards of education, and the securing of a fixed annual grant for schools which would replace the uncertainty of an annual vote. These innovations were informed by Butlers extensive experience within Tasmanian educational governance. Butler’s interest in education was spawned under the influence of Chief Inspector Thomas Arnold, who elevated Butler to a place on the central education board in 1854. Upon Arnold’s resignation, Butler became the leading educational bureaucrat in the colony. He was appointed Chairman of the Southern Education Board in 1857, and also chaired the remodelled single Board of Education from 1862. In 1858 Butler became an inaugural member of the Council of Education, while he was also a Commissioner in the 1860 enquiry into superior and elementary schools. It was not surprising then that, with Innes – who was also a prominent member of the Southern Education Board and the Council of Education – Butler maintained a central role on the 1867 Commission and the coming Public Schools Act.230

The issue of universal compulsion had not, apart from the need to ‘rescue’ neglected children, been discussed in any depth during the Commission. This changed when Butler produced a memorandum suggesting compulsory education which was subsequently attached to the report. In fact, the main body of the report argued that “legal compulsion as a principle in public education and its expediency in practice are by no means settled questions among educationalists.”231 Butler’s memorandum proposed that all children between 6 to 12 in the ‘settled districts’ should be registered, and that the Master of each public school provide a monthly return to the district school board showing the rate of attendance for each registered child, “together with their respective ages and classes.”232 During the committee stage of the second reading of the Public Education Bill, William Hobson – the Attorney-General, former President of the Council of Education and soon to become the first Vice-Chancellor of the University of Tasmania – who had introduced the Bill, noted that approximately 40% of the school-aged population were enrolled in public schools and that only 50% of this figure

231 Royal Commission 1867, xxi.
232 TPP, “Education Commission” 1867. 110.
regularly attended.²³³ These figures confirmed the gloomy statistics produced by the Colonial Statistician a week earlier. The numerical reality of stagnant population growth, poor transportation and communication, a trade deficit, and failing agriculture was admitted by most in the House to be a result of public mismanagement.²³⁴

Dobson was quick to remind the House that the Education Bill reflected the findings of the 1867 Commission. Compulsion merely confirmed the broad acceptance of the ‘abstract right of the state to interfere’. The Bill would ensure the accountability and ‘legality’ of an appointed Board to implement the compulsory measures – thus, the primary object of the Bill was to “place upon a permanent footing the present form of administration by establishing a Board with a corporate existence, which shall have perpetual succession, be capable to be sued and be sued, hold land and personal estate, and enjoy the privilege of a common seal.”²³⁵ Dobson was willing to sanitize the compulsory clause, arguing that it might only apply to children in the populated districts who could easily access the public schools. This view was contained in Butler’s final amendment to the Bill. Remaining cautious about a backlash to such a radical “infringement on the rights of the people”, Butler proposed that the clause be restricted to 36 of the most settled districts, and that the children had to live within one mile of a public school. The number of districts could subsequently be enlarged if sanctioned by the Parliament.

The most objectionable feature of the compulsion clause was the conferral of policing powers to local boards.²³⁶ While local police would be informed about truancy, summoning parents before two justices of the peace in the case of repeated negligence, this would require an attentive and active board if the robustness of the compulsory measures were to be maintained. Experience showed, however, that local supervision was not de rigueur, a fact exacerbated by the broad exemption clauses contained in the final Bill. Children between the age of seven and twelve could, therefore, be exempted from attendance if it was shown that the child was being privately educated; that the child was sick; that parents depended on the child’s labour; that the child can

²³³ THA, August 18, 1868.
²³⁴ THA, August 12, 1868. As the Mercury itself argued, such numerical reality was “too telling and convincing a fact to escape even the most dull and passive... martyrs prepared to make any sacrifice in defence of a system they had been trained up to.” Mercury. August 13, 1868.
²³⁵ THA. August 15, 1868.
²³⁶ Opposition to compulsory education contained in the Mercury mimicked the views of former editor, James Allen, who had resigned to form the Evening Mail. The language of free trade and voluntarism was no longer used to oppose compulsion, with the editor referring to the “inutility and inefficiency of such a mose of educating the people.” It was argued that in England compulsory legislation was limited to the factory act and that the Prussian and continental systems only had marginally better attendance while promoting a ‘military’ rather than ‘civil’ system of government Mercury. August 17, 1868.
already read or write; or that the child cannot safely attend school. These clauses, in addition to
the reliance on inefficient local boards, would serve to make the compulsory legislation highly
ineffective. Nonetheless, the principle of compulsion had been embedded in the system. In
1873, the Public Schools Amendment Act attempted to strengthen the initial legislation by
raising the age of compulsory attendance to fourteen, the distance from one to two miles, and
universally extending the law beyond the settled districts.

The remaining and most enduring problem, as attested by the formation of a ministerial
department in 1885, was the constitutional construction of the administrative system. As it was,
local boards were accorded too much discretion and failed to realise the mandate of the central
board. No one knew this better than the Chief Inspector of Schools, Thomas Stephen, who in his
report for 1869 remarked that “no scheme of compulsory education could be devised that would
extend the educational area so successfully as the establishment of more efficient and therefore
more attractive schools.” Stephen was a prominent educationalist who was appointed
Inspector of the Northern Board of Education in 1857, was a member of the Royal Society of
Tasmania from 1858, and later became a member and President of Christ's College and founding
member and Vice-Chancellor of the University of Tasmania. Stephens would emerge as the
most high profile protagonist during the 1882 Select Committee and 1883 Royal Commission
on Education, proposing far-reaching prescriptions for reform including improved teacher
training and certification, the raising of teacher salaries, increased central inspection, properly
graded curriculum and examinations, and responsible ministerial control.

While Stephens bemoaned the inefficiency of the local boards within a year of the Schools Act
being passed, there was little initial commitment to reforming the structure of the central board.
Henry Butler had defended the constitution of the central body by noting that compared to
England “ours was a united system, by which every child in a place met in a common school in
an equal position. It was not a pauperizing system, the children went to the schools of the
Colony as a right. In England...the schools were managed by the squire and other individuals in
the respective localities, and this has been spoken of as a circumstance detracting from the value
of the schools; but here on the contrary it is a system of national right.” Butler continued that
public education in Tasmania was not as comprehensive as France, particular at the superior and
tertiary level, however finances were the primary constraint, and this was not the fault of the
board. The important thing was that the board, a national, secular and state controlled

---

237 TPP, ‘Report of the Board of Education’. 1869, 18–19
238 THA. August 20, 1868.
administrative body, conformed with the maxim that “the interests of society are vastly benefited when education is general, and its influence rendered all-powerful in the state.”239

While Butler believed that the central board was, in principle, a sound administrative body, the exiguous size of the central inspectorate, particularly at a time when government spending on government departments was being cut, forced the Board to rely on local inspection. Unfortunately, local boards were unable, or unwilling, to implement the compulsory clause. By occupying the role of special visitors, and in effect losing all executive discretion over school finances and administration, the local boards initiated under the 1868 Act had become listless and inefficient. During debate over the 1873 Public Schools Amendment Bill, House members including Innes and William Robert Giblin, under whose ministry the 1883 Royal Commission into Education was initiated, agreed that the boards needed to be held more accountable – Giblin noted that of three Launceston schools, two had been inspected by the board once in two years, while one school had never received a visit from the board. Nevertheless, the parliament remained hesitant about abolishing the central board and appointing a permanent or responsible head, particularly in a continuing climate of political instability, with most members opting to give the local boards pecuniary incentive by contributing to the education fund.240

Such suggestions were a stop gap and the legislature continued to avoid the need for substantive administrative re-organisation until the early 1880s when a select committee was appointed to sort out the failing rate of attendance in the public schools. The inaction on educational matters throughout the 1870s can, as in the late 1850s, be blamed on a stifling upper house, factionalism and the attendant failure to establish strong party government. Between 1872 and 1879 seven ministries came and went, making for highly impotent executive government. When Innes took over from James Wilson as Premier in November 1972, he was heavily restrained by the conservative Legislative Council. Innes’ ministry was short lived. His successor, Alfred Kennerley, who had partnered Innes on the 1867 Royal Commission into education, was able to sporadically follow up on his avowed commitment to social legislation, particularly in relation to destitute children, juvenile offenders, indigent persons, and an extension of government support to life insurance and building societies.241 While there was evidence of increasing dissatisfaction with the performance of the Board, particularly in relation to the compulsory clause, even the Kennerley Ministry, which lasted three years, had failed to take any meaningful steps toward educational centralization.

239Mercury, August 22, 1868.
240THA, October 24, 1873.
241This combined with his involvement in social-welfare and educational institutions, with Kennerley acting on the board of the Education Department, the Public Library and the General Hospitals Board.
Tasmania’s once pioneering education system began to fall behind the free, compulsory and ministerially controlled school systems established in Victoria and South Australia. The Victorian Education Act of 1872 prescribed free, compulsory, secular and bureaucratised education thirteen years before Tasmania attempted such comprehensive legislation. South Australia followed in 1875 with a system based on Victorian model. These were free colonies who were less constrained than the ‘old’ colonies of Tasmania and New South Wales by conservative and archaic routines of patronage and localism. A trait which allowed Higinbotham to secure party government, and as a corollary, ministerial responsibility over schools in Victoria. This reality inspired the radical *Tasmanian Times* to campaign for an increase in the household suffrage, hoping to take government from the hands of an “oligarchical faction – the pliant nominees of the pastoral and moneved interests of the colony.” “Confidence in the system of Responsible Government in this colony is shaken if not destroyed”, opined the *Tasmanian Tribune*, because “Personal, not party government, has been the choice of the country.” Thus, the “independent politicians” or “Men who profess to be ‘of no party’ are always the most dishonest, and practically the most useless of public men.”

In 1872 W. S. O’Sullivan established the *Tribune* as a voice against Tasmanian conservatism, and most pointedly the *Mercury*, which for over a year had been the only state-wide daily newspaper. The *Tribune* argued that the *Mercury* needed to “re-read the sign of the times”, particularly the emerging “science of political economy” which understood that “the foundation upon which all civilized societies rest” was the “the public.” This invocation of the ‘general

---

242 See “Speech by Mr Stephen, Attorney General, on the Education Bill. September 12, 1872” (Melbourne: 1873). As described in the previous chapter, George Higinbotham was the catalyst to the measures for compulsion and ministerial control. See *Public Instruction: Speeches by the Hon. George Higinbotham* (Legislative Assembly of Victoria, 7th & 30th May, 1867), 24. For arguments opposing state interference in the Victorian system, a position less prevalent that pro-state arguments, see James Mirams, *Education: Our Present System Reviewed. with Suggestions for its Alteration and Improvement* (Fitzroy: 1872).


244 *Tasmanian Times*, 1868; in Townsley, *Tasmania: from Colony to Statehood* (Hobart: St David’s Park, 1991), 111.

245 *Tribune*, December 30. 1872.

