THE LEGISLATIVE COUNCIL OF
VAN DIEMEN'S LAND 1825-1856: A STUDY
OF SOME ASPECTS OF THE DEVELOPMENT
OF A COLONIAL LEGISLATURE.

A thesis submitted in fulfilment of the
requirements for the degree of Master
of Arts.

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UNIVERSITY OF TASMANIA

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DECLARATION

This Thesis contains no material which has been accepted for the award of any other degree in any university, and to the best of my knowledge and belief, the thesis contains no copy or paraphrase of material previously published or written by another person, except when due reference is made in the text of the thesis.

[Signature]

VICTOR KOROBACZ
ACKNOWLEDGMENTS

One could write an additional chapter, in a fruitless attempt to acknowledge all the help received in producing a dissertation of this sort. I have tried to indicate much of my indebtedness to other scholars in the footnotes and bibliography. However, I would be extremely remiss if I did not recognize here my debt to my supervisors, Dr. Michael Roe and Mr. Malcolm McRae, who set such a high standard of intellectual vigour; the archivists of the Tasmanian State Archives, Mr. Michael Saclier and Mrs. Mary McRae, and of the University of Tasmania Archives, Miss Margaret Littlejohn, and the staff of the Mitchell Library; all of whom dedicated much effort to finding sometimes obscure material. Finally, I wish to express my gratitude to Mrs. Diane Caulfield, who undertook the typing of the preliminary drafts, and to Mrs. Nell Gill, who typed the final draft.

The inadequacies of the end product are entirely my own.

Victor Korobacz
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T.S.A.  Tasmanian State Archives.
T.U.A.  University of Tasmania Archives.
V. & P.  Votes and Proceedings of the Legislative Council of Van Diemen's Land for the Year ...
INTRODUCTION

During the latter half of the eighteenth century Great Britain came to regard her colonies as a means of supporting her naval and military power, as well as a source of wealth. The emergence of this concept of the Empire as an integral part of Britain's defence system demanded strict metropolitan control of dependencies. After the war with France in the middle of the eighteenth century and the acquisition of Canada, India and some of the Caribbean Islands, she began to assert her authority to a greater degree. The consequences of this policy were far-reaching. The rebellion of the American colonies, an expression of discontent with the assertion of metropolitan authority, reinforced the existing disillusionment with settlement colonies and strengthened Britain's determination to continue her policy of integrating the empire, a policy which if implemented earlier might have prevented the loss of the Thirteen Colonies.

In the period between 1763 and 1815 which formed the bridge between the first and second Empire, attempts were made to establish

3. Ibid.
administrative efficiency and to prevent the diffusion of power which had previously made any calculated 'colonial policy' virtually impossible. In 1768 a Colonial Department was set up. It was abolished in 1782 as an economy measure; its responsibilities were assumed by the War Department, the Committee of Trade and Plantations and the Home Department. By 1801 colonial matters were handled by the new Department of War and Colonies. It was from this department that the Colonial Office of the nineteenth century developed.5

During this period, moreover, the Imperial Parliament tended to recognise fewer limitations on its power to legislate for all possessions and the Crown became more adamant in its denial of the right of colonists to control executive action.6 The autocratic governments installed in those colonies which were acquired during the period 1743 to 1815 both reflected and reinforced the current attitude to the Empire. These new dependencies, a majority of which were acquired by conquest, had two features which distinguished them from the settlement colonies of America. They were not settled by voluntary settlers of British stock; further, many possessed their own distinctive laws, social customs and political institutions. That some of these new dependencies, namely British North America, South Africa and the Australian colonies received immigrants and came eventually to resemble the earlier settlement colonies is not disputed. But at the time of

acquisition or foundation this was not foreseen. 7

The imposition of an authoritarian form of government, in each case, was considered justified because the subjects of annexed colonies, unlike British immigrants, had no right to British representative institutions or laws, while in the case of the Australian colonies, New South Wales and Van Diemen's Land, the subjects, who initially were convicted felons, had forfeited these rights.

The administration was conducted by the Governor. He was invested with both executive and legislative authority and was responsible only to the British Government. Except in the colonies which were under military government, he was assisted by a small Council made up of government officials and nominated representatives of the community. The Council was advisory only; the Governor was not obliged to abide by the decision of the majority. 8

Canada, Senegambia*, Ceylon and India possessed advisory Councils during the early stage of British rule. Those colonies initially under military rule, such as New South Wales, and Van Diemen's Land, the Cape Colony, Mauritius, St. Lucia and Trinidad were given a more sophisticated version of this constitution in the 1820s and 1830s. The duties of the Council were divided. The Governor, sitting with

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* In 1774 the Crown erected a province out of territories in Senegal and Gambia called Senegambia.


the senior government officials, formed the Executive Council. The
Legislative Council, which was composed of the Governor and approximately equal numbers of *ex officio* and non-official nominees, was charged with the task of making laws.

The powers of the Legislative Council exceeded those of the Advisory Council. In the Legislative Council enactment depended on the will of the majority of members, whereas in the Advisory Council the Governor could legislate without reference to the majority's consent. The general formula of the Legislative Council's enactments was:

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Be it enacted by the Governor of the colony with the advice and consent of the Legislative Council of the same.
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The Governor, however, was given powers with which, should he find it necessary, he could control the Legislative Council in order to ensure harmony between executive and legislature. He had the sole right to initiate legislation and the authority to make recommendations for nomination.

* * *

In the course of the thirty or so years of their existence before the introduction of responsible government and bicameral legislatures, the Legislative Councils of the Australian colonies, New South

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Wales and Van Diemen's Land underwent significant modifications of structure and role.

Since both dependencies were penal colonies requiring strict Imperial control, their first constitution, provided by the New South Wales Judicature Act of 1823, retained for the Governor a substantial amount of his former authority. The Legislative Council possessed some of the characteristics of an advisory Council. Although normally the Governor's legislative decision was required to reflect the wishes of the majority, he was competent, in certain circumstances, to ignore the Council's advice. Since the majority was made up of officials directly under the Governor's control, the only effective check on his authority was the fear of reprobation from his superiors at the Colonial Office, and the power of the Chief Justice to veto legislation on the grounds of its repugnance to the laws of England.

In 1828 the constitution was amended by the Huskisson Act. This Act abolished the power of the Governor to legislate against the wishes of the majority of the Legislative Council in specified circumstances. Further, the Chief Justice was deprived of his power to veto, although he retained the right to declare legislation ultra vires. Under the terms of the Act also the Legislative Council's membership was extended, and the proportion of non-official members was increased.

In 1824-3 in the case of New South Wales, and in 1850-1 in the case of Van Diemen's Land (and also South Australia and Victoria) the Legislative Council underwent its final stages of constitutional
development. Elected representatives were added to outnumber the ex officio members and the non-official nominees.

The representative principle came to be more fully expressed as the convict element in the population decreased in relation to the free element, and the dependencies acquired the characteristics of settlement colonies. In 1825 when 46.9 per cent of the population of Van Diemen's Land was convict, only one of the six members of the Legislative Council had been non-official. While in 1829 when the convict element was reduced to 40.2 per cent of the population, there were as many as seven bone fide non-officials out of a total (including the Lieutenant-Governor) of fifteen members. In 1851 when elective members were introduced and all except three officials were removed, 24.3 per cent of the population was made up of felons undergoing sentence.

As the representative element became proportionally greater it became more difficult for the Governor to control the Legislative Council and maintain harmony between the legislature and the executive. In the case of Van Diemen's Land the success of the Lieutenant-

* Based on the figures given in Michael Roe, Quest for Authority in Eastern Australia 1855-1851. A.N.U. and Melbourne University Press 1965, Appendix I, p. 207.


12. Ibid.

Governor in retaining influence over the Legislative Council depended upon three factors of varying significance.

The first factor was the extent to which he was prepared to use his constitutional powers. As head of an executive which was not responsible to the Legislature he could threaten to carry on the business of government without reference to the Legislative Council, which was never given full control of the purse. Further, he had the authority to recommend nominees and dismiss any non-elective members. Before the Legislative Council became two-thirds elective this authority alone might have been used as the principal means of maintaining influence. As the president of the Legislative Council and armed with the sole right of initiating legislation (at least until the introduction of elective members) he could determine the role the legislature was to play in the government of the community.

The second factor was the economic situation in the colony. The Legislative Council was less difficult to control in periods of economic prosperity than during periods of economic depression. During the 1820s, according to a contemporary, 'Van Diemen's Land had advanced rapidly in a legitimate and healthy manner.'14 Capital flowed into the colony from the British Treasury through the Commissariat, from British investors and from wealthy immigrants. Local industries such

as whaling and sheep and wheat farming flourished and provided valuable exports.

During the early thirties, despite the fluctuations in economic activity, the mood remained one of optimism. Overseas credit was still readily available and the government was able to handle its finances without serious difficulties. In the early forties a fall in the demand for livestock and a slump in the price of wool and wheat led to the severest depression the colony had known. Exports declined and incomes dropped to a level which precluded many colonists from meeting mortgages. Overseas investments fell off, banks declined and insolvencies increased. Loans became virtually unobtainable and interest rates which had always been high soared.

The fall in customs revenue which accompanied the decline in imports, together with a decrease in the monies accruing from the sale of crown lands forced the government to adopt severe measures in order to balance the budget. It was not until 1846 that the first signs of recovery became evident. The depression was followed by a period of relative prosperity which lasted until the discovery of gold and the consequent immigration to the mainland. Thereafter the economy underwent a steady decline until the mineral discoveries of the 1870s restored boom conditions.

The third factor was the degree to which the policies of the Lieutenant-Governor, often dictated as they were by the Imperial Government, coincided or conflicted with the demands of the colonists. There
were two inter-related issues upon which the British Government and a substantial number of colonists disagreed: political authority and convict transportation.

From circa 1816 to 1831 Van Diemen's Land, by offering generous conditions under which land (and cheap convict labour) could be acquired, attracted moderately wealthy immigrants intent on improving their station in life. With the blessing and encouragement of the government they immersed themselves in the task of building 'a new Britannia.' While some were entirely occupied with building up their estates and accumulating wealth, others, and especially those whose ambitions had been thwarted by the government, began to reflect upon the nature of the administration of the colony and to demand a fully representative legislature and English laws, rights to which they believed all free Englishmen were entitled.

The movement for an elective legislature and trial by jury was led by men of wealth, property and social standing. They included landed proprietors, merchants and lawyers. Although their demands have been labelled radical by historians who have taken their cue from those contemporary writers who used the term pejoratively, these men were not motivated by the ideals of the French Revolution, but by the Whiggish principles underlying the Glorious Revolution. A representative legislature to them was a means of acquiring greater political

authority at the expense of the Lieutenant-Governor.

Support for the movement increased as the free element in the population became proportionately greater. In 1823 the first petition for trial by jury reached Westminster. Four years later Parliament was confronted with the first demand for a representative legislature. In the 1830s the cause was popularized by the formation of the Political Association which, like its New South Wales' counterpart, the Australian Patriotic Association, kept the demand for these institutions before the British Government. By 1840 the principle of trial by jury had been conceded. In 1842 New South Wales was given a two-thirds elective legislature. The principle of legislation by representation was almost universally accepted in Van Diemen's Land by 1845. During the 1840s the slogan 'no taxation without representation' was repeatedly raised to enlist opposition against measures which involved the colonists in the payment of rates, levies and duties.

The conflict between the colonists and the Home Government over convict transportation was part of the quest for the acquisition of greater political authority. In the late 1830s convictism was opposed solely because it provided the British Government with a justification for withholding the principle of legislation by representation. In the 1840s, however, it met with opposition based on other grounds as well.

The change in the convict system (from assignment to probation) deprived the colony of a substantial part of its labour force and
generated a great deal of resentment. The disruption caused by the implementation of the new system was seen as one of the principle factors which brought on the severe economic depression of the early forties. Convictism, because it forced the colony to maintain a large police and gaols establishment which consumed a disproportionate amount of the colonial revenue, was also blamed for the government's financial embarrassment.

Although the Imperial Government attempted to make its transportation policies more acceptable by paying for a portion of the upkeep of the police and gaol establishments, and to make convict labour more readily available, opposition to convictism continued.

The anti-transportation movement, lead by moralists, idealists and political opportunists, gathered momentum in the late 1840s and early 1850s when it became more obvious that the island colony's destiny lay in its existence as a free settlement rather than a convict colony. The movement, after the formation of the Anti-Transportation League, became a powerful political force which, with its allies in the mainland colonies, pressured the British Government to accede to its demands, and influenced Vandemonian politics until transportation was permanently suspended.

The prestige of the Legislative Council in colonial eyes, at any given time, was inversely proportional to the amount of influence which the Lieutenant-Governor exercised over it. When subservient to the executive it was either publically mocked or simply ignored.
During those periods in its history in which gubernatorial control declined it became, as the major political arena in the colony, the focus of attention. It espoused popular viewpoints and raised and deliberated upon issues other than those put before it by the Lieutenant-Governor. Moreover, it formulated its own solutions to current problems and attempted to direct the executive.

* * *

This study of the Legislative Council of Van Diemen's Land takes the form of an analytic narrative rather than a cross-sectional description. Part I is an account of the performance of the Legislative Council under Lieutenant-Governor George Arthur. The second part deals with the decline of influence of the Lieutenant-Governor and the development of the Council as a deliberative body representing colonial as opposed to Imperial interests, during a period of economic stress. Part 3 examines the declining role of the nominee Legislative Council and evaluates the significance and implications of the constitutional change which made the Council two-thirds elective.
PART I

'A SCREEN FOR THE EXECUTIVE'
LIEUTENANT-COLONEL GEORGE ARTHUR.
Lieutenant-Governor 1824-1836.
The intention of this preliminary chapter is to provide a background to the establishment of a Legislative Council in Van Diemen's Land. In the first instance it deals with the forces which encouraged the British Government to establish a Legislative Council in New South Wales. It then goes on to relate the process by which Van Diemen's Land gained autonomy from New South Wales.

During the founding years, the Governor had legislated by promulgating daily orders, and as the population consisted almost exclusively of convicted felons and officials, there were no objections to this established procedure. But as the free population of the colony expanded and became more influential, this procedure became a matter of concern.

The English radical Jeremy Bentham, in a series of critiques of penal colonization was the first to point out that the Governor's power to legislate was unconstitutional, since the Governor's proclamations were not like the King's proclamations - mere acts of monitions, or other acts based on existing legislation - but original legislation. Furthermore, he postulated that the King (whence the gubernatorial commission was derived) could not confer upon the Governor the authority
to legislate and that therefore the Governor's acts were illegal.¹

Although these views did not cause the Colonial Office any concern at that time, they nevertheless paved the way for further criticisms of the existing situation.

In New South Wales the question was raised as early as 1805. Governor P.G. King reported that John Macarthur, an influential landowner, had brought up the issue, and quoted a legal authority who maintained quite definitely that the Governor's orders and regulations were not binding. King was unable to provide any legal argument to show that the Governor's legislative authority was in keeping with the British Constitution.²

T.W. Plummer*, whose advice Lachlan Macquarie sought before assuming the responsibility of colonial government, was also aware that the Governor's legislation was unconstitutional. He wrote to Macquarie of the 'absolute omission of Parliamentary sanction to the greater part of Colonial Government,' and suggested that the Imperial parliament institute a Legislative Council to assist the Governor in the making of rules and regulations for the colony.³

Plummer argued that such a Council, based on the Indian precedent

* Thomas William Plummer, the counsel consulted by the Colonial Office in the course of action to be taken against those who initiated in the Rum Rebellion.

and taking away no authority from the Governor, would make the government more palatable and afford the colonist less cause for complaint. He suggested that the Council should consist of five to seven members nominated by the Crown; the majority of the members should come from the official class while two should be selected from among the most respectable inhabitants. But Plummer's suggestion met with little response from Macquarie who recognized in it a threat, no matter how small, to gubernatorial authority.

In 1812 the Commons Committee on Transportation recommended that a Council be formed with the purpose of sharing with the Governor the responsibility for framing measures necessary for the government of the colony. The committee found that the use of the Governor's extensive powers had not always given satisfaction to the colonists and this situation was hardly conducive to the well-being of the colony. It is apparent, however, that the committee was oblivious to the fact that there existed legal arguments which might have added weight to the recommendation.

The Colonial Office was not aware of any compulsion to accede to the suggestion that a Council be established. Secretary of State for the Colonies, Earl Bathurst maintained that there should be no impediment to the Governor's authority as afforded by such a Council.

6. Commons Papers 1812 (341), 11, p. 573.
Furthermore he asserted the impossibility of finding persons who would perform the necessary duties in a satisfactory manner. Lord Bathurst avoided the question of the legality of the legislative authority of the Governor, but only for a short time.

The question was again raised in New South Wales by the Judge-Advocate Ellis Bent. Bent found much in the Governor's orders and regulations that was repugnant to the laws of England. He considered such a system, as existed in New South Wales, where the governor could abrogate laws of England and replace them by laws that were based on expediency, and usually contrary to the spirit of the laws of England, thoroughly obnoxious and inconsistent with established constitutional practice. He pointed out the fact that the Governor's power, if sanctioned, was above parliament.

His brother, Judge J.H. Bent, shared this point of view and, on another occasion the judge took the opportunity to inform Macquarie that he considered the Governor's orders and regulations invalid.

Earl Bathurst was unable to provide any legal arguments to counter those put by the brothers Bent. Because of their repeated clashes with Macquarie, the brothers were recalled. However their respective successors, Chief Justice Field and Judge-Advocate Wylde,

proved to be no less aware that the validity of gubernatorial legislation was questionable. In 1818 Field ruled that the duties levied by Macquarie's legislation were illegal since it did not have the sanction of Parliament. In the same year he challenged the power of the Governor to confer on magistrates the same civil powers which they enjoyed in England, on the grounds that a Governor might not enact an Act of Parliament in a colony unless that colony were included specifically in that Act. In the following year the question of the Governor's powers to tax was referred to the law officers at the Colonial Office. They ruled that neither the King nor his Governor could make laws for the purpose of levying taxes. 10

The same point was made more strongly in the Imperial Parliament by Bennett and Brougham later that year. 11 Goulburn, Colonial Under-Secretary, stated in reply that the Colonial Office intended to rectify the situation by introducing a bill authorizing the Governor to collect certain duties. 12

The question, however, was not yet settled. The Colonial Office had only so far conceded that the Governor could not legislate in fiscal matters. It was not until 1822 that it agreed that the Governor had in fact no authority to enact any legislation. The legal adviser, James Stephen maintained that the King could not make laws that are

'Binding on his subjects except by consent of Parliament.' Exceptions to this rule occur only in the 'case of foreign Settlements acquired by His Majesty's Arms, where he exercises legislative power as a conqueror and ... in the cases of Settlements ceded to the Crown': New South Wales, ruled Stephens, did not fall into either of these two categories as it had not been acquired by either conquest or cessation 'but by mere occupation of desert or uninhabited land.' He maintained that the settlers who occupied the land, carried with them the laws of England. The precedent that had been established in all such cases, required the Governor to 'convene an assembly elected by the freeholders of the colony.' Stephen argued that 'for His Majesty to confer legislative powers on the Governor alone, and without the control of a local assembly, would be to deprive the Colonists of the constitution and laws which they carry with them.'

Thus by 1822, the authorities at the Colonial Office realized that one of two courses might be followed. Either parliamentary sanction by means of legislation might be obtained for all measures to be implemented in the colony, as had been the practice with regard to fiscal matters since 1819; or parliament might provide the colony with a body competent to legislate. The second alternative was eventually decided upon. The actual form of the projected legislature posed no problem. New South Wales, as a penal colony, required a small, controllable Council, similar to those which had been established in the

colonies which Britain had acquired as a result of conquest. The possibility of the legislature being constituted as a popular elected body was never entertained by the Colonial Office authorities for the following reasons: first, such a body was not conducive to such tight Home Government control as was considered necessary for a penal colony; second, the number of free and morally respectable inhabitants was small; and third, there was no popular demand on the part of the colonists for such an institution.

In this summary manner the men at the Colonial Office, who at the time were preoccupied with the recommendations which arose out of the inquiries of Commissioner J.T. Bigge, into the state of New South Wales and its dependencies, disposed of a problem which for such a long time they had refused to face. Provisions for a Legislative Council were 'tacked on' to the New South Wales Judicature Bill which was designed to bring into force some of Bigge's recommendations. The Bill received the approbation of Parliament and passed into law in July 1823. In August of the following year the Legislative Council of New South Wales and its dependencies met for the first time.

* * * *

Van Diemen's Land from its very beginning was politically dependent on New South Wales. It had been founded as an extension of New


15. 4 Geo. IV, cap. 96.
South Wales in order to make effective the British claim of sovereignty over the island at a time when the French seemed likely to establish themselves in the area. The Lieutenant-Governor of the island colony received instructions from the Governor-in-Chief in Sydney rather than from the Secretary of State. Legislation effective for New South Wales was similarly effective for Van Diemen's Land. The Lieutenant-Governor of the island could only have the power to make 'Bye Laws for the internal Regulations of the colony, not repugnant to such of the laws of England as apply to the Colony,' and not repugnant to such of the Governor's bye-laws as applied to Van Diemen's Land.16

The Lieutenant-Governor was no more independent in executive matters. He had no authority to engage shipping or to enter into any contracts; to draw bills either personally or through his commissary on the British Treasury; to initiate construction of public buildings or to make land grants or of government stock, without prior approval.17

Commissioner Bigge found that the progress of Van Diemen's Land had been impeded by its dependence on the mother colony. To facilitate the efficient administration of justice, he recommended that an independent Supreme Court should be established in the island colony.18

Further, he suggested that the Lieutenant-Governor of the island
should be vested with the power to approve capital sentences and to
pardon offenders pending the approbation of the Secretary of State.
He also considered it expedient to erect Van Diemen's Land into an
independent colony as soon as the population was considered to be in
sufficient respectability to be worthy of this blessing. 19

These suggestions were accepted and incorporated into the
South Wales Judicature Act of 1823. By one of the provisions of the
act, Van Diemen's Land was to be constituted into a separate colony
at some future time to be left to the discretion of the Crown. As
independent colony it was to receive similar institutions as existe
in New South Wales, including a Legislative Council. 20

When it became known that the Colonial Office, at some date
the future, intended to separate Van Diemen's Land from the mother
colony, there was an immediate and enthusiastic public response.

number of merchants and landed proprietors* petitioned the Home G;
ment that independence be enacted immediately. These colonists am
ued: first, that legislation emanating from New South Wales would
be at odds with the interests of Van Diemen's Land, simply by virus of the geographica distance of the island colony from the Legislative
Council in New South Wales, which was therefore 'ignorant in many

* The petition was signed by E.Lord, J.Ingle, W.Wilkinson, J.G.
T.Simpson, T.Kent, J.Duncan, D.Ker, J.T.Watson, J.Kerr and J.

20. 4 Geo. IV, cap. 96, sec. XLIV.
respects of those measures that will best promote its prosperity'; second, that there was a sufficient number of gentlemen of fortune, talent and character resident in Van Diemen's Land, fully competent to form a Council; third, that the appointment of a council whose membership included Sydney merchants to legislate for Van Diemen's Land would operate prejudicially to the interests of the merchants of the island; and fourth, the colony's prosperity and the respectability of its inhabitants now made it ready for independence. The pleas were not without effect.

The task of paving the way to the island's independence was allotted to Lieutenant-Colonel George Arthur, Lieutenant-Governor elect. Arthur's instructions differed considerably from those of his predecessors. The Colonial Office authorities, to facilitate the transition, had removed many of the limitations which had restricted the earlier Lieutenant-Governors thereby giving the administration a measure of independence. It was understood that any recommendation made by the Lieutenant-Governor should receive the immediate approbation of the New South Wales government unless it was obviously unwise. Arthur, was, in fact, to be held responsible for all measures recommended by him, to which the Governor's sanction might be given.

Arthur was given even greater discretion with regard to legislation. The Governor in Sydney was obliged to send drafts of all legislation which might particularly affect Van Diemen's Land to Arthur

for perusal. If the Lieutenant-Governor were to find any such proposed legislation inexpedient, it was not to be put to the Legislative Council, except in cases of extreme urgency.23

Furthermore he was empowered to recommend to the Governor-in-Chief matters concerning the initiation of public works, the employment of public officers, magistrates and the use of the Royal prerogative of mercy in respect to persons convicted in the Supreme Court of Van Diemen's Land. Moreover, Arthur was to be ultimately responsible for the financial administration of the colony.24

Arthur proved equal to the task and contrived to govern the colony without undue interference from New South Wales. Meanwhile the separation movement gained momentum. Arthur's predecessor Sorell strongly recommended complete independence when he returned to London. He presented a petition on behalf of the colonists which furthered the cause for complete separation from the mother colony. Arthur, who resented the restriction on his authority, imposed by the present semi-dependence on New South Wales, was himself a strong advocate of the cause. He maintained that administration under the present system was proving exceedingly difficult largely because communications with Sydney were slow and resulted in undue delays in government action. He emphasized, furthermore, that the proportion of respectable men and women now resident in the colony rendered the moment ripe for separation.

23. Ibid.
24. Ibid.
By mid-1825 the Colonial Office had satisfied itself as to the validity of these reasons and made the decision to erect Van Diemen's Land into a separate colony. On 14 June an Order-in-Council was drawn up implementing this decision. This was delivered by the Governor-in-Chief designate, Sir Ralph Darling and was published in the Hobart Town Gazette on 3 December 1825 from which date it became law. Darling also brought with him a commission which articulated the new powers of the chief administrator of the island, instructions which provided for an Executive Council, and a warrant appointing members of the Legislative Council.
CHAPTER 2.

A Rubber Stamp: The Legislative Council as constituted by the 1823 Act under the direction of Arthur, 1825-1828.

The Legislative Council of Van Diemen's Land as constituted by the New South Wales Judicature Act of 1823 was only an insignificant part of the machinery of government. Its function, determined by Lieutenant-Governor Arthur's interpretation of its constitution, was, it seems, simply to express approval of legislation formulated by the Lieutenant-Governor sitting with the Executive Council. Debate was negligible and meetings were short. The business was made up of legislation, relating in the first instance, to the penal settlement. Here, only a few officials were equipped with sufficient information to enable them to contribute in any meaningful way to debate on acts relating to the management of convicts and convict institutions. In the second place the legislature was responsible for the needs of the civil community, and acts relating to this area played a small but increasingly significant role in Council business. While more active debate might have been expected with regard to this second area of the Legislative Council's responsibility, in view of the fact that here little else but a general knowledge of the social and economic conditions of Van Diemen's Land was required of the members, this was rarely forth-
The views of both official and private members appeared to be so perfectly in tune with those of the Lieutenant-Governor, in civil as well as penal matters, that little discussion was considered necessary. A number of factors can be seen to have contributed to this state of affairs.

The initial advantage of the Lieutenant-Governor lay in his position as president of the Council, by which he was exclusively empowered to introduce bills, to pass bills in the face of the majority of the members, and to make provisional appointments to fill casual vacancies in Council membership.

In the second place the Lieutenant-Governor's symbolic role as representative of the Crown in Van Diemen's Land made him the object of considerable awe and veneration. The small size of the Council was such that extremely informal proceedings characterized the meetings, held at Government House. The status of the members as guests in the Lieutenant-Governor's residence for the duration of the meetings, served to subdue the opinions as did the gratitude of the private members to the Lieutenant-Governor for the honour of Council membership which he had caused to be bestowed upon them. The official members, as the Lieutenant-Governor's subordinates, were reluctant to raise their voice against their Chief Authority.

Third, the intellectual and administrative ability of Arthur was unmatched by that of any of the official or private members. As such, the members were on most occasions, quite prepared to accept the
Lieutenant-Governor's leadership.

In effect, there existed under Arthur, only relatively minor limitations to the Lieutenant-Governor's authority in the Legislative Council. This lay in the constitutional provision that all Colonial Legislation be forwarded to London to be submitted for the perusal of the Secretary of State for Colonies. In only one case, however, between 1826 and 1828 did the Colonial Office authorities find it necessary to question such legislation.

It was accepted among a body of colonists that Arthur's domination of the Legislative Council was detrimental to that organ and detrimental to the well-being of the colony as a whole. The community expected the Council to be more than a mere instrument of the Lieutenant-Governor's will. The unpopularity of Arthur's authoritarian regime was extended to the Council, particularly after the illiberal Press Acts of 1827. The general dissatisfaction with the Council and constitution was manifested by the movement for legislation by representation and trial by jury.

* * *

The 1823 constitution of the Legislative Council was deliberately designed so as to impede as little as possible the authority of the Lieutenant-Governor. It was to consist of no more than seven and no less than five members nominated by the Crown.\(^1\) Its function, as

\(^1\) Geo. IV, cap. 96, sec. XXIV.
defined in the twenty-fourth section of the Judicature Act, was to assist the Lieutenant-Governor in the making of laws for the good government of the colony. The Lieutenant-Governor alone had the right to initiate bills, to any of which he could give the force of law, provided he received the assent of any one member of the Council. The dissenting members were provided with the right to record the reason for dissent in the minutes of the meeting. The Lieutenant-Governor, under such circumstances, was obliged to enter into the minutes the reasons which had led him to pass an act in the face of the opposition of a majority of the Council. In certain circumstances the Lieutenant-Governor was given extraordinary powers. In time of actual or apprehended rebellion or insurrection, he was empowered to promulgate and enforce such laws and ordinances as he considered necessary to the prevention or suppression of rebellion or insurrection, with, or without the consent of even one member.

Two provisions, however, checked the Lieutenant-Governor's indiscriminate use of his powers. First it was necessary for all acts before becoming law to be certified as being 'not repugnant to the Laws of England'; second all laws and ordinances were to be forwarded for scrutiny to the Secretary for State for the Colonies. If any law or ordinance received the disapproval of that minister, it was

2. Ibid.
3. Ibid.
4. Loc. cit., sec. XXV.
5. Loc. cit., sec. XXIX.
to be considered null and void. In this way it was ensured that all colonial legislation was consistent with the laws of England and British colonial policy.

Lieutenant-Governor Arthur, by using his constitutional powers, was able to dominate the Legislative Council. Arthur was a man with a quick and incisive mind. Moreover he possessed an uncommonly high sense of duty and unbounded energy. He first came to public notice during the Napoleonic Wars, in which he served with distinction. His experience of government began with his appointment as military secretary to the Governor of Jersey; in 1821 he went to Jamaica as Assistant-Quartermaster-General; and from 1814 to 1822 he administered Belize*. Before Arthur left England for Van Diemen's Land he read despatches and talked to the Under-Secretary at the Colonial Office in order to gain a sound knowledge of the affairs of the colony. When he arrived in Hobart Town he was able to take over the government and establish himself without any difficulty. Nearly two full years had elapsed after his arrival and before the first meeting of the Legislative Council. In those two years he had tightened his grip on the existing machinery of government.

Arthur controlled the Legislative Council, in the first instance, by filling the legislature with men who, in his opinion, understood the problems of the colony and the requirements of the British Govern-

* Later to become the Crown colony of British Honduras.

6. Loc. cit., sec. XXX.
CHIEF JUSTICE JOHN LEWES PEDDER,
Member of the Legislative Council
1825-1851.
ment with regard to their solution; who were certain to co-operate with his plans and ambitions for the colony and who, by virtue of their character, might add dignity to the institution.

Arthur considered Van Diemen's Land primarily as a gaol. The purpose of the administration was to bring about the punishment and reform of the convict population. For the efficient administration of the convict system, Arthur expected unwavering support and unquestioning obedience from both officials and free settlers, the majority of whom under the assignment system, functioned as task-masters, goalers and reformers of convicts\(^7\); and empowered with the right to dismiss officials, to refuse to issue land grants, to resume unimproved alienated land and to shut the door to the high society of Government House, the Lieutenant-Governor was in a strong position to enforce such discipline as he deemed necessary.

As early as October 1824, Arthur, on his own initiative, recommended that the Chief Justice, John Lewes Pedder, the Commandant of Port Dalrymple Edward Abbott, the Colonial Treasurer Jocelyn Thomas and the Naval Officer W.H. Hamilton be appointed to the first Legislative Council.\(^8\) These men matched the Lieutenant-Governor's requirements for membership. All were sympathetic to Arthur's aims in government and further, as officers of the administration they were, with the


exception of the Chief Justice, subject to his command. Moreover, they were all held in high esteem in colonial society.

John Lewes Pedder was appointed as the first Chief Justice of the colony. He had arrived on 15 March by the ship Hibernia bringing with him the Royal Charter of Justice which established the Supreme Court of Van Diemen's Land. Pedder, the son of a barrister at the Middle Temple, was born in 1784 and educated at Trinity Hall Cambridge. In 1813 he succeeded in gaining admission to the Middle Temple, but it was not until 1820 that he was called to the bar. In 1823 he was offered the post of Chief Justice of Van Diemen's Land. Pedder, a man at the age of thirty-nine with only three years' standing at the bar, was pleased to accept this position, which gave him a station in life such as he could never have hoped to attain in Britain.9

The Chief Justice, a pompous personality and ponderous thinker, was painstakingly slow in arriving at conclusions and making decisions owing to the detail and trivialities which occupied his mind and clouded his vision to the broader aspects of problems. 10 Nevertheless he was a man of upright morals who commanded wide respect in the colony - a high Tory and high Anglican who could be relied upon to maintain the established order and respect for authority.

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Major Edward Abbott, Arthur's second nominee, had served for a lengthy term in the service of the colonies. He arrived in Sydney in mid-1790 as a lieutenant and served with distinction at Parramatta, Norfolk Island and Sydney. His commendable conduct during the Rum Rebellion, when he refused to take part in the deposition of Bligh, came to the notice of the Home Government in 1810. After receiving promotion, he resigned from government service. In 1814 he accepted the position of Deputy Judge-Advocate of Van Diemen's Land and served the island in that capacity to the satisfaction of both the colonists and the Colonial Office, until the office of Deputy Judge-Advocate was abolished by the Royal Charter of Justice. The Authorities at the Colonial Office subsequently offered him the post of Commissioner of the Court of Requests which he declined in favour of a pension. Finally, dissatisfied with this situation, he induced Earl Bathurst to promise him the position of Commandant of Port Dalrymple.¹¹

Jocelyn Thomas, arrived in the colony in 1824 to settle with his large family in the Upper Derwent Valley. Before migrating to Van Diemen's Land Thomas had held a respectable station in society. In his native Ireland he had served as a magistrate for nine years. In October of 1824 Arthur appointed him Colonial Treasurer. The Lieutenant-Governor considered him a man of high moral principle, 'a qualification of paramount importance required of public officers.'¹²

But Bathurst did not find him a seat on the Legislative Council until 1829. He did, however, obtain a seat on the Executive Council in the capacity of Colonial Treasurer.

W.H. Hamilton, the last to appear on the Lieutenant-Governor's list of prospective legislators, like Thomas was considered to be of high moral calibre. And it was upon these grounds, so the Secretary of State was informed, that he was appointed Naval Officer of the colony. Yet Hamilton had other qualifications that recommended him to this position. He had served in the Navy for sixteen years; first as a purser and then as secretary to staff officers at an Indian naval station. In the latter days of his career he had entered into commerce by becoming a partner in a firm of Bombay merchants. After amassing a small fortune he retired to Van Diemen's Land where he arrived in April 1824 with letters of introduction from Earl Bathurst and capital amounting to twelve thousand pounds.

The first Legislative Council, however, was not composed of entirely officials, as Arthur had recommended. Despite the fact that there were no demands on the part of the free settlers of Van Diemen's Land for involvement in the legislature with the exception of the Hobart Town Gazette which pleaded that it should not be entirely constituted of government officials, the principle of giving very limited representation by nominating non-officials (or private members) was

13. Ibid.
14. Correspondence file on Hamilton in T.S.A.
15. Hobart Town Gazette, 8 July 1825.
conceded in response to demands made in New South Wales. The first Legislative Council of that colony had been established by a warrant dated 1 December 1823. It was composed entirely of official members and it met for the first time on 25 August 1824. This Council proved a disappointment for the many colonists who had looked forward to a representative legislature. The authorities at the Colonial Office had not yet come to a final decision on the actual composition of the Council. But the widespread disapproval of the existing membership on the part of those colonists interested in the constitutional development of New South Wales, influenced Secretary of State Bathurst in his decision to include nominated private members to represent the interests of the free settlers.¹⁶ The warrant for the Legislative Council dated 14 July 1825 extended membership to the Lieutenant-Governor William Stewart, the Chief Justice Francis Forbes, the Archdeacon T.H. Scott, and the Colonial Secretary, Alexander McLeay as officials; and John Macarthur, Robert Campbell and Charles Throsby as private members. Macarthur and Throsby were considered to be the representatives of the agricultural interests while Campbell was to be the spokesman for the commercial interests of the colony. All three private members were selected by the Colonial Office from a list furnished by the Governor, of ten of the most wealthy and respectable landholders and merchants of New South Wales.¹⁷

The warrant appointing the Legislative Council of Van Diemen's Land drawn up simultaneously with that appointing the second New South Wales Legislative Council, extended membership to five officials - Chief Justice Pedder, Colonial Secretary-designate Dudley Montague Perceval, Civil Commandant of Port Dalrymple Edward Abbott senior, Naval Officer William Henry Hamilton, Chief Police Magistrate Adolarius William Henry Humphrey, and one non-official namely Edward Curr, manager-elect of the VanDiemen's Land Company, to represent both landed and commercial interests.

The membership of the Legislative Council, appointed by the warrant dated 14 July 1825, proved to be to Arthur's satisfaction. While three of the members were his nominees, another two were employed by the government, and more or less ready compliance to the Chief Authority's will might therefore be expected from these latter. Perceval, the Colonial Secretary designate having not yet arrived in the colony, was an unknown quality. Humphrey, on the other hand, was widely known and respected. He had been a member of Collin's expedition and served the colonial administration in the capacity of minerologist until 1812 when he resigned from his position to further his agricultural pursuits on his properties at Pittwater and in the Upper Derwent Valley. In 1814 he was appointed a magistrate and subsequently earned a reputation for his harsh administration of justice. In 1818 he became Chief Police Magistrate and Superintendent of Convicts. He later proved a valuable source of knowledge to Commiss-
Edward Curr, the only non-official member of the first Legislative Council, had arrived in Van Diemen's Land in 1820 to further commercial enterprise with his partner, John Raine, who rapidly gained a reputation as a 'great celebrity in the blackguard world.' On discovering that his own respectability was suffering by virtue of his association with Raine, Curr took steps both to dissolve the partnership and to remake his own public image. He served in the Deputy Judge-Advocate's court, on several committee's of enquiry, and as treasurer to a fund raising committee for the construction of a Roman Catholic Church. In June 1823 he returned to England where he published an informative book entitled *An Account of the Colony of Van Diemen's Land primarily for the use of emigrants*. His account of the colony led the Colonial Office to believe him to be an authority on the island colony. Earl Bathurst consulted his advice on economic matters and introduced him to the entrepreneurs who were in the process of forming the Van Diemen's Land Company. Curr later became the Company's manager in Van Diemen's Land. Because of his connections with the Colonial Office, and London business interests, and knowledge of the local economy, Lieutenant-Governor Arthur considered him a valuable member

Edward Curr's membership was looked upon by the Colonial Times as 'the nucleus around which may be formed support for the rights of the people...'. But on his arrival in the colony in March 1826, fearing that the dissident elements amongst the inhabitants of the colony had, through their actions, identified him with their cause, and made his name obnoxious in the sight of the government, Curr took steps to make his position clear and tendered his resignation to the Lieutenant-Governor. Arthur fulfilled Curr's expectations by expressing confidence in Curr's integrity. The Lieutenant-Governor stated his desire to use Curr's knowledge of mercantile matters and refused to accept the resignation.

Arthur affected the first change in the membership of the Legislative Council in 1827 (a year after its first session) by increasing the number of non-officials. Edward Abbott a man over sixty years of age, had frequently been absent during the 1826 session of the Council since he did not often feel up to the one hundred and twenty mile journey from Launceston. Edward Curr was also intermittently absent from Hobart Town; he was often resident at Circular Head, the headquarters of the Van Diemen's Land Company, a distance of over two hundred and fifty miles from the capital. Arthur was worried that

20. Material on Curr in the T.S.A.
22. Curr to Inglis, 11 March 1826, Van Diemen's Land Company Papers: Foreign Letterbook, T.S.A.
the absence of these two members could not but interfere with the working of the Council. He suggested to Earl Bathurst therefore that it would be expedient if additional members were appointed.  

Thomas Anstey was recommended as a suitable member. Anstey had arrived in the colony in 1823 with strong recommendations from J.T. Bigge and Henry Goulburn of the Colonial Office, and capital amounting to six thousand pounds. After obtaining a maximum land grant, he had built up a considerable grazing property and one of the finest flocks in the colony. His morals and loyalty recommended him to Arthur who appointed him stipendiary police magistrate at Oatlands. Arthur had no hesitation in recommending him to the Secretary of State for nomination to the Legislative Council as a representative of the agricultural interests.  

Earl Bathurst acted on Arthur's advice. On 11 December 1826 he informed the Lieutenant-Governor that the warrant of 14 July 1825 had been revoked, and was replaced by a fresh warrant dated 10 December 1826 continuing the membership of those appointed by the former warrant with the exception of Abbott and Perceval and giving office to three new members, namely Thomas Anstey, Thomas Archer and John Burnett. Burnett, who had arrived in Van Diemen's Land in November 1826, was sworn in as a member of the Council on 15 December.  

24. Ibid., Material on Anstey in the T.S.A.  
Thomas Archer was a large landowner from the northern half of the island. He had come to Van Diemen's Land from Sydney in 1813 to take charge of the Commissariat at Port Dalrymple. From 1817 to 1819 he served at the commissariat in Hobart and then again in Launceston. After some time he resigned from his position to give his undivided attention to his extensive agricultural interests. By 1825 he had amassed six thousand acres and developed a large farming establishment. In 1826 the land commissioners were able to report that his properties employed an army of sawyers, bricklayers, blacksmiths and labourers as well as one hundred working oxen and ran ten thousand sheep. This establishment was considered to speak forcefully of what could be done for the colony by men of industry and perseverance. 26

In April 1826, the Lieutenant-Governor considered him worthy of a seat in the legislature, although in fact, Arthur did not recommend him to the Colonial Office for nomination for fear that his residence in the north would prevent him from attending Legislative Council meetings as frequently as was desirable. 27 But Bathurst,

* Perceval, who was originally designated as the first Colonial Secretary, did not arrive in the colony to take up his position, but instead accepted a position in the Cape Colony. Charles Ellis, who was subsequently appointed in his place, too, was unable to take up the position. In the meantime the duties of Colonial Secretary were performed by Arthur's nephew, John Montagu, Clerk of the Councils, and W.H. Hamilton.

despite Arthur's anxiety, decided that Archer's nomination to the Council was essential and while his absence might be frequently expected, it was hoped that 'he would not allow any important question on the deliberation of which his assistance might be required, to pass the Council without making any endeavour to be present.'

The member whom Archer replaced was Edward Abbott. Earl Bathurst, mistakingly believing that Abbott had taken up the position of Commissioner of the Court of Requests and Chairman of the Board of Magistrates and considering it injudicious for any person in this situation or who held any legal position, with the exception of the Chief Justice, to sit on the Legislative Council had found it necessary to remove Abbott.

The membership of the Council under the new warrant was published on 21 April 1827 and the usually hostile Colonial Times spoke favourably of the appointment of the two new nonofficial members. It was considered flattering that Archer, a man who 'had much local experience and a large stake in the colony' should have been appointed. The agriculturalists were told that they could look to him to further their interests.

Towards the end of 1827 there was yet another change in the

membership. Curr, who had taken up permanent residence at Circular Head and would not allow the 'duties of Council to interfere with those [he] owed to the [Van Diemen's Land] Company', resigned on the grounds that he would be unable to attend future meetings except at great inconvenience to himself. His place was taken by Edward Abbott whose removal from the original Council had been to that man, 'a continual source of sorrow.' Although he saw little value coming out of the services of that aged gentleman, Arthur had recommended that Abbott be given a place on either the Executive or Legislative Council in order to soothe Abbott's hurt pride and put an end to his incessant complaints of the injustice done to him.

* * * *

The 3 December 1825 was hailed as the beginning of 'a great and glorious era' by the government-patronized Hobart Town Gazette. On that day Van Diemen's Land was proclaimed an independent colony, and its first Governor and its first Legislative and Executive Councils were sworn in. The occasion moved the 'most loyal and public spirited inhabitants' to illuminate their dwellings.

32. Curr to Inglis, 11 March 1826, Van Diemen's Land Company Papers: Foreign Letterbook, T.S.A.
34. Arthur to Bathurst, 22 September 1827, H.R.A., III, vi, p. 188.
35. Hobart Town Gazette, 15 December 1825.
36. Ibid.
While the Executive Council was reconvened to discuss business shortly after its establishment, the Legislative Council remained in abeyance until 26 April of the following year when it met merely for the purpose of enabling Curr to take his seat.\textsuperscript{37}

The first sitting, however, was not uneventful. Curr refused to take all the oaths required of members. All members, by virtue of their position, were magistrates and as such were required to take the relevant oaths as well as the oath of membership stipulated by the 1823 New South Wales Judicature Act. These were the Oath of Abjuration, of Supremacy and the Declaration against Transubstantiation. As a practicing Roman Catholic, Curr would not take the Oath of Supremacy and the Declaration. He did not however have any objection to the Oath of Office and of Abjuration. Arthur, who had prior knowledge of Curr's religious beliefs, decided that Curr’s faith should not preclude his membership.\textsuperscript{38} Earl Bathurst subsequently expressed his approval of the Lieutenant-Governor's course of action.\textsuperscript{39} The Council rose after Curr had taken his seat.\textsuperscript{40}

The 1826 session proper commenced on the 21 June. The beginning was inconsequential however. Proceedings commenced when an embarrassed Arthur informed the members that the bill they were to consider was still uncompleted. He had no intention, however, of

\textsuperscript{37} Draft Minutes of Proceedings of the Legislative Council, 26 April 1826.
\textsuperscript{39} Bathurst to Arthur, 11 December 1826, \textit{loc. cit.}, p. 453.
\textsuperscript{40} Draft Minutes of Proceedings of the Legislative Council, 26 April 1826.
wasting the occasion, but went on to explain that the procedure
to be adopted in the Council would be based on British parliament-
ary practice, adapted to the peculiar requirements of the Van Diemen's
Land Council. \(^{41}\) The meeting was adjourned until the 24 June by
which time, it was hoped, the draft would have been finalized by the
Attorney-General. However, at the appointed time, Arthur had again
to announce to the assembled members that the bill was still in no
state to be presented for discussion.

The subsequent seven meetings of the Legislature in 1826 went
by uneventfully. Bills were promptly at hand as they were required
for consideration and procedure became firmly established. Unlike
his counterpart in New South Wales, Arthur remained present through-
out the entire proceedings of Council meetings. Governor Brisbane
had established a precedent in the New South Wales legislature whereby
the Governor, after introducing a bill, retired from the meeting so
that discussion should not be impeded by his awful presence. \(^{42}\) Arthur,
however, deemed the presence of Chief Authority essential in that he
was thereby able to provide necessary information and to correct errors
of judgement in all matters relevant to the legislation he introduced.
The Colonial Office approved of this move considering it to be in
keeping with the intentions of the constitution. \(^{43}\)

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41. Draft Minutes of Proceedings of the Legislative Council,
21 June 1826.

42. Murray to Arthur, 31 July 1828, C.O. 408/5; see also Darling to
Arthur, private, 27 January 1826, A2167.

43. Ibid.
During this first session the Legislative Council's routine was established. The Lieutenant-Governor, in his capacity as president, firmly directed opinion as well as proceedings. Proceedings were held in camera. The Clerk of Councils was always present and was responsible for the minutes. The meetings were not conducted at any set time, but at the convenience of a majority of members. Usually they took place in the mornings or afternoons in Arthur's apartment in Government House where it was customary for the Lieutenant-Governor to entertain the members to drinks and, in his more amiable moments, to dinner.

The brief 1826 session of the Legislative Council yielded only three Acts. Subsequent sessions were only slightly more productive. In 1827 five bills were passed and in 1828 eight became law. Five of these, however, were amendments of earlier acts; another was a validating act removing doubts as to the validity of acts in force on the 28 February 1827.

The Council's legislation fell into two broad categories: first, acts relating to the management of convicts and convict institutions; and second, acts affecting and attending to the needs of the civil community. Discussion on bills which fell into the first category was negligible. Only a few official members were sufficiently informed on matters relating to the convict establishment to make an authoritative contribution to debate, and since these had previously expressed their opinion in the course of discussions in
the Executive Council whence all legislation originated, they were reluctant to repeat themselves. For example, discussion of the Act for the summary punishment of Disorderly Conduct in Female Offenders was limited to Arthur's introductory remarks and his and the Chief Police Magistrate's answers to queries from private members. Deliberations on bills which fell into the second category were somewhat more lively. Non-officials were able to contribute to discussion on such measures as the Act to promote the circulation of Sterling Money ... and the legislation regulating the sale of spirituous liquors.

During the period of the Legislative Council's existence under the 1823 Act, the proportion of the free population became greater. The Council's legislation reflected the growing importance and the increasing needs of the free sector of society. Whereas, in 1827 only two of the five bills passed related directly to the free community, of the total of eight dealt with during the 1828 session, as many as six were relative to this area. Nevertheless the private members did not play a significantly greater part in proceedings. The bills, having undergone the scrutiny of the Chief Justice in order to be certified as 'not repugnant' and the Lieutenant-Governor and Executive Council to be ratified, were usually perfected before they were introduced into the Legislative Council and there was little left to be said.

44. Draft Minutes of Proceedings of the Legislative Council, 1 August 1826.
During the period 1826 to 1828 there is no evidence of any
dissension in the Legislative Council. If trust is to be placed
in the minutes of proceedings, and Arthur's records, one may even
go so far as to say that all legislation was passed without opposition. It was never necessary for Arthur to resort to his extra-
ordinary powers of legislating against the wishes of the majority.
Only two of the Legislative Council's acts were abrogated by the
Secretary of State. These were the so-called Press Acts which were
designed to regulate colonial newspapers.

The Lieutenant-Governor had for a long time considered that
the liberty of the press was incompatible with the present constitu-
tion and the penal system. A free press, he wrote, should not
precede a free constitution. The uncontrolled and licentious
press was deemed responsible for such evils as bushranging, convict
insubordination and disrespect of the government.

As early as 1825 Arthur had attempted to impose some control
over newspapers. From January to July of that year, he and his ad-
ministration had been constantly maligned by the Hobart Town Gazette
then owned by Andrew Bent. On hearing of the extent to which the
press attack upon the government contributed to entertainment in the
drinking establishments and places of low life in Hobart Town, Arthur
was ready to take immediate action to protect its authority. But

46. Hobart Town Gazette, 28 November 1825.
47. Hobart Town Gazette, 28 January-1 July 1825.
his superior in Sydney, Governor Brisbane did not agree that the newspapers should be subject to government regulations. He considered the laws of England were sufficient to restrain the licentiousness of the press. Bent and his supporters applauded the attitude of the Governor-in-Chief. Arthur, however, was no less determined to prevent further attacks.

In April 1826 Secretary of State Bathurst decided there was some necessity for the colonial administrations to exercise control of the publishing of newspapers. He suggested that the Governor of New South Wales and the Lieutenant-Governor of Van Diemen's Land should introduce bills into their respective legislatures first to give force to the English press laws and second to enable their governments to supervise newspapers. Arthur prepared, as did his New South Wales counterpart Governor Darling, two bills in compliance with instructions from the Secretary of State. The first required a stamp duty to be paid on every newspaper, while the second required newspaper proprietors and publishers to obtain an annual licence. This licence could be revoked if the licensee was convicted of printing and publishing blasphemous and seditious libels. Arthur placed the draft acts before the Legislative Council on 15 December 1826.

But he felt obliged to withdraw them almost immediately on learning that Darling had been prevented from proceeding with the same acts by the adverse comments of Chief Justice Forbes upon their constitutionality. Arthur judged it inexpedient to enact the laws, because unless they were brought into force in both colonies, they were bound to be ineffective.  

In April of 1827 Darling, after corresponding with Arthur on the matter, laid the press laws before his Executive and Legislative Councils which both agreed that such laws were necessary to the dignity of the government. But Chief Justice Forbes declined to certify the bills as they stood. He found the clauses which imposed the annual licence and stamp duty repugnant to the laws of England.

Arthur was not in the least deterred by Forbes' ruling. His own Chief Justice Pedder, whose legal knowledge had never lent itself to doubt and who had never suggested that any bill which had been discussed by the Council was not in keeping with the laws of England, had already assured him that the circumstances of Van Diemen's Land were such that the proposed laws were justified. On the 10 September 1827 the bills were reintroduced and on 15 September after little debate, they received the assent of the Legislative Council. The new private members who, it seemed, were still intoxicated by the high honour bestowed upon them by one of his Majesty's principle

secretaries of state, found no reason to disagree with his Majesty's Lieutenant-Governor over this measure despite the fact that it was one, which, judging from past demonstrations, would be unpopular with those in the colony who regarded themselves as upholders of liberal principles. 55

Twenty-four of the colony's leading inhabitants prominent in colonial politics, including Charles McLachlan, George Meredith, William Kermode, William Gellibrand, W.A. Bethune and the magistrates T.G. Gregson, A.F. Kemp and Dr. J. Scott, informed the Lieutenant-Governor of their disagreement with the Legislative Council's conclusions that the press laws were necessary for good government. They feared that these laws, repugnant to the spirit of the British constitution, would not only render the Legislative Council extremely unpopular, but might also degrade the well-being of the colony. Such laws they believed, would deter wealthy and respectable citizens from settling in the island. The Lieutenant-Governor and the Council, in passing the offending Acts, must have acted on misconceptions and misrepresentations. They hoped therefore, that the laws would be reconsidered and that

the knowledge of the unqualified sentiments and intense feelings of the Colonists will cause its immediate repeal, or at least Suspension until a Petition can be transmitted to that Quarter in England, to obtain that Object. 56

55. See Draft Minutes of Proceedings of the Legislative Council, 10 and 15 September 1827.
Convinced that the majority of colonists agreed with the laws, Arthur chose to ignore this plea. He saw the remonstration as the plot of the troublesome malcontents, Gregson and Meredith, to undermine his government. He found one paragraph of the address particularly offensive; to himself, the Chief Justice and the Legislative Council. 57 Here the matter temporarily ended.

However, at the end of 1828 Arthur received news that the new Secretary of State, Sir George Murray, acting on the advice of the British Crown Law Officers, had ordered the Acts to be repealed on the grounds of their repugnancy to the laws of England. 58 The Secretary of State, nevertheless, conceded that some regulation of newspapers was necessary. He advised the Lieutenant-Governor that another Press Act, incorporating those principles of the 1827 Acts not repugnant to English laws, should be brought into operation forthwith. 59

Arthur lost no time in acting upon these instructions. The Legislative Council was summoned and the new Act was passed with customary unanimity. The Council, like Arthur, 'felt it best to provide for any difficulties which might result for the discontinuance in the colony of any Press laws.' 60

59. Ibid.
60. Arthur to Murray, 2 January 1829, G.O. 33/5.
The new act was relatively mild. Newspaper proprietors were required to register their names and addresses at the Colonial Secretary's Office and to print the same in each of their editions. Arthur realized that the new Act was no real check on the hostile press. But he was content to believe that the more respectable section of the community were largely uninfluenced by the slanderers, who in the name of liberal principles, attempted to turn the settlers against his government. The colonists and the government he maintained existed in harmony, and the unanimity found in all branches of government provided 'a bulwark against the malevolent insinuations and aspersions of a few discontented spirits.'

* * *

The 'discontented spirits' to which Arthur referred in his despatch to the Secretary of State were an increasing group of colonists who criticized Arthur, and the existing constitution and agitated for trial by jury and legislation by representation.

Arthur was treated with suspicion from the very beginning of his administration. His reputation as a tyrant, unjustly acquired during his term of office in Belize, had preceded his arrival in Van Diemen's Land, and his personality seemed to compare unfavourably with that of his predecessor, the affable Sorell whose recall was

61. Ibid.
widely deplored. As soon as he took over the reins of government, Arthur, with characteristic thoroughness and determination, took steps to restore order in the chaotic administration which he inherited from the lackadaisical Sorell. The various administrative departments were carefully examined and some were subsequently re-organized. Officials, whose conduct of affairs was considered to be improper, found their appointments terminated. The Naval Officer Bromley was suspended for the misappropriation of colonial funds. The services of Evans, the Deputy Surveyor-General, were dispensed with for his 'shameful Land jobbing transactions.' Joseph Tice Gellibrand, the colony's first Attorney-General was charged with improper professional conduct and dismissed. Moreover, Andrew Bent the government printer was relieved of his duties for his constant criticism of Arthur's administration. By the end of 1825 Arthur had a firm grip of the government. However, in the process of acquiring control, he had offended powerful sections of the community. The dismissal of Evans, who had enabled pastoralists to acquire as much land as they wanted, infuriated the landed interests. The merchants, who had benefitted from Bromley's relaxed system of collecting customs duties were no less annoyed. Arthur's treatment of Gellibrand and Bent, both of whom had expressed sympathy for the

63. See Kemp to Barnard 18 January 1824, enc.no.1 Petition and enc. no.2 Resolutions, H.R.A., III, iv, pp. 547-550.
ou tcry against autocratic government, was regarded as evidence of gubernatorial despotism. No less disturbing to some of the colonists was the fact that Arthur appointed his nephew, John Montagu, as Acting-Colonial Secretary and surrounded himself with an exclusive circle of advisors 'from whom he gained the insight into the resources and capabilities of the Colony ...'\textsuperscript{67} As it became increasingly obvious that Arthur was governing the colony primarily as a penal settlement rather than in the interests of the established landholders and merchants, resentment and criticism increased.

The mouthpiece of those who nursed grievances, the \textit{Colonial Times} a weekly journal owned by Bent, conducted a vigorous campaign against the Lieutenant-Governor's administration. As an integral mechanism in Arthur's government, the Legislative Council was constantly criticized. The absence of any means by which the free community could participate in its own government, became a major complaint.\textsuperscript{68} It was frequently deplored that the Council was composed almost entirely of government employees, who, moreover, were recent arrivals in the colony and could not be expected to have no more than a little knowledge of the peculiar needs of the inhabitants.\textsuperscript{69} With firm faith in the excellent principle of the separation of the legislative and executive aspects of sovereignty, its editor in late

\textsuperscript{67}. Henry Melville, \textit{A History of Van Diemen's Land, from the year 1824 to 1835 inclusive to which is added a few words on Prison Discipline}. Smith and Elder, London 1835 (Australiana Facsimile Editions, No. 194, Adelaide 1967) p.27.

\textsuperscript{68}. \textit{Colonial Times}, 12 May 1826.

\textsuperscript{69}. \textit{Colonial Times}, 16 December 1825.
1825 denounced the fact that four members of the Executive Council, namely Arthur, Pedder, the Colonial Secretary designate Perceval and Humphrey were also members of the Legislative Council. It also found distasteful the presence of the Chief Justice on both Councils. The Colonial Times constantly told its readers that the Legislative Council, as presently constituted, functioned merely as a rubber stamp to the Executive, lending its enactment to the requisite legality. Its editor deplored the fact that the legislature met only infrequently, conducted its proceedings in camera and published legislation after it had become law.

The Legislative Council's Acts were constantly criticized. The legislation regulating the sale of spirituous liquors was denounced as being detrimental to the wants of the community and considered demonstrative of the ignorance of the legislators with regard to the needs of the free colonists. The 1827 Press Acts, which raised a howl of derision, were regarded as evidence confirming the suspicion that the Legislative Council was the creature of the autocratic Lieutenant-Governor.

The disgruntled elements in the community expressed their disapprobation of the existing system of government by echoing the

70. Colonial Times, 16 December 1825 and 26 May 1826.
71. Colonial Times, 10 February and 24 November 1826.
72. Colonial Times, 3 and 24 November 1826.
73. Colonial Times, 29 September 1827; see also Hobart Town Gazette, 22 September and 6 October 1827.
New South Wales demand for legislation by representation and trial by jury. They hoped that by acquiring a representative legislature, political power would be transferred from the Lieutenant-Governor to themselves. Taking their cue from the example of counterparts in New South Wales, twenty-five of the 'leading' colonists requisitioned the Sheriff to convene a public meeting where expression of opinion regarding the 'important subjects' of legislation by representation and trial by jury might be given.

The public meeting took place in Hobart Town on 13 March 1827 and was attended by over two hundred of the 'most wealthy and respectable inhabitants.' Among those present were prominent members of the commercial and agricultural circles who had petitioned against Sorell's recall. These included Edward Lord, W.A. Bethune, T.G. Gregson, Samuel Hood, William Gellibrand, George Meredith and Anthony Fenn Kemp. Present too was J.T. Gellibrand the former Attorney-General. The speakers who addressed the meeting all agreed that the existing legislature did not meet the requirements of the civil community and the inhabitants would be satisfied only with the restitution of those rights to which they were as Englishmen entitled, that is to say, legislation by representation and trial by jury. A petition calling upon the British Government to grant the colony

74. *Colonial Times*, 2 March 1827.
75. *Colonial Times*, 9 March 1827.
76. *Colonial Times*, 16 March 1827.
an elected legislature and trial by jury met with the unanimous approval of the meeting. A deputation with the purpose of requesting him to forward the petition to England was elected to meet Arthur. 77.

On the appointed day and hour, the members of the deputation, headed by William Gellibrand, father of the deposed Attorney-General, arrived at Government House, but Arthur, finding himself engaged at the time, ordered a clerk to inform them of his inability to keep the appointment and to advise them that he would meet them one hour hence. The members of the deputation took offense at the uncere-

monyous manner in which their meeting with the Lieutenant-Governor had been postponed. They felt that their status as a deputation from a public meeting merited an invitation into Government House at least, and a statement of intention from a high-ranking government official rather than an insignificant member of the Lieutenant-

Governor's household. With righteous indignation they declared that the public meeting had been insulted. 78

Thereafter the deputation declined to make any further verbal communications with Arthur in the matter. The malcontents seized the opportunity to malign the Lieutenant-Governor. In a letter inspired by J.T. Gellibrand to the Secretary of State the incident

77. Ibid.
was represented as typical of Arthur's disrespect for the dignity of the free settlers.\textsuperscript{79} The hostile press continued the attack, insinuating the existence of sinister motives on Arthur's part in the postponement of the appointment with the delegation.

The incident hardened Arthur's attitude towards the political aspirations of the inhabitants and confirmed his belief that the movement was the product of a minority of malcontents, who, through fault of their own, had lost the favour of his government.\textsuperscript{80} Many of them, in his opinion, were men 'who on very slender foundations had become opulent, and imbibed the ideas of self-importance of a kind seldom found in Gentlemen by birth and education.'\textsuperscript{81} The behaviour of the deputation appears to have reinforced his belief that the colony was not yet ready for liberal institutions and that the present constitution with a legislature controlled by the executive was still necessary for the good government of the community.\textsuperscript{82}

\textsuperscript{79} Ibid.
\textsuperscript{80} Arthur to Bathurst, 23 March 1827, \textit{loc. cit.}, p. 653.
\textsuperscript{81} Arthur to Hay, 23 March 1827, \textit{loc. cit.}, p. 666.
CHAPTER 3.

The Legislative Council as constituted by the Huskisson Act under Arthur 1828 - 1836.

The Constitution Act of 1823 was recognized to be a temporary expedient only, and by 1827, the Colonial Office authorities indicated that, in view of the large and growing number of free British subjects, and a similarly increasing number of complaints from various sections of the New South Wales population, the inadequacy and defectiveness of the Legislative Council was obvious, and that they were prepared to initiate functional modifications to the Constitution. ¹

In New South Wales representatives of the Emancipist and Exclusive factions complained that the legislature was too small adequately to represent the interests of the free community. While the Emancipists called for the implementation of the principle of legislation by elected representatives ², the Exclusives petitioned for an extension of the Legislative Council to at least fifteen members 'to be selected by His Majesty from the most respectable

landholders and merchants in the colony. Chief Justice Forbes drew attention to the fact that the executive enjoyed too much power, while Governor Darling continually complained that that of the judiciary was too wide and subject to too ready abuse.

In 1827 a bill, reconstituting the Legislative Councils of the Australian colonies, was introduced into the House of Commons. This, while reducing the power of the executive, still allowed the judiciary much latitude. Because of adverse criticism the bill was withdrawn at the end of the session. The criticism, much of which was constructive, came from New South Wales. There was little comment from Van Diemen's Land: Lieutenant-Governor Arthur did not favour any constitutional changes, firmly believing as he did that the legislature, as constituted by the 1823 Act, adequately catered for the needs of the island gaol, functioned perfectly, and enjoyed the support of a majority of colonists. This, apart from the 1827 petition for legislation by representation, was Van Diemen's Land's only contribution to the debate.

In April of 1828 a fresh bill was introduced into Parliament by Secretary of State Huskisson. This bill was similar to that introduced and withdrawn in 1827; it differed only in so far as the powers of the judiciary were less wide. In moving leave to introduce the bill Huskisson explained that the Australian colonies were

'not in a situation to be granted legislative assemblies, being two-thirds composed of individuals who had forfeited their civil rights.' The Government had decided it expedient 'to pursue the same policy as' had been established in Canada before it had a legislative assembly' and it therefore 'proposed a legislative council composed of twelve or fifteen members with competency to legislate on local expenditure as well as matters concerning ... affairs generally.' This, it was hoped, would lead to the establishment of institutions ... similar to those of the people from whom the inhabitants have sprung.'

The liberal Sir James Mackintosh, despite the minister's firm statement of policy, attempted to amend the bill. He first introduced a petition from New South Wales which requested legislation by representation and trial by jury, and then moved an instruction to the committee of the House:

that they have the power to receive a clause to provide for the election of one third of the Legislative Council of both colonies (till assemblies shall have been called by His Majesty) to be chosen for five years by all persons enjoying a yearly income of one hundred pounds, who shall have been free inhabitants for three years and to direct the governor and legislative council of each colony to frame such regulations as they see fit, respecting the time, place and other circumstances of the election of such members.

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Mackintosh saw no reason why the colonies, even as penal settlements, should not possess the right of electing assemblies, or for that matter, that of trial by jury. He pointed out that many good men refused to emigrate simply because the colonies were branded as 'receptacles of crime' and he warned that if the Government continued to restrict the colonies in the existing manner, the settlers would eventually cast off this 'odious subjugation' and break their link with Britain after the style of the American colonies. 8

But Huskisson and his followers remained unperturbed; the Secretary of State agreed that the colonies were deserving of liberal institutions, but asserted the inexpediency of their immediate introduction in view of the current predominance of the convict element in the colonies' population. 9 Mackintosh, convinced that opposition was useless, dropped his resolutions, allowing the bill rapidly to pass through the remaining stages of procedure.

The Act to provide for the Administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual Government thereof, and for other Purposes relating thereto, ... popularly known as the Huskisson Act 10, was in the first instance designed to solve problems relating to, and to silence criticism of, the judicial system. In the second place and more importantly for the purpose of

9. Ibid.
10. 9 Geo. IV, cap. 83.
this discussion, it introduced changes in the legislature. The reasons for the changes and the manner in which they were to be implemented were explained to Lieutenant-Governor Arthur in a despatch from the new Secretary of State, Sir George Murray.11

Murray told Arthur that because it would have been inexpedient to create a legislative assembly, the Legislative Council had been restructured and increased in size. The Huskisson Act had given the Crown the power to nominate to the Council 'persons resident in the colony, not exceeding fifteen nor less than ten in number'12 and although the Act did not stipulate any apportionment of seats between official and non-official members, it was understood that a substantial number of seats would be filled by private members. The reason for the increase in the number of councillors arose from the consideration of the rapid increase in the population and because there has seemed some reason to fear that so small a body as the former Act contemplated could not exercise powers so extensive without exciting some serious discontent and jealousy in society at large.

It was hoped that by adding to the members of Council, fairly selected from the more intelligent, wealthy and respectable members of the Commercial, Agricultural and Professional bodies of the Colony ... a legislature might be formed adequately representing

11. Murray to Arthur, 31 July 1828, G.O. 1/7. Governor Darling of New South Wales received a similar despatch.
12. 9 Geo. IV, cap. 83, sec. XX.
the various interests of Colonial Society and likely at once to receive a salutary influence from public opinion and to exercise some control over it. 

This admission of the forces of public opinion over colonial legislation was manifest in other aspects of the Act. The oath of secrecy prescribed by the 1823 Act which made it necessary for the Council to meet in camera was replaced by a short oath of office. 

The Colonial Office authorities were of the opinion that the advantages of secrecy were not compensated for by its disadvantages. It was considered that a law was 'most properly framed' when it was most likely to be followed by 'prompt and cheerful' obedience; when the 'feelings and even the prejudices of the people, are to a certain degree consulted in its formation.' 'The public discussions' wrote Murray, 'which precede and in some measure direct the enactments of laws in a free country, at once prevent many factual errors and facilitate the execution of even unpopular statutes.' He informed Arthur that the British Government realized the problems which might arise as a result of the contemporaneous public discussion and the deliberations of the Legislative Council and in order, therefore, not to lose the reaction of public opinion upon the legislature, the Lieutenant-Governor was required to give notice of legislative proposal to the public through the medium of the press, at least eight days before their enactment. This requirement was made applicable

14. 9 Geo. V, cap. 83, sec. XXX.
to all legislation with the exception of those cases where the Lieutenant-Governor felt that circumstances in the colony were such as to indicate danger in a delay of eight days. 15

The Huskisson Act, like the Act of 1823, enabled the Lieutenant-Governor and the Legislative Council to make laws and ordinances for the 'peace, welfare and good government' of the colony, providing such laws and ordinances were consistent with the laws of England. But the procedure as laid down in the 1828 Act differed considerably from that laid down by its predecessor. Whereas the 1823 Act had given the Lieutenant-Governor extensive powers, such as the sole right to introduce legislative proposals, and the competence to legislate in the face of the concerted opposition of the Council in certain circumstances, the Huskisson Act reduced such wide powers. Although it did not give the individual members of the Legislative Council the right formally to introduce bills, it was implied that members could request the Lieutenant-Governor to put before the Council, on their behalf, Legislative proposals. If the Lieutenant-Governor refused such a request, he was obliged to enter the reasons of the said refusal in the minutes of the Council, and every member who might disapprove of such a refusal was at liberty to enter in the minutes the grounds for his disapprobation. 16 Furthermore the 1823 Act deprived the Lieutenant-Governor of his previously held exceptional powers to legislate in matters of urgency with the support of one member of the

16. 9 Geo. IV, cap. 83, sec. XXI.
Council, and in time of riot or insurrection, even in opposition to the wishes of the whole of the legislature. In fact, the Act stated quite clearly that the dissent of a majority of members was sufficient to prevent the enactment of any oroonosal whatsoever. The dissenting members were required to give the reasons for their dissent. 17 Sir George Murray set out, for Arthur's benefit, the reasons for discontinuing the Chief Authority's extraordinary powers. It was deemed

inexpedient to suppose and to make provision for extreme cases because in truth such cases, when they occur will usually be found to make an adequate provision for themselves, and because evils of this nature may sometimes be excited by the express anticipation of them. 18

In other words it was considered inadvisable to sanction any irregular or unusual behaviour in a colony where public opinion was far from docile or reticent.

The Huskisson Act also made more definite provisions with regard to procedure in the Legislative Council. First, it laid down that the Lieutenant-Governor should preside at every meeting 'except when prevented by illness or some other adequate cause', and he was to have a deliberative vote as well as a casting vote when the Council was equally divided. 19 Murray explained that it was necessary to include this provision because, in the absence of any such

17. Ibid.
19. 9 Geo. IV, cap. 83, sec. XXIII.
stipulation in the 1823 Act, the Governor of New South Wales had consistently absented himself from meetings after the introduction of bills, in order not to impede upon discussions. It was the opinion of the Imperial Government that the presence of the Governor was of the 'highest' importance. 'His exclusion', wrote the Secretary of State, 'not only tended to lessen his consequence, but it would have the effect of exempting him from a responsibility which it was particularly necessary that he should sustain.'

In the second place the Act established a quorum. Section XXI stated that the legislature would not be competent unless at least two-thirds of the 'whole numbers exclusive of the ... Lieutenant-Governor should be actually present assisting at deliberations.' As for the subordinate rules of procedure, Murray considered that these might best be established by the Council 'as the occasion may require.'