246 This evoked the quote from Junius – the anonymous political writer whose radical critique of the Duke of Grafton and Lord North in the 1770s ignited the Whig critique of conservative government – that prefaced each edition of the *Tribune*: “The ruin or prosperity of a State depends so much upon the Administration, that, to be aquainted with the merit of a Ministry. we need only observe the condition of
interest' was, in terms of public policy, aimed at the landowning members of the Legislative Council who recently blocked legislation for the Main Railway Extension and the Sale of Crown Lands. Interestingly, the consistent attempts to reform the alienation of crown lands and increase state funded public works were initiated by Henry Butler, who in 1869, under the Dobson ministry, was appointed as the inaugural Minister for Lands and Public Works, a metabureaucracy which amalgamated the Departments of Public Works and the Department of Waste Lands. Butler proceeded to implement the Waste Lands Act of 1870 which was designed to end the unproductive practice of land jobbing by sealing the price of land surrounding country townships and reinvesting half of the money for government works such as the construction of roads and railways. For the Tribune, this served to combine labour with capital and thus more rapid industrial as opposed to agricultural based economic growth.

Apart from implementing the Mineral Leases Act of 1872, which allowed government, through the issuing of licences, to regulate the growing mining industry, Butler was also instrumental in the attempt to secure government ownership of the Mainline Railway, which had been stalled by the insolvency of the Mainline Railway Company and the intransigence of pastoralists who refused to contribute state taxes levied for railway construction. These efforts were carried on by Innes, who as Premier maintained a Benthamite distrust for either patronage or popular democracy, and staunchly enforced the authority of the incumbent executive. When, as noted above, he was elected Premier in 1872, Innes quickly came into conflict with the landowners and Justices of the Peace who refused to pay the direct tax levied to pay for the railway link between Hobart and Launceston. In 1874, 28 Justices resigned their commission in protest against the rate levied on all landowners in districts adjoining the railway. The most sustained dissent came from the north of the state, with the landowning and judicial clique based in Launceston fearing the further aggrandizement of centralized rule in Hobart. The episode ended with T. D. Chapman, henceforth referred to as the 'Secretary of War', threatening to send police to the north to quell the threat of riots.247 In the face of sustained opposition from landowners and justices who believed that the state should only act for individual or property interests, the effort to establish a state owned and administered transport network showed the commitment of Innes, Butler, Chapman et al to foster the growth of state owned utilities which, most importantly, would be administered by a responsible ministerial department.


the People." Tribune, January 24, 1873.
The attempt to expand the bureaucratic capacity of the central executive continued to be held back by an underpaid and transient civil service. The policy of retrenchment in the public sector, combined with the continuing instability of ministerial office, had depleted the ranks of professional bureaucrats on the island. The was of major concern. The Tribune complained that "there is a dislike of our Civil Service, which, under its present mode of management, is fast becoming an object of repulsion rather than an attraction. Gradually every efficient officer in the service is being eliminated from it by a process of management which deprives every one of its members of all sense of security against being sacrificed to the caprice or injustice of some practically irresponsible minister."  

Several leading public officers had been lost to other colonies, limiting faith in the future bureaucratisation of educational governance. When James Rule, who was appointed Assistant Inspector in 1876, noted that "half the schools were conducted in church or private buildings; that only one regularly trained teacher had been introduced in the last twenty years; despite a very imperfect pupil teacher system; that there was only one infant teacher in the colony; and that drill was almost unknown," the intent to correct these deficiencies was enfeebled by Tasmania's faltering system of responsible cabinet government.  

The economic, cultural and administrative constraints that limited Tasmanian state building throughout the 1870s began to diminish in the early 1880s. With the emergence of a new breed of radical political reformers such as Andrew Inglis Clark, who appropriated his constitutional radicalism from Higinbotham and was responsible for over 100 new bills during his first year in office in 1883, the governing capacity of the bureaucratic state began to gain momentum. This was a time of frenetic legislative activity with the 'burning questions' of the day being subject to parliamentary vote. In 1884, the fifth session of Parliament yielded 56 Bills of which only 4 were rejected by the upper house, and 5 were withdrawn. Of these were the Constitutional Act Amendment, the Electoral Act Amendment, the Mainline Railway Extension Bill and the Crown Lands Immigration Act Repeal, each of which embodied progressive changes in the sale of crown lands, the power of the upper house and the expansion of state transport infrastructure. The following year would see the drafting of the 1885 Education Bill which conferred full ministerial and central bureaucratic control over Tasmanian schools. Henceforth, the omnipotent legislative state could begin to realise its 'abstract duty' to govern the population.

---

248 Tribune, January 15 & 16, 1875.

249 Reeves, A History of Tasmanian Education, 74. Rule's primary objection was to the fee system, which, he argued, resulted in reduced attendance because parents were often unable or unwilling to pay weekly school fees.
5. The final capitulation: the 1883 royal commission, ministerial responsibility, and the birth of legislative absolutism in Tasmanian education

The resolve of the parliament to reform the defective board system of education was given momentum when the Giblin ministry in 1881 convened a Select Committee to report on the current state of education in the colony. The failure of the compulsory clause contained in the 1868 and 1873 Education Acts became starkly apparent after the ‘Statistics for the Colony’ in 1881 showed that upwards of 35% of the population could not read or write. The Mercury described the compulsory clauses as “a farce”, arguing that “between the Board of Education on the one hand, and the Government and the Parliament on the other, the blame rests.” Inspector Thomas Stephens agreed that the current compulsory legislation “rarely extends beyond producing an attendance which is so irregular as to be of little or no value.” Parents evaded fines for truancy, and many children were wandering “the streets, and in many cases are turning into a dangerous criminal class.” The Launceston based Daily Telegraph also warned that poor teaching standards could only be improved through a substantial increase in the teaching stipends.

Administrative reform was the first step in correcting this deficiency. The unaccountable ‘nominee’ system under which local public school boards were appointed was a conspicuous hangover of English constitutional orthodoxy, and it was to this practice that the select committee made its most sustained recommendation for change. The committee argued that “Board management may have succeeded admirably when education was a nursling, but cannot efficiently deal with it in its more developed form.” Local board management caused public schooling to be “distributed over a long but disconnected chain”, and the committee believed “that the time has come for the abolishment of that form of control”, and for a single, sovereign and responsible Minister of the Crown to be appointed to administer schools via a paid bureaucratic official. Yet apprehension remained about the accountability of an independent bureaucratic head. The Mercury argued that “On a board of any kind there is some play of

250 Mercury, September 13, 1882.
251 Select Committee on Education, TLA, September 7, 1882
252 Select Committee on Education, TLA, August 1882; cited in Daily Telegraph, May 16, 1883. The issue of teacher salaries was problematic throughout the colonies. In Victoria, for instance, the failure of the payment by results system was brought to light via the 1877 report of the Inspector of Schools, who at that time was Charles Pearson, the noted utilitarian and political philosopher. A pamphlet written by Robert Gregory, and sanctioned by the Minister of Instruction, suggested that a graded salary take its place and that as a result, instruction would be of a higher and more comprehensive standard R. Gregory, The System of Payment by Results Exposed (Melbourne: 1878).
253 Select Committee on Education, TLA, September 7, 1882.
opinion; but when all opinion is centred in single head there is none. The object of any change should clearly be to popularise the system, and to give the people voice in its management.”Such opinion ignored the bureaucratic innovations set forth originally in the Northcote-Trevallyn Report. To fear the “shortcomings of a permanent civil servant” was to miss the hard fought struggle to establish a bureau of independent and professional public officers who, without hindrance from popular impulse, could advance the administration of public policy in the name of the national interest. Nevertheless, while the Mercury questioned the expediency of ministerial rule, it did not want to “fall back upon laissez-faire”, arguing that the policy of the present ministry was to commit “itself to as little as possible.” Thus, the need to strengthen the administrative efficiency of a public education system which had succumbed to “prevailing inefficiency, universal somnolence, and frequent spasms of dictatorial imbecility” was being acknowledged across the political spectrum.

As a further expression of parliamentary commitment to education reform, the New Public Schools Erection Bill was unanimously passed in 1882. Previously, local communities were to provide one-third of the cost of school building, an arrangement which failed to inspire a sufficient degree of school maintenance. Under the new legislation, the “Government undertook the whole expenditure required for the erection and repair of public schools.” However, the contention surrounding the recommendation for ministerial responsibility in the select committee report caused the following Public School Amendment Bill to be rejected in the House pending the appointment of a Royal Commission to enquire further into the education question. In this vein, the Mercury questioned the conclusions of the select committee due to the “brief time” and “meagreness of information” which characterised the report. Nevertheless, the editor agreed with the general conclusion of the select committee; mainly, that “considerable reform is necessary in respect of the general control and local management of public schools.”

The need for a more detailed examination of the question of school governance was countenanced through the appointment, in January 1883, of a royal commission of “enquiry into the existing system of public education in Tasmania.” The press were quick to praise the

254 Mercury, September 14, 1882.
255 Mercury, September 25, 1882.
256 THA, September 15, 1882.
257 Mercury, September 14, 1882.
258 Select Committee on Education, TLA. September 7. 1882.
259 Demands for greater accountability and administrative rigour in schools was replicated in the other great public institutions of the nineteenth century – hospitals and prisons. It was no accident then that in January rival commissions were simultaneously appointed to enquire into hospitals for the insane. prison
move, noting that “The Board and Council at present existing are a chaos, while the Local Boards are a perfect sham. In most instances the latter serve the sole purpose of affording a convenient screen, behind which the Chairman and Secretary of the Central Board may act as they please, without responsibility and without control.” This view was supported in the final Commission Report:

There are members of such Boards who would find it impracticable to pass a fair fourth year examination of a public school; and there are many members who...never will, take an intelligent and lasting interest in education. In the sparsely peopled districts it would be impossible to find a sufficient number of eligible persons to form a Board of the most moderate dimensions for each school.

While contention lingered about the structure and authority of the educational state in 1868, the Royal Commission of 1883 determined that “During the 16 years that have elapsed since the Royal Commission of 1867 conducted their inquiry, primary education of the masses has become more fully recognised as an obligation of the State, and compulsory measures more generally accepted as necessary adjuncts of a State educational system.” In this vein, the state/education nexus had become an integral component of liberal state theory:

The State forces education upon the people, not so much in the interest of the individual as for the advantage of the whole community; not that the prospects of the individual may be improved by knowledge, but that the commonwealth may not suffer loss through his ignorance.

In arguing for free education, the cost to the state was seen as “an insurance premium to be paid by the public for immunity from the evils that would arise from widespread ignorance...Surely, in every case where education is forced upon one section of the people in the interests of the whole, the charge should be distributed over the entire community concerned.”

To argue that the state acted for the ‘advantage of the whole community’, and not the ‘prospects of the individual’, indicated a final shift way from the classical constitutional ideal of the social contract and the ‘liberty of the subject’. After a decade of stagnation on the education question, the state had an inherent duty to compel the citizen to attend school, and to rationalise and discipline and public education.