The Huskisson Act removed the power of the Chief Justice to block legislation on the grounds of repugnance to the laws of England. At the same time it was considered quite necessary to ensure reasonable compliance of colonial acts to English law. The 1823 Act had given the Chief Justice the power to veto any act which he considered repugnant. While Pedder in Van Diemen's Land had never used this power, his counterpart in New South Wales had frequently aroused the

21. 9 Geo. IV, cap. 83, sec. XXL.
22. Loc. cit., sec. XXIV.
wrath of Governor Darling by his inclination to reject any legislation which was justified by expediency rather than by legal argument. The Huskisson Act enabled the Lieutenant-Governor and the legislature to put expediency before English law.\(^{23}\) The Act required that each bill, in order to gain the force of law, should be transmitted to the Supreme Court to be enrolled and recorded within seven days of receiving the Council's assent. The Supreme Court had fourteen days in which to assess whether any such law was repugnant to the laws of England. If any law or ordinance did not receive comment at the expiration of this period of fourteen days, such law or ordinance should take effect until the pleasure of the Secretary of State was made known. If, on the other hand, any law should meet with the disapproval of the judges on the grounds of repugnancy, then the Lieutenant-Governor, on receipt of such a verdict, was to suspend the operation of such a law and resubmit it to the Council for revision, should he wish to 'persist with its acceptance.' If the Council chose to adhere to such an ordinance, the Lieutenant-Governor was obliged to inform the Supreme Court, and the law could then be considered effective unless the Secretary of State advised otherwise.\(^{24}\) Unlike the 1823 Act, the Huskisson Act did not concentrate these supervisory powers in the hands of the Chief Justice, instead the authority was given to any judge of the Supreme Court. Although there was only one judge on the Vandemonian Supreme Court in 1828,

\(^{23}\) A.C.V.Melbourne, (ed. R.B. Joyce), \textit{op. cit.}, p. 158.

\(^{24}\) 9 Geo IV, \textit{cap. 83}, sec. XXIV.
it was envisaged that another would be appointed in the near future.

The 1828 Act declared that all laws and statutes which were in force in England at the time of the passage of the Act, were to be applied to the colony as far as it was possible. In doubtful cases the Legislative Council was competent to pass declaratory acts explaining the extent to which the English law was considered applicable, or to change its application to the colony in which ever direction was deemed appropriate by the Council.25

The Legislative Council was limited in its powers of taxation; Section XXV stipulated that no tax or duty was to be imposed excepting for local purposes. This was a repetition of a similar clause in the 1823 Act. But whereas the earlier Act placed the appropriation of monies in the hands of the Lieutenant-Governor, the Huskisson Act made provision for this function to be handed over to the Legislative Council when the Crown so nominated; at which time it was to appropriate all colonial revenue except that derived from the property of the Crown, namely, land.26

Legislation was to be subject to the review of the Secretary of State, and was to be sent to the Colonial Office within six months of its passage through the Council. If a law did not receive comment within four years of its passage, then the inference was that it had received the Secretary of State's approval.27 The Crown

25. Loc. cit., sec. XXIV.
26. Loc. cit., sec. XXVII.
27. Ibid.
retained the right to fill vacancies resulting from the death, resignation, removal or absence from the colony of any member of the Council. The Lieutenant-Governor was empowered to fill casual vacancies. 28 Although the Act did not attempt to apportion seats between official and non-official members, it was understood that a substantial section of the Council would be composed of the 'representatives' of the various interests in the community. 29 When the warrant appointing the members was drawn up, it was deemed that six of the seats were to be held *ex officio*, the remaining eight were to be non-official. Chief Police Magistrate Humphrey's nomination as a non-official, however, resulted in confusing the Lieutenant-Governor of Van Diemen's Land as to the actual apportionment of seats. Probably because the seats in the New South Wales Legislative Council were apportioned equally, and because it suited him to permanently establish yet another member of the Executive Council in the legislature, Arthur came to regard Humphrey and his permanent successor as official members.

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Despite the constitutional changes made by the Huskisson Act and the increase in the proportion of non-official members, Arthur continued to dominate the Legislative Council to ensure harmony between the legislature and executive. The principle factor which

28. *Loc. cit.*, sec. XX.

enabled him to continue to dictate policy was his readiness to use his power temporarily to nominate, to recommend for nomination, and to dismiss members.

While Arthur was not consulted with regard to the membership of the first Legislative Council as constituted by the 1828 Act, the members appointed were, in the majority of cases, men of whom Arthur had spoken well, and those who had held seats on the previous Council. The warrant, which arrived in the colony in July 1829*, appointed Chief Justice Pedder, Colonial Secretary Burnett, Attorney-General McCleland, Colonial Treasurer Joscelyn Thomas, Senior Chaplain William Bedford, and Collector of Customs Rolla O'Ferrall as official members; and W.H. Hamilton, A.W.H. Humphrey, Thomas Anstey, Thomas Archer, Edward Abbott, Walter Angus Bethune, John Kerr and James Cox as non-official members. The Colonial Office Authorities, who had drawn up the warrant in consultation with Edward Lord, and R.W. Loane, two colonists temporarily resident in London, and acting Colonial Agent Wilkinson 30, had no knowledge of the current situation of those appointed as non-official members. In case any of these were absent from the colony or had died, another list was supplied from which replacements could be made. Those named were James Gordon, Richard Willis, John Lord, Robert Harrison, Patrick Wood,

* The warrant was published in the Colonial Times, 31 July 1829; and Hobart Town Gazette, 8 and 15 August 1829.

30. Colonial Times, 22 May 1829.
Abraham Walker, G.F. Read and Thomas Daunt. Arthur found that adjustment of the membership was necessary. The position of Attorney-General, which had changed hands since the warrant's inception, was currently held by Algernon Montagu, and he, as Attorney-General, was given a seat. In the second place James Gordon was given the vacancy occasioned by the death of Humphrey; and, lastly, Richard Willis replaced Bethune, who was at the time in England.

In the period between the years 1832 and 1834 eleven changes in the membership of the Legislative were effected. Five members were removed by Arthur; the remainder resigned for varying reasons. Jocelyn Thomas the Colonial Treasurer, whom Arthur had recommended for nomination in 1824, was dismissed from the public service in 1832 for misappropriating public monies. Thomas' defalcation caused Arthur a great deal of embarrassment since the Colonial Treasurer was a personal friend as well as a high ranking official and a member of the Legislative Council. Immediately after his exposure he fled from Hobart and skulked in the bush near Ross like an absconding convict until hunger drove him into the arms of the police. At first the Lieutenant-Governor considered taking criminal proceedings against him, since 'it could not be reconciled with impartiality if individuals who had filled his station ... were exempted from the penalties with which the lower classes were visited,' but further consideration revealed the inexpediency of such a move which might only direct unwelcome publicity to the wholesome business, affix

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31. Murray to Arthur, 1 February 1829, enc. no. 1, C.O. 408/5.
odium to his administration, and displease the Colonial Office. He and his Executive Council decided that Thomas should be given a year to sell his property and repay the money owed to the Colonial Chest. 32

The Collector of Customs, Rolla O'Ferrall, who had covered up Thomas' roguery for a number of years and had himself thrived on misappropriated public funds, was also dismissed. As a public functionary he was well-liked, although hopelessly incompetent. 33 It was said of him that he paid more attention to those aspects of his duty which involved the pursuit of pirates, smugglers and law-breaking sealers than those other important aspects which involved accounts, returns and mercantile transactions. 34 It would appear that Arthur, who had long regarded with disgust the part O'Ferrall had played in bringing about the suicide of a young woman he had seduced, was pleased to find a pretext for the termination of his services. 35

Colonial Secretary Burnett, who was described by a contemporary as a middle-aged fop

32. Arthur to Goderich, 3 November and 10 December 1832, and Arthur to Hay, 11 December 1832; G.O. 33/12; Arthur to Stanley, 20 December 1833, G.O. 33/15; see also Colonial Times, 12 July 1836; England to Forster, 22 November 1832, C.S.O. 1/628/14225.

33. Launceston Advertiser, 17 August 1829.


35. Arthur to Goderich, 1, 5 and 22 February 1833, G.O. 33/16; see also Abstract from the Police Office Record, 15 March 1832, A2195, N.L. and Colonist, 1 March 1833.
vain of his none-too-attractive appearance ... whose despatch box, brought daily from home, contained not dry documents, but nothing except scent bottles, pomatum-bots pertaining to the dandy, by the score, 

took office in November 1826 and was dismissed in 1834. Although assiduous enough in the performance of his duties, Burnett's knowledge of business was extremely poor and Arthur was forced to rely on convict clerks for the organization of the Colonial Secretary's Office which acquired an increased amount of importance in the administrative machinery. The Colonial Secretary's display of inefficiency, his hypochondria, and his bad memory was a constant source of his superior's irritation. 

During 1832 and 1833 Arthur showed less forbearance with Burnett's shortcomings. Burnett, returning from several months of leave, continued to complain about his health which, he claimed, rendered him unable to cope with his large work load. As his personal finances declined, and his dissatisfaction with his lot increased, his association with the critics of the government became stronger. In the course of the 1833 session of the Legislative Council he further estranged himself from Arthur by insinuating that the Lieutenant-Governor conducted proceedings in a disorderly manner, representing the viewpoint of the press on the issue of in camera meetings, and by voting with the non-officials on the occasion on which they


combined to oppose Arthur's bill increasing *ad valorem* duties. When Burnett was found guilty of committing a minor breach of the land regulations and exposed as a liar by Arthur's nephew, John Montagu, the Lieutenant-Governor did not hesitate in dispensing with his services. 38

The Reverend William Bedford was also deprived of his seat in the Legislative Council in the same year. Bedford had officiated as head of the Anglican Church since his arrival in Van Diemen's Land in January 1823. He had started life as a bodice-maker, and, after having been shown the light by Mrs. Fry, the prison reformer, entered the church in order to do good amongst the poor and weak. Although zealous and forceful in the execution of his duty amongst the convicts, many, including the Lieutenant-Governor, felt that he lacked the dignity and respect becoming to the head of the Church Establishment and a Legislative Councillor, since it was known that he was most intemperate in his drinking habits and that he had allegedly attempted to cheat Kemp and Company out of a horse. He was notorious for his treatment of his creditors and was regarded by the less charitable of his fellow officials as a 'liar, a mischief-maker, a backbiter and a drunkard.' 39

His deposition was a result of his inability to fulfil his

38. Arthur to Hay, 6 September 1833, G.O. 33/16; Executive Council Minutes, 4 and 12 July 1834; Diary of G.T.W.B. Boyes, 31 October 1834; see also Aberdeen to Arthur, March 1835, G.O. 1/37.

role as head of the Church Establishment rather than of any dispute with the Lieutenant-Governor in the Legislative Council. For although his attendance at Council meetings was irregular, he never once expressed any opposition to Arthur's measures. On the occasion when the private members and Burnett combined against the officials on the issue of the increase in ad valorem duties, he earned Arthur's gratitude when he saved the government from defeat and embarrassment by arriving at the crucial moment.\(^{40}\) However, on the Executive Council, where he held a position by virtue of his office, he proved less useful to Arthur. In this capacity, he was a thorn in the side of the Lieutenant-Governor, who was disgusted by the man's arrogance and his contempt for clergymen of other denominations. In order to rid himself of Bedford, Arthur asked the Secretary of State, when creating the position of Rural Dean, to make the holder of that office at the same time head of the Church Establishment.\(^{41}\) The Secretary of State complied with the request and when Dean Palmer took up his office, he replaced Bedford as head of the Anglican Church and thus on both Councils. Bedford, chagrined by his deposition, thereafter waged a bitter dispute with Palmer and Arthur.\(^{42}\)

The only private member to be dismissed from the Legislative Council during Arthur's administration was James Gordon, the police

\(^{40}\) Colonial Times, 29 October 1833.

\(^{41}\) M.C.I. Levy, op. cit., p. 181; and Arthur to Howick, 9 May 1832, G.O. 33/11.

\(^{42}\) Diary of G.T.W.B. Boyes, 5 November 1834.
magistrate. His dismissal from the Council resulted from his reaction to dismissal from government service. Gordon began his career as a merchant in New South Wales. His experience in commerce was considerable, having traded extensively with China, New Zealand and Macquarie Island. His association with trade and commerce ended when he resigned from the position of Naval Officer of the Derwent, to work his extensive farming establishment at Sorell. Gordon had continually enjoyed government favour; he received the position of Naval Officer both as a result of his support of Governor Bligh during the Rum Rebellion, and through the efforts of his connections in England. During Sorell's and Arthur's early administration he enjoyed the patronage of the local authorities and this enabled him to supply the commissariat with a variety of farm produce. In 1828 Gordon was made Principal Superintendent of Convicts. In the following year he was transferred to Launceston as a stipendiary police magistrate and subsequently held a similar appointment at Richmond. By 1830 Arthur realized the colony's 'oldest and most able' magistrate did not possess the orderly mind or habits required of his civil servants. It had come to his notice that Gordon, as Principal Superintendent, had allowed weekly returns to fall into arrears and had failed to allocate convicts according to the Lieutenant-Governor's instructions; and that he had left the police office at Launceston in wild disorder. Moreover the magistrate's drunken exploits had

made him the laughing stock of the colony. Arthur warned Gordon that should he not mend his ways and restore order in his office, then he would certainly be dismissed. Gordon, after a short period of reform, returned to his old habits. He paid his field police irregularly, failed to keep proper records and accounts of police fees and fines, and indulged in the most improper and intemperate carousals initiated by his chief constable Gilbert Robertson. After an enquiry concerning the affairs of the Richmond police district exposed disorder, Gordon tendered his resignation. But the news that Arthur's land agent Parramore had been nominated to succeed to the Richmond magistracy had apparently brought into Gordon's mind a suspicion that he had been forced to resign in order to make room for one of the Lieutenant-Governor's placemen, and that he was the victim of the 'tyrant of Van Diemen's Land's' unjust system of patronage. He complained loudly of his treatment to the Secretary of State and attempted to gain popular sympathy by writing a pamphlet in which he abused the government and Arthur's system and method of administration, and at the same time pleaded his own case. However his article was lampooned by the ticket-of-leave convict, Henry Savery, acting-editor of the pro-government journal, the *Tasmanian*. Gordon, in turn, filed a criminal information for a breach of government regulations, making it unlawful for convicts to write for the

44. Arthur to Goderich, 7 April 1832: and enc. Inquiry into the conduct of James Gordon, 9 March 1832, G.O. 33/11.

press, against Savery. Gordon's aim was not so much to settle the score with Savery as to bring discredit upon Arthur, with whose full knowledge and connivance, Gordon asserted, Savery had been carrying on his unlawful practice. 46

While Gordon was carrying on his campaign against the Lieutenant-Governor in the offices of the Colonist (a new anti-government newspaper started by Gilbert Robertson) and the pothouses of Hobart Town, he was still a member of the Legislative Council.

Several members of the Council, fearing that Gordon's membership of the legislature would bring that body into disrepute, agitated during the 1833 session for his removal. Richard Willis informed the members that Gordon had made it clear to him that he would never attend another Legislative Council meeting for as long as Colonel Arthur remained in the colony, and Kerr explained that Gordon had sworn that he would not resign his seat, even if Colonel Arthur attempted to throw him out of the Council chamber. 47 It was obvious that Gordon was out to make a nuisance of himself. His practice of 'exhibiting himself in the streets of Hobart Town when the Council was in session' as a demonstration of his contempt for that body and the Lieutenant-Governor, proved the final straw. The Legislative Council unanimously resolved that the Lieutenant-Governor be asked

46. Executive Council Minutes, 10 June 1833 and Colonial Times, 4 June 1833.
47. Draft Minutes of Proceedings of the Legislative Council, 3 October 1833.
JAMES COX,
Member of the Legislative Council
1829-1833 and 1851-1854.
to replace the miscreant with a more respectable person. Arthur, after consulting the Secretary of State, suspended Gordon during the following session. 48

Five members of the Legislative Council gave up their seats. Algernon Montagu, who in 1829 took his seat as Attorney-General in place of the drunkard McCleland 49, relinquished his place when he accepted the position of Puisne Judge in 1833. Paradoxically, while he earned the Lieutenant-Governor's praise for the skill and fairness with which he conducted prosecutions, and for his voluntary abstention from conducting private practice, the gossip-mongers and the anti-government faction looked upon him as the seducer of Henry Savery's wife, and as a 'raw young man quite unaccustomed to public duty.' 50 During the 1830 and 1831 session of the Council he proved to be extremely valuable and capable in drafting and explaining the judicial bills under consideration.

Montagu was replaced as Attorney-General by Alfred Stephen, who, soon after his appointment, took leave of absence. During the 1833 Legislative Council session, Edward Maccowell the Solicitor-General took his seat. Until the arrival of George Barnes, William Proctor occupied the seat of Collector of Customs. Two non-official

49. Pedder to Arthur, 27 August 1828, A2169, M.L.
50. M.C.I.Levy, op. cit., p.50; correspondence file on Montagu in the T.S.A.
members resigned. Hamilton, who had acted as manager of the Derwent Bank from 1830, sold part of his vast assets and returned to England. James Cox, the other non-official who resigned his seat, was a wealthy landowner, who had originally come from New South Wales to Launceston, where he successfully conducted a wholesale trade. His interests then returned to the land where his success in marketing his produce was ensured by his connections in the wholesale trade and the commissariat. His nomination to the legislature was one of the few which was approved by the Launceston press.\footnote{Launceston Advertiser, 17 August 1829; see also correspondence file on Cox in the T.S.A.}

Cox's intermittent and irregular attendance at Council indicated that he did not consider deliberations of the Council sufficient incentive to warrant his leaving his estate and making the tiresome journey from Launceston to Hobart. He submitted his resignation towards the end of 1833.

Arthur filled the vacancies occasioned by the dismissals, the resignations and the death of Edward Abbott which occurred in 1832, with men who were prepared to conform with his views on the government of the colony and who realized that whilst they maintained the favour of the Chief Authority, each was assured, not only of social success, but of success in his particular enterprise. The officials who were appointed were efficient and loyal. Some were the Lieutenant-Governor's relatives. John Montagu, Arthur's nephew, took over the Colonial Secretaryship after Burnett's suspension. Montagu, who arrived as the Lieutenant-Governor's private secretary and as an army
captain on half-pay, had occupied, albeit in a temporary capacity, a number of official positions including Clerk of the Councils, Colonial Secretary, Brigade Major and Colonial Treasurer. He was a capable administrator although personally unpopular. Colonial Auditor Boyes commented:

Money is his idol ... and he has a meritorious zeal to put it in his pocket ...'

Rumour in Hobart Town had it that Montagu had purposely exposed Burnett in order to gain the latter's office.52

Chief Police Magistrate Forster, another of Arthur's nephews, replaced Cox. The Lieutenant-Governor expected him to be regularly in attendance at Council meetings, and more importantly, an invaluable source of knowledge with regard to legislation concerning police regulations and the convict establishment.53 The appointment was not popular. The Hobart newspapers had labelled Forster as the 'Aga Bey of the Algerine Police' because of his enforcement of a system considered oppressive, tyrannical and utterly repugnant and unbecoming to Englishmen. Fellow officials regarded him as a reasonably competent administrator although a rash and arrogant individual.54

52. Diary of G.T.W.B. Boyes, 5 January 1835.
53. Arthur to Stanley, 22 August 1834, G.O. 33/17; see also Lieutenant-Governor's Address, Draft Minutes of Proceedings of the Legislative Council, 28 August 1834.
Arthur also showed favour to those whose relatives occupied high places. Alfred Stephen, son of Mr. Justice John Stephen and nephew of the influential legal advisor and future permanent Under-Secretary to the Colonial Office, 'Mr. Over-Secretary' James Stephen, was given the position of Attorney-General in January 1833. Those who were favourably regarded by the Colonial Office were also given seats. W.A. Bethune, who replaced the deposed Gordon, was originally appointed to the Legislative Council by the warrant of 1829. He was at that time, however, unable to take his seat owing to his temporary absence from the colony. In the twenties Bethune had been a member of the 'proscribed merchant class.' He had protested against the Press Laws of 1827 and had affixed his name to the petition for legislation by representation. His claim to the ownership of land on Hunter Island led to a virulent dispute with Arthur who later refused to give him public appointment because of his 'immoral conduct in private life.' After Under-Secretary Hay suggested that he should regard Bethune in a more favourable light, Arthur extended his hand in friendship. Bethune was not averse to making peace with the Chief Authority. His association with the government's critics had ceased soon after he turned his attention from commerce to agriculture and Arthur promised him public appoint-

55. Curr to Inglis, 11 March 1826, Van Diemen's Land Company Papers: Foreign Letterbook, T.S.A.

56. Arthur to Hay, 20 November 1830. G.O. 33/7. It was alleged that Bethune's relationship with his female assigned servants was most improper.
ment. Bethune was not the only critic of the government who was silenced by appointment to the Legislative Council. Charles McLachlan, a prominent merchant and managing director of the Bank of Van Diemen's Land and who replaced Abbott in 1832, was also associated with the petition for legislation by representation and the opposition to the 1827 Press Laws. So was John Kerr, who was appointed by the warrant of 1829. Kerr, nominated as a representative of commercial interests, was a large land owner, a merchant and a founding director of the Derwent Bank. During the Arthur period he proved to be only mildly interested in the Legislative Council's affairs, frequently putting private business before his public duty of assisting at the Council's deliberations. Unlike Bethune, McLachlan and Kerr, Richard Willis, who was nominated in 1829, had always been on the best of terms with the government. He had arrived in the colony in 1823 with impressive letters of introduction from Viscount Howick and six thousand pounds in capital. Within a relatively short time of his arrival he had built a large and exceptionally productive agricultural and grazing property near Launceston. His appointment was not popular with his neighbours or the denizens of Launceston with many of whom he had quarrelled.

The immediate replacement of Hamilton with Charles Swanston,

57. Correspondence file on McLachlan in the T.S.A.
58. Correspondence file on Kerr in the T.S.A.
his successor at the Derwent Bank, gave credence to Arthur's critics' claim that the Bank enjoyed the Lieutenant-Governor's favour to the extent that its manager held his seat virtually ex officio. Swanston, nevertheless, was a man of remarkable capabilities whose business acumen enabled the Derwent Bank to become one of the 'foremost finance machines' in the Australian colonies during the 1830s. Swanston was an ex-officer in the Indian Army, who, in 1828, arrived in Hobart Town with ten thousand pounds capital and set himself up as a merchant. His appointment, it seems, gained the widespread approval of the colonists and while it was regretted by some that he had only been a few years in the colony and could not therefore be expected to be thoroughly acquainted with local needs, it was remembered that he had, together with such 'public spirited citizens' as Horne and J.T. Gellibrand, denounced the British government's new immigration policy which involved the sale of Crown lands, the loss of the colony's capital and an influx of paupers, at a public meeting in August 1832. He was therefore judged a gentleman of quality who could be relied upon to serve the interests of the merchants and traders. Although Swanston registered a protest against the new Imperial immigration and land policy (to which Arthur was also opposed) he did not, until the end of the Franklin administration, form any close association with the movement for legislation by

representation.

Three of the official members nominated after 1832 were appointed without reference to Arthur. The Rural Dean Philip Palmer, Bedford's successor as head of the Church Establishment, was more interested in the spiritual welfare of his flock than in his duties as a Legislative Councillor. 62 John Gregory, who took his seat as Colonial Treasurer was a civil servant by profession. He had been noted for the efficiency and integrity with which he served the administrations of the Cape Colony and Mauritius. 63 The successor to O'Ferrall as Collector of Customs, George Barnes, was, like Gregory, a career administrator. Barnes, however, proved unimpressive in the Legislative Council. During his absences from the colony, his position as Collector of Customs and seat on the Council was occupied by William Proctor. Proctor was considered by the press as the most colourful personality that ever sat in the Council chamber. His frequent outbursts of inspired oratory caused the Colonial Times to confer on him the title of 'Desmosthenes of the Council.' 64

By 1834 Arthur had purged his administration of its disruptive elements. The new official members of the Legislative Council were, with a few exceptions, either career public servants or men upon whose personal loyalty he could depend. All were more able and more

62. Correspondence file on Palmer in the T.S.A.
63. Correspondence file on Gregory in the T.S.A.
64. Colonial Times, 7 January 1834.
acceptable than their predecessors. The non-officials, excepting Kerr, were Arthur's nominees. Judging by their public and personal conduct, it would appear that all understood the Lieutenant-Governor's expectations of them as members of the Legislative Council and his requirements with regard to their loyalty to British policy in the colony. In common with the officials, they respected his authority, efficiency and perceptiveness, and feared his treatment of those who deviated from his standards.

* * *

Arthur's ascendancy over the newly constituted Legislative Council was established during the early 1830s. From 1829 to 1832 the Lieutenant-Governor evinced little inclination to use the legislature, the Council being consulted regularly only in 1830. In 1829, despite Arthur's claims that much urgent business was accumulating, it did not meet because the new Council chamber, being erected adjacent to Government House 'at a very moderate expense'\(^{65}\), was not ready for use. In 1831 the Council met briefly to consider a bill amending the new Royal Charter of Justice. In the following year there was no session because Arthur, acting on the advice of the government legal officers, believed that acts passed during that year might not become effective, since the Supreme Court as recently established by the Royal Charter, was not in a position to review legislation until the Puisne Judge had been appointed to that Court.\(^{66}\) During this

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\(^{65}\) Arthur to Murray, 9 March 1830. G.O. 33/7.

\(^{66}\) Lieutenant-Governor's Address, Draft Minutes of Proceedings of the Legislative Council, 29 August 1833.
period, it was demonstrated, albeit implicitly, that the Lieutenant-Governor could govern without reference to the Legislature.

Arthur continued to use his position as president to maintain his influence. The regulations governing the Council's proceedings, until 1833, were in the main unwritten and reliant upon the discretion of the chairman. Arthur's rulings were accepted without question. Meetings, although no longer conducted in camera, were closed, in spite of the constant pleas on the part of journalists, who implored Arthur to 'throw open the doors of the Council chamber' so that the press might, 'as in Great Britain, enlighten the inhabitants on the proceedings of the Council and introduce the powerful force of public opinion into the colonial legislature and the future of the colony.'

Discussion was usually desultory. Members, inexperienced in participating in a legislature, were subdued by the mystique attached to the tradition and the complexity of the rules and proceedings. Many of the non-official members made only intermittent appearances at meetings and thus lacked continuity of knowledge about issues under consideration.

Some of the most important legislation dealt with during the 1830 session was introduced at the instruction of the Secretary of State and concerned with matters which required expert and specialized legal knowledge. The seventeenth and eighteenth section of the

67. Colonial Times, 22 May 1829.
Husking Act empowered the Lieutenant-Governor and the Legislative Council to create a court of General and Quarter Sessions and a Court of Requests. The Secretary of State had advised that these courts be created as soon as possible. While the Secretary of State was reluctant to issue specific instructions as to the rules and regulations of these courts, he made it clear that it was not permissible to extend trial by jury to Court of General and Quarter sessions.

In pursuance of these instructions, the Attorney-General, with the aid of the Solicitor-General, drafted the necessary bills, one being An Act to Institute a Court of General and Quarter Sessions and the other An Act to Institute a Court of Requests. During deliberations in Council, Attorney-General Montagu explained each section of the bills and the members, who were unacquainted with the finer points of the law, passed the bill without question. The Quarter and General Sessions Act, after being transmitted to the Supreme Court for review, was rejected by the Chief Justice. Pedder ruled that one particular clause was repugnant to the Huskisson Act.

in so far as it makes liable to the summary jurisdiction of the Court of General and Quarter sessions persons not being felons or other offenders transported to the colony, whose sentences have not expired or have been remitted.

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63. 9 Geo. IV, cap. 83, sec. 17 and 18.
70. Draft Minutes of Proceedings of the Legislative Council, 4, 6, 18 and 20 January 1830.
71. Enc. no. 1, Arthur to Murray, 16 April, C.O. 280/125.
But Arthur, to whom it appeared clear that the seventeenth section of the Act intended that all convicts should be subject to a summary trial, there being no distinction between the cases of persons transported and those convicted in the colony, believed his Honour's opinion to be based on the letter rather than the spirit of the said Act. Arthur told the Council that he intended to reintroduce the General and Quarters Sessions Act for he expected all members would agree that it was perfectly in keeping with the 1828 Act, and Sir George Murray's instructions with regard to its implementation. The Council thereupon advised the Lieutenant-Governor that the General and Quarter Sessions Act should be adhered to. Its action in the matter later received the approbation of the Secretary of State.

In pursuance of further instructions from Murray, the Legislative Council discussed the propriety of the introduction of trial by jury in criminal cases. Arthur, in accordance with his instructions, asked each individual member 'as to the expediency of extending to the colony the form and manner of proceedings by Grand and Petit Juries in the presentment and trial of Crimes and Misdemeanors.' Every member concurred with the Lieutenant-Governor's opinion that the introduction of such a mode of trial was at present inexpedient.

The members appeared to be influenced by Arthur's attitude and that of the Secretary of State, whose instructions concerning trial by

72. Arthur to Murray, 16 April 1830, G.O. 33/7.
73. Murray to Arthur, 31 July 1829, G.O. 1/7.
74. Arthur to Murray 1 July 1830, G.O. 33/7; Draft Minutes, 24 April 1830.
jury in the Court of General and Quarter sessions were still fresh in their minds.

The Legislative Council was not required to pass any opinion with regard to the propriety of the introduction of juries in those civil cases which might come before the Supreme Court. The Huskisson Act stated that trial by jury in such cases should be granted on the application of either the plaintiff or the defendant, providing the Court was satisfied that the law involved was not beyond the comprehension of twelve laymen. 75 The legislature was more concerned with the qualification of jurors. Arthur, in accordance with Colonial Office instructions, introduced a bill which ensured, by imposing high property qualifications, that only 'respectable' individuals might sit as jurors. These qualifications were the possession of land or real estate to the value of fifty pounds a year; or real estate and personal estate to the value of sixty pounds a year; or personal estate to the value of eighty pounds per annum; or the occupancy of a house in Hobart Town to the value of twenty-five pounds a year; or in occupancy of houses in areas of the island to the value of forty pounds a year. Further, no one was to be qualified except natural-born British subjects and no one was to serve who had been attainted of treason or felony or convicted of any infamous crime unless pardoned. Moreover it was provided that a second conviction in the colony would permanently disqualify any person

75. 9 Geo. IV, cap. 83, sec. VIII.
from the right of serving as a juror.* The majority of the members were extremely distressed that the bill did not entirely exclude the possibility of ex-convicts serving as jurors. However they gave their assent when Attorney-General Montagu gave an assurance that ex-convicts in England were permitted to sit on juries. 76

Arthur, during this early period of the Legislative Council's development, avoided conflict with the non-officials by introducing legislation which benefited the wealthy merchants, bankers and large land owners. Three acts designed to simplify proceedings at law or in equity, by or against the directors of the Bank of Van Diemen's Land, the Derwent Bank and the Cornwall Bank 77 were introduced at the request of the directors of those banks. 78 The Usury Act, exempting Van Diemen's Land from the British Usury Law which limited the interest on loans to ten per cent, was intended to attract capital to the colony. The Act was important to the banks, and in particular to the Derwent Bank, which, under Swanston, first came to be a channel for direct English investment and then relied on indirect investment in the form of English deposits. Swanston frequently used the absence of legal restrictions on interest rates as an argument to influence overseas investors. 79 It was believed that Hamilton ('His

* The Act, 11 Geo.IV, No. 5, was in many respects similar to that of New South Wales, 10 Geo.IV, No.8. See A.C.V.Melbourne (ed.R.B. Joyce), op.cit.,pp. 192 et seq.and C.H.Currey, op.cit., cap. 34.

76. Arthur to Murray, 12 June and 1 July 1830. G.O. 33/7.

77. 10 Geo.IV, Nos. 9 and 10; 11 Geo.IV, No.1, Acts of the Legislative Council, Vol. 1, T.S.A.

78. Arthur to Murray, 16 April 1830, G.O. 33/7.

79. S.J.Butlin, op. cit., p. 223.
Excellency's private banker') and government officials, who held shares in the Derwent Bank, were responsible for the Act so that they and their 'stock-jobbing, money-lending friends' in England and India could raise interest rates and fill their pockets with the colonists' hard earned money. The anti-government Colonist told its readers:

How did the usurer tremble for the uncertainty of his unhallowed gains, till the prime mover of the mischief, with the subtlety of the first tempter, insinuated that noxious measure among the laws of the land, under the pretext of doing good! The act passed, .... and usurers, bill-brokers, bank directors, pawnbrokers, et hoc genus omne, applauded the wisdom of our Councils, and Hobart Town, from the Sheriff's Office to the Derwent Bank, from Dan to Beersheba exhibited one scene of Jewish congratulation. ... Never before did Shylock, in Van Diemen's Land, sleep so sweet as on that night . . .

Another measure which gave satisfaction to the commercial interests was the Insolvency Act. As a result of the numerous demands for legislation for the relief for insolvent debtors, Arthur appointed a three man sub-committee to ascertain the views of the 'principal merchants and bankers upon a bill which might give relief to debtors imprisoned for three months' so that they might be enabled to deliver up their property to their creditors. Soon after a favourable report was tabled the bill was passed.

80. Henry Melville, op. cit., op. 94-7, Launceston Advertiser, 24 May 1830, and Colonist, 7 and 14 December 1832.
81. Colonist, 7 December 1832.
The Slaughtering, Impounding and Royal Charter Amendment Acts worked in the interests of the large landholders. The Slaughtering Act was intended to hinder and detect stock thieves. The Act provided, first, that stock-owners be required to furnish details of previous ownership and obtain licences of sale, should they wish to sell stock for slaughtering purposes; second, that stock should be slaughtered in government slaughtering houses; and third, that permission should be obtained from the inspector of stock to bring livestock to Hobart Town and Launceston for sale.\(^\text{83}\) The large landowners on the Legislative Council saw this as an effective way of dealing with stock theft, one of their most serious problems. The smaller farmers, who were severely inconvenienced by the Act, raised a howl of fury and made representations to the legislature against its implementation. Their pleas were ignored. Arthur considered the measure imperative in order to deal with what was a major problem in the colony. The anti-government press decried the Council members' selfishness and their failure to come forward with 'manly opposition to the tyrannous law'; the editor of the *Colonial Times* could only suppose the scene in the Council chamber during the debate on the Act was 'like what Hogarth so ludicrously portrayed in his "Sleeping Congregation".'\(^\text{84}\)

The bill of 1831, to amend the Royal Charter of Justice, was

84. *Colonial Times*, 31 December 1830.
another attempt to deal with the problem of stock theft. The provision of the Charter which had removed capital punishment for offences such as cattle and sheep stealing was considered useless, detrimental and unsafe in a convict colony, by the Lieutenant-Governor. By an act of the Legislative Council the Charter was amended so that stock theft remained a capital offence. 85

The Impounding Act was another law which acquired the support of the large landowners and alienated the small farmers. The latter group complained that they were forced to reduce their stock, because certain sections of the Act prevented them from grazing their flocks and herds on crown lands, since animals found on crown lands were subject, by law, to impounding. They accused the wealthy landowning class, who did not themselves have to resort to the use of crown lands as grazing grounds, of deliberately and unfairly attempting to force them out of the competitive meat market. 86

The 'middling classes' were further alienated by the Dog Licensing Act. The intention of the Act was to rid Hobart Town and Launceston of the large number of dogs which roamed the streets and menaced the inhabitants. Dog owners were required to purchase licences for their animals, and provisions were made whereby unlicensed dogs might be destroyed. The resultant revenue from the dog licence was to be spent on the improvement of roads and bridges. Both the

86. Henry Melville, *op. cit.*, pp. 97-8; see also Arthur to Murray, 16 April 1830, G.O. 33/7.
small farmers and the inhabitants of the towns, each having a strong aversion to taxation, raised an outcry against this 'imbecile' Act.\textsuperscript{87} They argued that this 'tax' would prevent them from keeping dogs which, in a convict colony, were necessary for personal protection. Their representations to the Legislative Council were, however, ineffective.\textsuperscript{88}

The Act to facilitate the Apprehension of Felons and other Offenders at large raised the ire of those already offended by the legislature's enactments. The ninth section of this Act empowered magistrates to issue warrants enabling police to search any house or establishment suspected of harbouring felons. This section was seriously debated in Council. Kerr's protest, that such powers constituted a gross infringement of the liberty of the individual, gained the non-officials' support; however, when Attorney-General Montagu pointed out to the members that it was essential that the executive be armed with such powers in order to protect their wives and children, and after Arthur guaranteed that these powers would only be used in order to gain entry into 'illicit spirit houses, brothels and the abodes of the convict settler class and any other place where a runaway convict may abide in concealment,' the Council gave its assent without further protest, agreeing with the Lieutenant-Governor that no respectable inhabitant would have the 'least cause to fear that the peace of their dwellings would be disturbed in consequence of

\textsuperscript{87} Henry Melville, \textit{op. cit.}, p. 94.