261 Royal Commission 1883. xxxvii.
262 xvi.
regulate curriculum, teacher training and local inspection. The Commissioners claimed that two
fundamental precepts of liberal state theory were accepted with unanimity. Firstly, “it was a
duty of the State to provide for primary education”; and secondly, “that it is not an undue
interference with the liberty of the people to make education compulsory.” In support, the
Report referred to recent compulsory legislation in France (1882), Canada, England and other
colonies like NSW (1880) and Victoria (1872). However, unlike the commitment to free
education in other states, there was “strong an expression of doubt as to the desirability of
making public education free to all.” Opposition to free education was not related to the issue of
centralisation but was founded on moral concerns about diminishing parent responsibility, a
lack of pecuniary incentive and the ‘pauperisation’ of public schools. Nonetheless, it was also
noted that free education would aggrandize the directive authority of the educational state, as it
had done in Victoria, where education had been free since 1872. It was argued that if parliament
was to fully fund public schools then “the State may justly assume all powers necessary to the
vigorous enforcement of the compulsory clause.”

The Commissioners conducted a detailed exposition on the constitution of the current board
before recommending the establishment of responsible, ministerial authority like the ‘Minister
Controlling Education’ in Queensland or the ‘Minister of Public Instruction’ in NSW. The
central board set up in 1868 was controlled by the Chief Secretary, but in practice, as claimed
by the Commissioners. “he is a roi faineant, without responsibility or authority...He may
criticise the proposals of the Central Board...but, as to the vital details of public education, he is
powerless and irresponsible.” The ‘informal’ relationship between the Chief Secretary and the
nominated board failed to facilitate the kind of unity of purpose required to regulate and
homogenise a discursive and unwieldy school system. As an antidote, legislative and executive
authority had to be fused under the tutelage of an elected minister whose ‘responsibility’ had
been vindicated by the improved status and efficiency of the central parliament. Consequently,
the report suggested “a radical change of the constitution of the controlling authority, – by
abolition of the Central Board, and the transfer of the powers of that Board to a Minister of the
Crown.” Yet, in the light of Tasmania’s continuing susceptibility to government by patronage
and faction, there remained some scepticism that “Political influences might prevail over
educational requirements, patronage might be abused for political purposes, to the detriment of
departmental efficiency and neglect of departmental claims.”

263 Royal Commission 1883, xiii, xxi.
264 Royal Commission 1883, xxxv.
265 Royal Commission 1883, xxxv.
Before administrative practices could be improved via ministerial authority, the abstract right and duty of the state to do so still had to be clarified. In a questionnaire forwarded to 32 educators, politicians, clerics, editors, and administrators, the “duty of the state to make provision for the for the primary education of the young?” was questioned. That duty was unanimously affirmed. Rev. J. C. Hall of Christ’s College backing his response by arguing that

The State confers certain privileges and imposes certain duties upon its citizens, and it is therefore its duty to do all in its power to enable them to appreciate the one and discharge the other. It is, moreover, answerable for the general well-being of all its members, and as education is a valuable agent for the amelioration of society, and calculated to promote the repression of crime, it is the duty of the State to make the best of it for the securing of these objects.266

Such was the standard testimony, irrespective of political or denominational alliances. One respondent believed that compulsion should be directed at the needy and another argued for religious instruction, but all agreed that the state possessed sovereign authority to impose education for the general good. Thus, when asked if it was “an undue interference with the liberty of the people for the State to make Education compulsory?”, a Rev F. E. Stephenson of Hobart answered “No; because the liberty of the individual must yield to what is essential to the general welfare of the community.”267 This was again a typical response, the notion of the general good subverting individual right as a principle of public policy. When asked whether private school teachers should be certified by the state, Rev. Hall replied “Yes...I should think it an admirable thing if the State took the whole system of education into its hands, to allow no one whatever, to teach without holding some such certificate. I do not think the State bound in this matter to consider in the slightest degree the ‘liberty of the subject.’ It is a matter in which, to my mind, the subject has no right to liberty.”268 This sanctioning of the absolute sovereignty of a central bureaucracy was no easy task, marking the final triumph of a long fought struggle to shift the constitutional basis for colonial law and government.

Having affirmed that the individual or the local board had no ‘right to liberty’ on the subject of public education, Thomas Stephens was able to confidently argue that a restructured administrative body should be headed by a ministerial representative and “composed of

---

266 Royal Commission 1883, 127.
267 On the subject of free education, most were opposed except for those unable to pay since it devalued the worth of schooling, making it less appreciated and thus limiting attendance and performance; Royal Commission 1883, 131–133.
268 Royal Commission 1883, 142.
graduates or persons distinguished of educational acquirements." He then outlined an administrative structure which would form the basis of the 1885 Education Act:

The direct control of the Education Department by a Minister might facilitate the dispatch of business; but its efficient working will depend more on the executive agency than upon the question of the exercise of the chief controlling authority. The chief conditions of efficiency are (1) the presence of a regularly organised staff or responsible officers, with jurisdiction over all matters connected with public schools; (2) the determination of all questions as to appointments and promotions on the sole ground of merit, – the chief elements in this being professional attainments and faithful service; and (3) the exclusion of all direct or indirect political influence or patronage from these or other questions connected with the working of the educational system.

The fear that a single, responsible head might be vulnerable to parochial influence would be resolved by appointing a professional Director of the Department of Education – Stephens was the inaugural Director – who was to supervise professional, non-political and competitive bureaucratic officers. The role of the minister, while in practice remaining largely symbolic, would be to ensure that educational policy, as advised by the Director, was given voice within the cabinet. In terms of local supervision, administrative authority would be devolved through district boards of advice. In order to diminish the incidence of local patronage, and ensure strict standards of accountability, opinion stressed that boards of advice should be nominated by the central body rather than elected by rate-payers in the district.

The Education Commission’s Report was well received throughout the popular press. Reiterating much of the testimony in the report, the *Mail* noted that the “fundamental principle” of the report “is now generally admitted, viz., That it is the duty of the State to provide the primary education of the masses.” Sanctioning the principle of “free, undenominational and compulsory schooling”, the *Mail* thought it critical that the current compulsory legislation be improved since it served to “favour evasion.” The decision to replace the “apathetic local boards” with more accountable district boards of advice was another necessary reform; while the *Mail* also agreed with the argument favouring free education: “free education would [effectively] close inferior private schools that now impede and damage elementary

---

269 Royal Commission 1883, 151.
270 T. Stephens (Chief Inspector of Schools) Royal Commission 1883, 155.
271 The Commission conducted a questionnaire among educationalists and of 78 replies only 14 favoured election of Local Board members. Royal Commission 1883, xxxvi.
272 *Tasmanian Mail*, August 11, 1883.
education...eradicate evils arising from class distinctions between free and paying scholars, and...improve the position of the teacher.” Finally, the Mail sanctioned the abolishment of the omnipotent legislative state of the board of education and the “Central control of Education vested in a responsible Minister.”

Calls for a better regulated and professionalised system of school governance was mimicked in ongoing debate over the management of the New Norfolk asylum. The Select Committee of the Legislative Council appointed to inquire into the internal and general management of the hospital for the insane in New Norfolk noted that “ignorant and incompetent” persons had been employed as wardens and nurses, and had not been furnished with written rules and regulations “which in well conducted establishments are rigidly insisted on.” Accordingly, ill-treatment of patients was commonplace. Conditions were deplorable, while the asylum admitted individuals who did not require treatment. Proper management of the asylum could only be effected, argued the Mail, through an “efficient system of inspection.” The Mail extended this critique of local board management to the operation of municipal government, arguing that the accounts of the incorporated councils should be audited by a responsible public officer while charging that “many abuses of long standing in connection with municipal government are still allowed to exist.”

The mid-1880s saw a concerted push to bring education, public health, asylums, prisons, police, and the administration of justice under central bureaucratic control. The Public Health Act of 1885 was a seminal piece of legislation, reversing a long period of non-intervention in a privately controlled health system. The Central Board of Health established under the act – which mimicked the central board proposed by Edwin Chadwick in his Public Health Bill of 1848 – was a prototype ministerial department comprising several members of the legislature who were to present an annual report to the Parliament. The need to centralize the policing authority, which, since the Police Regulation Act of 1865, had been devolved to municipal authorities and militia style ‘territorial’ police organisations, was of pressing importance, and in 1886 a Select Committee was establish to formulate a centralised model for police organisation. The country landowners, magistrates and municipal councils had long been protective of their independent policing powers. However, the arbitrary practices of local municipal wardens had, since the 1860s, become an issue of increasing concern. The Mercury itself was quick to acknowledge that “The complaints of mal-administration of justice in our municipalities are too loud and too general to be any longer disregarded.” Indeed, this was a constitutional problem.

---

273 Tasmanian Mail. August 11, 1883.
274 Tasmanian Mail, December 22, 1883.
275 Tasmanian Mail. May 24, 1884.
since the municipal wardens performed their duties gratuitously and, encompassing the role of local justice and magistrate, were discretionary in their judicial conduct. The total neglect of local justice through the non-attendance, the inexperience, and the unaccountability of municipal wardens was exacerbated by the fact that the central government had “parted with the direct nomination, efficiency, and control of the police force.” Tasmania was the only colony which had relinquished the control of police and justice to municipal government.\textsuperscript{276} The ambiguity of the justice system drew the ire of the public and press into the 1880s. In 1883, the \textit{Tasmanian Mail} noted that “Justices’ justice is proverbial for its uncertainty, incongruities, and contradictions. Wardens are, as a rule, made of pretty much the same stuff as the Justices.” Thus, the \textit{Mail} supported the proposal currently being debated in the House to appoint two circuit judges holding court at stated intervals in each centre of population, and who would be selected “on account of their legal education”, therefore removing “anomalies which occasionally approach to an outrage on common sense, and would secure that uniform interpretation of the law” and with it “public confidence.”\textsuperscript{277} Thus, the failure of what Foucault called called the ‘vast, inordinate framework of judicial machinery’ was becoming increasingly apparent, exacerbating calls to implement codified techniques of government in all areas of public administration.

It was in this climate for reform that a Public Education Bill was drafted which would legislate the main recommendations of the 1883 Royal Commission. The \textit{Daily Telegraph} was glad to hear that the Premier, Adye Douglas, was to bring the education question to the forefront of legislative debate during the coming session of Parliament.\textsuperscript{278} Arguing that “the modern system of providing education for the rising generation will revolutionise the world”, the editor argued that the acquirement of “a taste for thinking” would limit the “danger of social or political disorganisation, such as the world has witnessed in former times, a condition which, as a rule, owed its being to the ignorance of the mass who did not enjoy the benefits of education which the State now supplies.” Secular, compulsory and free education had been established in France, Switzerland, Holland, where attendance was optional, and Prussia; while in England attendance was compulsory, as it was throughout the Australia colonies. The \textit{Telegraph} noted that free primary education was available to all classes in Victoria, and hoped that the Tasmanian parliament would also pass such a measure, particularly as a means to ensure that the

\textsuperscript{276} \textit{Mercury}, August 14, 1867.
\textsuperscript{277} \textit{Tasmanian Mail}, March 10, 1883.
\textsuperscript{278} Douglas was a founding member of the Anti-Transportation League, prominent in the arrest of J. S. Hampton, a protagonist for the Mainline Railway, federalist and active delegate in the constitutional conventions of 1891 and 1898, and advocate of compulsory state education. \textit{Daily Telegraph}, May 16, 1885.
compulsory clause was better enforced. However, the free clause was ultimately left out of the coming Education Bill because, as noted earlier, it was argued that such a measure might overly reduce parental responsibility.

Free and compulsory measures aside, the central object of the proposed legislation was to break with 45 years of 'irresponsible' board administration. Henry Butler, reneging on his faith in the governing capacity of a nominated board, had conceded the need to make education a coordinate branch of cabinet government. Butler has "accelerated the demise" of the board, remarked the *Mercury*, by "acknowledging that in many things, it had not properly fulfilled its proper functions but has caused delay and needless vexations in many instances as only such responsible bodies can do."\(^{279}\) On December 5, 1885, after a unanimous vote in the House, the Education Act came into force, replacing a nominated and unrepresentative Central Board with a responsible bureaucratic department which was to have the final say on matters of educational governance. Schools were henceforth to be governed by parliamentary majorities and as such were to be governed in the public interest. While local boards of advice were to retain some administrative discretion, the overarching authority of the state would remain in view – regulating, rationalising, and 'compelling' the education of each citizen.\(^{280}\)

5. Conclusion

The history of the ascension of centralized educational governance in Tasmania contains many gaps, contradictions and inconsistencies. This chapter argues that these vagaries are best understood in terms of the broader constitutional evolution of the Tasmanian state. While compulsory measures remained sanitized and ineffective, and free education was not legislated until 1908, these were the result of short-term barriers that fail to explain how such an enduring system of free, compulsory and state controlled education emerged in the early twentieth century. To understand how the political chaos of the nineteenth century gave birth to the centralized and highly intransigent system of education that continues to this day, it is important to find lines of historical convergence, a project upon which this chapter has embarked, in simple terms, by drawing an inference between liberal constitutional discourse and the education question. Such was evident in the consistent reference to intellectual debates expounded by John Stuart Mill, Chadwick, Arnold and Shuttleworth concerning the linkage

\(^{279}\) *Mercury*, January 1, 1885.

\(^{280}\) The legislation attempted to improve the compulsory clause of 1873 by raising the maximum age of from 13 to 14, and by imposing a compulsory 'standard' meaning that each student had to reach a proficiency in reading, writing, and arithmetic to the satisfaction of an Inspector of Schools.
between centralized education and modern theories of the liberal state. Distilled in the Royal Commissions of 1867 and 1883, these debates and discourses traversed issues of rights theory, political and social economy, criminal law reform, theories of municipal government, and the constitutional construction of a bureaucratic department of state. It is important to remember that these issues had first influenced Tasmanian political culture in the 1830s, when Maconochie, Innes, Melville and Gregson, in the face of the stark constitutional reactionism of the Arthur regime, began to expound constitutional reform via a synchronous web of discourses pertaining to penal reform, systematic colonization, the reform of the administration of justice, democratisation, colonial self-government, and the ‘vexatious’ education question. For all the pontificating between liberals, conservatives, Anglicans and Catholics, and their efforts to block or facilitate reform in the name of self-interest, the deep and enduring debate over the ambiguous, unaccountable and administratively inefficient tradition of local self-government, the merits of a codified and centralized system of liberal governance, and finally, the ‘abstract duty’ of an absolutist legislative state, would ultimately prevail. There is evidence to suggest that reformers and educators had the opportunity to increase the mandate and influence of local school authorities. However such efforts belonged to a tradition of social administration which had, by the mid-nineteenth century, been relegated to the ‘lumberoom of constitutional antiquity’. As much as Tasmania’s conservative political clique hoped to sustain the liberty of the subject, it could not overturn a global shift in the way government would henceforth do business with the people.

---

281 Thody, for instance, argues that local authorities ‘chose’ to accept centralization due to cultural or ‘learned incapacity’. A. Thody, *Learned Incapacity: Reassessing Local Involvement in Schooling in Nineteenth Century Tasmania* (University of Luton, 1995), 22.
Chapter 8

Conclusion

1. Introduction

By drawing a historical linkage between the educational question, liberal constitutionalism and the rise of the legislative state, this thesis has set out to address a significant theoretical limitation in exiting histories of educational centralization in nineteenth century Tasmania and New South Wales. Historians have described in great detail the causal relation between geographic isolation, a corrupted social body, economic recession, an ascendant liberal/reformist middle class and the push to educational centralization. But few have acknowledged how the latter was further welded to a broader shift in the constitutional dynamics of colonial state building. Transportation, a static commodities based economy and a hopelessly inadequate denominational school system can be understood, therefore, not only as a product of social and economic ‘circumstance’, but as a symptom of a broader common law constitutional tradition upheld by the logics of negative power, the right to property, artificial reason, juridical law, minimal government, saxon self-reliance and so on. Embedded in the early modern foundations of English law and government, Bentham and his colonial kin set out to deconstruct these logics as a means of instituting a more positive, unified, absolutist and efficient schema of liberal governance designed to manage people rather than property. It was by virtue of this radical shift in the logics of liberal governance that a highly fragmented and impotent public school system could be completely transformed. The disciplinary revolution that emerged out of Bentham’s prison panopticon, and indeed the modern school, needs, therefore, to be also understood as a constitutional revolution. Accordingly, this study has suffused debates surrounding educational, criminal, health and municipal reform in the colonies with a broader constitutional challenge. Consolidated during the emergence of responsible self-government, to the last vestiges of common law government.

The fundamental premise of this thesis, then, follows that this constitutional schema of law and government, as played out through the effort to establish full ministerial responsibility over schools, was the foundation upon which a modernized and centralized system of compulsory and free education was established, and continues to flourish, in Australia. Ministerial
responsibility can then be seen as the apex of a contrived and ultimately pervasive constitutional model of accountable, scientific, uniform and innovative legislative rule designed to impose an inspectorial web over a localized governing system prone to irrationality. But it needs to be remembered that this move involved a revolutionary challenge to an older and more venerable constitutional tradition. The education question was thus embroiled in broader questions of the duty of state and the limits of state interference, meaning that the archaic routines of localized education could not be reformed until a positive constitutional relation between the individual and the state had been established. In summation then, it can be argued that this opening up of a problematic concerning the foundation of constitutional power in the liberal state contributes an important and hitherto unexplored historical route through which to explain the origins and dynamics of centralized educational governance in Australia.

In an effort to develop this relation between nineteenth century educational reform and liberal constitutional discourse, the thesis has drawn on, and responded to, a number of extant analytical models that address the dynamics of governing power in modern liberalism. Drawing largely from the work of Michel Foucault, the thesis has developed a historically grounded account of the relationship between constitutional development and the notion of a 'governmentalized' state which acts through positive and constitutive power rather than the negative and juridical logics of eighteenth century reason of state. As will be reiterated below, this thesis offers an important constitutional adjunct to a Foucauldian formula that gives undue weight to the non-central, bio-political and self-regulating locations of governing power. This point is played out through the ongoing efforts of neo-Foucauldians to explain the ubiquitous strategies of neo-liberal educational reform. At this point it might then be germane to juxtapose the explanatory purchase of our own model of the dynamics of educational governance as it relates to the issue of contemporary neo-liberal reform with attempts to impose a more orthodox reading of governmentality on this terrain. As stated in chapter one, a secondary goal of this thesis has been to throw historical light on the tendency for devolutionary, self-managing and free-market reforms employed under the banner of the new right and neo-liberal policy agenda to paradoxically increase, in the words of Anthony Welch, "centralised regulation and control." Thus, it is in the context of contemporary reform that we can understand the important need to identify, beyond the neutral and 'self-governing' strategies of the emerging nineteenth century governmentalized state, the constitutional dynamics that, it is argued, provided the framework through these strategies could be realised.

2. Neo-liberalism and the dynamics of educational governance

1Welch, Australian Education: Reform or Crises, vii.
Developed initially in the 1980s under the corporate managerial mantra of the new right and consolidated during the 1990s, neo-liberalism connotes a pervasive governing project that continues to marketize, decentralize and globalize the relationship between society, economy and government. Through the privatising and devolutionary policies of successive federal and state governments, public education has, as described by Marginson, remained a central object of this neo-liberal agenda:

Educational institutions, in Australia and throughout much of the world, are changing. In the neo-liberal era, the old dividing lines between public and private, and between state and market, have been partly dissolved. Institutions and systems that were built by government social programs, and subject to bureaucratic norms, albeit with varying levels of institutional independence—more freedom in universities, rather less in schools—are now taking on certain of the forms and behaviours typical of corporations operating in an economic market.

As a system of government, neo-liberalism is distinctive in that it is able to appropriate free-market mechanisms while maintaining regulatory controls. Thus, for Meredyth, “the advanced liberal tactics of deregulation and deferred authority” have been combined with a “strong statist program of nation-building and institutional reform.” This dualism represents a variable and complex model of governing power that has reached across all sectors of the public education system. Accordingly, neo-liberalism has presented scholars with a new theoretical problem. No longer is it a question of which class rules the state, which economic principles inform state policy, or which ideologies drive political culture? More obviously, the question now is: how are we governed?

In an attempt to understand this phenomenon, critical theorists, sociologists, policy analysts, political scientists and the like have been forced to look beyond theories of the capitalist state which focused on the static relationship between the state and economic or ideological power. Economistic and class theories of the state fail to adequately address, on the one hand, the subtle and complex reach of neo-liberalism beyond the relations of production and consumption; and on the other, how the free individual has ‘subjectivized’ this mode of power, not as an economic relation, but as a strategy of governance which is at once regulatory and laissez-faire, statist and individualistic. From this perspective, Hindess and Dean argue that “much of the contemporary

---


neo-liberal agenda can be understood as a liberal response to the difficulty of viewing economic interaction as constituting a self-regulating system at the level of national society.4

While sociologists and critical theorists including Habermas, Giddens and Lyotard have been drawn upon to explain the new relationship between the state, society and technologies of power which underlie the ‘post-modern condition’, it is to Michel Foucault that most have turned to get a better handle on neo-liberalism.5 Over the past five to ten years the body of work which draws on Foucault’s ‘genealogy of liberalism’ to contextualize the relationship between power and subjectivity in modern government has grown at an astounding rate. There is good reason for this. For the most part, the Frankfurt School, historical sociology and critical theory in general have focused on socio-cultural variables such as communicative action, citizenship formation, mass culture and so on to explain the dynamics of power that underlie the modernist project. This concern with the public sphere, and of the culture of commodity fetishism, individualism, narcissism and western cultural imperialism emerging out of the Enlightenment, has not taken serious account of governing mechanisms that underpin western liberalism. What is so timely about Foucault’s project is that, in Latour’s terms, it attempts to focus on the ‘humble and mundane’ strategies that have allowed liberalism to govern effectively ‘at a distance’.