\textsuperscript{88} Draft Minutes of Proceedings of the Legislative Council, 4, 11, 13 and 20 January 1830, and Arthur to Murray, 16 April, G.O.33/7.
these powers which the section gives to the police. 89

* * *

During the period 1833 to 1836 the Legislative Council, although still directed by Lieutenant-Governor Arthur, began to play a significantly greater part in the government of the colony. Sessions were held regularly in each year. Members took a greater interest in business and attended meetings regularly. Whereas in the sessions of 1830 and 1831 four meetings had lapsed for want of a quorum, only one meeting lapsed during the period 1833 to 1836 90, and Arthur ceased to complain to the Secretary of State of the difficulties of obtaining 'the presence of the required number of members.' 91

The adoption of detailed rules and regulations for procedure provided the Lieutenant-Governor, in his role of president of the Legislative Council, with less opportunity to interfere in debates. In 1831 a sub-committee of the Council was appointed to consolidate rules and generally to streamline procedure. Its report was presented and adopted during the 1833 session. The rules established procedure with regard to debate, quorum, bills, petitions and private bills. Until 1833 private bills had never been introduced into the

89. The Colonist, 5 August 1834.
90. Draft Minutes of Proceedings of the Legislative Council, 22 January, 1 and 6 March and 20 April 1830.
91. See Arthur to Murray, 12 June 1830, G.O. 33/7.
Council. It was assumed that provisions in the rules should be made for these since there was nothing in the Huskisson Act that prevented members introducing bills. In fact the Imperial Act recognized the right of members to initiate legislation providing it had the Lieutenant-Governor's sanction. According to the rules, private bills should be first submitted to a sub-committee for examination. Should the sub-committee report favourably, then the bill might be introduced by the Lieutenant-Governor, should it meet with his approval. 92

In 1833 Arthur, for the first time, permitted the minutes of proceedings to be published. Previously pressmen had produced sketches of proceedings based on inadequate and sometimes inaccurate information. The newspaper editors, however, with the support of both official and non-official members continued to attempt to gain admission to Council meetings even after the minutes were made public. The sub-committee which drew up the rules of proceedings recommended that members be allowed to introduce friends to the Council chamber, and this suggestion was debated in conjunction with a petition introduced by acting Collector of Customs, Proctor, on behalf of the journalist, R.L. Murray, who requested admission to the Council chamber in order to fully report proceedings to the public. Burnett, in a speech seconding the petition, reflected the opinion of the press and those prominent in the movement for legislation by representation,

Gregson, Gellibrand and Kemp.\textsuperscript{93} Burnett claimed, much to the chagrin of Arthur, that it was desirable that strangers be admitted so 'that misrepresentation of the Council's deliberations would cease to exist'; so that the community at large would be inspired to place more confidence in the Council; so that order might be created during deliberations; and to allow 'regularity of sittings whereby the despatch of business would be greatly facilitated.' He pointed out that the Act of 1828 which 'had done away with the oath of secrecy', intended the Council to approximate more clearly to a Legislative Assembly, with which intention it seemed to be nearly in accordance to throw open the Council chambers' doorway to the public.\textsuperscript{94}

Arthur, who found such sentiments repugnant to his conservative principles and who had no wish to go beyond instructions from the Colonial Office in order to bring about a more liberal institution, replied that had it been the intention of the Secretary of State to admit the public to proceedings, then he would have issued specific orders. Arthur went on to explain to the members that in his opinion no advantage would result for such a move. He felt that the public was sufficiently aware of those matters that concerned it. He pointed out that he had recently taken steps to ensure that the public was informed in respect of these matters. Before the commencement of this present session, the Clerk of the Council had been instru-

\textsuperscript{93} See J.T.Gellibrand \textit{et al.} to the editor, \textit{Colonist}, 3 December 1833.

\textsuperscript{94} Draft Minutes of Proceedings of the Legislative Council, 24 September 1833.
cted to transmit to the press for promulgation any of the Council's proceedings which might be judged to be of interest to the public.

Arthur said he could not follow the line of Mr. Burnett's reasoning which led that gentleman to the conclusion that the admission of the public would lead to orderly proceedings and regularity of sittings. Arthur felt that this was an insinuation of the most improper nature, suggesting both that proceedings had under his chairmanship been disorderly, and that meetings had not been regular enough to allow for the 'efficient dispatch of business.'

In his speech to the Council arguing against the admission of the public, Arthur gave only superficial reasons justifying his position. In his despatch to the Secretary of State Goderich, his true reasons for his stance on the issue are revealed. He told Goderich that extensive publication of Council proceedings or the admission of strangers would bring too much attention to the Legislative Council. The malcontents, through the medium of the press, would take every opportunity to cause the government trouble by calling 'forth a strong expression of public feeling and originating opposition to measures which would otherwise have been unanimously adopted.' Arthur predicted that, were attention drawn to severe convict laws and the appropriation of revenue, public dissatisfaction would be provoked. Private members, encouraged by public opinion would become 'more pertinacious', and by opposing government, however ineffectively, would draw out proceedings thereby wasting

everybody's time. Arthur believed that opening proceedings to the public could do nothing but weaken his government. 96

In the Council debate over the issue, the Lieutenant-Governor's argument was supported by acting Attorney-General Macdowell. Macdowell in support of his case pointed out that there was no space in the Council chamber for anybody other than councillors and Council officers; further, a precedent which might justify such a move did not exist, at least not in the sister colony, New South Wales, where an actual resolution seeking the admission of the public to Council debates had lapsed. He also contended that the presence of strangers might intimidate the more reticent members 'in the delivery of their sentiments.' Macdowell claimed that the rural members would be most affected since they had little experience in public speaking.

The country members were grossly offended by Macdowell's remarks and took the opposite view. They vigorously denied that the admission of strangers to the chamber would affect them in any way. Willis, who spoke for Anstey and Archer, proclaimed that any movement to admit the public had the country members' unqualified support. 97

Despite the support for the admission of the public, no member was prepared to put forward a resolution which might give effect to a measure so evidently repugnant to the Lieutenant-

96. Arthur to Goderich, 12 August 1833, G.O. 33/14.
Governor. The matter, for the time being, was dropped. However in the 1834 session Swanston took up the cause, intending at first to introduce the necessary resolution. But on finding that members were now unwilling to give their support for the admission of the public, he decided to at least press for more extensive promulgation of proceedings. He gave the Council notice of his intention, but here the matter ended. Arthur's immutable opposition convinced him that his cause was lost, and the Council sat behind closed doors until 1837 when Franklin voluntarily admitted the public. Strangers, during Arthur's presidency, were only admitted at such times as they were required and called upon to give evidence in such matters as the Lieutenant-Governor, and the Legislative Council, saw fit.

During the 1833 session the matters and business, which required the Council's consideration, increased as a result of the limited control which was given over finance. Previously the estimates of the colony had been prepared and appropriated by the Lieutenant-Governor and the Executive Council.

On 3 October Arthur announced that it was the pleasure of the Crown that the Legislative Council be authorized to consider local expenditure 'so as to ensure a proper degree of influence over local government' and that the Secretary of State had instructed him, 'before the expiration of June of each year, to submit such estimates of the expenditure which are to be charged against the

Colonial Revenue.' After explaining that these instructions had only recently arrived, he excused himself for not preparing the estimates as early as required and proceeded to read the Secretary of State's instructions with regard to procedure. Goderich suggested that the estimates should be handled and passed 'in the form of an ordinance', and that should the estimates prepared by the Lieutenant-Governor be opposed by a majority, then those members who might dissent from such estimates, 'should be asked to furnish such as they might propose as a substitute'; and should the Lieutenant-Governor still give preference to his own, he should forward a copy of both estimates to the Colonial Office for consideration. 99

Arthur made it his practice to submit his estimates to a Council sub-committee for consideration before they were finally debated in Council. This sub-committee was made up of members who were thoroughly acquainted with financial matters and who possessed a sound knowledge of the local economy. During Arthur's administration it was consistently made up of the Colonial Treasurer, the Collector of Customs, the Colonial Secretary, Swanston and McLachlan. The estimates sub-committee made it its practice carefully to sift through the estimates, suggesting alterations where necessary. Except where changes of policy were involved, the Lieutenant-Governor usually accepted its recommendations.

The non-official members of the Legislative Council manifested an increasing resentment toward the Imperial Government's policy which demanded that the local government defray the costs of items ancillary to the convict establishment* and withheld the bulk of the revenue, derived from the sale of Crown land, from colonial appropriation. The land revenue was almost exclusively used by the Imperial Government to finance immigration. Any surplus which might accumulate, was at the disposal of the local legislature. This, in subsequent years, proved negligible.

The estimates sub-committee of 1833, as well as being instructed to review the estimates prepared by Arthur in conjunction with the Colonial Auditor, was required to examine the economy of the island as a whole. Although, as in the following years, it generally approved of the Lieutenant-Governor's estimates, the British Government's control of Crown lands and immigration policies was severely censured. The private members were most adamant in their objection, which also reflected the feelings of many of the colonists. Swanston and McLachlan told the Council that the land revenue should be appropriated by the Council, within the island, for the improvement of roads and bridges, and other much-needed public works. They wished to make their opinion known, that Britain was squandering the colony's money for her own benefit, namely to rid the slums

* Convict barracks, police offices, houses of correction and hospitals. The cost of the civil administration (including the Lieutenant-Governor's salary) the judiciary, the powder and ordnance magazine, forts and gaols was also defrayed from colonial revenue.
and poor-houses of their unwanted population. It was predicted that if the existing policy were to be continued, then

the existing resources of the island ... by the sales of Crown Lands, must soon become exhausted and the colony drained of its very little wealth in exchange for that which [i.e. immigrants] if entering with accompanying capital would be a positive good. [Furthermore, they maintained] that while such a policy was of trifling benefit to Britain, it would have a lasting disastrous effect in Van Diemen's Land. 100

Because payment to the British Treasury was made in sterling it was feared that 'metallic currency would disappear, banks would suffer, and the only financial machinery of the government would disappear' to produce a 'convulsion, the calamitous effects of which it is fearful to anticipate.' 101

The Council was determined that at least some major part of Colonial expenditure should be charged against the Land Fund. When the estimates were debated in committee, it was resolved that the cost of the Aborigine Establishment, and part of that of the survey department, should be charged against the Land Fund, regardless of the size of the surplus for the Council's appropriation. The majority of the members subscribed to the argument that, because the removal of the Aborigines had benefited the Land Fund by causing an increase in the price of land, it was only equitable that the Land

100. Draft Minutes of Proceedings of the Legislative Council, 12 October 1833.
101. Ibid.
Fund should support the Aborigine Establishment on Flinders Island. Also, in view of the fact that much of the time spent by the Survey Department was devoted to the surveying of land for sale, it was felt that at least half the cost of that department should also be offset by land revenue. 102

Arthur viewed this resolution, together with the protests registered by Swanston and McLachlan, and subscribed to by Willis and Kerr, as highly improper and contemptuous of the will of the Imperial Government. He told the Secretary of State that his instinct was to strike both items from the minutes, but that he had decided that it would be in his best interests not to do so, in view of the wish of the Secretary of State, that discussion and free expression of opinion by members should not be hindered. 103 It is more probable, however, that Arthur allowed the minutes to stand unaltered, in order to demonstrate the unpopularity of the Ripon Land Regulations, which he himself had repeatedly condemned.

During the 1834 and 1835 deliberations on the estimates, the Council, supported by strong public opinion, continued their opposition to Imperial control of Crown lands. The situation was aggravated by the fact that immigration increased, and the surplus from the fund became non-existent as the result of a decline in land sales. In view of this fact the Council decided to charge the cost of the

102. Ibid.
103. Arthur to Stanley, 14 October 1833 and Arthur to Lefevre, 4 December 1835, G.O. 33/18.
Aborigine Establishment against the monies of the Military Chest with which Britain paid for the police, and the upkeep of convicts.

In 1836, however, the Legislative Council was prevented from pursuing this course, by the addition of a further burden. The Secretary of State had deemed that the time was ripe for the local government to pay for two-thirds of the cost of the upkeep of the police force necessary for the constraint of convicts, despite the protest of the Lieutenant-Governor that such a course was impossible, firstly because the surplus land revenue could not possibly account for this additional burden; secondly, because such a move might arouse a general spirit of opposition to the whole convict system; and finally because were this measure implemented, then convict discipline would take its character from colonial interests. 104

Arthur subordinated his personal opinion and dutifully charged the expense of two-thirds of the police department as well as the Aborigine Establishment against colonial revenue. Anticipating a strong reaction in the Legislative Council, he expressly ordered, for the first and only time, that the official members vote as instructed by the Secretary of State, regardless of the dictates of personal judgement. The compliance of the official members with Arthur's instructions was the means by which the estimates bill became law. 105

104. Arthur to Spring Rice, 21 April 1835 and Arthur to Glenelg, 2 October 1835, G.O. 33/27.

Estimates debates enabled private members, unsure of the administration and function of departments and of finance, to acquire greater understanding and confidence they needed to participate effectively in general matters. The Council's competence to appropriate enabled members to express views on, and become concerned with, important matters such as education, and religion which were partially financed by the government. In such matters the Lieutenant-Governor took the lead.

In August 1836 Arthur lectured the Council on the importance of education, and developed ideas upon which he concurred with the Secretary of State. Glenelg had suggested that district committees, consisting of persons of various denominations, should undertake the superintendence of schools within their own areas, and undertake to report to a central board of education in the capital, similarly made up of representatives of the various denominations. As the community was predominantly Protestant, the Colonial Office had decided that the government of the colony should adopt a share of the responsibility for education, and the system should be based upon the principles of education of the British and Foreign Bible Society. Reading of Scriptures was to be the basis of instruction. The Lieutenant-Governor added that the Roman Catholics could scarcely be expected to send their progeny to such schools and that therefore provision would be made for grants of money to be extended to the Roman Catholic community, and any other religious community so
placed, for the construction and upkeep of schools.

Accordingly, Arthur made grants of land for the establishment of educational institutions, and made a small amount of money available for the financing of these institutions 'at the request of a large number of inhabitants of many parishes.' The Legislative Council unanimously agreed upon the principles which guided the Lieutenant-Governor, although there was some dispute as to the method of distribution amongst schools. 106

Another important matter with which the Council was occupied, at this time, was the question of the financing of the various churches. Owing to the fact that the government had employed chaplains from the three major churches, the Church of England, the Church of Scotland, and the Church of Rome, for the spiritual oversight of the convicts, the two latter felt that they had good reason to make claims for equality of status with the Church of England. The moderator of the Synod of Australia had recommended to Glenelg that the heads of the Church of England and the Church of Rome be given a seat on the Legislative Council. The Presbyterians in Van Diemen's Land, followed this up by demanding equality with the Church of England, and put their case before Arthur and the Legislative Council. Arthur agreed that their case had a great deal of merit, and recommended that money be given on a proportional basis, to

the congregation of all three churches. This created a stir in the Council chamber, since it was recognized that any decision which might result would constitute a firm basis of precedent for future legislation with regard to the Church. Surprisingly enough, all opposition to Arthur's plan came from four official members, namely Pedder, Palmer, Barnes and Gregory, all firm adherents of Church of England supremacy. They argued that because the Anglican Church was the established Church in England, it must necessarily be the established Church in the colonies.

However, after a day's discussion of the matter, a resolution was passed to the effect that the ministers of the Church of Scotland be placed on the same footing with regard to salaries and allowances, as the clergy of the Church of England. Arthur applauded the Council in this decision, saying that he believed that equal distribution of revenue 'would suppress ... discontent and eliminate sectarian bitterness that so very easily might lead to the discomfort of the community.'

The Legislative Council's involvement in the Lewis Case similarly resulted from its control of expenditure. In May 1834 Thomas Lewis stood trial on the charge of inciting William Bryan and Thomas Lyttledon to fight a duel. Throughout the proceedings, Judge Montagu showed a regrettable lack of impartiality toward the defend-


ant, who conducted his own defence. The judge continually rebuked Lewis, interrupting his defence to do so, and told him that for every question unconnected with the case directed, by the defendant, at the witnesses, he would be fined five pounds. In the end Lewis was found guilty, fined, and sentenced to eighteen months imprisonment. The opposition press sensing that Lewis was the victim of arbitrary authority, encouraged him to appeal against the decision. Secretary of State Stanley, on the advice of the English legal officers, found that Lewis had been prevented from conducting his cross-examination, and accordingly, he advised the Lieutenant-Governor and the Legislative Council of the necessity of awarding Lewis an indemnity. The Lieutenant-Governor took immediate action to implement Stanley's instructions. An umpire was appointed to investigate the extent of damages and loss of money suffered by Lewis through his incarceration. The umpire recommended seventeen hundred pounds as an equitable figure.

Arthur was loath to ask the Council to vote this sum from the Council estimates, feeling as he did, that the Colonial Treasury should not be called upon to compensate victims of maladministration of justice. However, he obeyed the Secretary of State's instructions in proposing that the sum of seventeen hundred pounds

109. Colonist, 13 May 1831; Colonial Times, 13, 15, 20 May 1834; Hobart Town Courier, 16 May 1834; Petition of Thomas Lewis to Arthur, 7 June 1834, G.O. 33/21.

be awarded to Lewis, only to find that the majority of Council members were in accord with his views on the matter, unanimous on the impropriety of such an award. It was thus agreed among the members, and the proposal put forward, that the Council be given an opportunity more fully to acquaint itself with the essentials of the case. To this end, Lewis was called before the bar of the Legislative Council for interrogation; a move which proved singularly unfruitful. Attorney-General Stephen then moved that Lewis should not be given any compensation in view of the fact that Lord Stanley and the Crown law officers, in reaching their decision, had laboured under the impression that Lewis was fined for 'persevering in a line of defence to which he was entitled' rather than for his remarks reflecting upon the character of persons associated with the case. The motion passed, but not without objection. Gregory, Swanston and McLachlan, after unsuccessfully attempting to move an amendment to Stephen's motion, registered their protests in the minutes, to the effect that the legislature could not change the verdict of the Secretary of State, who had asked the Council merely to appropriate damages, not to review the case, or to inquire whether or not such an indemnity was justified. The Secretary of State was fully in agreement with the sentiments of these three gentlemen on this point and, in 1838, he instructed the Council to award Lewis the seventeen hundred pounds. The Council carried out these further

During the period 1833 to 1836 the overall quantity of business increased. Numerous laws, mostly in connection with the liquor trade, convict and police regulations and rules relating to procedures in the various courts, were revised. A number of other bills were introduced where there was a need for government control and intervention. Acts were passed for the regulation of distilleries, auctions, stage coaches, for the licensing of hawkers, the post office and for the preservation and regulation of ports and harbours, markets and the sale of bread.

Petitions to the Legislative Council became more numerous. Those which challenged Council policy were, on most occasions, not received. The numerous representations and petitions from newspaper editors requesting admission to Council proceedings were consistently rejected, for the Lieutenant-Governor held firmly to his policy of meeting behind closed doors. A petition which requested the repeal of the Usury Act was rejected by a majority in the Council since it was held to challenge the firm policy of the Council, a policy from which, incidentally, a number of the more influential councillors, as money-lenders, benefited. The Legislative Council also dismissed the move to abolish imprisonment for debt.

112. See Glenelg to Franklin, 27 July 1837, V. & P., 30 June 1838.
113. Colonist, 3 December 1833.
114. Minutes of the Legislative Council, 9 September 1935, Hobart Town Gazette, 10 September 1835.
petitions which sought for improvement in existing legislation, or in bills before the legislature, were usually carefully considered. A petition, requesting the Council to make certain changes in the Dog Licensing Act, contained several sound suggestions which the Council adopted and incorporated into a new and less objectionable Dog Licensing Act. As the result of numerous petitions, the area of judicial competence of the Court of Requests was extended in order to cut the cost of litigation in minor civil matters. The legislature amended certain provisions for the regulation of the sale of bread and spirituous liquors in a response to the demands of interested parties. The countless number of petitions requesting relief for insolvent debtors, forced the Legislative to abandon its practice of passing annual Insolvent Debtor Acts and to consider more effective means of dealing with debtors.

Some of the more important items of legislation resulted from petitions from the public. The numerous requests for the enactment of fencing regulations, caused Arthur to set up a sub-committee to investigate and form a liaison with the fencing committees formed in many of the rural districts. Legislation based on the sub-committee's recommendations came into force in 1835. A petition

115. Minutes of the Legislative Council, 3 September 1834, Hobart Town Gazette, 11 September 1834.
117. Lieutenant-Governor's Address, Minutes of the Legislative Council, 22 August 1834, Hobart Town Gazette, 28 August 1834.
drafted at a public meeting, which called on the Legislative Council to pass a bill for the improvement of the Hobart Town water supply, provided the initiative for the Water Supply Act.\textsuperscript{119} The merchants' and bankers' petitions, presented by Swanston, pointed out that the lack of metallic currency was detrimental to commerce and suggested that the Council take remedial measures by introducing the Sicca rupee, the U.S. dollar and the French five franc piece as local currency.\textsuperscript{120} The sub-committee consisting of the Chief Justice and the Colonial Treasurer and the representatives of commerce, namely Swanston, McLachlan and Kerr, examined witnesses, petitions and other evidence.\textsuperscript{121} Its recommendations formed the basis of the Sicca Rupee Act.\textsuperscript{122} The acceptance of the Sicca rupee was beneficial to Swanston in particular. It greatly facilitated his Indian trading ventures.\textsuperscript{123}

Arthur would not allow public opinion to have any bearing on legislation introduced in pursuance of instructions from the Colonial

\begin{itemize}
\item \textsuperscript{119} Draft Minutes of the Proceedings of Legislative Council, 19 June 1835 and 2 April 1836; see also Henry Melville, \textit{op. cit.}, p. 192.
\item \textsuperscript{120} Swanston to Mercer, 1 October 1834, Derwent Bank Letterbooks, Library of the Royal Society of Tasmania.
\item \textsuperscript{121} Draft Minutes of Proceedings of the Legislative Council, 24 March 1835.
\item \textsuperscript{122} Draft Minutes of Proceedings of the Legislative Council, 19 June and 3 September 1835; Arthur to Glenelg, 31 August 1835, G.O. 33/33.
\end{itemize}
Office. The bills which extended trial by jury to criminal cases in which the government was involved, which empowered the Lieutenant-Governor to grant letters of denization to aliens and which abolished capital punishment for cattle and sheep stealing were rushed through with little debate.

* * *

In spite of the greater and more active participation in proceedings on the part of the 'representatives of the community', and the increased quantity of legislation resulting from their heightened responsiveness to the needs of certain sections of society, those who looked forward to an elected legislature retained an attitude of unrelenting hostility towards the Legislative Council. While the Council remained as constituted in 1828 with the extremely unpopular Arthur at its head, and while it facilitated the enactment of unpopular British land and immigration policies and appropriated colonial monies for the partial upkeep and restraint of British felons, it was regarded with suspicion and even contempt.

In 1829 the newly-constituted Legislative Council was greeted as a step towards liberal government. The Colonial Times told its readers that it would have 'a bright new future and period of enlightenment'. However, after Arthur's refusal to admit the public to Council meetings, attitudes hardened. The press expressed dis-

* This Act abrogated the Royal Charter Amendment Act of 1831.
124. Colonial Times, 22 May 1929.
satisfaction with the membership. The Colonial Times resented the fact that the northern half of the island was, superficially at least, better represented, insofar as five of the non-officials nominated by the 1829 Warrant lived in the environs of Launceston. The Launceston Advertiser explained that its legislators, with the exception of Anstey and Cox, were worthless as true representatives of Northern interests since they were made of 'pliable material' which could be moulded into shape by the Executive.

Opposition increased after the passage of the Usury, Slaughtering and Impounding Acts which were regarded by the small farmers and small entrepreneurs as being responsible for their distressed state. They were joined in the expression of their grievances by other sections of the community, including large land owners and members of the learned professions who were convinced that the evils of the colony stemmed from its lack of an elective representative legislature. At a public meeting held on the 'Glorious Twenty-third' of May 1831, speakers such as Kemp, the Gellibrands, and the attorney Thomas Horne, not only complained about the Imperial Government's land and immigration policies, but about the Legislative Council, which was regarded as an insult to the free colonists, and which should be replaced by an elected legislative assembly. With the

125. Colonial Times, 21 August 1829.
126. Launceston Advertiser, 10 and 17 August 1829.
approval of the meeting the speakers censured the Legislative Coun-
cillors for their 'slavish obedience' to the Lieutenant-Governor,
which enabled Britain to treat the colony

as an appendage to her own power ... a
line of policy that had lost British
America and makes Britain's hold upon
Canada and the West Indies Island of
a precarious nature, and will cause
England the loss of everyone of her
colonies unless she saw and repaired
her fault in time. 129

During the mid-thirties criticism of the Legislative Council increased,
as the movement for legislation by representation gained greater
support, and Arthur antagonized powerful sections of the community.
The withdrawal of assigned servants from the large landowners, George
Meredith and William Bryan, the prosecution of Lewis, Robert Bryan
and the journalist Robertson and Henry Melville were used by the
government's opponents to demonstrate the manner in which the present
constitution allowed Arthur to tyrannize over 'respectable' colonists.
Because the Legislative Council 'did not have the confidence of the
people' since its members were nominated by the Crown, 129 and because
'the public looked upon this body as serving as a screen for the
Executive Government when passing objectionable laws' 130 a well
attended public meeting in Hobart Town on 17 September 1835 decided
that a Political Association should be formed. Its council,

128. Colonial Times, 25 May 1831; see also Henry Melville,
129. Colonial Times, 22 September 1835.
130. Henry Melville, op. cit., p. 211.
consisting of Horne, Kemp, Gellibrand, Bent, Melville and others was to draw up petitions for a representative legislature, cooperate with its sister organization, the Australian Patriotic Association in Sydney, 'watch over developments in the colony' and advise the Lieutenant-Governor.\footnote{131} 

The formation of the Political Association was, amongst other things, the ultimate expression of lack of confidence in the Legislative Council. The Association's Council saw itself as a truly representative body which spoke for the colony. It formulated policy on political issues and attempted to make representations to the Lieutenant-Governor who, because he regarded it as attempting to usurp the place of the Legislative Council, ignored it completely.\footnote{132} Its satirists mocked its pretensions. They sarcastically referred to it as the 'Parliament ... and House of Commons of the Sovereign people' with 'Gatehouse* as speaker ... Kem the acclaimed O'Connell of the Southern Hemisphere\footnote{133} and the \textit{True Colonist} as its Hansard.\footnote{134}

\* Gatehouse, a merchant and landowner, was one of the few emancipists of Van Diemen's Land who prospered. Critics drew attention to his convict background in order to bring the Association into disrepute.

\footnote{131}{First session of the Political Association, 17 September 1835, \textit{Colonial Times}, 22 September 1835; see also the account of the public meeting called to petition for a legislative assembly, \textit{Colonial Times}, 4 November 1834; \textit{Colonist}, 15 July 1834.}

\footnote{132}{John West, op. cit., p. 176.}

\footnote{133}{\textit{Hobart Town Courier}, 14 and 25 September and 2 and 23 October 1835.}

\footnote{134}{\textit{Hobart Town Courier}, 31 December 1844.}
The anti-government newspapers in the meantime continued criticism of the Legislative Council. The Colonial Times proclaimed that all legislation was passed to 'suit the view of the members only' and was so odious that it would ultimately cause every inhabitant to leave the island. Henry Melville wrote in 1835:

That the Legislative Council, constituted as is the present, is totally inadequate to the welfare of the settlement, cannot be doubted. The mere fact, that because a man has sufficient interest in England to obtain the Colonial Treasurership, or the situation of Collector of Customs, does not guarantee that such a man has either talent or the integrity necessary for a legislator - nor does his appointment to office engraft upon him, as if by magic, the necessary local knowledge for a maker of law, for a large number of his superiors in talent, wealth and character. Suffice it to observe, that so little confidence have the Colonists in either the Council or the Counsellors, ... had the public a voice in the nomination of the Council, not one of the present members would be chosen.

The opponents of Arthur's administration represented the members of the Legislative Council as venal, corrupt and selfish. It was maintained that they were a 'faction without integrity bound together by the mutual interests' of profit-making directed by the 'principal partners in the firm of George Arthur and Co.', a reference to

136. Colonial Times, 14 August 1835.
138. Bryan to Glenelg, 20 November, enc. no.1 in Glenelg to Arthur, 24 November 1835, G.O. 1/29; see also Colonial Times 16 December 1834, 28 July and 17 September 1835.
Arthur, his two nephews John Montagu and Matthew Forster, and Chief Justice Pedder and Attorney-General Stephens. Montagu gained infamy for his alleged mis-appropriation of government materials and his persecution of Gilbert Robertson; the image of Forster projected by the hostile press was that of an idle pleasure-seeking young blade who used his convict police force to hound the weak, the down-trodden and the seekers of liberty; Stephens was made known for his false sympathy with 'the people' and for his sycophancy; Pedder was portrayed as the stern judge who held one opinion on the bench and the opposite opinion in Council; Anstey was unjustly despised as a turn-coat, since, before becoming a member of the legislature and the establishment, he had been one of Arthur's opponents; Archer was described as a man both pompous and selfish, whose vanity was gratified by his acceptance into the exclusive government house circle and whose greed was satisfied by the convict work force provided for him by the government; and Willis was regarded as a 'failed London tradesman' who showed no competence 'in the execution of his duties on the Council.'

It was Arthur, however, as head of this unpopular government, albeit one which had brought order to the administration of the colony, who bore the full brunt of the criticism. He was accused of tyranny, land jobbery, usury and nepotism and was blamed for everything unpopular in the colony. His personal unpopularity reached

140. Bryan to Glenelg, 20 and 23 November 1835, enc. no.1 and no.2 in Glenelg to Arthur, 24 November 1835, G.O. 1/29.
a climax when the opposition faction, led by Robertson, Gregson, J.T. Gellibrand and Melville convinced a public meeting, in January 1836, that the Home government should be petitioned to bring about the removal of Colonel Arthur. \textsuperscript{141} By May of that year many were gratified to hear that Lieutenant-Governor George Arthur had been recalled: a bonfire was lit and a dinner held to celebrate the occasion. \textsuperscript{142}

* * *

On 22 October 1836, one week before his departure, the members of the Legislative Council met Arthur for the last time. They presented him with an address which 'testified with much eloquence the fruits of his labours' amongst them. \textsuperscript{143} In spite of the furious anti-Arthur propaganda campaign launched by the Hobart Town demagogues and the opposition press, the members of the Legislative Council still held Arthur in the highest esteem. He was a man, who, through his commanding personality, his able management of proceedings and his ability to handle members, was able to preside over a legislature which bred few differences between individual members and which was free from any discernible antagonism between the two distinct groups within the Council, the official members on one hand, and the private members on the other. Only on two

\textsuperscript{141} True Colonist, 22 January 1836.
\textsuperscript{142} True Colonist, 24 June and 1 July 1836.
\textsuperscript{143} Hobart Town Courier, 23 October 1836.
occasions did the private members vote *en bloc* against the official members who were carrying out instructions from the Chief Authority; and in respect of these occasions no ill will or hostility was expressed, since in each case, the official members and the Lieutenant-Governor were recognized to be acting only according to Colonial Office instructions, while privately their sentiments were in full accord with those of the dissenting private members. 144

All members, both in theory and practice, enjoyed equality of status. Arthur always took care to appoint private members as well as official members to sub-committees to avoid any friction between the two groups. Official members as well as private members were permitted to introduce petitions on behalf of the inhabitants. All members were equally welcome at Government House as the Lieutenant-Governor's guests. By playing down the differences between the official and private members, Arthur prevented the formation of two opposed *blocs*. In this manner, the strife and conflicts which characterized the proceedings of the Legislative Council during the administration under Franklin, were avoided.

144. Arthur to Spring Rice, 15 October 1837, A2165, M.L.
PART II

A FORUM FOR COLONIAL POLITICS.
CHAPTER 4:

The Legislative Council during the Administration of Franklin
1837 - 1842.

The beginning of Sir John Franklin's administration marked a new epoch in the history of the Legislative Council of Van Diemen's Land. It was during Franklin's term as Lieutenant-Governor that the Council assumed a larger and more significant role in colonial government and politics. Franklin, in freeing the Council from those bonds imposed by Arthur in order to preserve his autocracy, was instrumental in giving it a better public image and an identity of its own. Because the Council was no longer exclusively made up of men who were 'creatures of the Chief Authority', but of men who were considered to be of 'independent mind', and because members vigorously opposed unpopular executive measures, its old image as a subordinate piece of machinery in an obnoxious authoritarian regime gradually lost its validity.

It was Franklin's liberal and laissez faire approach to colonial government that allowed the Legislative Council to assume a new character. Franklin allowed the legislature to deal with matters
SIR JOHN FRANKLIN,
Lieutenant-Governor 1837-1843.
such as pensions and compensation for injuries sustained in the service of the colony, unseemly behaviour on the part of minor officials and investigations of government departments. He allowed the Council to assume a slightly more popular flavour by opening its proceedings to the public in 1837. This, as well as being a conciliatory gesture to those colonists who sought a more liberal constitution, was an affirmation of Franklin's belief that the colony was worthy of free institutions. During the 1837 session public interest in the proceedings of the Council was not evident. However newspaper reports and comments stimulated enough curiosity to assure attendance at subsequent sessions. By 1840 it became obvious that the members of the public could not be accommodated in the chamber adjoining Government House and in consequence Franklin made arrangements for the Council to meet in the spacious long room of the newly erected Customs House. This move symbolized the end of the political proximity between the Lieutenant-Governor and the Legislative Council.

Open proceedings forced members to take into account public opinion. Non-official members, as the nominated representatives of the colonial viewpoint, were guided in their attitudes to particular issues by public opinion. At times they played to the press and public gallery and in November of 1840 Franklin complained about this to the then Secretary of State, Lord John Russell:

The tendency of opening the doors of such a Council to the public is to subject the unofficials to the control of the public to the extent which perhaps does not exist were
they really representative. The conviction is that he is the nominee of the crown, and therefore suspected to have a bias in favour of its views may contribute to impair a member's firmness and make him aim almost unconsciously by an uncompromising opposition, to give a striking and undeniable demonstration of his independence.

More importantly, the non-officials, free from any obligation or subtle pressure to support the government, welded themselves into a virile opposition which defeated executive measures frequently enough to prove troublesome.

Franklin, because he failed to give leadership and direction and display the firmness which the *ex officio* members, during the administration of Arthur, had become accustomed to expect from the Lieutenant-Governor, became embroiled in disputes with Colonial Treasurer Gregory and Colonial Secretary Montagu. These disputes which indirectly involved other officials as supporters of either man, weakened the Lieutenant-Governor's position and authority.

* * * *

Sir John Franklin, unlike his predecessor, was not a career administrator. He was a captain in the Royal Navy who, for the greater part of his life, had been actively engaged in this line of duty. His interest and his achievements in the field of Arctic

exploration earned him high honours and fame. That he preferred the quarterdeck to the office stool is quite clear. He accepted the position of Lieutenant-Governor of Van Diemen's Land because it was the only employment available to him in keeping with his station in life. Franklin was not endowed with those qualities which characterized a successful colonial administrator. He lacked an incisive mind, shrewdness, personal authority and decisiveness. These personal deficiencies did not go by unnoticed. In 'A Letter to the Independent Members of the Legislative Council' a correspondent of the Colonial Times declared:

He did not evince that degree of firmness and decision so becoming to a ruler ... and every advantage will be taken of every deficiency of this kind, which might be found in the official character of Sir John Franklin.

He did, however, possess other redeeming characteristics. He was determined, devoted to duty, zealous and high-minded. Yet he was always a man who was praised for the assiduity with which he tackled tasks rather than for his success in carrying them out.

Franklin, despite his training and background was no authoritarian. He was, in fact, the reverse. He was liberal and open-

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minded. 4 'His motto', wrote Henry Melville, 'appears to have been laissez-aller [sic].' 5 He regretted having to administer the colony as a gaol. He saw the future of the colony in terms of a free society with free institutions rather than as the gaol of the empire. His attitude to the moves for representative government, and his interest in legislation encompassing those civilizing agents, education and religion, bear this witness.

Franklin, in an attempt to represent in the Legislative Council 'all respectable classes of society', 6 nominated men who had fallen foul of the Arthur administration and who were prominent in, or sympathetic to, the movement for legislation by representation. Those members appointed by Franklin saw themselves in the role of representatives of the free colonists ('the people') and guardians of their rights and privileges.

William Effingham Lawrence, who assumed the seat vacated by Bethune and who Franklin described as 'possessing great wealth and superior talents' had constantly been at loggerheads with Arthur. Lawrence was an enlightened and cultured man. He had shown a more than superficial interest in constitutional and scientific developments whilst in England. His friends included the father of utilitarianism, Jeremy Bentham, who referred to him as a person

4. See K. Fitzpatrick, Sir John Franklin. passim.
possessing much intelligence. Lawrence's voyage to the Australian colonies was interrupted by a short stay in Brazil where he was invited to give advice on the implementation of that country's new liberal constitution. On his arrival in Van Diemen's Land in 1822 he acquired land amounting to no less than twelve thousand acres. Before long he clashed with Arthur who questioned his right to possess such a vast amount of land. His dispute with Arthur, which stemmed from his dislike of the Lieutenant-Governor's autocratic method of government, continued until the latter's recall.  

William Page Ashburner, who in 1833 replaced Willis, had also been an opponent of the Arthur system. He was a farmer from the north, and a man who from his participation in public debate was judged independent, outspoken and interested in community affairs enough to warrant a place on the Council.  