Foucauldian analysis is distinct in that it positions liberal government as a neutral technique that, in contrast to the eighteenth century notion of juridical, sovereign and territorial power, makes us “aware of the ways in which the political power of the state impinges on our individual lives, that we feel it.”6 For Rose and Miller, liberal technologies of government are “beyond the state” because they seek to extend the domain of “thought into reality”, to act at the level where we “dream and scheme.”7 This subjective realm of state power is the telos of liberal government, the fulfilment of a strategy in which the citizen-individual perpetuates, and participates in, government via the institutional practices of everyday life. This new end of government, the ‘life-conduct’ of the population, is explained by Foucault thus:

The population now represents more the end of government than the power of the sovereign; the population is the subject of needs, of aspirations, but it is also the object in the hands of the government, aware, vis a vis the government, of what it wants, but ignorant of what is being done to it. Interest at the level of the consciousness of each

6Burchell, “Peculiar interests”, 124.
7Rose & Miller, “Political power beyond the state “. 176.
individual who goes to make up the population, and interest considered as the interest of
the population regardless of what the particular interests and aspirations may be of the
individuals who compose it. This is the new target and fundamental instrument of the
government of population: the birth of a new art, or at any rate a range of absolutely
new tactics and techniques. 8

As detailed throughout this study, the school acted as a primary site through which these ‘new
tactics and techniques’ were developed. Thus, throughout the nineteenth century we see, within
the pedagogical and administrative discourses of educational reform, the appropriation of
techniques of classification, comparison, hierarchicalization, regulation and surveillance that, in
contrast to the moral admonition of the pastor or the judge, would work silently and ‘invisibly’
on the problem of “Ignorance, intellectual destitution, vice, and crime.” 9 Unlike the eighteenth
century notion of ‘police’, this constitutive and positive mode of disciplinary power would
correct the problem of population via pedagogical and administrative practices and routines
enacted outside the sovereign boundaries of the state. Uniform and secular curriculum,
centralized teacher training, the regulated payment of teachers and the institutionalization of
school building and design were to be enforced. Not via relations of sovereign power, but the
polymorphous routines of the all-seeing, omniscient inspector. As described in great detail
elsewhere by educational historians, these ‘normalising’ technologies where initially articulated
by a lineage of Continental, English and American educators reaching from Pestalozzi through
Lancaster, Horace Mann and Kay-Shuttleworth. Heralding a new political economy of school
organisation, colonial educators such as Henry Carmichael, William Wilkins, Thomas Arnold
and William Hearn appropriated these techniques with remarkable precision. It was in this
context that William Hearn criticised the operation of dual systems of school governance in the
colonies:

if we wish to increase the efficiency of these schools we must combine them. It would
not be easy to find any system more thoroughly unscientific than the present. It is by the
combination of labour, by the united exertions of many persons working together at the
same time and in the same place. that we obtain the maximum of power; it is by the
division of employment’s. by the assignment of a separate function to a separate class,
that we obtain the maximum of skill. 10

8 Foucault. “Governmentality”, 100.
10W. E. Hearn “Some Observations on Primary Schools”, in Transactions of the Philosophical Institute of
Citing Joseph Kay, Hearn suggested that a combined system would not only improve the quality of teaching, but would also lead to greater economy in the classification and building of schools. This "combination of labour" would be best facilitated through a united board, thereby correcting the "divided labour and wasted power" inherent in a divided system of educational governance.

Hearn employed pastoral techniques of school governance which Hunter, commenting on the reform discourse of Kay-Shuttleworth, described as "arts of government that problematise political reality as a domain open to technical administration." Returning then to the issue of the relations of governing power in neo-liberalism, Foucauldians argue that these arts of government are geared at the economic and self-regulating domain of subjective power. This idea of course originated with Adam Smith. According to Graham Burchell, Smith did not "seek either the origin or the essential nature of political power in a pact or contract which establishes a legal right to authority and a corresponding obligation to submission," but proposed that "civil society spontaneously generates forms of causal subordination which are distinct from, (and may be opposed to) the formal establishment of power." As a result, "the legal codification and restriction of authority comes after, and is a function of, spontaneously formed social relations of authority and subordination." Smith's self-regulating rationality of liberal government thus forms a neat analytical framework through which to understand how the 'twin' strategies of marketisation and 'legal codification' have been utilized by neo-liberalism. From this perspective, Nicholas Rose insists that advanced liberal strategies of governance attempt to govern "without governing society; that is to say, to govern through the regulated and accountable choices of autonomous economic agents." This combining of governing regulation and individual choice is evident in the quasi-market education reform strategies of

---

11 Hearn was referring to Joseph Kay's "Social Condition and Education of the People in England and Europe" vol. II, 253.
12 Hearn "Some Observations on Primary Schools", 80.
13 Hunter. Rethinking the School, 70.
14 G. Burchell, "Peculiar Interests", 136. According to Denis Meuret, "The form of government in modern societies owes more to Adam Smith than to the strictly political authors of the Enlightenment, than to Locke, Montesquieu, or Rousseau... If political economy is the governmental discourse of the modern world, if, moreover, it can be argued that it is an account with programmatic value more than a description of reality, then one might also take the view that this account was constructed precisely in order to make this government possible." D. Meuret, "A political genealogy of political economy" Economy and Society 17:2 May 1988, 226.
15 Rose, "Governing 'advanced' liberal democracies". In Barry, Osborne & Rose. Foucault and Political Reason, 61: in Dean & Hindess, "Government, Liberalism and Society". 10
parental choice and school autonomy that, as described by Whitty et al., “involve an apparently paradoxical combination of state controlled and market forces.”

While disciplinary power and governmentality provide an important typology for understanding the dynamics of neo-liberalism, we encounter problems when attempting to understand how this ‘governmentalization of the state’ occurred in the specific historical context of Australian state building. While Foucauldian scholarship gives important detail of the movement through sovereignty-discipline-government, this account of the shift from absolutism, to reason of state, to bio-political power fails to deal with the subtle and complex constitutional discourses which intervened in and were impressed upon the issue of ‘how’ the population is to be governed in the Australian colonies. This deficiency relates, on the one hand, to an animadversion to historical agency in Foucauldian method; and on the other, to an epistemological limitation based on Foucault’s avowed emphasis on a “problem of government” that “finally came to be thought, reflected and calculated outside of the juridical framework of sovereignty.”

However, while the debates over educational centralization were undoubtedly geared at the self-regulating domain, this logic of economy was, for important reasons, coupled with a contrived and inherently absolutist model of state power. As detailed in chapter five, this was uppermost in the mind of a legal positivist like Hearn, who was aware that disciplinary practices had an inherent tendency to irrationality and arbitrariness unless maintained within the rational, responsible and expert jurisdiction of the sovereign legislature. Accordingly, Hearn insisted that a

---

16 Whitty et al., Devolution and Choice in Education, 11.
17 This limitation can be extended to Foucauldian accounts of contemporary, neo-liberal education reform. Marginson, for instance, notes that “despite Foucault’s interpretation, governments have not dispensed with the power of centralised implementation. Rather, ‘marketisation’ has been pursued simultaneously from above and below. In the newly marketised education systems, individual institutions experience a greater economic autonomy: for example, they are freer than before to raise money and to deploy resources as they see fit without reference to higher authority. But with the exception of the leading private schools and universities—which were always partly independent of the state—individual institutions have not departed from central control.” Marginson, “Education: the trend to markets”, 236.
18 Foucault, “Governmentality”, 99.
19 Foucault has been critiqued on a number of fronts for his account of sovereignty. Kerr, for instance, argues that the Foucauldian formula fails to include an account of market power operating at the level of sovereign power. More interestingly for our purposes. Carole Smith, a legal theorist, has criticized Foucault’s dismissal of law as a purely procedural form of power. On this account, I would agree with Foucault, since Smith tries to reposition the rule of law as an important, and indeed sovereign, source of power in modern government. See Kerr: “Beheading the king and enthroning the market”; Smith, “A critique of Foucauldian governmentality”.
responsible and centralized governing body staffed with salaried and professional officers was paramount to a disciplinized educational system: “a Board of Education, undisturbed by ruinous competition, composed of men skilled in their work and devoted to it, and supported by an enlightened public opinion, would render greater services than we might at first sight suppose, towards the general diffusion of knowledge.” 20 This model of a professional and centralized board was the precursor to full ministerial control. Hearn’s influence on education reform must, therefore, be understood both in terms of his role as a progressive pedagogue and a radical jurist. Accordingly, his broader educational vision embodies the need to theorise the ‘linkage’ between pastoral technologies and constitutional mechanisms rather than their ‘exclusivity’.

The fact that Australian scholars have dominated the emerging corpus of studies in governmentality says something about the relevance of this analytical framework, not only in light of Australia’s heavily neoliberal contemporary policy agenda, but in the context of Australia’s peculiarly statist nineteenth century experiment in liberal government. While this notion sits uneasily with an orthodox reading of bio-political power, this was a statism of a particular kind, exhibiting, through its absolutism, the hallmarks of a self-regulating governing apparatus. The Benthamite vision of legislative ‘innovation and change’ instituted via the constitutional mechanism of responsible cabinet government needs, therefore, to be conceptualized, not as a secondary effect of bio-political rationality but as a central analytic which explains much about the centralizing history of the governmentalized state in Australia. Thus, the historical depth and complexity of this constitutional discourse, as it related to the issue of educational governance, is worthy of far greater attention. The historically informed genealogy of the legislative state presented by this thesis thus points to the fact that neoliberalism, while remaining faithful to the tenants of Smiths ‘system of natural liberty’, emerged as a historical response to the problematization of the localized English state and the resultant demand for a supreme centre of governing power. Indeed, the latter should be viewed as a governing strategy whose primary goal was the governing of populations and not the reinforcement of the sovereign jurisdiction of the state. The demand for a central and animating governing force guided by strategies of responsibility, impartiality and rationality was articulated through a parliament that can be understood, not necessarily as a function of state power, but as a neutral technology, a constitutional architecture guided by a purely utilitarian rather than sovereign end. Nonetheless, history shows that this technical apparatus of legislative governance was backed by constitutionalism and state theory in important and enduring ways.

20Hearn “Some Observations on Primary Schools”. 80
When Dean and Hindess insist that government cannot be understood as “as a definite and uniform group of institutions nor as the realisation of a certain set of political or constitutional principles”, and instead, should be viewed “as an inventive, strategic, technical and artful set of ‘assemblages’ fashioned from diverse elements”, this does not, it is argued in this study, tell the full story of the dynamics of liberal government in Australia. To reiterate our earlier point, this dichotomous portrayal of ‘theory’ and ‘practice’ relates to Foucault’s assertion that liberalism is “a political philosophy that isn’t erected around the problem of sovereignty, nor therefore around the problems of law and prohibition. We need to cut off the King’s head: in political theory that has still to be done.” Continuing in this vein, he insisted that “To pose the problem in terms of the State means to continue posing it in terms of sovereign and sovereignty....We must escape from the limited field of juridical sovereignty and State institutions.”

3. State power, constitutionalism and the dynamics of educational centralization in Australia

In rejecting constitutional principle as an overly prescriptive basis for understanding liberal government, the Foucauldians share an epistemological aversion to political theory and constitutional design evident in an Australia historiography dominated by the grand unifying themes of the economy, geography and political circumstance. When Manning Clark said that the “discovery of gold strengthened the Australian demands for responsible government”, he animated a generation of historians to uncover the great social, economic and cultural upheavals that underlay the political evolution of the Australian nation. There are four common routes upon which historians have charted the emergence of state power in colonial Australia. The first views colonial statism as an expediency designed to foster capital expansion in an underdeveloped economy; the second as a symbol of political and social democracy embodying an especially egalitarian political culture: the third views the state as a site for class struggle between the conservatives and the mercantile, urban bourgeoisie; and the fourth looks deeper into the non-central and ‘invisible’ apparatuses of disciplinary and governmentalized state power.

There are important differences here. However, while liberal and Marxist scholars long differed on the class and democratic nature of the Australia state, these ‘meta-narratives’ are homologous in that they reduce the state to a vehicle for power held in civil society. Bannister.

23Clark, Select Documents in Australian History 1831–1900 [1955 edn.], 321. I might take this opportunity to appropriate the quote from Fyodor Dostoevsky which prefaces Clark’s document collection: “I want to be there when everyone suddenly understands what it has all been for.”
for instance, in the context of the relationship between the colonial state and educational change, typifies the ‘convergence’ of these opposing critiques, arguing that the “domination of the state by squatter and business interests”, as expressed in land and factory legislation, highlighted the “exclusivist nature of parliamentary representation” and called “into question the historians’ representation of the nineteenth century state as a popular and utilitarian state.” Both Bannister and the whiggish scholars she critiques fail to evince any complex constitutional analysis since they make assumptions about a liberal-capitalist political model which, in general terms, descended from the English Revolution of 1688, the Act of Settlement and the 1832 Reform Acts. Taking this constitutional lineage as a given, these histories have switched their focus to the more salient themes of interest group conflict between the colonial liberals and the landed aristocracy; or of a utilitarian, pragmatic, materialist and avowedly middle class political culture forged in the context of economic hardship, geographic isolation and the ascendency of liberal-capitalism as Australia’s dominant political ideology. Similarly, neo-Marxist, post-structuralist and Foucauldian analysis, while focusing on the indivisible relationship between civil society and the state, and thus at non-central strategies of government, does not comprehend the autonomous and exogenous constitutional logics of the state since state power is reduced to a discursive regime of technical practice.

Davidson’s account of the Invisible State and Danaher’s analysis of ‘Foucault, ideology and Social Contract in Australia’ are cases in point since they marry Foucauldian analysis with a critique of bourgeois social relations. Referring to the mass of regulatory legislation – mines, factories, poor relief, education – introduced in the colonies during the Victorian period, Danaher, in similar terms to Davidson, describes the “manifestation of the state’s role of a constitutive agent in the construction of morally upright citizens commensurate with the interests of liberal, bourgeois, propertyed values.” Thus, Danaher reconsidered the Foucauldian emphasis on governing practices by adding the “ideology of the social contract” conceived variously in the guise of “Tory paternalism, Protestantism, liberalism, utilitarianism, and a faith in the rule of law.” This intermingling of the social contract, the rule of law and ‘constitutive agency’ is, in the context of our own model of legislative and codified power, indicative of a loose reading of the constitutional debates that animated legislative reform. Similarly, Gavin Kendall’s study of the effects of “a kind of permanent problematization of the legitimacy of rule and of rulers” on the ‘Colonisation of Australia’, assumes that common law governance in the locality exemplified the attempt to ‘government at a distance’. He argues that the de-centred system of magisterial administration set up under the early colonial governors was, therefore, typical of techniques in which “Government was conducted by ensuring an efficient circuit of information.

24Bannister, “The Centralization Problematic”. 259
from the periphery to the centre, but the actual minutiae of police and magistrate administration was not over-defined.” 26 This attempt to link the routines of English local self-government to the technical apparatuses of the governmental state again contradicts the constitutional rejection of localism, and the juridical logic of governance that accompanied it, in the emergence of the legislative state. Similarly, Davidson’s focus on ‘the dominance of the judiciary and legal reason’ in his account of colonial political development, contradicts our own analysis of a system of disciplinary power that was importantly formed around a rejection of the rule of law in Australian constitutionalism.27

Underlying the rise of the legislative state, therefore, was a legal revolution defined by the emerging doctrines of legal positivism and the command theory of law. Through a variety of historical processes – systematic colonization, the failure of local self-government, general dissatisfaction with imperial government – this project was embarked on with enduring success in a colony which was not yet saturated with English legal and constitutional convention. While few Australian scholars have picked up on this discourse. Frederick Eggleston, referring, in 1933, to the era of state socialism in Victoria during the turn of the twentieth century, noted – while we have used this quote previously, it is worth repeating – that it was the “Austinian theory that law is a command and the State is omnipotent [that] really paved the way for modern socialism. The power of the State, so conceived, might be as effective to build up as to cut away.” Arguing that the command theory of law provided the means through which to “create the elaborate machinery necessary for state action”. Eggleston asserted that it was “precisely this constructivist view of the function of the State which, after an early struggle against a rather immature Liberalism, determined the trend of political activity.”28 Denoting a whiggish constitutionalism concerned with property rights, the separation of powers and minimal government, this ‘immature liberalism’ could not adequately deal with the problem of population, and became the catalyst to a command theory of law that came to underlie Australia’s ‘omnipotent’ and ‘constructivist’ state. While this shift is crucial to understanding the dynamics of modern liberalism, and indeed neo-liberalism, revisionist and post-structuralist theorists alike continue to link liberalism to an earlier constitutional model.

The command theory of law is fundamental to understanding a simmering debate concerning the locus of sovereign authority in Australia government. The contemporary argument as to whether sovereignty is lodged in the people, on the one hand, or the parliament, on the other,

26G. Kendall, “Governing at a Distance: The Colonisation of Australia”, in O’Farrell, Foucault the Legacy, 90, 94.
27Davidson, The Invisible State, 189.
28Eggleston, State Socialism in Victoria, 23–24.
confirms, however, an ongoing failure to adequately contextualize the nineteenth debates over social governance, and the 'problem of population', which confirmed the ascendancy of legislative absolutism over common law rights. Thus, while progenitors of the 'parliamentary sovereignty' thesis, such as Timothy Jones, argue that "Australia and Britain have remarkably few constitutional guarantees of fundamental rights", this misses the fact that the legislative state was founded on a fundamental rejection of contractarian notions of natural right. Jones picks up on this point in part when he notes that common law rights are "always vulnerable to abrogation or removal by statutory law", and argues therefore that rights could be protected if lodged in statute, as in America.29 This failure to appreciate the fit between constitutionalism and the governing imperatives of modern liberalism is brought out more clearly through the 'popular' sovereignty position. From this perspective it is argued that popular sovereignty, while not provided for under a bill of rights, is achieved through democratic mechanisms such as a constitutional referendum, and thus remains the underlying source of authority in the Australian state.30 By contrast, this thesis has argued that the peculiar system of democratic government established in the colonies lodged sovereignty in the parliament in complex, 'neutral', and largely irreversible ways.

This point takes us back to the nineteenth century discourses of parliamentary and constitutional reform initiated by the likes of Mill, Austin, Bentham and the philosophical radicals. Thus, the latter were bent on establishing a chain of command between the supreme authority -- the legislature -- and subordinate authorities -- citizens, local administrators -- as a means to ensure the unhindered passage of unified and codified law. The abstract logic of rights and 'artificial reason' were therefore subordinated to the supreme governing will of the legislature. For this reason, Halevy described how the vision of popular sovereignty underpinning philosophic

30See B. Galligan, A Federal Republic: Australia’s Constitutional System of Government (Cambridge: Cambridge University Press, 1995). 147. On the forming of Federal Constitution see also Irving, To Constitute a Nation; R. Birtell, A Nation of our Own: Citizenship and Nation Building in Federation Australia (Melbourne: Longman, 1995). Davidson, in a rejection of the popular sovereignty thesis, compares the underdeveloped culture of popular, participatory democracy in the colonies with France or Britain, where a “modern political space was opened out by a revolutionary system in which popular reason was dominant over the different reasons of the administration and the law, the executive and the judiciary.” Davidson, The Invisible State, 189. While Hirst notes agreed that, along with the Sydney Democrats', "the people of New South Wales declined to mobilise for the extension of their political rights", he argues that a defacto popular sovereignty was accorded to the colonists through the demands for rights on the goldfields which resulted in more democratic electoral distributions and the extension of the franchise. Hirst, The Strange Birth of Colonial Democracy, 23.
radicalism merely moved from a ‘monarchical authoritarianism’ to a ‘democratic authoritarianism’, and failed therefore to stop at the point of ‘Anglo-Saxon liberalism’. It was of course Bagehot who articulated this shift, and while the following quote has been cited in part elsewhere, it does well to illustrate our point:

The efficient secret of the English Constitution may be described as the close union, the nearly complete fusion, of the executive and legislative powers. No doubt by the traditional theory, as in all the books, the goodness of our constitution consists in the entire separation of the legislative and executive authority, but in truth its merit consists in their singular approximation. The connecting link is the Cabinet.

While the separation of powers doctrine, along with the prescriptive property rights contained in the English common law, remained, since the decline of monarchical absolutism in the seventeenth century, a bulwark against the idea of centralized parliamentary sovereignty, it was in the second half of the nineteenth century that, as Archer explains, “parliamentary sovereignty was made an integral part of some prominent British governmental theories.” It was Dicey who, by relegating the rule of law to procedural law based on custom and habit, and by giving the parliament the sovereign authority to ‘make or unmake any law whatever’, signalled the death-knell of the common law based system of popular rights. The parliament may deem to selectively protect rights under enabling legislation, as they have done in Australia with the Aboriginal vote, sex discrimination and so on, but in the last instance sovereignty remains, not with the people, or indeed, local administrators, but the parliament. Accordingly, liberals such as Herbert Spencer were, by the 1880s, justifiably concerned with the emerging convention that ‘parliaments can do anything’.

This study has argued that the colonial discourse of command law and legislative sovereignty can in fact be reconciled with Foucault’s genealogy of liberalism, and indeed, that constitutionalism provides the missing historical link in an analytical framework which does not tell the full story of nineteenth century education reform. Again, we return to the issue of

---

32 Bagehot, The English Constitution, 66.
34 See Walker, Rule of Law, 130.
sovereignty, and to the tendency, on the one hand, to argue that liberalism was formed in opposition to an eighteenth century concept of 'legal-totalising' juridical sovereignty; and on the other, that this was replaced by a discursive regime of bio-political power that eschewed these totalising logics in favour of a 'system of natural liberty'. Our own account of 'legal positivism and governmentality' goes some way to inverting this historical shift in the logics of sovereignty, and for good reason. Foucauldians have mistakenly appropriated aspects of the whig theory of the state, and of classical political economy, to underlay their schema of a 'liberal rationality of government' consolidated in the late eighteenth and early nineteenth centuries. They are no doubt correct in identifying liberalism's attempt to create a self-regulating governmental domain through the texts of Adam Smith, Beccaria, and indeed, the earlier works of Jeremy Bentham. However, to transpose this discourse of liberal government out across the whole nineteenth century misses another, and crucial, shift in this governing logic.