In the place of McLachlan, who in 1841 returned to England, Franklin appointed the dynamic demagogue and archenemy of the Arthur Faction, Thomas George Gregson. Gregson, who had resided in the colony since 1820, became the most influential exponent of the principle of legislation by representation after the death of J.T. Gellibrand in 1836. Being of an extremely erratic disposition, he was not a success as a farmer; his financial difficulties were proverbial. As a member of the gentry, nevertheless, he was accepted into the high society of Government House. By 1840 intimate relations

8. Correspondence file on Ashburner in the T.S.A.
between the Gregson and Franklin families had been established.

Lady Jane, the Lieutenant-Governor's wife, spoke of him in affectionate terms:

'Mr. Gregson is an old colonist ... and a man of considerable talent and of impetuous character, which in his earlier days here involved him in many scrapes, but nothing in so far as I can learn affecting his integrity and honour - he is full of good and generous impulses but uncertain and a little wild headed.'

Franklin nominated Gregson to the legislature in order to offset the influence of the Arthur Faction in the government. The Lieutenant-Governor was very much aware that Gregson, who held an immeasurable amount of influence in the community, might become a valuable political ally. His action of commuting Gregson's prison sentence, Gregson's punishment for having, under extreme provocation, horse-whipped Colonel Arthur's nephew, Henry, received widespread approbation and won for Franklin the confidence of many colonists. Gregson frequented Government House regularly, and during Franklin's dispute with Montagu and the Faction, he was one of the Lieutenant-Governor's constant advisors.

Although Gregson's and Franklin's views on many subjects differed, Gregson, during debates in the Legislative Council, did not take that strong line which characterized his opposition to

9. Jane Franklin to Mary Simpkinson, 10 September 1842, typescript copy, T.S.A.

10. Diary of G.T.W.B. Boyes, 21 December 1844; see also True Colonist, 5 April 1844.

Franklin's successor, Wilmot. Indeed his opposition as manifest in the legislature was mild and unobtrusive. Gregson, during the Franklin period, was by far the most informed and diligent member of the Council. 12

The temporary absence of John Kerr during 1839 enabled Franklin to appoint another man of 'independent sentiments' and 'unmatchable talent' to the Legislative Council. He was Michael Fenton who had served as a military officer in Canada, Martinique and more recently India. In 1829 he came to Van Diemen's Land and settled on the Derwent, past New Norfolk. During the 1830s Fenton became involved in the movement for legislation by representation and was one of Arthur's marked men. 13

Three weeks after Fenton had taken his seat in the Council, Kerr, recently returned from Sydney, protested against Fenton's appointment, which deprived him of his seat. Kerr, in appealing to Secretary of State Russell, claimed that he had been unjustly ousted in view of the fact he had informed Franklin that he would go out of his way to be in Van Diemen's Land in time for the opening of the oncoming session; it was only due to an unavoidable delay that he was not in Hobart for the commencement of the session. 14 In order to avoid a crisis, Franklin, after explaining that he had acted

13. See correspondence file on Fenton in the T.S.A.
within the constitution by appointing Fenton in Kerr's absence, assured Russell that Kerr would be appointed 'to the next vacancy which might occur.'\(^\text{15}\) And Kerr did not have to wait long for the fulfilment of this promise. He was nominated to the seat of W.E. Lawrence who expired in July 1841. It is possible that Franklin considered himself well rid of Kerr when he did not appear for the beginning of the 1840 session. Kerr was a member of the Faction. It was rather obvious that Franklin preferred Fenton to Kerr, otherwise he would have terminated Fenton's appointment in order to allow Kerr to resume his seat. It was only when Kerr offered to make trouble that Franklin promised to restore him to the Legislative Council.

William Kermode, who replaced Forster, took his seat at the beginning of the 1842 session. Kermode, like most of the influential gentry of the era, had arrived in the colony in the pre-Arthur period. He began life in the colony as a merchant. After taking up large land grants near Ross in 1823 he turned to grazing and agriculture. His ideas and plans for his future were grandiose, in fact so ambitious that Arthur's suspicions were aroused. It was not long before the country squire and the Lieutenant-Governor were at loggerheads. Arthur initiated the dispute by refusing to grant the land and the convict labour which were requisite for the materialization of Kermode's dreams. The dispute continued when charges were laid

\(^{15}\) Franklin to Russell, 7 December 1940, G.O. 33/36.
against Kermode for harbouring absconded felons and misappropriating government stone. As a member of the anti-Arthur group, Kermode protested against the 1827 Press Laws, and signed petitions calling for legislation by representation. His organization of the bonfire on Tower hill which celebrated Arthur's recall brought him to the public eye for the first time. Like other colonists of similar convictions and aspirations, he looked upon Franklin's administration as an indication of a change to a more liberal outlook on the part of the Imperial Government. His nomination to the Council rested on his intimate friendship with Gregson.

There were many new faces amongst the official members of the Legislative Council. This was in part due to the change in the official positions. William Hutchins, who was appointed first Archdeacon of Van Diemen's Land in 1836 and who arrived in the colony with Franklin, took his seat as head of the Church Establishment at the opening of the 1837 session. Because he was a man who took his clerical duties seriously, Hutchins was left with little time to attend to his legislative duties. During 1837 he was able to attend Council meetings infrequently; in 1838 he was present only for the opening of the session; thereafter he did not appear at all. It is possible that his absence was due to his disgust with the Church.

17. Ibid.
Bills which put the Roman Catholic and other dissenting churches on a parity with the Church of England. Feeling as he did that his presence on the Council was pointless since, as an official member, he could not, according to established practices, give outright opposition to government measures, Hutchins did not bother to appear. In April 1839 the diarist Boyes reported that Hutchins had recently told the Lieutenant-Governor that he quite definitely would not attend Council.  

Franklin, moved by an urgent need to increase the number of active official members (the non-officials commanding a workable majority which successfully defeated three government bills in 1839) urged the Secretary of State to replace the position of head of the Church Establishment with that of Clerk of the Councils so that the more amenable Adam Turnbull could take a seat. Russell refused. Although he did not object to a change in the official component of the Council, since the Colonial Office did not follow any rigid pattern in this regard, he considered it unwise for 'the Clerk of the Council to sit as a member of that body of which he was a servant.' He told Franklin that

the combination in the same persons of the duties of legislator and Clerk of the Councils has already formed grounds of complaint in other colonies.

Instead the Colonial Auditorship was made an official Council position.

In other colonies similarly constituted, Russell told Franklin, 'the Auditor invariably sat at the Council Board.'22

So after 1840, the officials, in order of precedence, were: the Chief Justice, the Colonial Secretary, the Attorney-General, the Colonial Treasurer, the Collector of Customs and the Colonial Auditor, six in all. There was some confusion as to whether the Chief Police Magistrate sat as an official or private member. During the early years of his administration, Franklin, like the Clerk of the Council and the colonial press, had been under the impression that the Chief Police Magistrate was an official member. Arthur had not made the position clear. From the very beginning the Chief Police Magistrate had occupied a seat. A.W.H. Humphrey was appointed to the Council both as constituted by the 1823 Judicature Act and also as reconstituted by the Huskisson Act in 1828. The warrant appointing the Council as constituted in 1828 made it quite clear that the Chief Police Magistrate was not an official member. Humphrey was to sit in the Council in his own right as a private member. However Arthur felt that ideally the Chief Police Magistrate should occupy an official seat so that the occupant of this important position would be assured of a seat whatever the circumstances. To Arthur it was vital that the Chief Police Magistrate should hold a seat. Since the legislature debated and passed laws concerning the regulation of felons, he deemed the presence of the Chief Police Magis-

22. Ibid.
trate, whose expert knowledge in this area could be drawn upon, imperative. Forster had not long occupied the Police Chief Magistracy before he was appointed to the Council. Franklin continued Arthur's policy in this regard. When Forster became acting Colonial Secretary, the acting Police Magistrate Josiah Spode was automatically appointed to the legislature. As soon as Forster resumed the Chief Police Magistracy, Spode discontinued in the Council. Until 1841, therefore, the Chief Police Magistrate was de facto an official member.

It was in 1841, when Forster had resumed the Police Magistracy and had requested the appointment of the Chief Police Magistrate as an official member that Franklin became properly aware that de jure the Chief Police Magistrate was a non-official. The Lieutenant-Governor, after a careful study of his Manual for Colonial Governors refused Forster's request. The addition of another ex officio member at the expense of the non-official members would be detrimental to the function of the Council, he explained. The present apportionment of seats (six official and eight non-official) assured the executive of a sufficient amount of influence, and at the same time and adequate representation of the Colonist's views. That Forster and other persons, who occupied the Chief Police Magistracy as paid government officials, acted as if they were in fact ex officio members of Council, was inconsequential in his argument.

23. See page 69.

24. Journal of Sir John Franklin, 21 April 1841, typescript copy, T.S.A.
Forster persisted in his request. He suggested that the Police Magistrate become an official in place of the Colonial Auditor. Boyes, the occupant of that position, could continue on the Council in a non-official capacity. Since this course would not involve de jure a change in the numbers of officials and non-officials, Franklin agreed to recommend the suggestion to the Colonial Office.\textsuperscript{25}

Secretary of State Stanley dismissed the suggestion and reviewed the membership of the Council. He eventually decided that for the Chief Police Magistrate, or any other public servant to sit as a non-official was a contravention of the intentions of the framers of the Huskisson Act who sought to give colonial opinion a 'fair representation'. 'It makes little difference' he replied to Franklin, 'whether Mr. Forster was gazetted an unofficial member or not. The fact remains he is a government official and therefore not a representative of the colony.' He called for Forster to resign his seat, and commanded Franklin to replace him with 'a person who did not hold public office.'\textsuperscript{26} Forster, who was most unhappy to resign, accused Franklin of mishandling the whole matter. During a time when relations between the Lieutenant-Governor and the Faction were strained, Forster spread the rumour that his resignation resulted from his refusal to comply with 'one' (unspecified) of Franklin's fruitless schemes.\textsuperscript{27}

\textsuperscript{25} Loc. cit., 7 May 1841.
\textsuperscript{26} Stanley to Franklin, 8 December 1841, G.O. 1/44.
\textsuperscript{27} Jane Franklin to Mary Simkinson, 22 February 1842, typescript copy, T.S.A.; Diary of G.T.W.B. Boyes, 24 June 1842.
During the Franklin period there was a great deal of movement amongst the ex officio positions within the Legislative Council. The Colonial Secretaryship changed hands several times. Forster assumed the position temporarily during Montagu's absence 1839-40. In 1841, after Montagu had been dismissed, Boyes took over temporarily until the permanent appointee, Bicheno, arrived in 1843. There were also several changes in the Colonial Treasurership. Gregory, dismissed in 1840, was replaced by Adam Turnbull who in turn gave way to Fraser, who was appointed in 1842 by the Colonial Office. The changes in the office of Attorney-General were not only numerous but complex. Alfred Stephen resigned in 1837. He was succeeded by Edward Macdowell; Macdowell resigned in 1839; he was reappointed in 1840 and dismissed in 1841. Until the permanent appointee, Welsh, arrived, Herbert Jones and Thomas Horne filled the position temporarily. These changes within the official membership of the Council inevitably caused disruption through a general sense of insecurity and instability.

Of the new official members who took their seats during the Franklin period, Boyes and Turnbull were the more significant. Both had been in the public service during Arthur's administration. Boyes arrived in Van Diemen's Land in 1826 to set up the commissariat department. His efficiency soon came to Arthur's notice and it was not long before he was promoted to Colonial Auditor. Boyes represented the better type of colonial public servant. He was honest,
able and eminently respectable.\textsuperscript{28} His interest in music and painting, and his diary indicate that he was a man of culture and refinement. As a watercolour painter and a violinist, he featured prominently amongst Hobart's artistic circle. Boyes was able to carry out his official duties without becoming entwined in the political wrangles of the day. Remaining aloof from the cabals and factions, he managed to maintain his independence so that even the colonial press left him unmolested.

Adam Turnbull, M.D., entered the Colony as a free settler. Soon after his arrival in 1825, he received a large land grant near Campbell Town which he farmed until 1828. In that year he entered the colonial medical service. In 1833 he succeeded John Montagu as Clerk of the Councils. He occupied this position until Franklin appointed him Colonial Treasurer.\textsuperscript{29} Despite the Lieutenant-Governor's warm recommendation, the Secretary of State refused to appoint Turnbull permanently. From 1839 onwards a close relationship developed between Turnbull and the Franklin family. Turnbull, for a short time acted as Franklin's private secretary. For drafting official despatches, a task for which Franklin had little liking and even less capacity, he won the Lieutenant-Governor's eternal gratitude. Franklin had the most complete confidence in his loyalty and ability.\textsuperscript{30} Turnbull proved valuable to Franklin in the Legislative

\textsuperscript{29} C. Finlay, 'Turnbull, Adam', \textit{A.D.B.}\textit{, Vol. 2, p. 451.}
\textsuperscript{30} Franklin to Russell, 16 August 1840, G.O. 33/35.
Council. His membership enabled the Lieutenant-Governor to reject the Presbyterian's clamour for the nomination of their Moderator to that body. Franklin told the Secretary of State that he refused to comply with their demand because he regarded Turnbull, a leading member of that church, as an adequate representative. He informed Stanley that he had discussed with Turnbull matters connected with the church, and he received advice distinguished by its scrupulous justice and impartiality as well as a desire to promote the advancement of religion and the spread of knowledge. 31

* * *

From the very beginning Franklin had difficulties with the Legislative Council. Much of this initial trouble was caused by the Attorney-General. During Arthur's administration, Stephen, although full of complaints of overwork, carried out his duties diligently. 32 The presence of Arthur's energetic personality ensured that draft legislation was at hand during Council sessions. However in Arthur's absence, Stephen became less assiduous in the performance of his duties, and his complaints became louder and more frequent. Since Franklin made no attempt to discipline him, he attended less and less to his official duties and more to his lucrative private practice.

31. Franklin to Stanley, 17 October 1842, G.O. 33/43.
32. Franklin to Glenelg, 23 September 1837, G.O. 33/27.
In early July 1837, Stephen submitted a list of twenty-eight bills, accompanied by a list of dates fixing the reading of each. The Council met in the latter half of July and fifteen bills were passed with such rapidity that the press was provoked to denounce such 'steam-pace legislation'. When it came time to consider the sixteenth, Stephen was forced to admit that it and the remainder on this list were not yet prepared. He requested a two-week adjournment to allow him time to draft the remaining thirteen. Franklin, which characteristic charity and forbearance, delivered no admonishments and adjourned the Council for seven weeks 'in order that he [Stephen] was left unhurried.'\(^{33}\) The date on which the Council was to reconvene was 15 September. On 11 August Stephen informed Franklin that he had completed four bills, and because of the pressure from his private practice and his other duties as Attorney-General, he would not be able to complete the remaining ones within the month. He suggested that either the Solicitor-General or the Crown Solicitor be instructed to deal with at least some of the remaining nine bills. Franklin, again ignoring Stephen's failure in the performance of his duty, complied with the request. However, a few days later, Stephen renewed his complaints. Finally he resigned, leaving four bills uncompleted. The Lieutenant-Governor, without anybody to guide even the completed bills through the Council, was panic-stricken. He postponed the impending meeting and requested Stephen to put off his

\(^{33}\) *Ibid.*
resignation until all current legislation had been dealt with.
Stephen agreed. However he carried on in such a half-hearted
fashion that Franklin was forced to accept his resignation before
the Council reconvened. 34 The Solicitor-General Edward Macdowell,
who was eager to acquire a more remunerative post, took Stephen's
place.

Macdowell had come from England to New South Wales in 1830 to
take up the Solicitor-Generalship of that colony; but his tardy
arrival had deprived him of the appointment. In 1833 he accepted
the lower-salaried Solicitor-Generalship of Van Diemen's Land, and
in that same year he became acting Attorney-General in Stephen's
absence. 35 During the Arthur administration he was an outer member
of the Faction. But after he had married into Swanston's family
and when the Faction, after Arthur's departure, moved its centre to
the Derwent Bank, he assumed a more prominent position.

Macdowell's behaviour during Council sittings caused much dis-
ruption. His passion for dramatic rhetoric and his 'sarcastic,
though muddy, wit' left him open to much ridicule. 36 Fellow members,
bored by his long-winded speeches and eager for light relief, took
every opportunity to mock his affectations. 37 The press more than

34. Ibid.
36. See the report of the meeting of the Legislative Council of
20 November 1837, Tasmanian Austral-asiatic Review, 24
November 1837.
37. Colonial Times, 12 and 19 March 1839.
often treated him as a joke. Unimpressed with what it termed his 'pretentious and superficial manner', the *Tasmanian and Austral-asiatic Review* told its readers that Macdowell's

Irish eloquence is not smooth ... or overpowering enough to drown [one's] ... sensibility to the fact that he is anything but a competent Attorney-General. 38

His curious debating style attracted a great deal of comment. His chief tactic - attacking 'everyone indiscriminately, whether the sentiments they uttered were in support of his own views or opposed to them', was considered, if not unorthodox, unbecoming in a man of his station and profession. 39 It was Macdowell's personal attacks that introduced an unprecedented amount of ill-feeling into the Council's debates. His abusive remarks on the character of members who supported the five resolutions connected with the Feigned Issues Bill almost provoked a brawl. 40 On another notable occasion, after he had been asked by the Council to redraft the Jury Validation Bill, tempers became frayed when he insinuated that the honourable members were 'drones and drivellers'. It was only a humourous remark, made at Macdowell's expense, that alleviated the critical tension aroused by this remark. 41

39. Diary of G.T.W.B. Boyes, 1 July 1838.
Members of the public who appeared at the Bar of the Council were not immune from the Attorney-General's viperous tongue. Thomas Lewis, when giving information in connection with his claims for compensation, was forced to protest against Macdowell's improper insinuations. Macdowell's bigoted and uncomplimentary observations, on the character of Roman Catholics, infuriated their advocate, T. Chisholm Anstey, to such an extent that Anstey, in presenting the views of his church on education, spent much time abusing the Attorney-General. Macdowell was quick to take offense when he was given that treatment which he so often and so eagerly meted out to others. Had he been so grossly insulted in any place other than the Council chamber, he declared, replying to Anstey's attack, he 'would have answered the vile slanderer with a blow.'

Macdowell carried out those duties of Attorney-General associated with the Legislative Council in anything but a satisfactory manner. Like Stephen he was preoccupied with his growing private practice and was unable to devote sufficient time and energy to the important task of drafting legislation. During the 1838 Council session, Franklin was forced to suspend proceedings for several weeks because the scheduled bills had not been prepared.

Many of the bills for which Macdowell was responsible were

42. *True Colonist*, 27 July 1839.
44. *True Colonist*, 30 November 1838.
loosely and carelessly constructed. On numerous occasions the Council could not proceed because Macdowell had to revise and correct the drafts of the bills under discussion. Chief Justice Pedder continually complained of the slapdash drafts. Puisne Judge Montagu's unfavourable reviews of legislation also reflected upon the manner in which Macdowell performed his duty. The Puisne Judge refused to enrol at least four acts, not because they were in spirit repugnant to the laws of England, but because of 'their want of thoroughness in preparation' and 'their disregard for precision and consistency'. Macdowell usually insisted that the Council should adhere in an unrevised state to any bill which the judges refused to enrol. The Council, usually complied with the demand. But the Secretary of State, the final authority, consistently expressed disapprobation of a number of these acts. The Robbery on the High Seas Act, which was disallowed by Normanby at the Colonial Office because it gave cognizance to house breaking at sea, provided the press with a pretext to abuse and mock Macdowell and the executive.45

Only when there was sufficient pressure, both within and without the legislature, would the Attorney-General concede to revise acts which had been rejected by the Supreme Court. In December 1840 Judge Montagu, in a lengthy Minute to the Lieutenant-Governor and the Legislative Council, tore the Road Act to shreds. Franklin and other executive members, fearing that this important Act, which was

45. Normanby to Franklin, 2 August 1839, S.O. 1/35; See Colonial Times, 8 January 1839 and the report of the meeting of the Legislative Council of 29 December 1838; True Colonist, 4 January 1839.
already drawing opposition from certain vocal elements in the community would be endangered unless redrafted, ordered Macdowell to rewrite it in the light of Montagu's criticism. 46

The insolvency laws which Macdowell had induced the Council to pass, being unworkable, became a dead letter. 47 'The Insolvent laws', declared Judge Montagu, 'were such a jumble of absurdities' that he and the Chief Justice were obliged to allow lawyers 'to use those practices with regard to insolvencies as were used in England.' 48

In September 1839 Macdowell resigned in circumstances which caused Franklin a great deal of embarrassment. As the government's first law officer, Macdowell had been instructed to draft and 'steer through the Council' the so-called Feigned Issues Bill which was to provide the executive with regulations and conditions by which the eligibility for compensation for loss of trade of certain distillers, could be determined. Being unable to support the bill because he considered it not in keeping with the Distillation Prohibition Act, which promised unconditional compensation to all distillers, Macdowell submitted his resignation. Franklin asked him to reconsider his resignation since the Attorney-General's resignation might raise doubts in the minds of the other members as to the bill's legality and prejudice its chances of becoming law. But Macdowell

47. Report of the meeting of the Legislative Council of 30 December 1838, True Colonist, 4 January 1839.
stood firm in his earlier decision.

In desperation Franklin turned to Solicitor-General Jones. Jones' views on the bill were widely known since he was its leading antagonist. He had spread the rumour that the judges would not certify the bill for fear of being dismissed by the Home Government. He also had advised Macdowell to resign rather than follow Franklin's instructions and guide it through the Council. Jones' opposition to the Feigned Issues Bill was not unnatural, for a large number of his clients were distillers who would have been ineligible for compensation were the bill to come into effect. He firmly retained the opinion that the bill was repugnant 'until his intellectual vision was suddenly illuminated by the splendid blaze of light shed upon it by the offer of the office of Attorney-General.' He told Franklin that after he had carefully studied the bill he had been forced to change his opinion. The bill, he said, was perfectly in keeping with the Distillation Prohibition Act, and he would be glad to help the executive out of its difficulties by guiding, in the capacity of Attorney-General, this difficult piece of legislation in its passage through the legislature. He also gave his word that he would resign, after the bill had been dealt with, in order to allow Macdowell to resume his old post. But Macdowell distrusted Jones' word. As soon as Jones took over his duties as Attorney-General,
Macdowell launched a bitter attack against him. The ensuing struggle, conducted in the arena of the colonial press, was vicious and lengthy. It continued long after Jones resigned and again became Solicitor-General and after Macdowell resumed the Attorney-Generalship. In the end the Secretary of State, who regarded their behaviour as inappropriate to their high station, dismissed both. 52 Thomas Horne became acting Attorney-General in July 1841. Horne had been a leading member of the Political Association and an opponent of the Arthur regime. Financial difficulties, however, had forced him into the camp of Arthur's coterie. It was as a minion of the Derwent Bank that he was appointed. 53 Although Arthur seemed to have a high opinion of Horne's ability, having offered him, in 1832, before he became involved in the movement for legislation by representation, the post of Solicitor-General, 54 his achievements showed him to be a man of mediocre intellect. To the Launceston Advertiser he was no more than a 'plain, plodding but sound lawyer'. However he was a success in the Legislative Council. His 'plain straightforward and explicit manner' that same newspaper told its readers, 'can defend the measures of the government and expose the absurdity of the opposition.' 55 Horne continued as Attorney-General until

52. Russell to Franklin, 2 March 1841, G.O.1/57; Jones to Russell 31 March 1840, G.O.33/35 and February 1841, G.O.45/1; Macdowell to Russell, 31 July 1841 enc.no.1 in Franklin to Russell, 14 August 1841, G.O.33/39.


54. Ibid. and Horne to Forster, 19 February 1841, C.S.O. 5/281/7385.

55. Launceston Advertiser, 14 September 1844.
November 1841 when Welsh, the Colonial Office appointee, arrived. Welsh proved to be a first class Attorney-General. However he remained in Van Diemen's Land for only two years.

The men who sat on the Council in the capacity of Attorney-General were not the only ones amongst the officials who caused disruptions in the Legislative Council. Colonial Treasurer John Gregory openly rebelled against established practice by casting his vote with the private members against the executive government. As Arthur's Treasurer Gregory had established a reputation as a man of honesty, integrity and efficient business methods. He had fulfilled his role in both the Legislative and Executive Councils to Arthur's satisfaction. Gregory soon found Franklin's *laissez faire* style of government impossible. When he looked for guidance, none was afforded, and when he struck out alone he was reprimanded. In the Legislative Council he frequently took advantage of the freedom which Franklin afforded both officials and non-officials. In 1837, Gregory, as well as the Chief Justice spoke out strongly against the executive's Church Bill. In the following year he assumed the same position with regard to the Marriage Bill and other bills concerning the churches. He again violently opposed the executive government during a debate on the granting of new pensions. Such opposition did not concern the Lieutenant-Governor since there had not been any danger of these bills being defeated. However when Gregory, on another occasion, spoke and voted against a government bill, and the
bill was defeated, he was deposed from office. His dismissal came at a time when relations between himself and the Lieutenant-Governor were extremely cold. Gregory, who privately had always had little respect for Franklin's administrative style, first found himself openly at loggerheads with the Lieutenant-Governor when Forster was appointed acting Colonial Secretary on Montagu's departure for England. He expected himself to succeed Montagu in the Colonial Secretaryship for several reasons. He was the most experienced and senior official in the administration. Under-Secretary Hay had informed him as early as 1833 that he was favoured for a colonial secretaryship and both Arthur and a former Secretary of State, Lord Glenelg, had 'spoken of him in flattering terms.'

On receiving Gregory's remonstrance against the appointment of Forster, Franklin felt bound to offer some explanation. During a long interview he told the Colonial Treasurer that Forster's appointment had been preferred because in the first instance Forster carried the 'most weight and influence with the Members of the Legislative Council'; second, Forster's 'long and varied experience as Chief Police Magistrate rendered him a desirable person' since the Colonial Secretary was to be responsible for the changeover from assignment to probation; third, Forster had the 'most extensive personal acquaintance of the inhabitants'; and fourth, because of the difficulty of finding a man equal to Gregory in capacity for

56. Gregory to Franklin, 24 December 1838, enc. no.1 in Franklin to Normanby, 27 December 1838, G.O. 33/33.
Colonial Treasurer. Franklin's final reason - that Montagu would not countenance any successor or accept responsibility for any legislation other than that introduced by Forster, raised the Colonial Treasurer's ire. Realizing that the first four reasons were spurious, and regarding the fifth as unacceptable, Gregory began to annoy and hound the Lieutenant-Governor, who, without his pro and advisor, Montagu, was particularly vulnerable. Personal relations between the two men were broken off after Gregory coldly refused invitations to Government House. They came into contact only when official business necessitated their meeting.

Before long Gregory was to bear Franklin another grudge. In May of 1839 Gregory received news that her Majesty's government no longer required his services in the Executive Council. The Colonial Treasurer immediately concluded that Franklin was behind this move which threatened to deprive him of dignity and station. Even after the Lieutenant-Governor had convinced him that it was the Colonial Office that was in fact responsible for his removal in consequence of a change of policy, Gregory was still disgruntled and found a new reason for complaint. He demanded to be thanked publicly for his past services. Such had been the reputation of past Colonial

57. For a resume of the interview see Gregory to Franklin, 29 December 1833, enclosed in Franklin to Normanby, 3 January 1839, G.O. 33/33.

58. Jane Franklin to Mary Simpkinson, 13 February 1839, typescript copy, T.S.A.

Treasurers, he told Franklin, that the colonists would automatically assume, unless some expression of gratification on the part of the government was officially made, that he had been removed from the Executive Council as a result of misbehaviour. Franklin thanked him privately, but would not thank him officially. The feud continued.

When the Legislative Council met in the latter part of 1839, Gregory had not lost any of his hostility toward the Lieutenant-Governor. Since he was no longer a member of the Executive Council, Gregory felt not in the least obliged to remain silent during discussion on legislation of which he disapproved. The Lieutenant-Governor made no attempt to check his early opposition. During the debate on the Lighting and Paving Bill and the Servants and Apprentices Bill, Gregory was foremost in denouncing government policy. However, when Gregory spoke out against the Feigned Issues Bill which had attracted strong opposition from the private members, Franklin's attitude changed. In spite of his earlier avowal with regard to officials who spoke 'according to the dictates of their conscience', Franklin reprimanded the Treasurer's behaviour, which, he told him, 'had been calculated to embarrass the government.' He advised Gregory either to remain silent or to absent himself from further debate on the bill. Franklin had finally seen the necessity,

60. Franklin to Russell, 10 August 1840, C.O. 280/120.
61. Ibid. and Franklin to Normanby, 30 September 1839, C.O. 280/110.
now that the non-official members more frequently acted in concert in opposition, for the executive government to exercise some measure of control over the official component of the legislature. But Gregory, having become accustomed since the departure of Arthur to give expression to his opinions, and still bearing Franklin a grudge, persisted in his opposition to a measure which was not, in his opinion, in the best interests of the colony.

After the Feigned Issues Bill was defeated, the Executive Council moved to punish Gregory for his disobedience. Acting Colonial Secretary Forster and Chief Justice Pedder, who considered Gregory's recent association with Turnbull and Murray, two distillers who stood to gain by the bill's defeat, most improper and unbecoming of a high ranking government official, goaded Franklin into action. Instead of taking independent action, Franklin submitted the case against Gregory to the Secretary for State. In his reply, Lord John Russell informed Franklin that he had mishandled Gregory from the very beginning. Nevertheless, in order to maintain peace in the community and the Lieutenant-Governor's dignity, he was willing to let Gregory be sacrificed. 'You are at liberty,' he told Franklin, 'to remove Mr. Gregory should you judge it necessary.' Gregory was immediately dismissed as Colonial Treasurer on the grounds that he, because of his persistent opposition to the executive government's

62. Diary of Sir John Franklin, 7 May 1840, typescript copy, T.S.A.
63. Franklin to Russell, 10 and 12 August 1840, C.O. 280/120.
64. Russell to Franklin, 13 March 1840, G.O. 1/37.
measures, was not fit to sit in the Legislative Council. He was offered, however, the position of Collector of Inland Revenue, a post which did not require him to play even a semi-political role. But rather than suffer the indignity of demotion, he declined the offer and returned to England.

The Derwent Bank Faction, formerly known as the Arthur Faction, proved to be another source of opposition. The leading members of the Faction were members of the Legislative Council. Since the departure of Arthur, leadership of this cabal was afforded by Swanston and Montagu. Swanston, manager and controlling shareholder of the Derwent Bank, strove for wealth and power. He became involved in many ambitious trading ventures, and land speculation at Port Phillip. His bank by the end of the 1830s became the 'most powerful finance machine' in Australasia. Montagu, who, many believed, acted as Arthur's steward in the colony, was closely connected with the Bank. Franklin realized the extent of this involvement; he wrote:

Although his [Montagu's] official situation prevented him from being a director of that Bank, he represented in it, for himself and others, stock to a very large amount and it was well understood in the colony that ...

65. Forster to Gregory, 8 August 1840, enc. no.4 in Franklin to Russell, 10 August 1840. C.O. 230/120.
67. S.J. Butlin, op. cit., cap. 8, sec (a), passim.
Mr. Swanston conferred with him on every important occasion, and that the Bank and the Colonial Secretary reflected and augmented each other's influence.  

The Faction attempted to fill the Legislative Council with its members to increase its influence on the government. Montagu pressured Franklin into appointing Horne as Attorney-General. It was well-known that Horne, who was deeply in debt to the Derwent Bank, was one of the Faction's minions. Montagu also convinced Franklin that Forster should be his successor at the Colonial Secretary's office. At times the Faction resorted to underhand methods in attempting to gain nomination for its sympathisers. Thus, in order to ensure the appointment of Robert Kerr (the son of John Kerr, member of the Legislative Council and sometime director of the Derwent Bank), the lawyer Dobson, at the instigation of Forster, attempted to prejudice the Secretary of State against Gregson, Robert Kerr's rival for the vacant seat, by repeating unfounded allegations that Gregson had acted improperly when arbitrating in a land dispute. The allegations were serious enough to prevent the Colonial Office from sanctioning Gregson's appointment until his name had been cleared.  

Montagu, after it had become clear that the private members had organized themselves into a cohesive opposition, pointed out to

68. John Franklin, op. cit., p. 8.


70. John Franklin, op. cit., pp. 64-65, fn.; True Colonist, 5 and 19 April 1844.
Franklin that it was necessary for the executive not only to control the official members but also the non-official members. This, he said, could only be done by appointing men sympathetic to the government. What he in fact wanted was men on the Council who were sympathetic to the interests of the Derwent Bank Faction. In arguing for the nomination of Roderic O’Connor, a large landowner who had profited from his close association with Arthur, Montagu contended that it was necessary for Franklin to appoint non-officials who were sympathetic to the present government in order to ensure the officials' political safety after Franklin left the colony. He argued that perhaps the succeeding Lieutenant-Governor might, if the present officials did not have sufficient support, reverse Franklin's policies and regard the officials, who would be identified with those policies, in an unfavourable light. In other words he wanted Franklin to build up the number of members sympathetic to the Derwent Bank Faction in order to ensure that the Faction maintained its prominence after Franklin had been succeeded. But Franklin, who was attempting to break away from his dependence on the Faction, and who did not wish to see his successor in a similar position, would not appoint the Faction's nominee.

That the Faction was a powerful force in colonial politics was a fact of which the colonists, as well as the Lieutenant-Governor,

72. Diary of Sir John Franklin, 20 April 1841, typescript copy, T.S.A.
were well aware. On one occasion it demonstrated its capacity to thwart Franklin's plans. When Macdowell and the Faction suspected that Jones would not resign from the position of Attorney-General as he had pledged, pressure was placed upon Franklin to ensure that Jones would not continue in that office. From the public gallery during the debate on the Feigned Issues Bill, Macdowell offered the 'most strenuous, violent and undisguised opposition' to the executive government. Sitting in the front row he 'audibly marked his approval and disapprobation of the arguments employed' and 'openly supplied the opposition members with written suggestions in the immediate presence of the Lieutenant-Governor.' Swanston who had earlier indicated his support for the bill, and had in fact voted for its first and second reading, voted against the third reading. His aim was to make 'His Excellency feel that Macdowell would provide him a second vote [i.e. Swanston's vote] of which the retention of [Jones] in the office of Attorney-General would deprive him.'

The existence of the Derwent Bank Faction weakened Franklin's position. He was never able to control it or use it to further his own ends. Until 1841 the Faction was tolerated, since the Lieutenant-Governor, until that time, welcomed both Montagu's and Forster's efficient services and Swanston's knowledge of economic matters.

73. John Franklin, *op. cit.*, pp. 8-10.
Montagu, by assuming the leadership of the government in the Legislative Council, in fact, enabled Franklin to become an impartial chairman and remain aloof from the frequent squabbles between members. In fact Franklin's role, as head of the government in the Council, had become insignificant. A letter in the Colonial Times noted:

In the proceedings, the Colonial Secretary [Montagu] is clearly, palpably and tangibly the Magnus Apollo of the Council; he features invariably and unequivocally as the unflinching advocate of any government measure. 76

It was not only in the Legislative Council that Franklin relied upon Montagu. The Colonial Secretary, having greater energy and administrative ability, aided the Lieutenant-Governor more than was necessary for him adequately to fulfil his duty. And because Montagu was such a valuable civil servant, Franklin was prepared to overlook his failings. When Montagu committed a serious breach of the convict regulations by ordering Forster to assign to him Stephen's highly-skilled cook, who because of his misconduct was to have been sent to the road-gang, Franklin turned a blind eye. 77 Similarly Montagu's involvement with the Derwent Bank was ignored. As soon as Montagu became hostile toward the Chief Authority, however, Franklin took firm action against him.

76. Colonial Times, 10 October 1837.
77. True Colonist, 23 February 1838; Tasmanian and Austral-asiaic Review, 6 March 1838 and K. Fitzpatrick, op. cit., cap. 6, (1) passim.
COLONIAL SECRETARY JOHN MONTAGU,
Member of the Legislative Council
1833-1841.
The Franklin-Montagu dispute was sparked-off when Franklin overrode Montagu's decision dismissing the surgeon Coverdale for alleged neglect of duty. Because of the firmness of Franklin's stance on the issue, Montagu became abusive. It was not long before he called his coterie to his aid and declared outright war. Thomas Macdowell, brother of the Attorney-General and a man who was deeply in the debt of the Derwent Bank, initiated a scurrilous attack on the Lieutenant-Governor and his wife in the Van Diemen's Land Chronicle. Forster, Swanston and Edward Macdowell, as a sign of their solidarity with Montagu, boycotted Government House.