In this vein, one of the primary barriers to the comprehensive 'disciplinization' of the school system in Tasmania and New South Wales was the tendency to 'legislative inaction'. Thus, while education reformers moved increasingly to invoke the 'duty of state' and 'beseech' the parliament to 'act' on the education question, they realised that reform would continue to be stifled by what William Forster, the New South Wales parliamentary radical and educational centrist, called "progression by antagonism." To this end, the command theory of law, ministerial responsibility and the fusion of legislative and executive power became the fundamental constitutional means to inspire 'unity of purpose' in government and set in track the process of political and economic modernization. Thus, when responsible ministries of education were instituted in the 1880s, not only could they execute governing regulations, but could impose them upon the whole population. To this end, the management of the law would be lodged in an accountable civil service which had the resources and legitimacy to comprehensively appropriate disciplinary technologies derived from statistics, political economy, social economy and the science of managing populations.

Bentham's modern state, while operating upon the subjective capacity of the individual, was, therefore, also intent on creating a means through which the governing techniques which nurture the 'self-policing' subject are given the important characteristics of uniformity, responsibility and rationality. It is true that when Bentham wrote, in his Fragment on Government, that the "The season of fiction is now over", he was, as noted by Rosenblum, responding to reason of state, and in this sense preferred to speak of a 'political society' rather than 'the state'. Rosenblum goes on to describe how

37VPLANSW, July 23, 1863
Bentham’s reason for not personifying the state is clear—he wanted to emphasize the state’s basis in individualism. He wanted rulers to especially recall that political order is constituted of diverse and changeable relations among individuals...The moral status of the state. Bentham judged, was threatened equally by the old metaphor of the body politic with one sovereign head and by the more recent notion of the sovereign state. Power was not something that attached to the person of rulers, he advised, and his rejection of the long-standing division between civil and criminal law in favour of distributive and penal law constituted an attack on this vestige of monarchical sovereignty.\(^{38}\)

Rosenblum continues that while Bentham, in recommending a ‘social psychology for legislators’, rejected “monarchical absolutism”, this was “not a rejection of absolutism” per se. Rather, Bentham was “an heir to the sovereignty idea” since legislation and innovation became, like absolutism, irresistible.\(^{39}\) Bentham thus forwarded an absolutist model of legislative power whose unity of purpose could not be interfered with, or divided, by faction or particular interests. While he wanted to replace static legal prescription with legislative innovation and change, this process further relied on a modernized and bureaucratized state apparatus that would be held together by a heavily contrived constitutional code. This idea was present in Matthew Arnold’s opposition to ‘Aristocratical bodies’ who continued to resist what he referred to as the “dignity of a commanding executive.”\(^{40}\) Bentham backed this idea in his *Parliamentary Reform Catechism* when he wrote that the “the ultimate end” of the state was the

*advancement of universal interest.* In order that the *universal* interest may be advanced, *all particular* interests must be comprehended and advanced, except, that in any case it can be shewn, that the advancement of any particular interest would injure the advancement of the universal interest; and then this particular interest must and ought to be excluded – always keeping steadily before us this principle – that in no case should any exclusion be made, unless the comfort and security of the WHOLE receives an absolute increase, as a result of the exclusion of a FEW.\(^{41}\)


\(^{39}\)Rosenblum, *Bentham*. 73.

\(^{40}\)M. Arnold, *Democracy*, in Smith & Summerfield, *Mathew Arnold and the Education of the New Order*, 60–65. As noted in chapter four, this was Arnold’s report, read as part of the 1858 Royal Comission on Education, on the condition of education on the Continent wherein he praised the ‘democratic’ systems evident in France and Prussia.

This logic of the universal interest would have a profound influence. Not only in forwarding population as the primary object of disciplinary power, but in justifying the continued accretion of state power, particularly in the realm of educational governance. This rational and utilitarian view of the practical need for state control was elucidated by the Scottish educator, George Combe:

Nobody contends that the Government has a right, despite of the will of the people, to seize on public education. All that is maintained is, that the Government may do the work better than individuals; and the security against our abuse by Government of its delegated powers lies in...elections and the press. We do not leave the defence of the country and the police of our great towns to the voluntary administration of individuals; because...these objects can be better accomplished by leaving them to the state. And the case will be the same in regard to education.

Combe feared the “capricious or negligent administration” of “voluntary managers”, arguing on this “principle alone that Parliament gives to the executive the right to take these affairs into its own hands.” Thus when the majority – meaning a parliamentary majority – are “satisfied that individual teachers, sects, and incorporations, have so neglected or mismanaged public education, as to endanger the welfare of the State, they will (without limiting the right of individual action) provide public institutions for the better accomplishment of this end.”

Educators in both Britain and the colonies were soon able to argue that compulsion would not transgress individual liberty if it were invoked by state laws ‘framed for the good of the people’. Thus, while compulsion was still “an ugly word” producing “distaste for a scheme which...proposes to do away with the highly prized ‘liberty of the subject’ “, it had become increasing accepted, in response to the inherently arbitrary and irrational governing logics identified with localism, as a function of the higher rationality of parliamentary rule. School reformers increasingly argued, therefore, that the “the school question affects directly the motive power of the State”, and by so doing, had contributed to a shift in the constitutional foundation of liberalism. In the words of an anonymous pamphlet: “in old times, for the State to teach religion in universal common schools would have caused a universal paralysis...but the position of all the possible parties to such an idea is entirely altered.”

---

42 George Combe, Remarks on National Education: An Inquiry into the Right and Duty of Government to Educate the People (Edinburgh: 1848), 10–15.  
44 A Birmingham Liberal, Citizenship versus Secularists and Sacerdotalists in the Matter of National
To reiterate our earlier point, the idea of legislative absolutism was not simply a convention borne of social and economic circumstance. The sovereign state actively embraced its mandate to govern the population by maintaining the constitutional mechanism of ministerial responsibility, and thus ensuring that the parliament could legislate actively and productively for the universal interest. This was in distinct contrast to an outgoing constitutional logic that viewed the legislature, in the words of Bagehot, as a "preservative body" whose use was not "so much to alter the law, as to prevent the laws being altered." This 'negative' parliament defended the contracts that maintained social and political order — "That men should enjoy the fruits of their labour, that the law of property should be known, that the law of marriage should be known." However, while the rule of law gave continuity to English political life by forbidding parliamentary innovation and amendment, political modernization demanded "adjusting legislation" and Baghot believed that the "Parliament of today is a ruling body."45 From this, Bagehot was able to articulate the constitutional means through which the idea of 'bureaucracy', and indeed of disciplinary power, which had successfully guided the comprehensive system of compulsory schooling in Prussia, could be extended to Britain and the colonies.

By now I think we have made the point that the governmentalization of the state, while concerned on one level with economic agency and bio-political power, was not, at the level of state power, founded on a rejection of political theory and constitutional principle. While this vision of sovereignty rejected the rights based logics of the common law and monarchical constitutions, it was nonetheless a highly schematic and contrived model of state power. Like the micro-physical strategies of the disciplinary sciences, legislative absolutism can be viewed as a 'capillary power' acting through a positive constitutional architecture — democratic participation, elections — that has served to dissolve the boundary between the state and the individual. Importantly though, this dissolution has a history, and embodies a relation of power established in the face of an arbitrary and faltering system of social administration. To this end, these logics, while acting at the subjective level, are ultimately prescribed under the 'normalising gaze' of the absolute parliament.

Returning then to the marketizing and devolutionary strategies of new right and neo-liberal education reform, it might now be better understood why educators and policy theorists continue to argue that such reforms have paradoxically maintained central controls — through the continuing regulation of curriculum, minimum competency, a stifling regime of central inspection and so on — and have not provided for any real 'difference' or 'autonomy' in the

---


*Teaching* (London: 1873), iv.
school system. While this study has been too concerned with historical matters to test the hypothesis, it could be argued that this tendency to simultaneously extend the ambit of the free market and government intervention can be understood as an effect of the logics of a supreme and directive governing authority which, while not necessarily emitting potent, sovereign power in the eighteenth century sense, must maintain, at all times, the ‘self-policing’ subject within the reach of a constitutionally prescribed system of responsible, accountable, uniform, professional and scientific government. Thus, while the education centrists of the nineteenth century kept in view the active, ‘vigilant’ and free subject, the problem remained that, left to unregulated and independent control, “Local supervision and assistance” became, in the words of the 1855 New South Wales Schools Commission, “entirely neglected.” The reigning in of this tendency to ‘arbitram’ – embodied in the logics of juridical law and the governing authority of the ‘old corruption’ establishment clique – required, at the level of practice, a unified legislative governing apparatus, and at the level of theory, a redeployed liberal concept of the relationship between the individual and the state. The latter then signalled a radically new notion of ‘freedom’ from that prescribed within the outgoing logics of the liberty of the subject, and which differed in important ways from Smith’s system of natural liberty. James Kay Shuttleworth summed it up when, in 1848, he argued that state intervention through compulsory legislation was fundamental to the ‘freedom of education’:

When, therefore, freedom of education from the interference of Government becomes the war-cry of any party, will it not be suspected that they seek the interest of a class rather than the welfare of the nation; that they prefer popular ignorance to party insignificance; the liberty to neglect the condition of the people, rather than the liberty of progressive civilisation?

The idea that the ‘interference of Government’ was the source of individual freedom was in many ways the normative pre-condition for the shift from a contractarian to legislative state. Thus, this indivisible relationship between state and civil society opened the way for the emergence of a constitutional architecture that, no longer held back by individualism in the classic liberal sense of independent self-reliance and the right to property, was able to aggrandize the absolute and supreme directive power of codified and scientifically prescribed public law designed to ‘secure’ a new end of liberal government, the universal interest. It is this

---


end which continues to justify the means. No amount of spurious talk about devolution, public choice or self-management will, therefore, deny the omnipotent reach of the responsible cabinet – or to quote again that venerable high-priest of ‘representative government’, J. S. Mill, of “statesman and thinkers...obliged to carry the mind and will of the mass along with them...[to] impose these ideas by compulsion as despots could.”

In concluding, it can be surmised that the primary goal of this thesis has been to provide a much needed analytical intermingling of the debates surrounding the nineteenth century education question and the constitutional processes underpinning the pervasive and complex strategies of modern governmental power in Australia. Appropriating a number of themes from diverse and sometimes contradictory aspects of state theory, constitutional history, jurisprudential theory and Foucault’s genealogy of government, the thesis has articulated a synchronous historical model of educational centralization that goes some way to improving our understanding of the relationship between the modern school and the state. While this approach has, at the primary level, been a response to the socio-economic reductionism of the dominant historiography, it might also serve to give some historical relief to the ‘paradox’ of neo-liberal education reform. Thus, “While devolutionary measures appear to hand responsibility to individual institutions”, such measures “have often been set alongside others which tie education providers even closer to the state.” The supervisory and inspectorial role of the state over free-market reforms can thus be analysed in terms of the continuing ascendancy of a precise, efficient and supreme locus of legislative rule whose supra-regulatory, ‘all-seeing’ omniscience will ensure that the self-regulating student, parent, educator and school administrator will not succumb to irrationality or caprice. Indeed, the legislative state is a constitutional laboratory fashioned out of fear, the fear of difference, of chaos and the unknowable.

49 As described in chapter four, Mill was when referring to the need to avoid the “initiative” of the “general mass” when formulating a model for ministerially controlled school governance J.S. Mill, “On the New Educational Bill”, in Sessional Proceedings of the National Association for the Promotion of Social Science, III (March 10, 1870), 261–84; in Works, XXIX.