It was some time before Franklin was goaded into action. His first move was to request Montagu to 'use his influence' to put an end to the press attack. Montagu denied his connection with the attack and any influence with the attackers. The attack which transformed Franklin into the buffoon of Hobart Town, continued. After the Van Diemen's Land Chronicle became defunct, the attack came from the Hobart Town Courier, now edited by both Thomas and Edward Macdowell and owned by W.G. Elliston another client of the Derwent Bank. It was only when Montagu became extremely unco-operative in the Colonial Secretary's Office and addressed himself to his Excellency in 'disrespectful terms' that he was dismissed.

The Faction remained a force in colonial politics after Montagu's departure, but only for a short while. On his arrival

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78. *Van Diemen's Land Chronicle*, 10 December 1841, 10 February 1842.
79. See K. Fitzpatrick, *op. cit.*, cap. 9, passim.
in England Montagu sent Swanston a bound collection of letters and memoranda. This, the so-called 'Montagu Book', which contained allegations and imputations of maladministration on Franklin's part, was displayed at the Derwent Bank with the intention of bringing the character of the Lieutenant-Governor into disrepute. It was read by the members of the Legislative Council and the commercial community, the Chief Justice, the Puisne Judge and 'anyone who cared to apply to Captain Swanston for its perusal.' Franklin, after hearing of its existence from Gregson, made a futile attempt to confiscate it. Franklin, 'as President of the Legislative Council,' appealed to Swanston, as a member of that body which 'was entrusted with the management of the colony and bound to ensure the safety and prosperity of its inhabitants,' for the surrender of the 'Book', on the grounds that 'it injures the Government of Van Diemen's Land and unsettles the public mind, striving to destroy the confidence of the community of its lawful protectors.'\textsuperscript{80}

Swanston, because the 'Book' contained 'material of private nature', refused. There was little the Lieutenant-Governor could do.

He was in fact impotent. Secretary of State Stanley was unimpressed by the Franklin administration. He had patiently listened to Montagu's case against the Lieutenant-Governor and in

\textsuperscript{80} Franklin to Swanston, 27 May 1843, enc. no.5, L1, in Franklin to Stanley, 19 July 1843, S.O. 33/46.
the end found for the plaintiff. He decided that Franklin's term of office should soon come to an end. This decision was known to the Faction long before it reached the Lieutenant-Governor's ears. Towards the end of the administration members of the Faction openly demonstrated their contempt for Franklin. The respectable classes were the first to note their 'disrespectful conduct'. Low, a Wesleyan and a commercial man, who enjoyed some social status, wrote to the Lieutenant-Governor to express his disgust with Forster and Swanston, who stood in the doorway of the Derwent Bank, 'clad in ordinary raiments', nonchalantly joking and gossiping, as Sir John and his entourage passed by, on their way to a public function, which both men had been invited to attend. Their ungraciousness and gross lack of deference was considered by Low as most unbecoming of Members of the Legislative Council. 81

Swanston was able to use his position of influence within the Faction in order to pass legislation that was of personal benefit to himself. In 1839 a bill allowing a joint stock company to build a bridge across the Derwent at New Norfolk was passed at Swanston's request. Swanston and some of his clients who were behind the venture, calculated to make a lucrative profit from the venture. 82 The Faction, guided by Swanston, was behind the move to make the Mexican dollar legal tender. The press noted how

81. Low to Franklin, 12 June 1843, enc.no.3, Fl, loc. cit.
82. True Colonist, 5 June 1839.
Captain Swanston (manager of the Derwent Bank), T. Anstey (director of the Derwent Bank), M. Forster (a shareholder), Edward Macdowell (son-in-law to the manager of the Derwent Bank), J. Montagu (whose unofficial connections with the Derwent Bank are well-known) and J. Kerr (a sometime director of the Derwent Bank) voted as one
to carry a measure which was intended to facilitate the Bank's trade.83

The Faction only infrequently opposed the Lieutenant-Governor's schemes. Its opposition to the Christ College plan, described by Franklin's lady as 'sly' and 'secret', was not conducted in the Council chamber, but in the privacy of Swanston's office at the Derwent Bank.84 The members of the Faction considered a college, such as Franklin proposed, useless, since the educational needs of the wealthier orders of society could be met by the schools in England and those of the less wealthy by the existing grammar schools in the colony. The members of the Faction were usually wealthy enough to be able to send their children to England for an education. The Faction might have been induced to withdraw its opposition had Franklin planned to build the college in Hobart on a site adjoining the property of Swanston. Educated in the Arthur school of administration, they were unable to see the reason for expenditure on public purposes which could not serve the private interests of the chief officials.85

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83. True Colonist, 30 November 1838.
84. Jane Franklin to Mary Simpkinson, 6 February 1841, typescript copy, T.S.A.
Franklin's *laissez faire* style of chairmanship radically altered the character of Legislative Council proceedings. The short and productive Arthurian sessions were replaced by long, drawn-out sittings which often tended to be tedious. Because Franklin looked upon the Council almost as if it were a local variant of the House of Commons, he was, unlike his predecessor, loath to interfere with or criticize members' speeches. Left unchecked by the President, the members, especially the non-officials, spoke on all matters, whether informed on the subject of debate or not. And by the end of the 1830s it seems the standard of debate had declined. A physician, Dr. Richards, who 'by chance strayed into the Council Chamber' was 'shocked by the absence of discussion of matters of great importance.' He wrote in reference to debate:

> A speech with reference to an Act of Council, although involving consideration of the most momentous importance, is dashed off as easily as a speech at a public dinner. When the doors [of the chamber] opened the people did not expect to witness quite such a display of inanity, nor so solemn a mockery of legislation as was submitted to their gaze.

The press during this period was extremely critical. The *True Colonist* in mid-1838 wrote:

> No one at all accustomed to witness the debates in the Legislative Council, ever expects logical precision ... on the part of the several speakers.

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87. Cadmus (pseudonym of Richards) to the Editor, *Colonial Times*, 10 October 1837.
Private members, who now saw themselves as colonial parliamentarians, and who had acquired a taste for the sound of their own voices, spoke for lengthy periods, expressing views and sentiments which had a very remote connexion [sic] with the business in hand...

At the end of the wearisome summer session of 1838, the journalist R.L. Murray told his readers:

We have never witnessed a more childish discussion than in the Council Room... or heard old wives wander farther from the text started in conversation than did the worthy gentlemen who sat there.

Franklin, who did not possess a commanding personality, was unable to control debate. He was unable to restrain Macdowell from constantly ridiculing and provoking the dour Scot Maclachlan, who to the delight of the members and the public, provided entertainment by responding in an angry, and often ludicrous, manner. Nor was he able to control the outburst of mirth which frequently shook the Council chamber. Macdowell who struck more success in the role of Council jester than in the capacity of Attorney-General, often had the chamber in convulsions. When defending himself against the onslaughter of the critics of his draft legislation, Macdowell was most entertaining. Boyes believed that the wags on the Council deliberately provided the Attorney-General with opport-

89. Diary of G.T.W.B. Boyes, 1 July 1838.
90. Austral-asiatic Review, 9 March 1838.
91. Diary of G.T.W.B. Boyes, 1 July 1838.
unities to perform. It was often, and particularly during the 1839 session, that Franklin, amidst the back slapping and guffaws, expressed his ' vexation at the manner in which the Council conducted itself.'

Franklin was frequently at a loss as to how to proceed when irregularities arose. Incapable of making quick and firm decisions, he groped around the Council for counsel which was often reluctantly and hesitantly given. During the 1837 session after the debate on the Church Bill had come to an end, Franklin was unable to decide whether it would be proper to proceed with the Census Bill or the Inquest Bill, which had been laid on the table first. Initially no advice from the floor was forthcoming. A 'desultory conversation' followed. Then Montagu, after consultation with Forster, advised his Excellency to proceed with the Inquest Bill. This advice provoked an argument. The private member MacLachlan reacted and told Franklin that it would be more expedient to discuss the Census Bill. The Attorney-General at this stage refused to advise; so did the Chief Justice. Franklin remained undecided; the argument amongst the members continued for a further twenty minutes. Finally Macdowell, in the absence of any ruling from the chair, moved a resolution directing the Council to proceed with the Inquest Bill.

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92. Ibid.; see also the report of the meeting of the Legislative Council of 12 March 1839, Colonial Times, 19 March 1839.
93. Colonial Times, 12 and 19 March 1839.
94. Tasmanian and Austral-asia Review, 24 November 1837.
Such occurrences were common. Auditor Boyes, who before his official position forced him to become a member, 'came away [from the meeting held on 1 July 1838] without any distinct intention of ever again venturing within the precincts of the Council chamber', was appalled by the vast amount of time spent on the discussion of the 'proper mode of proceeding'.

Chief Justice Pedder who appointed himself watchdog of Council practices and behaviour, occasionally brought proceedings to a standstill by raising minor points of order to prove to members that he was worthy of his esteemed position. On one occasion, Franklin, who seemed to regard the Chief Justice's submissions on procedural matters as being equal in authority to divine revelation, caused proceedings to be halted for thirty minutes in consequence of Pedder having objected to the chair's procedure. In January 1839, Franklin reintroduced the Quarter Sessions Act. However, after a short debate, Macdowell, convinced that the Act, as Judge Montagu had pointed out, contained many defects, advised that it should be withdrawn for revision. Before Franklin was able to proceed, the Chief Justice arose and declared that since the Act had already passed through the Council once, it was not within his Excellency's power to withdraw it now that it had been reintroduced. The Act had to pass through the normal procedure. Franklin bowed to this opinion and waited upon advice as to how to deal with the situation. 'A silence of

95. Diary of G.T.W.B. Boyes, 1 July 1838.
the most indescribable solemnity ensued', reported the *Colonial Times*, 'for no one, not even the Chief Justice seemed to know how to go about the business.' 96 Eventually it was suggested that the Attorney-General should move 'that the Act should be adhered to.' Macdowell refused since he intended to vote against it. After further discussion and because not a single member seemed prepared to move for the Council's adherence to the Act, Macdowell, against the counsel of the Chief Justice, moved that the Act be withdrawn. This, to the majority of the members, seemed an acceptable solution to the problem. 97

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Franklin's vision of the future of Van Diemen's Land, or Tasmania as he and his wife preferred to call the colony (the name Tasmania was free from the association with the odium of convictism) indirectly affected the scope and importance of the Legislative Council. He saw the future in terms of the colony's development as a free society. Unlike Arthur, who gave primacy to the penal purposes of the colony, Franklin was interested in the implementation of measures which advanced and benefited the free community. The convict system was important, but only insofar as it provided a bolster for the local economy and contributed to the material welfare of the colony. He left the drudgery of its administration to

96. *Colonial Times*, 8 January 1839.
his chief officials. This attitude of Franklin's was evident from the very beginning of his administration. No mention of the convict system was made in his first address to the Council. During the five years of his presidency of the legislature, not a great amount of time was spent dealing with laws regulating convicts. The vital issues which concerned Franklin were such matters as education and religion, which were also of concern to the colonists. It was with such matters that the Legislative Council became concerned. And because of the nature of the issues, Franklin was only too pleased to receive advice from the body of colonial opinion, through its representatives, the non-official members, not merely in view of the political expediency of the move, but also because it was morally correct to do so. It was not long before the non-officials, having tasted real freedom of debate and feeling that their opinions would be treated with respect and sincerity, began to regard themselves in a more important light. In fact it became increasingly obvious that they regarded their opinions as equal in weight to those of the executive members.

During the first session with the Legislative Council, Franklin found himself more often in harmony with the non-officials than with some of the more prestigious officials. The important Church Bill of 1837, which gave equality to the Churches of Rome and Scotland with the Church of England, was strongly opposed by Chief Justice Pedder, Colonial Treasurer Gregory, Attorney-General Macdowell
and Archdeacon Hutchins, and supported by the private members and the other officials. The bill authorized the executive government to grant an Anglican, Roman Catholic or Presbyterian congregation three hundred pounds for the erection of a parsonage, and seven hundred pounds, or an amount not greater than that subscribed by a congregation, for the erection of a church. It also provided for a salary of two hundred pounds in support of a clergyman whose congregation numbered eighty adults in country districts, and two hundred adults in towns.98

The Church Bill provoked an unprecedented amount of discussion in the community. Petitions for and against its provisions were presented to the Council. Members of the various churches were heard at the Bar to deliver evidence. Council members vitally concerned with the outcome, became involved in long disputes. It was the first time debates became heated. The Chief Justice's especially long-winded speech in which he attempted to distinguish the difference between the Anglican and Episcopalian Church and the Anglican Church's constitutional position gave rise to a great deal of irritation among the Council members. Macdowell infuriated those members who supported the bill by implying that they lacked any understanding of the British Constitution. Montagu replied that Pedder, Gregory and Macdowell had formed a triumvirate with the intention of disrupting the proceedings to delay the bill. The

private members, with the Presbyterian Charles McLachlan in the lead, joined the fray to help the government carry the bill in the face of the opposition of the conservatives. The bill was eventually passed. Before long, however, it was discovered to be inoperable and in consequence of reintroducing the bill in an amended form, Franklin reopened the whole question during the 1838 session. The response was similar. Even with the 1838 amendments, the bill was found wanting and during 1840, a new bill which extended the principle of equality to churches of all denominations, gained the Council's sanction.

The private members were generally more interested in education than were their official counterparts. The officials, who tended to regard their residence in the colony as being only of a temporary nature (although some in fact lived out their lives in the colony) and were wealthy enough to send their children to be educated in England or by private tutors, did not view the development of colonial education as being of any great consequence. Franklin received very little help from the members of the executive in formulating his plan for furthering education. Colonial Secretary Montagu and the Chief Justice, in the Executive Council, constantly expressed the view that the existing educational institutions served the colony adequately. Nevertheless the Lieutenant-Governor kept education before the Legislative Council, where, in fact, response from the

100. See Davies' memorandum, February 1848, Christ College Papers.
private members at least was encouraging. The non-officials, finding this another area in which their opinions could influence government decisions, attempted to make positive contributions.

Franklin's efforts to establish a tertiary college indicated his eagerness to further educational standards within the colony. The projected college came to nothing because the Lieutenant-Governor, unaware of the realities of the colonial situation, attempted to model it on ideals unacceptable to a large majority of the colonists. The college was planned to give 'young Christian gentlemen' of all denominations a higher education based upon the traditional disciplines and the scriptures. It was to be in the charge of an ordained Anglican clergyman and situated in an idyllic setting on the Derwent at New Norfolk. 101

The plan although approved, underwent severe criticism. Montagu, Forster and Pedder opposed it because they considered the proposed college unnecessary. Roman Catholics, who presented petitions and urged T. Chisholm Anstey, a barrister, a convert to their faith and son of the member of the Councillor Thomas Anstey, to act as their advocate before the Council, objected to the proposed college on sectarian grounds. Anstey, at the Bar of the Council, in a lengthy and impressive address which was marred only by his abuse of Attorney-General Macdowell, told the Council that the proposed college discriminated against Roman Catholics. Since

Roman Catholics could not, in good conscience, read the Anglican version of the scriptures nor join with other Christian denominations or religious groups, Roman Catholics would be unable to attend any such institution which in fact catered only for Protestants. Every other religious group would necessarily be excluded. He felt that his brethren, the Jews, would have similar complaints to make. Anstey told the Council that he had no objection to the idea of a tertiary college. This was an innovation which should be applauded. He objected, however, to the lines along which it was proposed that it should be run. He declared that the college should be secular and open to all, regardless of religion or station in life. Under the guidance of an Anglican clergyman and situated at New Norfolk, which made it amendable to the more wealthy, it would not achieve its intended aims.¹⁰²

Anstey received general approval for his case. Ashburner, by moving a resolution altering the rules and regulations of the college, which coerced students to study the scriptures, removed Roman Catholic objections.¹⁰³ However, apart from this minor change, Franklin's original concept of the college remained intact. The foundation stone of the college was laid in 1840 in the presence of the members of the Legislative Council and religious and government dignitaries. The college itself did not materialize until

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¹⁰². Report of the meeting of the Legislative Council of 31 August 1840, Colonial Times, 1 September 1840.
¹⁰³. Ibid.
much later and in a different form and place.*

The private members' interest in education often reflected that of the public. Members presented and spoke for the numerous petitions of the numerous interest groups on issues pertinent to education. The ideal type of educational system was a perennial topic of debate. Franklin welcomed everyone and anybody's opinion on the matter, and numerous laymen and churchmen appeared at the bar of the Council to plead their particular case. The initial response from Anglicans with regard to the establishment of the college was encouraging. Various districts vied with each other for its site. Lawrence presented a petition from Launceston requesting that the college be built in the north; the petitioners promised, should their prayer be granted, to 'provide it with every assistance possible.' 104 The Anglicans of Campbell Town promised £1,600 and ten acres of land on condition that the college be built in that district. 105 Other petitions evinced a genuine faith in the contribution toward education which the college might make. The Oatlands petition presented by Thomas Anstey, hoped that the Council would finalize plans for the college and requested that certain sums of money be put aside for academically distinguished colonial youth.

* In 1846 the college was established at Bishoosbourne to provide training for those preparing for the ministry. It was closed down and re-opened several times and moved to Hobart in 1894. In 1929 it became, as Christ College, an affiliated residential college of the University of Tasmania.

104. V. & P. 26 August 1840.

105. Report of the meeting of the Legislative Council of 1 September 1840, Colonial Times, 7 September 1840.
The Customs House.

The sessions of the Legislative Council, from 1841 to 1856, were held in the Long Room (above the main entrance). The building is now Parliament House.
with exhibitions to English universities as well as to the college. Other citizens of Launceston, feeling that New Norfolk was an inconvenient site to both Hobart and Launceston, prayed that the college be established at a place equidistant from the two major towns of the island.106

Interest in education during the 1840 session was at a peak. After the major debates had been concluded, the Council voted large sums for the establishment of new school houses at Oatlands, Longford and Campbell Town. In addition £2,500 was set aside for scholarships to British universities. So pleased was the Lieutenant-Governor with the Council's, and in particular, the private members' attitude that he told them:

As far as it was competent for you to give, you have given to the country of your birth the most convincing proof that the British Parliament might fearlessly extend free institutions to the land of your adoption.107

Franklin's approbation of their conduct gave the non-officials more confidence and encouraged involvement and a more independent outlook. In scrupulously presenting education reports, in explaining in detail every move on the part of the government in this and associated areas, and in constantly soliciting and sometimes accepting the Council's advice, the Lieutenant-Governor unwittingly gave rise to the non-officials' false assumption that the executive was

106. V. & P., 26 August 1840.

responsible to the Legislative Council.

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During the Franklin administration the Council became involved with matters that had been, under Arthur, outside its domain. Certain areas which, during the Arthur period, had been dealt with by the Executive Council, came to be handled by the Legislative Council during the Franklin period. It became customary for the Legislative Council as well as the Executive Council to award pensions and compensation to persons who sustained injury in the service of the government. It was upon the initiative of the non-official members, who were eager to expropriate power from the executive, that this practice became established. The private members, in their capacity as representatives of the colonial inhabitants took it upon themselves to present petitions and plead on behalf of the petitioners. During the Franklin period pensions and compensation, because this matter was decided by the Legislative Council and in view of the fact that it was inexpedient for members to appear tightfisted, were generously handed out.

The Council also took upon itself to investigate some of the government administrative departments. It looked into the workings of the Survey Department and the Caveat Board and recommended changes, which were later implemented by the executive.

The Council, in considering and attempting to sit in judgement
upon the behaviour of semi-government and government officials, again invaded areas that Arthur had reserved for the Executive Council. In July 1837 the Council discussed allegations against the Reverend Mackersay, but because proceedings in the matter were conducted in a most improper manner (Mackersey was not informed of the charge against him and there was no real inquiry into the facts alleged against him) nothing came of the matter. 108 In June 1839 the Legislative Council, in consequence of a petition from New Norfolk 'complaining of certain stigmas and calumnies which had been cast upon the colonists' by Captain Cheyne, the director of Public Works, again attempted to sit in judgement. Cheyne had hurt and insulted the colonists by attacking the morality of Van Diemen's Land in a chapter of Maconochie's book which denounced the convict system in the island. Both official and non-official members reflected the anger of the community during the debate which was provoked by the New Norfolk petition. Although discussion was tempestuous in the beginning, calmness and sanity prevailed in the end. The Council, realizing that it was impossible to impeach a man despite the fact that he was a government employee, for expressing a private opinion, dropped the issue. 109

Franklin allowed the Council to participate in the arbitration of disputes between churches. In 1839 the Anglicans and Presbyterians

108. True Colonist, 4 August 1837.
of Bothwell came into collision when the Presbyterian clergyman refused to permit the Anglican clergyman to perform a marriage ceremony in the Bothwell church. Although the Presbyterians were the custodians of the church, the Anglicans, because of the peculiar circumstances in which the local government had supported its erection, had a right to its use. The dispute brought into question the ownership of the church. At first Franklin, who had even less liking than ability for decision-making, referred the matter to the Colonial Office. The Secretary of State, in deciding that the local government was in the most advantageous position to resolve the matter, threw the onus back on Franklin. Franklin, in turn, passed the matter on to the Legislative Council. A bill which provided for an Anglican takeover of the church was introduced. Franklin cautiously forwarded the opinion that the Anglicans should be given the church since Arthur had intended it to be in the hands of the Church of England. He was not convinced his present course was the correct one and it is clear that he was open to persuasion. 110

The debate on the so-called Bothwell Church Bill, animated as it was, attracted a great deal of attention. Dignitaries of both churches appeared at the Council Bar and their cases were further pleaded by professional lawyers. T. Chisholm Anstey appeared for the Presbyterians, whilst Jones appeared for the Church of England. Anstey's brilliant summary of the Presbyterians' case

won the day. The Anglican private members, convinced that the
Presbyterians' cause was just, cast their ballot against the Bill.
The Council, however, was equally divided and Franklin was forced
into the painful position of casting the deciding vote. Feeling
that, in view of the opposition to the bill, it was not worthwhile,
he caste his vote against it. 111

* * *

The non-officials, because they were nominated as the repre-
sentatives of colonial opinion, and were formally unconnected with
the executive government, were expected by public opinion, so far
as it was formed and reflected by the press, to vote against the
government on most occasions, since it was axiomatic that all notable
government measures were bad or at least not beyond improvement.
The press constantly placed pressure on the non-officials to form
themselves into an indentifiable opposition in order to keep the
executive in check. During Arthur's administration the non-officials
did not dare to indicate any intention of so doing. However, the
favourable circumstances afforded by Franklin's administration
allowed common bonds and mutual interests to emerge and develop.

The esprit de corps which existed so strongly amongst the
private members in the 1840s can be traced back to the opening years
of Franklin's presidency of the Council. Their unity stemmed from

111. V. & P., 20 July 1837.
their common opposition to the Imperial insistence on the colony's obligation to pay for the total expenditure on police and gaols. They argued that, because the expenditure was due to the presence of British felons, the British Government should accept responsibility for a major portion of the charge. In 1835 the Colonial Office had deemed that the time was ripe for the colony to take over this area of expenditure in view of the fact that it had at its disposal the monies accruing from the sale of Crown lands. Both Arthur and his Council considered this grossly unfair, since the monies from the sale of Crown land were also to be expected to offset the expense of immigration. Furthermore, Arthur contended, it was unfair to expect the colony, in a time when the return from Crown lands was negligible, to pay for the charge entirely out of ordinary colonial revenue. Until 1836, because the Chief Authority had made the protest, the Legislative Council had remained relatively silent. However, the Council, finding that Franklin was not aware of the injustice of the situation, took the matter into its own hands. In 1837, during the second reading of the Appropriation Bill, Swanston moved an amendment to the effect that the colony pay for only one third of the Police and Gaol Department charge. This amendment was defeated by the Lieutenant-Governor's casting vote. 112 In the following year a similar amendment was lost, but a less radical move, a resolution expressing the Legislative Council's opinion

112. V. & P., 20 July 1837.
on the matter, was passed nemine contradicente. The resolution read:

That it is the unanimous opinion of the Council that the whole of the amount of the charge of the Police Department ought not to be defrayed out of Colonial Revenue: and that His Excellency be respectfully requested to submit to the Secretary of State this their opinion, and their hope that such a portion only of the charge for the police of this territory, as may be strictly proportional to the colonial duties required from them, may be defrayed from the revenue of the colony: and that the remaining portion of the expense of the Police Department, which is incurred for the coercion and discipline of convicts under sentence of British laws, may be borne by the Home Government. 113

Franklin's consequent communication with the Secretary of State on the subject proved unfruitful. Stanley refused to consider the consequences of this large and disproportionate charge with which the colony was encumbered. In the following years, in spite of the apparent uselessness of their effort, the non-officials sustained their opposition to the colony's payment of the entire police and gaols charge. When the coffers of the Colonial Treasury reached a particularly low level in 1839, the private members' protest became stronger. On 17 June 1839, after a heated debate involving most members, a resolution recommending the current estimate for the Police and Gaol Department be reduced by two-thirds - from £23,741.2s.0d to £8,247.0s.10d. was passed. 114 Franklin, realizing that he was responsible to the British Government and not to the

113. V. & P., 18 July 1838.
114. V. & P., 17 June 1839.
Legislative Council, ignored the recommendation. Nevertheless the Council continued to give the same advice. In 1842 when the depression was making an impact on colonial finances and when the Police and Gaol Department cost had noticeably risen in consequence of the implementation of the probation system, the non-officials' attitude hardened. The protest which Ashburner, Anstey, Archer and Kerr entered into the minutes was strongly worded. They described the charge as unjust because it forced upon the Colony for purposes purely beneficial to the Mother Country, and unpoltic because being unjust it tends to destroy that confidence that ought to subsist between the governed and their rulers; and weakens that attachment that should bind the colony to the parent state. 115

However it was not until the October session of 1845 that the non-officials took extreme action in order to bring the urgency of this grievance to the notice of the Imperial Government.

It was not until the rowdy spring session of 1839 that the non-officials formed a cohesive bloc to bring about the defeat of government measures. On 5 July 1839 the Attorney-General introduced the bill which consolidated law with regard to apprentices and servants. This bill, illiberal in so far as it provided for the imprisonment of apprentices and servants for certain specified acts of misbehaviour, was opposed by the Chief Justice as well as all private members, and thrown out. 116 A bill providing for municipal

115. V. & P., 8 September 1842.
institutions to supervise and finance the lighting and paving of Launceston and Hobart met a similar fate eight days later. The private members opposed the bill because these projected institutions were empowered to levy a tax in the form of a rate. Ashburner, reflecting the popular nineteenth century attitude that taxation was a moral evil and a burden, declared the bill to be 'evil and pernicious.' Lawrence, in a similar vein, objected to the bill 'only in so far as it made the people subject to further taxation.' He, like his colleagues, would have agreed to the bill were the necessary finance for the municipal institution to come out of the general revenue. The significance of this defeat went by unnoticed probably because, in the absence of any spectacular struggle, there were no sensational or dramatic moments. 117

It was not until the defeat of the executive's important Feigned Issues Bill that a private members' victory was celebrated. The defeat of this particular bill took on significant proportions. To the newspapers it marked the beginning of the establishment of a Westminster type of opposition whose prime task was to be to check 'tyrannous or illiberal' moves on the part of the executive. Hereafter the private members were collectively referred to as the 'Opposition'. Aware of their new role, the private members took their seats opposite the officials in the Council. It became common for members during debates to refer to an opponent as 'the member

117. Report of the meeting of the Legislative Council of 13 June 1839, loc.cit.; see also the editorial comment in the True Colonist, 21 June 1839.
The passage of the Feigned Issues Bill, the intention of which was to reduce the number of distillers eligible for compensation, which the government promised whilst legislating for the prohibition of distillation, was a measure of importance to the executive government, at the time engaged in an attempt to sort out the colony's financial difficulties. As early as 1833 it was discovered by the executive that the Colonial Treasury was not in a particularly healthy state. The provision of financial aid to churches and the increased expenditure for the upkeep of the police and gaols made substantial inroads into the Colonial coffers. The prospect of increased income from current revenues was poor. Monies derived from one of the largest sources of revenue, duties on spirits, had fallen by an estimated £3,959, and a further decline was expected. Sensing that the local distilling industry was the cause of the decline, Franklin instructed a sub-committee of the Legislative Council to investigate the feasibility of phasing it out.

The distilling industry had been established as early as 1822. During its first four years it flourished under the protection of heavy tariffs on imported spirits. Further expansion was prevented by the implementation of new regulations in 1826 which increased the duty on the local product and reduced that on the imported product. However, the local product was still protected.\(^\text{118}\)

1836 Arthur, in an attempt to encourage the industry, systematized and reformed the regulations affecting it. The Distillation Law of 1836 placed a high duty on imported spirits (nine shillings per imperial gallon) and a lower duty on local spirits (a maximum of four shillings per imperial gallon). Whilst the duty on imported spirits was fixed, the duty on colonial spirits was subject to alteration; the Act authorized the Lieutenant-Governor to diminish the duty, either generally or for a fixed period, to meet the fluctuations in the price of colonial grain.* Immediately after the passage of the Act, Arthur was forced to reduce the duty on locally produced spirits, from four shillings per imperial gallon to two shillings and threepence, so that the industry might survive. 120

Franklin, because of the strains on the Colonial Treasury, was not prepared to show as much forbearance; in the latter half of 1838 he attempted to collect duties at the maximum amount allowed by the Act (four shillings per imperial gallon). 121 This helped neither the distilling industry nor the Colonial Treasury. In the meantime it was discovered that the revenue derived from duties on imported spirits had dropped. This was not due to the fact that the colony's consumption of spirits had fallen off. Nor was it due

* The duty on colonial spirits distilled from imported grain or sugar remained fixed.

120. V. & P., 17 June 1839.
121. Ibid.
to an increase in the consumption of local spirits in preference to imported spirits. It was because local distillers, in using imported spirit as a raw material, legally avoided the payment of the duty.* The distillers found that it was profitable to mix the local distillate with the imported spirits and sell the final product ('gin' or 'rum' as it was called), which, when sold as colonial spirits, was subject to the lower duty, in competition with the 'pure' imported spirit sold by spirit merchants and which carried the heavier duty.

The Legislative Council sub-committee, through its chairman Colonial Treasurer Gregory, recommended that 'distillation should be altogether prohibited because of its effects on the colonial revenue.' The sub-committee could see no reasons for the government indirectly subsidising an industry whose economic viability was questionable. It was evident, reported Gregory, that the industry whilst being injurious to the colonial revenue, no longer benefited the local grain producers in any meaningful way. The industry only consumed twelve thousand bushels of wheat annually.122

The press attempted to induce the non-officials to take a stand against the executive's intention of abolishing distillation. The journalist Gilbert Robertson, who, being a foremost authority on agriculture, frequently lectured on the subject at the Mechanics

* Raw materials used by the distilling industry were free from duty.

Institution and later became director of Public Agriculture on Norfolk Island, wrote in his *True Colonist*:

The whole attention of the Committee appears to have been directed to the question only as it affected the revenue. The relation which it bears to the agricultural interest appears to have occupied a very small portion of their attention. 123

The advantages of the industry could not be ignored, he wrote. Since the distilleries used damaged and smutty wheat, the farmer, regardless of the quality of his product, was always assured of a market. The market afforded by the distilling industry had in the past saved many small farmers from insolvency. 124

Henry Melville, editor of the *Colonial Times*, was even more outspoken in his criticism of the sub-committee's recommendation. While admitting that the distilling industry was of benefit to only farmers and distillers and contributed little to the economy of the colony as a whole, he was convinced that were it properly nurtured, it 'would expand gradually and be of more general benefit.' He wrote:

The advantages of liberally encouraged Colonial Distillation are great and striking. It promotes Colonial labour, the employment of capital and the consumption of grain: and though last and not least, it keeps that money amongst us which would otherwise find its way into the pockets of the foreign merchant. 125

123. *True Colonist*, 19 October 1838.
124. Ibid.
125. *Colonial Times*, 16 October 1838; see also Henry Melville, *Australasia*, p. 247.
Only W.E. Lawrence, W.P. Ashburner and Chief Justice Pedder agreed with the press on the issue. The other members followed the lead of the executive. Amongst these there was some dispute as to how distillation could be best abolished. Those, like McLachlan who claimed to be *laissez faire* liberals, opposed its abolition by direct legislation since such action 'would be obnoxious to the principles of free trade.' McLachlan suggested that the industry might be killed by imposing a much higher duty so that it could not compete with imported spirits. Colonial Secretary Forster favoured abolition by direct legislation which would permit fair compensation to the distillers 'for the loss of their livelihood.'

Eventually the Distillation Prohibition Bill was passed. Little mention was made in regard to the compensation of distillers. It was understood however, that every distiller was expected to be remunerated for his losses. The matter was to be dealt with in a separate bill. A sub-committee known as the Board of Compensation, under the chairmanship of Collector of Customs Barnes was given the task of recommending the basis of compensation.

In June 1839 Franklin directed the Council's attention to this question. He told the members that they would have to decide whether all distillers, even those that had been in the habit of mixing colonial and imported spirits contrary to the Distillation

Act of 1836, should receive compensation and whether the amount of compensation should be calculated on the basis of the maximum duty imposed by the Act and which had been collected since 1 October 1833, or on the basis of the duty imposed by Arthur (two shillings and three pence) collected from 1836 to 1838. The Board of Compensation, basing its recommendations on the understanding which prevailed when the Distillation Prohibition Bill was under consideration, considered it proper for distillers who mixed spirits to be compensated, since the practice, although illegal under the 1836 Act, had been permitted by the Inspector of Distilleries. Furthermore it recommended that compensation should be calculated on the basis of the duty of two shillings and three pence. 127

The executive, because such a course would be expensive, refused to accept the recommendations. Forster expressed the view that the less amount spent on compensation, the better the position of the government would be to deal with its financial problems. He moved a series of resolutions which formed the basis of the Feigned Issues Bill and which cut down the number of distillers eligible for compensation. The first resolution required that compensation be calculated on the basis of the maximum (four shillings per imperial gallon) duty; the second stipulated that no distiller or rectifier be compensated for the loss of trade on mixed spirits; the third required that distillers and rectifiers 'who may establish

127. V. & P., 17 June 1839.
a right to compensation be paid a sum equal to two years profit; the fourth required that any distiller or rectifier who attempted, by avoiding payment of duties, to defraud the revenue, forfeit his right to compensation; and the fifth required distillers and rectifiers to submit their ledger books in order that the government might determine their eligibility for compensation.

Although the resolutions passed, there was some dissent which was most strongly expressed by Gregory and Macdowell, who contended that the government, having implied in the preamble of the Distillation Prohibition Bill that all distillers were eligible for compensation, should keep its word. Before the Feigned Issues Bill was introduced Macdowell resigned. His action was applauded by the press which was conducting a campaign to bring about the defeat of the bill. By October 1839 public attention became fully focused on the issue. The private members, influenced by the news media and public opinion as well as the distillers who would benefit by the defeat of the bill, and flushed with confidence which resulted from their having twice defeated a government bill earlier in that same session, were determined to check this 'unjust' government measure. Led by Ashburner, they launched a vigorous attack. Franklin, afraid the bill might be defeated, called the official members together to order them to vote for the bill. Gregory was

told either to stay away from the chamber or cast his vote for the government. Gregory refused. He joined the non-officials in their attack. The importance of the bill to the executive government rendered the clashes dramatic. The Council chamber was filled with members of the public; the press gave detailed reports of proceedings; and, altogether, the amount of interest shown was unprecedented. The issue was seen in terms of a struggle between the executive government and the non-official members.

The government's defeat caused Franklin great consternation; the cheers and applause for the 'private members rendered him confused and embarrassed.' Before he could close the session, Ashburner, seconded by Lawrence, moved a resolution to the effect that the Lieutenant-Governor be empowered by the Council to compensate distillers, and that an amount of £15,000 be set aside for this purpose. Franklin, after recovering from his confused and alarmed state, implored Ashburner to withdraw the ill-conceived resolution. He told him the objectionable sections of the bill would be withdrawn and proposed that compensation should be awarded along the lines suggested by the Board of Compensation with which the 'Opposition' seemed to agree. Ashburner complied with the request.129

The private members' triumph raised their prestige and consolidated their identity as an opposition to the executive govern-

129. Report of the meeting of the Legislative Council of 3 September 1839, Colonial Times, 30 September 1839; see also Austral-asian Review, 11 February 1840.
ment. Although a struggle of such a dramatic nature was not repeated during Franklin's presidency, the unity amongst the non-officials remained. It showed itself to be extremely strong during the 1840 education debates. And it was also manifest during the debate of Franklin's Road Bill.

The Road Bill was part of Franklin's plan to institute local government. The bill provided for boards of elected commissions who were to be responsible for the administration of roads of the various districts in the colony. Like the Lighting and Paving Bill, in conjunction with which it was originally introduced, the Road Bill levied a tax in the form of a rate to provide the money to finance the upkeep of roads. The bill underwent three major amendments during the 1839 session. After further imperfections were discovered by the Chief Justice, it was withdrawn, redrafted and introduced during the 1840 session. The non-officials objected to this bill for the same reason that they had objected to the Lighting and Paving Bill. The Road Bill levied a tax, and taxation to the nineteenth century man was evil. The press, public opinion and private members complemented each others views with regard to the bill. Nevertheless, despite the staunch opposition afforded by Ashburner and Fenton, the bill was passed, but only because insufficient private members were present to vote against it on the

130. *Colonial Times, 15 August 1839.*
day of its third reading. Owing to the nature of the Road Act, and by using their influence with prospective rate-payers, the private members were able to render it inoperable. The Act could come into effect only if the inhabitants of the various districts co-operated with the government for the election of Road Commissions. Certain members of the Legislative Council, and a number of influential members of the community, did their utmost to prevent co-operation. Gregson organized public meetings at Richmond at which he consistently denounced the tax as unjust, because it was imposed by a legislature which was not elected by the people; and unconstitutional because, being raised locally and used generally, it contravened section 25 of the Huskisson Act, which stated the Council could raise local taxes for local purposes only. 132 Ashburner campaigned against the Act in Hobart. He, like Gregson, was concerned that tax should be imposed by a nominated rather than a popularly elected body. The press took up his objections. 'The Road Act', declared the Austral-asiatic Review, 'is a direct violation of the principles of the Magna Carta since no Englishman can be taxed except by his elected representatives. 133

By March 1841 it was evident that popular opposition was of such strength that there would be little chance of the Act being implemented. The Review called on the inhabitants of the island

132. Austral-asiatic Review, 3 November 1840.
to prevent the election of Road Commissioners. On 10 March, the tenantry of the south met in Hobart to express their opposition to the Act. To them the Act was obnoxious, not only because it levied a tax, but also because they, whilst having to pay rates, could not take part in the election of Commissioners. Nor for that matter, they complained, were they eligible to advance themselves as candidates for the Road Boards! In Hobart the bourgeoisie were busy canvassing prospective rate-payers to oppose the election of the Commissioners. The lawyers T.W. Rowland and Robert Pitcairn were in the forefront of the movement against the bill.

On 13 March, the day on which preparations for the elections of Commissioners were to be made, approximately six hundred prospective rate-payers were assembled in the Long Room of the Customs House. Acting Chief Police Magistrate Josiah Spode was in the Chair. The opponents of the Road Bill attempted to disrupt the meeting from the beginning. Rowlands, as soon as the meeting opened, brought up a number of technical points in consequence of which Spode was obliged to leave the chair. Rowlands submitted that the meeting was unconstitutional since the Act required the meeting to be chaired by the police magistrate assisted by his clerk; Spode was not the police magistrate of the district, but the Chief Police Magistrate of the colony and Rocher, the assistant, was his clerk.

135. Tasmanian Weekly Despatch, 12 March 1841.
His second ground for declaring the meeting unconstitutional was the fact that, contrary to the thirty-third provision of the Act, the requisitionists of the meeting had not paid their rates. After the chair had been handed over to Edward Abbott junior, one of Gregson's associates, and the tenantry's petition against the Act presented, a resolution calling on the chair to dissolve the meeting was put and carried. The Act thus was made inoperative. Amidst the shouts of jubilation, the band struck up *God save the Queen* and led the crowd, which carried above it a coffin marked 'Road Act', to the Police Office and 'to the houses and establishments which had evinced support for the Act.'

* * *

The economic depression which had set in by 1841, and which continued until 1845, providing circumstances which bred the constitutional crisis of October 1845, became the Council's major preoccupation in the closing years of Franklin's administration. The depression was caused by a fall in export income: overseas wool prices had declined and the export of livestock and wheat to the mainland fell to an all-time low. The changeover from the assignment system to the probation system caused a severe labour shortage. Wages rose and production costs increased, and this, couched with the fall in exports, had a serious effect on the economy. It was

136. *Colonial Times*, 16 March 1841.
popularly believed not only by the colonial press, but also by the administration, that the depression could be explained simply in terms of the labour shortage. Believing that wages and profits were inversely related, employers cried out against the high cost of labour. The colonial economists felt that by increasing the supply of labour relative to its demand, wages would be reduced, profits increased and prosperity revived.\(^{133}\)

During the 1841 session Franklin instructed a Council sub-committee to investigate the possibility of tapping the large pool of labour afforded by Britain. The sub-committee reported to the Legislative Council that

> extensive immigration is to be found a remedy for almost every inconvenience, and the grand source of the future prosperity of the colony.\(^{135}\)

The entire Council, anxious to apply every remedial measure, was unanimous in setting aside £60,000 for immigration. However, by December of 1841 it was realized that this remedy was ineffective.\(^{140}\) Employers, finding the demand for their produce had declined, economized by cutting labour costs either by lowering wages or dismissing employees.

Franklin attempted to meet the depression by currency reform.

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He introduced a bill to repeal the Act by which Spanish and American dollars were made legal tender. This measure, which was opposed by some of the members connected with the Derwent Bank, was designed to keep British currency in circulation. The banks had tended to hoard the more acceptable British currency, leaving the less acceptable Spanish and American dollars as the medium of exchange. This measure did little to halt the general decline in prosperity.

Moves to restore the economy did not emanate solely from the Lieutenant-Governor. The private members were gravely concerned at the seriousness of the situation. Fenton, espousing the cause of those who believed that the depression was caused by the high interest rates which led to foreclosures, attempted to initiate a bill to fix interest rates in September 1842. The high interest rates during the 1830s had been the favourite explanation for the minor recessions during those years. It again became a popular diagnosis when the government's current remedial measures failed. In the latter part of 1842, R.L. Murray announced in his Australasiatic Review:

Speak to who you will - the inhabitants of the town or colonists from the country - you will find the subject is ... the reduction of the rate of interest. 141

The majority of newspapers were in favour of a reduction in the interest rates. The Hobart Town Advertiser averred:

141. Austral-asiatc Review, 16 September 1842.
None can refuse a usury law but the political economist, the usurer and those who dread to be the victims of a usury law. 142

During the course of the 1842 session, Fenton presented ten petitions bearing a total of 965 signatures, 143 to demonstrate the demand for some sort of regulation of the rate of interest. He also placed before the Council the figures of the number of registered mortgages with the amount of interest being paid on each in order to familiarize members with the urgency of the situation. 144 In September he requested the Lieutenant-Governor to introduce on his behalf a bill fixing interest rates at eight per cent. Franklin, who had been assured by the Hobart bankers that current interest rates were unrelated to the depression, refused. 145 On 12 October Franklin pacified the private members, with the exception of Fenton, Gregson and Kermode, by stating the reason for his refusal. He was opposed to pegging the interest rate at eight per cent as it was far too low. He also opposed legal control of interest rates. 146 Several days later he triumphantly laid on the table a petition from Launceston, backed by the Launceston Examiner, the mouthpiece of laissez faire liberalism, to demonstrate that his viewpoint was not without support. Fenton did not give up easily. Backed by Gregson

142. Hobart Town Advertiser, 2 September 1842.
143. See Legislative Council Papers 1842.
145. S.J. Butlin, op. cit., p. 338.
146. Franklin to Stanley, 7 November 1842, G.O. 33/43.
and Kermode he moved for a sub-committee to look into both the proposal to fix interest rates and 'the state of the colony.' This move, however, also proved futile. The depression continued to worsen.

Franklin was unceremoniously recalled in mid-1843. He left his successor Sir John Eardley-Wilmot an unwanted legacy: a cohesive and potentially troublesome opposition in the Legislative Council on one hand, and a declining colonial economy on the other.

147. V. & P., 12 and 18 October 1842.
CHAPTER 5.

The Legislative Council during the Administration of Eardley-Wilmot
1843 - 1847.

During the administration of Wilmot, the political significance of the Legislative Council was greater than at any other period of its history. It was during this period that it became the venue of a major clash between the executive, carrying out the policies of the Imperial Government, and the non-officials, who became identified with the interests of the colony. As such it captured the attention of the press, the public, and the Imperial authorities. The Patriotic Six, the six private members who created the crisis of the October session of 1845, demonstrated that the position of Legislative Councillor could be used to force changes in the Imperial Government's policies in the colony.

Until 1840, with the exception of the issue of representative government and colonial payment of the police and gaols charge, the interests of the colony went hand in hand with those of the Imperial Government. Convictism, the raison d'être of the colony, was regarded by the majority as a boon to free settlers; labour was cheap and plentiful; the expenditure of the Imperial Government
through the commissariat provided a sound basis for the local economy; and land, in spite of the Ripon Regulations, was sufficiently available not to cause any real resentment. The seeds of the rift between the interests of the Home Government and the colonists were sown when the assignment system was terminated, and when land became more expensive and less easily available. The depression of the forties, the colonial government's financial embarrassment and its taxation measures sharpened the effects of these changes and brought into focus the divergence of interests. As the dialogue became more polemical, the opposition of the colonists hardened and became more determined.

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In the arena of this struggle, the Legislative Council, the quality and character of the combatants shaped the final outcome. The Lieutenant-Governor, Sir John Eardley-Wilmot was the island colony's first civil administrator. He was a member of the English gentry class who, until his appointment in 1843, chaired the Warwickshire Quarter Sessions and represented North Warwickshire in the Commons. He was a legal scholar of some note. His *An Bridgement of Blackstone's Commentaries ....and A letter to the Magistrates of England* brought him to the notice of learned circles and those in high places who were interested in legal and prison reform. Undoubtedly these publications, as well as his display of interest in penology and criminology during parliamentary
debates, were as influential in his appointment as were his personal connections with Prime Minister Peel and political connections with Secretary of State for the Colonies Stanley. Wilmot was a sensitive and generous individual with wide cultural and intellectual interests, with an honorary Oxonian Doctorate of Civil Law and a fellowship of the Royal Linnean and Antiquaries Society. He had little experience however as an administrator. His appointment to Van Diemen's Land was severely criticized in an article in the London Times reprinted in several colonial newspapers. The article contended that the problems of vice-regal life were outside the experience of a country squire who cracked jokes at the expense of prisoners before the bar in the Warwickshire Quarter Sessions.1

Wilmot was much maligned both during and after his administration, by colonists, government functionaries and Imperial authorities for varying reasons. However, history records him as the man who, in spite of the difficulties thrust in his path by an arrogant and unco-operative Secretary of State for the Colonies, brought the colony through an alarming depression and financial crisis.2 This


vindication does not pretend that Wilmot was devoid of failings, indeed it is not so. He lacked consistency, and a sense of tact and diplomacy, shortcomings which helped to bring about his ignominious end, for he was to prove incapable of governing a community made irate by circumstances beyond its control.

There were several members new to the Council when Wilmot assumed its presidency. C.E. Bicheno, who arrived in mid-1843 took his seat as Colonial Secretary. Bicheno had made a reputation in science and economy and as an Irish Poor Commissioner, rather than in his chosen profession, the law. Attorney-General Welsh, who assumed appointment in 1843, notwithstanding the fact that he performed his duties, particularly those in connection with the drafting and introduction of legislation, with remarkable competence, was dismissed the following year for fighting a duel. He was replaced by Thomas Horne who had already sat in Council as acting Attorney-General.3 Horne had long ceased to express those libertarian sentiments which he had so often mouthed during his brief leadership of the Political Association. A change in the official membership, although in 1847 declared unconstitutional, allowed for the replacement of the Colonial Treasurer by the Comptroller-General of Convicts. Secretary of State Stanley, anxious for the success of his probation system, considered it necessary for the head of the convict establishment to take part in the making of laws of a

community which harboured so many felons. 4 At the beginning of the 1844 session Comptroller Forster, who, during the Arthur and Franklin administrations, had sat as a private member when he occupied the position of Chief Police Magistrate, took his place in the Legislative Council.

First amongst the new private members to be appointed by Wilmot was the son of an Irish emancipist, Richard Dry, a landowner from Hagley and the first colonial son to take a seat on the legislature; he replaced William Ashburner. 5 In early 1845 John Dunn, a shrewd businessman and entrepreneur and manager of the Commercial Bank, which by 1844 had grown to challenge the prominence of the Derwent Bank, was appointed to the seat held by the ailing and senile Thomas Archer. 6 Roderic O'Connor, a grazier, succeeded to the seat previously held by Anstey. O'Connor, besides being the most wealthy man in the colony was also the most hated. He had been from 1826 to 1828 one of Arthur's land commissioners; later he became Inspector of Roads and Bridges. It was through his sharp dealings as well as his connections with the Arthur faction that he was able to acquire the most, and some of the best, land in the colony. He was a ruthless individual whose impressive empire in the north of the Midlands, rather than his public spirit, justified

4. Stanley to Wilmot, 1 August 1843, G.O. 1/51; see also Wilmot to Stanley, 17 November 1843, G.O. 33/46.
5. Wilmot to Stanley, 9 February 1844, G.O. 33/47.
6. Same to the same, 4 February 1845, G.O. 33/50.
his appointment. His sole claim to distinction as a member of the Legislative Council was his frequent absences during the important debates of October 1845.

Although there were a number of changes amongst the ranks of the private members, the esprit de corps and sense of common purpose remained. The members who formed the hard core of Franklin's opposition retained their seats. The nomination of Dry swelled their ranks. Charles Swanston, who, since his involvement in the Franklin-Montagu dispute and the decline of his Derwent Bank, was gradually losing his influence with the executive government, joined forces with them. John Kerr, a staunch supporter of the Derwent Bank Faction until its disintegration, followed Swanston's example. And John Dunn, although discreet in his support for the actions of the opposition members, generally approved, or was sympathetic towards their principles. Such leadership as existed was afforded by Thomas Gregson. Released from the ties of friendship which had disposed him to temper his opposition to Franklin's government, he emerged into prominence from the beginning of Wilmot's administration, with that energy and determination which had characterized his opposition to Arthur.

* * *

The great issue, which continually preoccupied the Legislat-

ive Council from 1843 to 1846, was that of the colony's financial crisis. The increase in the public debt was caused by the economic depression and the increased financial burden placed upon the colony by the implementation of Stanley's probation system.

The colonial revenue was obtained from seven main sources: customs duties, sales of Crownland, post-office fees, licences and auction duties, rents on government property, fees of public offices, and fines collected by the Chief Police Magistrate. Customs duties were by far the most important; they usually contributed eighty per cent of the total fixed revenue.\(^8\) Once the depression had set in there was a disastrous drop in imports. At the same time there was a serious fall in the sale of Crown land, caused by the lack of readily available capital, and the increase in the minimum price from twelve shillings per acre to one pound per acre. The corresponding decline in revenue was a continual source of concern to both the executive and the private members.

In the middle years of his administration, Franklin had borrowed heavily from the British Treasury, via the commissariat chest, in order to square the colonial budget. This stop-gap measure had been unsuccessful, and at the time of his departure the financial crisis was already serious. It was left to Wilmot to present the problem to the legislature a few months after his assumption of office. In his first address to the Legislative Council he pointed

out that the major problem which faced the government was to find ways and means to make ends meet. He emphasized continually, during subsequent sessions, the necessity to 'maintain the strictest economy.' His finance minutes of 1843 revealed the urgency of the situation. The revenue of 1842 was £10,494 below the estimate, while the expenditure exceeded the estimate by £10,937. A supplementary estimate had to be introduced for 1843. 'There must be,' he told the Council when presenting the budget for 1844, 'the rigid application of public money to public purposes only.' Accordingly there was a drastic cut in expenditure in areas such as the distribution of rations to the unemployed, and pensions. In line with the policy of saving, public works were scaled down to a bare minimum and the plan to build a new Government House was scrapped. The sub-committee which inquired into the growing number of insolvencies and the financial state of the colony generally, recommended even more stringent retrenchments. However, when attempts to balance the budget failed, Wilmot resorted to the practice, followed by his immediate predecessor, of borrowing from the commissariat.

In the following year the Lieutenant-Governor had to inform the Council that the financial situation of the Colonial Treasury


was even more desperate. The revenue of 1844 had fallen £11,520 short of the estimates and the expenditure exceeded the amount provided for by £1,742. The revenue from the sale of Crown land was negligible; the police and gaol charge, which was normally offset by the land fund, had to be met almost entirely out of ordinary colonial revenue. Wilmot warned the Council that the future would be grim unless the British Treasury afforded some form of financial relief. Further retrenchments failed to close the gap between income and expenditure. Wilmot could take no course other than to borrow from both the commissariat and the local banks. In February 1844 when Treasury bills were unsaleable, he negotiated his first loan with the Bank of Van Diemen's Land. In March and May of that year he borrowed £15,000 from the commissariat: in August and December, when there was no improvement in the situation, he made further loans from the commissariat.

Secretary of State Stanley, known in the colony for his tightfistedness and his implementation of a convict system designed to cost the Imperial Government only a fraction of its former expenditure on the correction of its criminals in Van Diemen's Land, abruptly put an end to Wilmot's use of Imperial funds. In November of 1844 Wilmot received dispatches intimating that sums from the

13. V. & P., 23 July 1844; see also Hobart Town Advertiser, 26 November 1844.
commissariat should not be borrowed 'except in a case of urgent and special necessity.' The Secretary of State immediately modified his instructions as soon as he received word of Wilmot's December loan, which the Lieutenant-Governor justified as a 'pressing emergency.' Stanley made it clear that the practice of borrowing was to cease, regardless of the circumstances. He wrote:

Her Majesty's Government feel bound to express their decided disapprobation of your application for advances to the Commissariat Chest, and of the acquiescence of the Officer commanding the troops in those applications.

The commissariat was instructed to prevent 'further continuance of these unauthorized loans' and Wilmot was told to make more stringent efforts to 'equalize Colonial Revenue and expenditure .... and to repay the sums advanced from the Military Chest.'

Abandoned in its plight, the colonial government found itself in an invidious position. In order to acquire the money necessary to balance the budget and repay the debt, it was forced to resort to the extremely unpopular measure of taxation. It was taxation, and the belief that this taxation was forced upon the colony by convictism, from which the colonists no longer derived any benefits, that made the opposition of the private members as extreme as it was to become in the October session of 1845.

At the beginning of Wilmot's administrations the non-officials

17. The same to the same, 8 February 1845, G.O. 1/56.
spoke in a subdued voice. Placated by the Lieutenant-Governor's pleas to the Home Government for financial relief, they rendered every assistance possible for the passage of legislation. His measures to revitalise the economy revealed him in a favourable light. The act to exempt foreign whaling vessels from port charges, designed to lure American whalers to Hobart Town for the purposes of refitting and replenishing supplies, received unqualified support. Although the benefits of the act were not felt until 1846, its introduction demonstrated to them the Lieutenant-Governor's concern as well as his willingness to take positive steps to 'bring about a better state of things.' Wilmot's Brewing Act, in spite of the opposition from the adversely affected parties, and although later disallowed by the Secretary of State, was generally regarded as a useful measure since it would, in coercing the brewers to use local barley in the production of beverages, better the lot of the agricultural industry.

The private members approved of Wilmot's efforts to reduce expenditure in order to reduce the colonial debt. Moreover they were more than gratified when the ex officio members, with Wilmot's blessing, unanimously voted for the resolution calling on the Home Government to pay for two-thirds of the police and gaols charge.

19. Hobart Town Advertiser, 1 October 1844; Observer, 27 March 1846.
The non-officials concern to bring about an end to the depression and a solution to the financial crisis was reflected in their activities outside the Council as well as by their support of the administration's measures inside the Council chamber. Gregson conceived the grand idea of forming an Association whose function it would be to 'watch the economy' and advise the government as to how best to deal with the present crisis. Whilst addressing a large gathering assembled in the meeting room of John Mezger's hotel, the headquarters of the ill-fated Political Association, Gregson expanded on his ideas. He foresaw his Association developing into a unofficial legislature, 'which, unlike that legislature of which he was presently a member', would have the 'confidence of the people.' Its specially elected committee, functioning as its executive, was to attempt to stimulate the economy by persuading 'the people' to give preference to local products over imports and goods manufactured by probation labour. It was to call on the government to divert convict labour employed in public agriculture to produce 'articles on the raising of which the livelihood of the settlers does not depend.' Its most ambitious task was to persuade the government of both New South Wales and Van Diemen's Land to refrain from building up iniquitous tariffs against each other, and whilst this was an important objective, the first and foremost labour of the committee was to collect data relative to the economic state of the colony for the information of the Local and Home Governments, whose decisions in matters political and economic had, in the past,
been both illconsidered and uninformed.\textsuperscript{22} The active life of the Association was less than a month. After Wilmot had refused to give it any recognition, since it threatened 'undue interference in matters which concerned the executive,' namely probation, commerce and fiscal matters, it disappeared into limbo.\textsuperscript{23}

Fenton, Gregson and Kermode, who firmly believed that high interest rates were one of the principal causes of the depression, attempted to make capital available at cheaper rates. In the first instance they suggested a plan whereby the colony could, corporately, raise a loan from England at greatly reduced interest rates. At public meetings in Hobart and Oatlands, convened to look into the state of the colony's economy, the scheme attracted enthusiastic support.\textsuperscript{24} However, because it lacked government approval, and because local banks lowered interest rates on new loans, the plan became unprofitable.

In the second instance they attempted to achieve their objective by mustering support for the introduction of the British usury law. At various public meetings they stressed the lack of restrictions on interest rates, particularly those on mortgages, which caused the large number of insolvencies and the depressed state of the economy. Gregson, partly because of his powers of oratory and partly because he never dismounted from this perennial hobby-horse,

\begin{itemize}
\item \textsuperscript{22} \textit{Hobart Town Advertiser}, 8 December 1843.
\item \textsuperscript{23} \textit{Hobart Town Advertiser}, 19 January 1844.
\item \textsuperscript{24} \textit{Colonial Times}, 18 April and 30 May 1843.
\end{itemize}
most effective in arousing support for the cause. Even
inner, given in his honour by the inhabitants of Richmond
and surrounding districts, in 'testimony of approval and respect for
his constancy' as a member of the Legislative Council, and his 'undev-
ating consistency' during a period of twenty years in advocating
the public interests and constitutional rights and liberties of his
fellow constituents, he responded to the principal toast by haranguing
the guests urging their support for the regulation of interest rates.

In the Council chamber, for the duration of the depression,
the privy members constantly called on the executive to produce the
returns of insolvencies in order to demonstrate the force of their
argument. Fenton and Gregson repeatedly told the executive that
the alarming number of insolvencies were caused by the high interest,
which in effect, was the cause of the depression. A lowering of
the interest rates by the introduction of a usury law would prevent
further economic decline. Although the executive government con-
sidered statistics of insolvencies useless, since the actual
figures of the insolvencies did not illuminate the case for a new
usury law, the press heartily applauded the move. Insolvency
returns, the editor of the *Hobart Town Advertiser,

would cause to develop the causes which
has led in a great measure to the present
crisis and will show the vast depreciation

of property. It will show the gains of the creditor by the destruction of the debtor. This is how the exorbitant rate of interest, accumulating from year to year has conduced to insolvency ..., which is eating like a cancer into the vitals of the colony.26

During the 1843 and 1844 sessions of Council the struggle for a usury law was at its zenith. Towards the end of 1844 the issue was dropped for want of success. Gregson, and his henchman, Kermode, favoured Fenton's new proposal, the reintroduction of distillation, as a solution to the economic crisis. Although all three campaigned with moderate success to gain support for the idea, the Council refused to give it any consideration.27

The sense of frustration which developed as a result of the continual failure of the private members' schemes and proposals, was accompanied by a change in their attitude toward the executive government, a change which was caused by the executive's decision to resort to taxation. Their argument was that this taxation was unnecessary if the Imperial Government either paid for the colony's share of expenditure on convictism, two-thirds of the judiciary, police and gaol charge, or abandoned transportation altogether.

* * *


The first strains of the outcry against transportation were heard as early as 1835 when the movement for representative government was at its zenith. They came at that particular time, not as a result of any financial crisis or because of any failings in the assignment system, but because the more influential of those foremost in the movement for legislation by representation, in the view of the assertions of the men at the Colonial Office, believed representative institutions would be more quickly and easily acquired once the stigma of convictism has been removed. At a public meeting held in the Hobart Town Court House, J.T. Gellibrand, A.F. Kemp, Horne and Hackett, who formed the nucleus of the abolitionist party, expressed their objections in moral terms. To them convictism was intrinsically evil; it 'violated the feelings of the adult and barbarized the principles of the rising generation.' Moreover they resented 'being reduced to the materials for the punishment of British offenders' and labelled 'inhabitants of a large prison.'

The outcry, however, was not sustained. The majority of colonists were prepared to tolerate transportation since the advantages of the system appeared, to them, to outweigh its disadvantages. One section of the legislation by representation movement, which had decided that free institutions and convictism were not incompatible, went so far as to oppose any moves for its discontinuance.


29. See Colonial Times, 3 and 10 March 1835.
Anthony Fenn Kemp, the earliest apostle of abolition, alone attempted to arouse support for the cause in the late 1830s. 30

The murmurs of protest provoked by the termination of assignment, which deprived the colony of its source of cheap labour, and the decision to implement probation, gave Kemp new heart. 'We are to be deprived of our character, and our very existence is threatened if the probation system were implemented', he thundered, to the enthusiasm of his already angry audience, at the public meeting held in April of 1840. 31 The rumblings of discontent became amplified when Secretary of State Stanley introduced changes into the administration of the system which adversely affected both the pockets of the colonists and the coffers of the colonial government.

Franklin had planned to employ convicts in public works. To Stanley this was a 'secondary consideration.' The primary object of his system was to diminish the financial burden of the mother country and to this end the labour of convicts was henceforth chiefly to be used in the production of 'materials for their own maintenance.' Stanley hoped that, by making the convict establishment independent and self-supporting, the large amount expended by the commissariat on the upkeep of convicts would be drastically reduced. Consequent upon this statement of policy, convict labour was diverted from

31. True Colonist, 1 and 15 May 1840.
Production in this area soon led to a contraction in the hitherto lucrative market provided by the commissariat for the free settlers. The lot of the free agricultural producer became worse when probation produce was sold on the open market at low prices. It was feared that the 'articles produced by convict labour', being sold 'regardless of the cost of production' which was estimated at 'tenfold the return', would destroy the legitimate producer. In order to save the situation, Gregson, through his ill-fated Association, unavailingly attempted to convince the government to divert convict labour to some other area. As the gravity of the situation increased, that sector of the rural producers which relied on the local markets came to regard the system with contempt and loathing. Leading farmer, and one-time arch-enemy of Arthur, George Meredith was aroused to join the political opposition. At a public meeting in December 1843, he gave expression to the attitude of all those who suffered from the system. 'The probation system', he declared, 'is pregnant with evil, contained within it the forces of anarchy, corruption and confusion.'

33. Hobart Town Advertiser, 13 June 1845; see also the report of the meeting of the Legislative Council of 15 November 1843, Hobart Town Advertiser, 17 November 1843.
34. Hobart Town Advertiser, 19 January 1844.
35. Hobart Town Advertiser, 22 December 1843.
The change in the system of hiring of convict labour which accompanied the implementation of probation caused a great deal of resentment. An employer was obliged to pay the probation pass-holder a fixed wage, whereas previously he was merely responsible for the assigned servant’s upkeep. This change was accompanied by a change in the attitudes of convicts, who, according to one newspaper, assumed ‘a most overweening idea of their privileges and importance’, and developed an ‘all too independent and insubordinate air’. Moreover, employers were unimpressed by the quality of the more expensive probation labour. John Leake, a supporter of transportation, who was later nominated to the Legislative Council, complained that probationers did less than the average assigned servant. They had been trained, he wrote, ‘in the gangs on the roads’, and were neither taught to be a ‘very useful handyman’, nor encouraged in a spirit of industry. The Hobart Town Advertiser informed its readers:

No master with common prudence will hire ....
a ticket-of-leave man since a probationer, five times out of six is not skilled in the labour he undertakes.

The finances of the local government were badly affected by the change in the system. This was fully realized during the estimates debates of 1844. The extra cost involved in the employ-

36. Hobart Town Advertiser, 4 January 1844.
38. Hobart Town Advertiser, 5 January 1844.
ment of probationers who had hitherto been paid in rations, would be £17,046 for 1845, the Lieutenant-Governor told the Council. The separation of the convicts from the colonial department also increased the colonial government's expenditure. Its takeover of several administrative areas, which had hitherto been paid for by the Imperial Treasury, involved an even greater outlay for salaries.

Furthermore, the charge of the judiciary, police and gaols departments increased as the number of convicts transported to the island became greater. The depressed economy rendered the system more expensive. During 1844, Wilmot, contrary to Imperial instructions, made extra money available for public works in order to give employment to pass-holders who were unable to find work, so that the 'objects of the system might be attained.'

The extra expenditure on the system soon gave rise to widespread acceptance of the notion that 'non-existent colonial funds' were being squandered on the 'reformatory schemes of the Mother Country.'

The probation system was blamed for the difficulties of the lower orders of the free society. In a period during which employment was scarce and wages were low, labourers and mechanics naturally resented competition for the sale of services from pass-holders who, 

39. Finance Minute 1844.
40. See Wilmot to Stanley, 2 December 1843, G.O. 33/46; and Stanley to Wilmot, 31 August 1844, G.O. 1/55.
41. Hobart Town Advertiser, 9 January 1844; see also the report of the preliminary meeting, 14 February 1845, of the public meeting in protest of the Increased Duties Bill, loc. cit., 18 February 1845.
in spite of their reputation as bad workmen, had the advantage of being able to work for lower wages. And because the system seemed to create a situation in the labour market where supply continually exceeded demand, thereby keeping wages at a constant low, those affected judged the system to be pernicious. The exodus from the island of large numbers of 'decent and respectable' members of the free working-class, who were 'brought to the colony at great public and private cost' and were now unable to cope with present conditions, was viewed with the gravest concern.

The objections against the probation system were not all economic. The lack of adequate supervision in a system which congregated a large number of convicts, resulted in an increase in sodomy and viciousness and a renewal of bush-ranging and other forms of lawlessness. Increasingly the colonist talked about the moral evils inherent in the system. The stories of the convicts' most improper and intemperate carousals, their moral laxity and their laziness were richly embellished as they circulated through the tea-houses, church gatherings, and salons of the island. The eyes of the upright became wide with amazement and their heads shook in


rectitudinous disapprobation as the goings-on at probation stations reached their ears. The scandalized and the highminded felt that they could only regard the probation system, which allowed men to sink so deeply into the mire of depravity and degradation, with contempt and disgust. 45

In the Legislative Council the private members gave voice to the complaints of the colonists. They, like the majority of the upraised voices, till 1845 at least, demanded the abrogation of probation and a return to assignment and/or the assumption on the part of the Home Government of the colony's expenditure on convictism. Secretary of State Stanley, however, would not accede to their demands; he explained to Wilmot his attitude towards the colonists' requests with regard to transportation:

It must be borne in mind that Van Diemen's Land was a convict settlement before it was a colony. The access of free settlers to the island has been, in many ways, of great value and has facilitated the execution of the system of transportation. But still the primary and great object in occupying Van Diemen's Land having been the establishment of a penal settlement there, it is not to be admitted that the colonies are entitled to regard the convicts as intruders or to claim any indemnities with which their presence maybe attended. 46

45. John West, op. cit., Vol. 2, pp. 269-309; see also the report of the public meeting of 13 February 1845, Hobart Town Advertiser, 21 February 1845.

46. Stanley to Wilmot, 31 August 1844, G.O. 1/55.
This refusal to compromise led many colonists to oppose the concept of convictism in its entirety. By July of 1845 the first petition requesting the gradual abolition of transportation had attracted the signatures of 1780 inhabitants, including those of forty magistrates and the six members of the Legislative Council who formed the core of Wilmot's opposition. 47

During Council debates the first attack on probation came during the discussion on the Act for regulating the hiring of Probation Pass-holders and for other purposes connected therewith in November 1843. Kermode and Fenton, the then principal spokesmen for the opposition, based their objections on economic factors. Later Gregson, Dry, Swanston and Kerr stated their objections which were based on moral as well as economic grounds. 48

It was the Lieutenant-Governor himself who brought them to the realization that the change in the administration of the system was, in no small part, the cause of the colonial government's financial embarrassment. His address, opening the 1844 session and finance minutes of the same year, made his views clear. 'The separation of the Convict from the Colonial Department', he announced, 'has thrown upon the colony several charges which were mixed up

47. Hobart Town Advertiser, 23 May and 29 July 1845; see also John West, op. cit., Vol. 1, p. 253.

48. Report of the meeting of the Legislative Council of 1 November 1843, Hobart Town Advertiser, 3 November 1843; and report of the meeting of the Legislative Council of 20 August 1845, Hobart Town Advertiser, 22 August 1845.
between them.' After explaining this statement, he went on to blame 'the presence of a large convict population' for the great expense borne by the colony - the judiciary police and gaols charge - which he described as 'greatly disproportionate to our population and revenue', and the vast amount expended on the Church Establishment and religious instruction for which 'the colony has provided ... more liberally than the present state of finance admits.'

This was a tactical move on Wilmot's part. In the first instance he sought the Council's backing for his pleas to the Colonial Office for financial relief, and in this he was successful: the resolution calling on the Imperial Government to pay for two-thirds of the colony's police and gaols expenditure was moved and passed *nemine contradicente*. His second aim in speaking out against Britain's convict policies was to maintain the Council's confidence and co-operation in a period in which any further difficulties were likely to provoke their violent opposition. In this, however, he was successful only for as long as the non-official members remained optimistic of a favourably reply from the Home Government. This optimism waned when the executive, in the absence of any sign of a change in Stanley's policy, initiated moves to cure the financial crisis by raising taxation and by creating municipal institutions to shoulder certain areas of its financial responsibility. Having

49. Finance Minute 1844; see also Wilmot's opening address V. & P., 23 July 1844.
had it pointed out to them by the Lieutenant-Governor himself that the colony's financial crisis was partly due to probation, and realizing there was already a great deal of antagonism to the system, they stood firm in their determination to prevent any further colonial monies being expended 'other than for colonial purposes.'

* * *

During the extraordinary session of February 1845, taxation became the major issue. At first discussion centred around the recommendations of the finance sub-committee. After it had been decided that its proposed taxes were either 'useless or impossible to collect', Wilmot introduced the Increased Duties Bill which provided for an increase of ten per cent in ad valorem duties. The bill provoked a hostile reaction from a community which regarded taxation as a moral evil as well as a financial burden. The Hobart Town Courier indignantly declared:

Such recklessness, such a want of consideration towards a community struggling .. as this is, and acknowledged to be so, by those saient legislators under heavy debt; such unblushing rapacity because all these taxes come before us unredeemed by scarce a solitary item of reduction....

50. See Michael Roe, 'The Establishment of Local Self-Government...', loc. cit., pp. 22-23; and Wilmot to Stanley, 8 and 24 January 1845, G.O. 33/50.

51. Hobart Town Courier, 13 March 1845.
On 18 February, upwards of twelve-hundred angry colonists attended the public meeting at the Victoria Theatre*, to remonstrate against taxation. As the debate developed, it became increasingly evident that the meeting was as much a protest against the convict system as it was against taxation. That the system was the sole cause of taxation was considered axiomatic. The resolution, which was moved by one of the leading anti-transportationists, the lawyer Joseph Allport, and adopted unanimously, embodied the essence of the protest:

That the imposition of taxes upon the inhabitants of the colony, for other than colonial purposes, and particularly in the imposition of any tax for defraying the large portion of expense of the Police, Gaol and Judicial Establishment required for the coercion of British Prisoners, whose presence threatens the colony with deep and widespread evils, while no benefit whatever is allowed to be derived from their labour, is most unjust and an infringement on our rights and privileges as British subjects.  

In protesting, the colonists manifested their beliefs that they alone possessed the right to control their own destiny. Their demands could never be satisfied without a greater measure of autonomy from the Colonial Office, and representative government. Anthony Fenn Kemp, 'the long tried and consistent friend of the people', made this clear as he implored the meeting to petition for

* The present Theatre Royal.

52. Report of the public meeting of 18 February 1845, Hobart Town Advertiser, 21 February 1845; see also the report of the preliminary meeting of 14 February 1845, loc. cit., 18 February 1845, and John West, op. cit., Vol. 1, pp. 239-40.
THOMAS GEORGE GREGSON,
Member of the Legislative Council
1842-1856.
representative institutions. It was already evident that the issues of taxation, transportation and the demand for representative government were inextricably linked.

The non-official members of the Legislative Council were visibly affected by the determination shown by the politically-aware inhabitants of the island. Gregson, Kermode, Fenton and Dry all liked to consider themselves foremost in the van of popular movements and they felt more than a little picqued at being designated 'sapient legislators' and individually attacked at the public meeting of 18 February. In order to regain face, they attacked with renewed vigor every executive move which seemed to maintain convictism at the expense of the colonial treasury. Wilmot was the first to sense the turn the opposition had taken.