50 Whiny et al., Devolution and Choice in Education, 11.
Stuart Braun

“Educational centralization and the rise of the legislative state: school governance in Tasmania and New South Wales, 1830–85”

Select Bibliography

2000
Select Bibliography

Abbreviations

B. L. British Library
BNE Board of National Education
BCE Council of Education
JRAHS Journal of the Royal Australian Historical Society
M. L. Mitchell Library
SMH Sydney Morning Herald
TSA Tasmanian State Archives
THRAPP Tasmanian Historical Research Association, Papers and Proceedings
THA Tasmanian House of Assembly
VPLCVDL Votes and Proceedings Legislative Council of Van Deimen’s Land
LCSVLD Minutes – Legislative Council Van Deimen’s Land
VPLCNSW Votes and Proceedings Legislative Council New South Wales
VPLANSW Votes and Proceedings Legislative Assembly New South Wales
JLCSW Journal of the Legislative Council New South Wales

Contemporary Sources

Official


Tasmania Legislative Assembly Votes and Proceedings. 1856–85.

*Historical Record of Australia*. Ser. 1, vols IV–XXVI. General Despatches.

The Administration of Education under the Two Boards, 1848–1866. (NSWSA: NBNE AND NDSB)

"Letters Received From the Colonial Secretary and Government Departments", 1848–51, 1856–66" (NBNE/4); "Miscellaneous Letters Received, 1848–66" (NBNE/1); "National School Annual Reports, 1860" (NBNE/12); "Press Copies of Letters Sent by the Inspector and Superintendent of National Schools and Chief Inspector" (NBNE/18); "Press Copies of Letters Sent by the Secretary of the Board, 1859–65" (NBNE/20); Miscellaneous Letters Received, 1848–9, 1851–66" (NDSB/2); Inspectors' Reports. 1856–66 (NDSB/3).

Official Correspondence of the Council of Education, 1867–80 (NSWSA: NCE)

"Letters and Memoranda Received from Inspectors, 1867–74" (NCE/7).

Tasmanian Board of Education 1839–56 (TSA: 1467)

Tasmanian Board of Education 1863–85 (TSA: 766)

*THA* 1867 *Report of the Royal Commission into Education*, May–12 Sep 1867 (TSA: 84/7023)

Colonial Office Despatches:

C. O. 280: Despatches, Tasmania to London 1832–68

C. O. 408: Despatches, London to Tasmania 1832–68

Government Office Records (TSA GO/33)

Non-Official

Manuscripts

Arthur Papers M. L. 3684

Books and Pamphlets

An English Radical, Our Colonies, London: 1853.
Arnold, M. A French Eton; or, A Middle Class Education and the State, London: Macmillan, 1864.


---


---

A Plea for the Constitution. Shewing the enormities committed, to the oppression of British Subjects. Innocent as well as Guilty...in and by the Design, Foundation, and Government of the Penal Colony of New South Wales: in Works. IV.

---


---


---


---


---


---


---


Campbell, C. Remarks on National Education. Melbourne: 1853.
Carlisle, T. Lectures and Addresses in Aid of popular Education. London: 1852.
___ Introductory Lecture Delivered at the Sydney Mechanics School of Arts. Sydney: 1844.
Carpenter, W. Relief for the Unemployed: Emigration and Colonization considered with special reference to the South Australian Colonies of South Australia and New Zealand, London: 1841. Fischer Library Rare Books F3166.
Cowper, W. F. "On Education", at a meeting of the National Association for the Promotion of the Social Sciences, London October 11, 1858.


*Educational Pamphlets*. Melbourne: 1857.


Franklin, J. *Narrative of Some Passages in the History of Van Diemen's Land. During the Last Three Years of Sir John Franklin's Administration of its Government*. Hobart: 1845.


Gregson, T. G. *Speech of Thomas George Gregson, in the Legislative Council, on the State of Public Education in Van Diemen’s Land*. Hobart: 1850.


Grote, G. *Philosophical Radicals of 1832*. London, 1866


Hale, Mathew B. *The Transportation Question: or, why Western Australia should be made a reformatory colony instead of a penal settlement*. Cambridge: Macmillan & Co., 1857.


___ *Payment by Results in Primary Education*. Melbourne: 1872.


Heydon J. K. *Civil and Religious Liberty in Education* Sydney: 1877.


Lang, J. D. *An Historical and Statistical Account of New South Wales both as a Penal Settlement and a British Colony*. London: 1837.


Letter From the Australian Patriotic Association to Charles Buller. Esq., M.P. in reply to his Communications Respecting Certain Forms of Local Government Proposed for this Colony. Sydney: March, 1839.

Letter to the Right Honourable His Majesty's Principal Secretary of State for the Colonies, London, From John Bingle, Esq., One of His Majesty's Justices of the Peace, for the Colony of New South Wales. Sydney: 1832.


Comparison between Mr Bentham's views on punishment, and those advocated in connection with the Mark System. London: 1847.

Emigration, with Advice to Emigrants; Especially those with Small Capital. London: 1848.


Ignorant Learned: Providing that Theology, Mythology, Astronomy and Freemasonry are Sciences Unknown to the Modern Scholar. London: W. N. Crawford, 1863.


Mill, J. S. "A Review of Col. Torrens' Letter to Sir Robert Peel 'on the condition of the country'.” Spectator January 28, 1843; in Works XXIV.

"Montesquieu." MSS Mill-Taylor Collection. Works, XXVI.

"Mr Walter's pamphlet against the Poor Law Amendment Bill.” Morning Chronicle, May 12, 1834; in Works, XXIII.

"Of the Government of Dependencies by a Free State”, in Considerations on Representative Government. in Works XIX, 563, 569.

"On the New Educational Bill.” in Sessional Proceedings of the National Association for the Promotion of Social Science. III, March 10, 1870, 261–84; in Works, XXIX.

"Recent Writers on Reform" in Dissertations and Discussions vol. III. London, 1867; in Works XIX.

"Reform in Education.” Monthly Repository VII July, 1834; in Works XXI.

"Sarah Austin’s Translation of Cousin.” in Works XIX, 729.


"Austin on Centralization.” Morning Chronicle 6 Feb. 1847: in Works XXIV.

"Death of Jeremy Bentham”. Examiner. 10 June, 1832, 371–2; in Works XXIII.
“Taylor’s Statesman.” London and Westminster Review, V, April, 1837, in Works XIX.

“The Monthly Repository for June 1833.” in Works XXIII.

“The New Colony” Examiner. July 6, 1834; in Works, XXIII.

“The Sale of Colonial Land.” True Sun 22 Feb., 1837, 3; in Works XXIV.

Considerations on Representative Government, London: 1861, in Works XIX.


Objects, and Regulations of the Constitutional Association, and Address of the Provisional Council. Sydney: 1848.


Fifty Years in the Making of Australian History. London: Longmans Green, 1892.


Ponsonby, Mrs. Education: The Scotch System; What it is. Melbourne: 1861.

Public Instruction: Speeches by the Hon. George Higinbotham. Legislative Assembly of Victoria, 7th & 30th May, 1867. Melbourne: 1868.


Rusden, G. W. National Education Melbourne: 1853.

____ The Old Road to Responsible Government, or the Development of the Representative Principle in Government Historically Considered. Melbourne: 1856.


____ Man versus the State, London: 1880.


West, J. The History of Tasmania Launceston: 1852.
Whately, R. *Thoughts on Secondary Punishment, in a Letter to Earl Grey: to which are appended two articles of Transportation to New South Wales. and Secondary Punishment and some observations on colonization*. London: 1832.


Newspapers and Periodicals

- Atlas
- Australian
- Colonial Times
- Edinburgh Review
- Elector, The
- Empire
- Freeman’s Journal
- Hobart Town Courier
- Hobart Town Gazette
- Hobart Town Observer
- Hobart Mercury
- Launceston Examiner
- Launceston Daily Telegraph
- Leeds Mercury
- London Times
- Maitland Mercury
- Pall Mall Gazette
- Peoples Advocate
- The Representative
- Spectator
- Southern Cross
- Sydney Gazette
- Sydney Mail
- Sydney Morning Herald
- Tasmanian Daily News
Secondary Sources

Books and Pamphlets


Bessant, B. *Schooling in the Colony and State of Victoria*. Melbourne: La Trobe University, 1983.


---


---


---


---


---


---


---


---


---


Hacking, I. *The Taming of Chance*.


Hancock, W. K. *Australia* Brisbane. 1961


**Articles**


Burchell, G. "Peculiar Interests: Civil Society and governing 'the system of natural liberty' ." in Burchell et al., The Foucault Effect, 119–150.


Fitzpatrick, K. “Mr Gladstone and the Governor: The Recall of Sir John Eardley-Wilmot from Van Deimen’s Land, 1846.” Historical Studies. 1:1, April 1940.


Foucault, M. “Governmentality.” in Burchell et al., The Foucault Effect.


Hacking, I. “How should we do the history of statistics?” in Burchell et al., The Foucault Effect.


____ “Culture, Bureaucracy and Popular Education.” in Meredyth & Tyler, eds., Child & Citizen.


Historical Studies 1964.


“Considerations on Social Democracy in the United States.” *Comparative Politics.* 11, October 1978.


Martin, A. W. "Faction Politics and the Education Question in New South Wales." 


Meadmore, D. "This Slender Technique": Examining Assessment Policy", in O'Farrell, *Foucault: The Legacy.*


Relton, W. “The Failure of the Dual System of Control of Education in New South Wales.”


Somers, M. “Citizenship and the Place of the Public Sphere”, in H. Langeluddecke, “Law and Order in Seventeenth Century England”.

t “Citizenship and the Place of the Public Sphere: Law, Community, and Political Culture in the Transition to Democracy” American Sociological Review 58, No. 5, 1993.


Therborn, G. “The right to Vote and the Four World Routes to/through Modernity”, in Torstendahl, State Theory and State History.


Vick, M. “Class, Gender & Administration: the 1851 Education Act in South Australia”,
History of Education Review 17:1, 27.

_____ “Community, State and the Provision of Schools in Mid-Nineteenth Century South


Walter, J. “Intellectuals and the Political Culture,” in B. Head & J. Walter eds. Intellectual

Ward, J. M. “The Responsible Government Question in Victoria, South Australia and

Wettenhall, R. L. “Modes of Ministerialization, Part 1: Towards a Typology – The

_____ ”The Ministerial Department: British Origins and Australian Adoptions” Public

Windeyer, V. “A Birthright and Inheritance” Tasmanian University Law Review.
November, 1962.

JRAHS: XIX 1933.

Journal 31 1972.

Theses

Axon, J. “A Biographical Study of Thomas Arnold the Younger.” Unpublished Ph.D

Elliot. C.M. “Frederick Maitland Innes; a study in liberal conservatism.” B.A. Hons

Ely, M.J. “The development of a centralised educational administration in N.S.W.

Lawry, H. J. “A Perpetual Struggle for Power: Local Control of Education in Nineteenth

Meadmore, D. “For Reasons of Governmentality: a genealogy of dividing practices in