On the 19 February, the day following the dramatic meeting at the Theatre, the bill seeking ratification for Wilmot's latest loan from the Commercial Bank drew fire. The loan, Fenton hotly contended, was not of 'the slightest benefit to the colony.' Since colonial revenue, if appropriated wisely, was sufficient to meet colonial expenditure, he could only suppose that it was to be used to offset the entire judiciary, police and gaol charge two-thirds of which was, in his view, expended for 'Imperial purposes.' It

54. Ibid.
55. Wilmot to Stanley, 3 March 1845, G.O. 33/50.
was not, he concluded, incumbent upon the Council to raise any
finance except for colonial expenditure. Gregson and Kermode
based their opposition to the bill on similar grounds. 56

During the violent debate on the Increased Duties Bill this
basic argument was repeated ad nauseum. The non-officials' antag-
onism to probation and their refusal to vote money which affected
the system was basic to their opposition to the bill for the imple-
mentation of Surveyor-General Major Cotton's scheme to irrigate the
Midlands. The bill, introduced at a time when Cotton's ambitious
project could be least afforded, was initiated in order to provide
work for unemployed convicts. The non-officials refused to con-
sider the advantages of Cotton's plan because the government pro-
posed to use convict labour in carrying it out. Gregson told the
Council that he would be an aider and abettor of Stanley's penal
schemes if he were to vote for the bill. 57

The non-official members' opposition, as well as being flam-
boyant and rigorous, was in a limited way successful. In the first
instance, although unavailing in preventing the passage of the
entire Increased Duties Bill, it succeeded in bringing about the
removal of the clause which required duties to be levied on goods
at their value in the colony, rather than at their value at the

56. Report of the meeting of the Legislative Council of 19 and
20 February 1845, Hobart Town Advertiser, 25 February 1845.
57. Ibid.; and Report of the meeting of the Legislative Council
of 26 February 1845, Hobart Town Advertiser, 4 March 1845.
place of export - a clause which was described as:

obnoxious because it taxed not only foreign goods, but what in every instance constituted the principal portions of their cost at the place of consumption - the freight, port charges, interest on money and risk to the holder.58

In the second place their opposition brought about the defeat of the Irrigation Bill.

The popular movement, which set the pace of the non-officials' opposition, gained momentum as the colonial debt increased, and the executive government pushed forward with plans for further taxation. In June the executive gave notice of its intention to tax auctioneers, pawn-brokers, publicans, butchers, eating-house keepers, stagecoach and steamboat proprietors and cabmen. In the same month, Bicheno proposed the creation of municipal institutions with revenue-raising power, which would supersede the colonial government in areas of responsibility where expenditure was high, such as the upkeep and construction of roads and bridges and the police force. The Colonial Secretary had two aims: to cut government expenditure so it would not have to resort to unpopular measures, such as taxation and retrenchment and to satisfy the demand for representation.59

In believing that the colonists would have few objections to paying taxes imposed by their elected representatives, he was obviously


59. Executive Council Minutes, 24 June 1845; see also Wilmot to Stanley, 26 August 1845, G.O. 33/52.
unaware of their abhorrence of direct taxation. Bichenô's proposal gave rise to the Lighting Paving and Cleansing of Hobart Town Bill, and the Road Bill. The former was similar to those which Franklin had unsuccessfully introduced in 1839 and 1840. It provided for the election of an authority which was to supervise the raising of funds and the administration of maintenance of the streets, lighting and cleanliness of Hobart Town. The latter provided the raising of tolls for the upkeep of certain roads.  

On 31 July 1845, the day after the opening of the spring session of the Legislative Council, a demonstration was staged in Hobart Town against the latest taxation proposals. A procession of cabs and waggons, bearing banners remonstrating against taxation without representation, provided the prelude to the protest. Placards of (according to Wilmot) a 'most inflammatory nature' were pasted all over the town.  

The 'Great Public Meeting' at the Victoria Theatre was the most important event of the day for it was there that eight-hundred colonists, in the most opprobrious terms, expressed, by attacking taxation and probation, their opposition to the existing constitution and the relationship between the Colonial and British Governments. The popular patriot Anthony Fenn Kemp was called to the chair. He, a republican, and an admirer of George Washington, with whom he had once had the honour to dine,

60. Legislative Council Papers, 1842-46.
whipped up enthusiasm when he spoke on that subject which had caused his hero to embark upon a course that led to the acquisition of autonomy and taxation by representation. Aided by the merchant T.D. Chapman, the physician Rowe, the lawyer Pitcairn and other members of the Hobart Town bourgeoisie who spoke against the Lighting, Paving and Cleansing Bill, the Road Bill, and other measures designed to extract money from the colonists' pockets in order to provide finance for the system which turned the colony into 'a receptacle for the filth of all parts of the British Empire', he succeeded in gaining the adoption of a series of motions based on the slogan of 'no taxation without representation'.

The success of this demonstration encouraged the planning of others. George Meredith, Kemp and a number of 'public-spirited inhabitants' including five non-official members of the Legislative Council, namely Gregson, Kermodc, Fenton, Dry and Kerr requisitioned Sheriff John Burnett to call a public meeting for the purposes of taking into consideration the present depressed state of the colony, the amount and appropriation of the revenue, the announced imposition of numerous oppressive taxes, and the threatened reduction of police protection and to petition for Legislation by Representation.

Sheriff Burnett thought it improper to call the meeting because one

62. Report of the Great Public Meeting of 29 July 1845, 
Hobart Town Advertiser, 1 August 1845.

63. George Meredith, et al. to John Burnett, 14 August 1845, enc. no.1 in Wilmot to Stanley, 26 August 1845, G.O. 33/52.
of its objects, 'to notice the appropriation of public revenue', was an interference with the Royal prerogative. The 'friendly tone' of his refusal, however, 'restrained the wrath it was calculated to excite.'\(^{64}\) Furthermore, the non-officials' opposition in the Legislative Council provided enough excitement to distract public attention from the issue.

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The atmosphere in the Legislative Council throughout the Spring session of 1845 was tense. Anthony Fenn Kemp raised Wilmot's ire by staging a Punch and Judy show outside the Council chamber whilst the opening address was being delivered.\(^{65}\) Wilmot was no more pleased with the existence of the popular movement which held his government in contempt. He was infuriated by an article which appeared in the *Hobart Town Courier* on the executive's withdrawal of the proposal to tax certain trades and professions in response to popular opposition.

> Rulers [wrote the editor of that newspaper] will henceforth recoil from the virtuous indignation of the people, as the reptile recoiled from the touch of Ithuriel's spear.\(^ {66}\)

The Lieutenant-Governor's sensitive nature was grossly offended by this invidious comparison with the vile fiend of antiquity.\(^ {67}\) He

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64. John West, *op.cit.*, Vol.1, p. 242; and Wilmot to Stanley, 26 August 1845, G.O. 33/52

65. See Diary of G.T.W.B. Boyes, 1 August 1845.


identified the private members' opposition with all other hostility to his government. Possibly there was some justification for this. After all Gregson, Kermode, Fenton, Kerr and Dry, were all close friends of Wilmot's **bête noire**, Anthony Fenn Kemp. They had helped him formulate the anti-taxation resolutions passed by the public meeting held at the Theatre on 29 July 1845. Furthermore, they were amongst the requisitionists who attempted to call a public meeting to which official permission was refused. Wilmot could 'not reconcile their conduct' of 'encouraging interference with the Queen's prerogative by public meeting' with 'the oath of the Lieutenant-Governor's advisors.' It was Wilmot's anxiety, which caused him to be overcautious and constantly on the defensive, that lent the Spring session its characteristic tense atmosphere.

The non-official members launched their attack during the debate on the Road Bill. In opposing the second reading, Gregson denounced the bill as unconstitutional, since the monies it raised were not for local purposes, as was required by the Huskisson Act, but for Imperial purposes - namely, the payment of convicts being disciplined on the roads. He then tabled a petition, containing between eight and nine thousand signatures, against the bill's introduction. The executive had its defense prepared. Bicheno,

69. Wilmot to Stanley, 26 August 1845, G.O. 33/52.
infuriated by what he considered the Gregson's 'deliberate misconstruc­tion' of the Constitution Act, told the Council that the first object of the Road Bill was to ensure the colony of good roads; the fact that convicts would be given employment in their construction was coincidental. He condemned the cry of 'no taxation without representation' as republican and un-English. He dismissed the claim that the Road Bill was unconstitutional, as it imposed a 'toll not a tax.' The distinction between a toll and a tax, however, was not great enough to induce the non-officials to withdraw their opposition. They remained firm in their conviction that any bill to raise money was unnecessary while the colony was burdened by the convict system, and the Home Government refused to contribute money to the upkeep of the large judiciary, police and gaols expense. Dunn and Swanston voted with the hard core of the opposition to bring about the bill's defeat.71

Gregson continued the attack when the second reading of the Lighting, Paving and Cleansing Bill was moved. In his rapid and intense manner of address, he denounced convictism for the financial distress it had caused. He realized, he told the executive, that the present bill was a devious ploy designed to raise taxation and to allow monies currently used to maintain order in Hobart Town, to make up the deficit in the estimates, a deficit that had been caused by the presence of the convict system. The private members,

71. Ibid.
he said, were determined 'to resist the contribution of one more shilling by the people of the colony, ... and, until the [Imperial] Government acted with justice to the colony in paying for the police and gaols, no law should pass by which any tax was levied on the people.' He himself would not be satisfied until he had seen with his own eyes, an authorization on the part of the British Treasury, for the expenditure of £50,000 per annum for the restraint of the Mother Country's convicts in the colony. In order to make the bill ineffective he moved that it 'be read this day six months.'

The strain upon the Lieutenant-Governor began to tell. Having had to contend with the numerous reprimands from the Secretary of State, the rumours concerning his alleged amorous adventures, and the popular opposition to his policies, he was in no mood to deal with his opponents diplomatically. He jumped up from the chair and severely chastised Gregson for the manner in which he conducted his opposition. That honourable gentleman's obstructionist tactic, he complained, was a cowardly method of attack. The manly way to go about the matter, he declared, was at least to allow the bill to reach the committee stage 'so that it could be attacked on its own merits.' Gregson, he stated, had been guilty of departing from protocol when he had introduced the petition against the bill before its first reading, but he was also culpable of adopting methods

72. Wilmot to Stanley, 26 August 1845, G.O. 33/52 and report of the meeting of the Legislative Council of 12 August 1845, Hobart Town Advertiser, 15 August 1845.

73. See Diary of G.T.W.B. Boyes, 11 May 1844; 13 April, 2 June and 23 October 1845.
which 'put to question his true loyalty.' After delivering a tirade against the slogan of 'no taxation without representation', he went on to point out Kermode's inconsistency in first, as a member of the finance sub-committee, recommending the bill and then, when the tide of popular opinion rose against it, opposing it. However, he was unable to intimidate the non-officials. Although Gregson's amendment was lost on the Lieutenant-Governor's casting vote, they continued in their opposition to the bill.\(^\text{74}\) During debate in committee, Swanston, who had voted against Gregson's amendment, made it clear he would not support the bill. Wilmot, on hearing the petition which allegedly contained the signature of the head of every household of Hobart Town, came to believe that even if the bill should carry the Council, passive resistance outside - such as that which rendered Franklin's Road Act inoperative - would void it.\(^\text{75}\) When the bill was put to the vote on the third reading, Swanston, and O'Connor, who on that day made one of his rare appearances in the chamber, joined Gregson, Kermode, Dry, Fenton, Kerr and Dunn to bring about its defeat.\(^\text{76}\)

Having won the preliminary skirmishes, the private members prepared for the crucial battle over the estimates. With the bulk

\(^{74}\) Reports of the meetings of the Legislative Council of 7 August 1845, and 12 August 1845, \textit{Hobart Town Advertiser}, 12 August 1845, and 19 August 1845.


\(^{76}\) Report of the meeting of the Legislative Council of 12 August 1845, \textit{Hobart Town Advertiser}, 19 August 1845.
colonial opinion behind them, and the taste of the fruits of victory still fresh in their mouths, they confidently assumed the offensive from the very beginning. The colony's expenditure on the 'pernicious convict system' remained the basis of attack.

On 19 August, as Wilmot was about to present the estimates for the following year, Dry arose to complain at length about the cost of convictism to the colony. He ended by calling for the appointment of a sub-committee to inquire into the amount of colonial money expended on the probation system. Such an inquiry was necessary, he told the Council, since a great deal of excitement throughout the island had been aroused by that leviathan's consumption of large quantities of public revenue. Speaking in support of his colleague, Fenton attempted to clarify the advantages that lay in the results of the proposed inquiry. On being confronted with evidence that the colony was spending a vast proportion of its revenue on 'Imperial schemes', the Home Government could take no other course, he asserted, than to accede to the colonists' requests and pay for a portion of the judicial, police and gaols charge. Moreover, he continued, a situation would be avoided where the non-officials, on finding themselves required to vote for the full judiciary, police and gaol estimate, against which they had remonstrated for the past eight years, would leave the Council chamber in protest. 77

77. Report of the meeting of the Legislative Council of 19 August 1845, Hobart Town Advertiser, 22 August 1845.
Recognizing the logic in this argument, Wilmot delayed the estimates so that the matter could be fully debated. On the following day the executive counter-attacked. Comptroller-General Forster informed the members of his belief that the proposed inquiry was merely a ruse to delay the passage of the estimates. Colonial Secretary Bicheno then asserted that such an inquiry as proposed by Dry was ultra vires, since it interfered with the Lieutenant-Governor's prerogative in the appropriation of revenue. However doubtful this claim was, it was sufficient to persuade the majority to reject Dry's motion. 78

Tension mounted as the executive members became more firmly entrenched in their belief that the non-officials had stooped to the use of obstructionist tactics. Gregson's motion for an adjournment to enable members further time to study the estimates, provoked an acrimonious debate. 79 When at last the estimates came under discussion, tempers were frayed and Wilmot evinced a less tolerant attitude toward the non-officials' strategy. Swanston, who had hitherto been less prominent in the opposition, was the first to launch the attack on the Appropriation Bill. His intention to submit a set of his own estimates which he proposed to move as an amendment to those introduced by the Lieutenant-Governor, aroused a roar of protest from the official benches. Wilmot hurriedly

78. Report of the meeting of the Legislative Council of 20 August 1845, Hobart Town Advertiser, 22 August 1845.
79. Ibid.
flicked through his *Manual for Colonial Governors* in search of authoritative guidance. At last, after finding the colony's constitution, he triumphantly waved the *Manual* above his head and informed Swanston that his proposed course of action was unconstitutional. Swanston, referring to another section of the Huskisson Act, hotly disagreed. Gregson, however, fearing that the Lieutenant-Governor might have been correct in this instance, successfully convinced the irate banker that he should back down. Both Wilmot and Swanston were given an opportunity to regain their composure during Fenton's long-winded speech against various minor items of expenditure. However, it was not long before Swanston resumed his attack.

Sarcastic remarks flowed thick and fast as he informed the chair that the estimates from which the Colonial Secretary was reading did not correspond to those which the members had in their hands. Gregson found this to be true. These estimates were no use to anybody, he said, as he moved for an adjournment. 80

Wilmot adjourned the session for two months. The adjournment afforded a breathing-space during which, he hoped, dispatches bearing a favourable reply for his latest pleas for financial relief, would arrive. However, no word was received and he was forced to redraft the estimates for presentation to the Council in October.

The new set indicated that the executive was prepared to compromise.

A drastic cut, which reduced the salaries of public servants by twelve per cent was made in response to the demands of the non-officials. In a similar vein it was suggested that the British Government be asked to repay 'to us the exoenses of trials of those convicts in our Supreme Court who are in no way employed for the benefit of the colony.' The October estimates also indicated that the executive wished to overcome the opposition without making any concessions to the colonists' demands with regard to the police and gaol charge. Major reductions were made in the expenditure on the Police, Ecclesiastic and Education Establishments. These were made 'regardless of the effect upon the security' and welfare of the colony. 'This would,' believed the Lieutenant-Governor, 'throw unpopularity onto the non-officials,' who, having constantly applied pressure for a reduction in this area, had 'driven the government to such a perilous proceeding.' He predicted that 'this would be followed by petitions from every part of the colony who unlike the member for Risdon [Gregson] had something to lose'. This sort of reaction, he reasoned 'would strengthen the position of the executive government to a surprising degree' and 'prove a wholesome lesson to the non-officials.' The colonists were not as naive as Wilmot had hoped. They realized that the non-officials

82. Diary of G.T.W.B. Boyes, 14 August 1845.
83. Ibid.
fought for a reduction of the colonial expenditure, rather than a reduction of the total expenditure in these areas, and events consequently followed a course other than that which Wilmot had predicted.

The Legislative Council was reassembled at 21 October 1845. The attack on the new estimates commenced as soon as these were presented. Dry, after introducing a petition against the reduction in the Ecclesiastical Establishment, informed the executive that since the estimates did not acknowledge the Imperial Government's responsibility for the payment of two-thirds of the police and gaols charge, they were completely unacceptable. He then called for papers showing the extent of the colonial debt and moved for a sub-committee to inquire into the amount expended by the colony on convictism. He reaffirmed his faith that the results produced by such a sub-committee would convince the Home Government that the present convict system was the sole reason for the 'rapid destruction of the colony.' The motion sparked off a bitter debate. 84

The executive became convinced that the private members intended to throw every impediment in its way in order to prevent the passage of the estimates. Whilst Wilmot agreed that Britain should pay for at least two-thirds of the police and gaols charge, and had encouraged the Council to pass resolutions to this effect, he and his executive refused to countenance its attempts, by obstruction

84. Report of the meeting of the Legislative Council of 28 October 1845, Hobart Town Advertiser, 31 October 1845.
RICHARD DRY,
Member of the Legislative Council 1844-1854.
Speaker 1851-1854.
and intransigent opposition, to bring about these aims. Bicheno clarified the position. He told the Council that it was the government's place to execute the policies of the Colonial Office, rather than those of the Legislative Council. The task of the Council, he asserted, was to advise the government how best to carry out its instructions. The present moves on the part of the non-officials, based on the assumption that Imperial policies could be changed by their opposition, were designed to prevent the estimates from passing. Dry's motion, he continued, was part of their overall policy of 'delay and procrastination' with the object of embarrassing the local government. After debate on the motion had been closed, Wilmot attempted to elucidate the government's position in relation to the opposition. He pointed out that since the constitution was not that of a free colony, it ill-behoved the members to act as elected representatives and attempt to change the existing order by trying to force their views upon the local and Imperial governments. He, being Lieutenant-Governor, and they, being members of the Legislative Council, he explained, were bound, until Her Majesty's Government changed the constitution, to carry out the instructions of Her Majesty's Government acting through the Secretary of State for the Colonies. 'You imagine,' he concluded 'you can change the present state of things - this is the fallacy under which you are labouring.'

85. Ibid.
The defeat of Dry's motion angered the non-officials. They felt that the executive had used dubious means in bringing about this result. In the first instance they were offended by the executive's interpretation of the Legislative Council's role; in the second they were disgusted by the irregularity and unfairness of Wilmot's expression of opposition to the motion after debate had been closed; and finally they were outraged by the Lieutenant-Governor's unprecedented use of both his deliberative and casting votes which indicated his disrespect for the wishes of the majority. They began to express doubts as to his impartiality as chairman of the Council.

Before the Colonial Secretary could move the first reading of the Appropriation Bill, Gregson, after denouncing the Lieutenant-Governor's part in defeating Dry's motion, moved that the estimates be not considered until every Council member was in his seat. The estimates, which encompassed the issue of colonial expenditure on probation, he said, had become a matter of such importance that it was absolutely necessary for every member to be present and to participate in debate. The Council, he continued, had, year after year, without any acknowledgment on the part of the Home Government, entered its protest against the payment of the total judiciary, police and gaol charge. Since the decision, with regard to the course the colony would follow in the matter, would be made during the estimates debate - a decision of great consequence, he asserted - a short
adjournment, allowing O'Connor to take his seat, was warranted. 'If Mr. O'Connor were absent from illness', Gregson concluded, 'then he could express regret; but if he were absent for any other cause then [he] should only despise him.' Before the debate continued, Dry personally requested the Lieutenant-Governor for an immediate adjournment. Wilmot refused on the ground that O'Connor was ill and would be unable to attend for some time. Wilmot would not commit himself to a principle which, if any of the members chose to absent themselves from meetings, could lead to the indefinite postponement of the Appropriation Bill. 86

The debate on Gregson's adjournment motion grew more heated as it continued. The private members, who contemptuously regarded O'Connor as a one-time member of Arthur's coterie, delighted in exposing his lack of political principle. They made it plain that his illness, gout, was not of a serious enough nature to prevent his attendance since it did not prevent him from washing rams. The real reason for his absence, they claimed, was his refusal to take sides in the great struggle of the day. They realized that he was attempting to steer between the Scylla of offending the executive, to remain on favourable terms with whom it was to his pecuniary advantage, and the Charybdis of aggravating the popular press which, in view of his connection with the Arthur administration, would tear his character to shreds at the slightest opportunity. The non-officials' assurance that O'Connor would attend, were he

86. Ibid.
officially informed of a Council opinion that the presence of all members was of such importance that deliberations were to be suspended especially to allow him to take his seat, caused the executive great consternation. Fenton, in arguing that O'Connor's presence would relieve his Excellency of the odious necessity of using his double vote, provoked one of Wilmot's characteristic tactless remarks. He would suffer no remorse, he said, in using both his deliberative and casting vote to counter any opposition. This assertion infuriated the non-officials. Dry, in highly excited tones, declared himself and other members insulted by the Lieutenant-Governor's statement. Dry told Wilmot that in flouting the will of the majority he disregarded the will of the Council, and extracted from Wilmot's statement the inference that the Lieutenant-Governor would not listen to any of the members' arguments with an open mind. Accusing Wilmot of failing to take the Legislative Council seriously, he told the Lieutenant-Governor that he and the other non-officials would be more profitably occupied in promenading in Macquarie Street than unavailingly attempting to advise a government which would not be advised. 87

As Dry's anger rose, the basis of his attack broadened. He touched on the estimates, the explosive issue underlying all the government's opposition. He savagely denounced the executive for reducing the expenditure on colonists' education, religion and 87. *Ibid.*
protection in order to make funds available for the upkeep of Britain's convict system, and warned that the oncoming struggle would be made more furious since the colonists were 'fighting for their religion' and firesides.' Gregson, in his speech of reply closing the debate on his adjournment motion, spoke with uncharacteristic calmness on the same topic and ended with an appeal to the executive to charge the judiciary, police and gaol expenditure against the account of the military chest. 'If this were done', he said, 'the colonists would support His Excellency to a man.'

After the adjournment motion had been defeated by the Lieutenant-Governor's use of his double vote, there was a lull in the battle. It was not until the estimates were being debated in committee that the struggle recommenced. After Bicheno had moved approval of the first item, Gregson arose to make an amendment to the effect that the Council decline to vote for the judiciary, police and gaols charge. In response Wilmot declared his stern disapprobation of the move and again cast his double vote to defeat the amendment. Dry continued the attack. He requested details as to origins of the year's £20,000 deficit. Bicheno, suspecting this inquiry to be yet another pretext for delay, informed him that such a request might prove difficult to satisfy. Nevertheless he and Auditor Boyes would be only too happy to answer queries in this regard. This was not good enough for Dry. He immediately moved for an adjournment of three days in order to give Bicheno

88. Ibid.
sufficient time to prepare a comprehensive statement outlining the items which led to the deficit. In speaking to his motion he pointed out that it was incumbent upon the executive to show how the £20,000 was spent and the duty of members 'to ascertain in what way this large charge had been contracted.'

The motion was carried with a majority of one vote. The Lieutenant-Governor then used his double vote to nullify the non-officials' majority. Thereupon Gregson, Dry, Kermode and Kerr ceremoniously took up their hats and proceeded out of the chamber. The dramatic silence which overcame the crowded meeting room lasted for a few seconds. Wilmot ordered the estimates reading to be continued. After all items had been passed and the next item on the agenda brought forward, the absence of a quorum was noticed and in response Wilmot adjourned the meeting until the morrow.

This was the prelude to the crisis. The drama continued on the following day, 29 October. The public gallery was packed before proceedings commenced. The leading gentlemen, Gregson, Kermode, Dry, Fenton, Swanston and Kerr, true to the best theatrical tradition, arrived late upon the scene. After the meeting was opened, Dry, in giving notice of his intention to move for a return of the police and gaols expenditure from 1835 to 1844, sparked off hostilities. Upon Wilmot denouncing the move as useless and no more than a delaying tactic, Fenton arose to assert that any delay

89. Ibid.
which prevented the passage of the Appropriation Bill and an increase in the colonial debt was only to the benefit of the colony. Gregson agreed with his colleague's sentiments and attempted to cause another delay by moving a resolution declaring those proceedings of 28 October, which took place after the four private members had left the meeting, illegal, on the grounds that those proceedings took place in the absence of a quorum. He concluded his speech on the matter by asking Attorney-General Horne for his opinion. Horne refused. 'There,' said Gregson triumphantly, 'the Attorney-General's silence testifies most eloquently what that opinion was.' Wilmot defended the course he had taken on the 28 October by informing the Council that he had merely followed the practice adopted in the House of Commons whose committees required no quorum. After a long and heated debate, Gregson's motion was thrown out. 91

Discussion on the motion for the first reading of the Appropriation Bill did nothing to alleviate the tense atmosphere. Dry, with the intention of invalidating the bill, moved that it be read 'this day six months.' Following Gregson's and Fenton's attack on the convict system, to which were ascribed all the colonies' woes, Dry caused tempers to rise by inferring that the Lieutenant-Governor forced the ex officio members to vote upon his instructions rather than in accordance with the dictates of their conscience.

91. Report of the meeting of the Legislative Council of 29 October 1845, Launceston Examiner, 1 November 1845 and Hobart Town Advertiser, 4 November 1845.
Gregson continued to provoke the executive by giving examples in order to substantiate Dry's assertion. He infuriated Forster, who had focused attention upon himself by vigorously protesting against these allegations, by pointing out that his salary of £1,200 per annum as Comptroller-General of Convicts depended on the continuance of the system which he and the executive supported and the private members opposed. Wilmot then joined the fray. He said with reference to the non-officials' imputations:

I'll ask Mr. Gregson, I'll ask Mr. Dunn ... if ever, when I spoke to them on the subject of their appointment, I on any occasion asked them for a vote.

Addressing himself to Gregson he continued 'with unusual animation':

I'll ask you what I said to you on the same subject when your appointment to the Council was twice deferred. I recommended to the Secretary of State that your appointment should be confirmed, not because I agreed with you on many points, but because I thought you would come here as an honest man and record your vote. 92

Gregson moved for an adjournment. Wilmot was determined to use 'every power to stop procrastination.' After once again exercising his double vote to defeat the motion he made it clear that the non-officials' present tactics would have no effect. He declared:

I shall continue to carry out the instructions of Her Majesty's Secretary of State, and no power on earth shall induce me to take any other course.

92. Ibid.
Appropriation Bill passed the first and second reading. Wilmot at this stage saw victory in his grasp, but before he could put the motion for the third reading, Gregson, Kermode, Dry, Fenton, Swanston and Kerr left the chamber. Wilmot, embarrassed and angered by the crowded gallery's strong manifestations of approbation of the non-officials' action, was forced to adjourn the Council, for a second time, owing to the absence of a quorum. 93

Wilmot expected the opposition to return for another encounter on the following day (30 October). However, only Gregson and Kerr arrived. After the Clerk had informed the Lieutenant-Governor of the absence of a quorum, Gregson told those present that there would not be a meeting since his colleagues were occupied in the preparation of a manifesto which was eventually to be laid before the Lieutenant-Governor. Wilmot, angry and insulted that a member should presume to rise before the chair, turned his back as Kerr attempted to address the members and declared 'in a derisive tone: "There is no Council today".'. 94

On 31 October the opposition, feeling they had sufficiently convinced the executive government of the extremes to which they would go, considered the climate to be appropriate to negotiation.

93. *Ibid.; Observer, 31 October 1845; see also Wilmot to Stanley, 5 November 1845 and 15 December 1845, G.O. 33/53.

94. Report of the meeting of the Legislative Council of 30 October 1845, *Observer, 31 October 1845; Hobart Town Advertiser, 4 and 7 November 1845; see also Wilmot to Stanley, 15 December 1845, G.O. 33/53.
While Gregson, Kermode, Dry, Fenelon and Kerr waited at the Derwent Bank, Swanston attended a private interview with the Lieutenant-Governor to ask him to leave the judiciary, police and gaols charge out of the estimates. If the executive would not comply, warned Swanston, then the private members would not be in attendance when the Appropriation Bill was put to the vote. In refusing to allow the Bill to pass, he said they would 'totally put a stop to public business.'\textsuperscript{95} Wilmot, considering the demands and threats 'disrespectful', became highly excited, 'forgetting some of those forms of civility which no man could safely neglect' and Swanston left him with 'a sense of personal affront - an irremediable wound.'\textsuperscript{96} In consequence of the interview, Wilmot summoned each of the six opposition members to the Council-meeting scheduled for that afternoon. It was either a sense of propriety or a feeling that the government was about to surrender which led to the attendance of the non-officials in the Council.

As soon as the President declared the meeting open, Bicheno moved the third reading of the Appropriation Bill. Thereupon Gregson, speaking so rapidly that the newspaper reporters could not account fully for what he said, again brought into question the legality of proceedings with regard to the Bill. Supported by the

\textsuperscript{95} Wilmot to Stanley, 5 November 1845, and 15 December 1845, G.O. 33/53.

\textsuperscript{96} John West, \textit{op. cit.}, Vol.1, p. 249; Wilmot to Stanley, 24 January 1846 and enc. no.1, Swanston to Stanley, 7 January 1845, G.O. 33/54.
opinion of the lawyer, Francis Smith*, he contended that the Lieutenant-Governor, as President of the Legislative Council, had no right to vote in committee. During the committee stages of the bill, he said, his Excellency had upon one notorious occasion used his two votes. Although Attorney-General Horne dismissed Gregson’s contention, Wilmot remained disconcerted. The Huskisson Act made no reference to that aspect of proceedings and the practice followed in the Commons (the Chairman of a committee was not allowed a double vote) and appeared to give substance to the oppositions’ claim. After a long debate, Gregson moved an amendment for an adjournment to enable the Attorney-General to prepare a ‘deliberate opinion.’ This amendment was opposed on the grounds that it was another delaying tactic and defeated by the Lieutenant-Governor’s use of his deliberative and casting vote. Dry then attempted to read a manifesto on behalf of the six opposition members in which they expressed their disapprobation of the committee proceedings and adherence to Smith’s opinion that, in law, the estimates were rejected. He was called to order by the chair. Next, Greason informed the Council of his intention to move another amendment. Unperturbed by Wilmot’s refusal to allow him to proceed, he moved for the recommittal of the Bill in order, first, to allow dissentient members to bring forward their own estimates, and second, to

* Smith was the son of a prominent member of the Political Association. Smith Jnr. became Solicitor-General in 1848, Attorney-General in 1854, Premier from 1857 to 1860 and Chief Justice in 1874.
ensure the bill's legality. Wilmot used his double vote to throw out the amendment. But before he was able to put the third reading of the Appropriation Bill to the vote, the six non-officials left the chamber. The following morning Gregson and Kerr arrived at the chamber to deliver their resignation. On receiving those of the remaining four opposition members, Wilmot adjourned the session until 1 December 1845, thus giving himself a month to fill the vacancies.

* * *

The resignations of the six non-officials were accompanied by an abundance of correspondence outlining reasons for their actions. A letter signed by all six, attributed their resignation to Wilmot's constant reference to the opposition as 'disloyal and unconstitutional' and his refusal to listen to the wishes of the majority. In the same letter they complained of Wilmot's refusal to admit their opinion on questions involving general policy and his accusations, when they called for sub-committees and papers, which implied their


98. Report of the meeting of the Legislative Council of 1 November 1845, Hobart Town Advertiser, 4 November 1845; Diary of G.T.W.B. Soyes, 1 November 1845; and Wilmot to Stanley, 5 November 1845. G.O. 33/53.
oath of membership. These reasons, in view of their aims -
the prevention of the passage of the estimates - seem inadequate
as an explanation of their action in resigning. It is true that
Wilmot's utterances were extremely untactful. His claims that the
opposition was disloyal and 'radical if not jacobinical' did cause
a great deal of anger; but such accusations, albeit in a milder
form, had been levelled at the non-officials during the February
session of 1845. That the non-officials resigned because there
was no other course of action open to them seems to afford a more
tenable explanation. This is not to say they resigned without
plan or effect. Indeed the opposite is true. Their resignations
were made to correspond with a highly dramatic movement. By timing
their resignation almost immediately after having brought accusations
of unconstitutional practices against the Lieutenant-Governor,
accusations which had the backing of an eminent, respected and
popular attorney, and which were not successfully refuted by the
executive, they were successful in establishing legitimacy for their
action. They aimed, by capturing public opinion, to make it im-
possible for the Lieutenant-Governor to fill the vacancies their
resignations caused and so to prevent the passage of the estimates,
thus placing pressure on both the Local and Home Governments.

In this they were successful. They acquired the honourable

99. Resignation of the non-official members of the Legislative
Council of Van Diemen's Land in the October session of 1845,
enc. no.1 in Wilmot to Stanley, 15 December 1845. G.O. 33/53.
sobriquet 'Patriotic Six' and tumultuous receptions. On 20 December 1845 at a public meeting in the Theatre, Anthony Fenn Kemp moved a vote of thanks and informed them of the 'debt of gratitude the colony owed them.' Kemp's son, Edward, attempted to canonize them by singing their praises in his poem *A Voice from Tasmania*. Launceston, with its characteristic pride in the achievements of its native sons, gave Dry an unequalled ovation. A procession of one hundred and fifty horsemen accompanied his carriage from Evandale to Launceston where his arrival was greeted by unfurled banners, the tunes of a brass band, loud and prolonged cheering from the 'thousands assembled' and an address of welcome from the leading citizens. The carriage of the popular hero was then drawn by fifty men, who replaced the protesting horses, to the Cornwall Hotel from the balcony of which he delivered a platitudinous address to the cheering multitude. Six months later in Hobart Town the friends and admirers of Thomas Gregson*

* E.Kemp in his *A Voice from Tasmania* (Hobart 1846) lauded Dry:
'Then go forth Dry, and not to us, alone
Thy name - thy virtues - and thy fame be known
Let Europe's wide extended regions view
A benefactor of the world, in you -'

+ E.Kemp in *A Voice* wrote:
'Not so with Gregson, in the patriotic fight,
He nobly struggled for the people's right,
Integrity found welcome in his breast.'


a dinner in the patriot's honour. For 'his conduct as a member of the Legislative Council' and ever mindful of his chaotic financial situation, they presented him with two thousand guineas 'on a splendid silver salver.'*

In their stance against the executive and the policies of the Imperial Government, the Patriotic Six had encompassed prevalent popular attitudes with regard to the Probation system and convictism generally, taxation and representative government without which their demands in the former two areas could not be met. In identifying the actions of the Patriotic Six with the colonists' cause, public opinion categorically rejected all imputations of 'improper action on the part of the ex-legislators.' Unlike the executive, public opinion judged that the Six had, during the October session, carried out their duties as legislators to the fullest extent. John West, Tasmania's greatest historian and a contemporary of the crisis, voiced his opinion. He praised them for 'doing their utmost' in delaying the estimates - a measure 'necessary for the good of the colony' and for their attempts to hold the 'executive in check on behalf of the people.'

* The salver bore the inscription: This piece of plate and the sum of two thousand guineas were presented by his fellow-colonists as a tribute of their gratitude for his able, zealous and disinterested efforts to promote the interests of and to obtain the redress for their adopted country, more particularly during the period in which he sat as a member of the Legislative Council of Van Diemen's Land. Cited in John West, op. cit., V.1, p. 252 and Hobart Town Advertiser, 19 June 1846.

Wilmot was cast in the role of the villain in the drama.*

He was denounced, although quite unjustly, as the archetypal collaborator, who, with his chief, Secretary of State Stanley, conspired to use the colony for Imperial purposes without regard to the needs or wishes of its inhabitants. His views on the function of the Legislative Council and the role of members were a major factor in his lack of popularity. His determination to resist any attempts to convert 'the Legislative Council into a Legislative Assembly', from 'a Council of Advice to a Council of Dictation', and his refusal to allow it 'to declare to Her Majesty whether she shall contribute any, or what sum, out of the British Treasury to the colonial expenditure,' failed to win him any

* E. Kemp in A Voice attacked Wilmot:

'Isle of the South .......
When shall her palmy days return again?
And her sons' lips, nor murmur, nor complain.
When he [Wilmot] departs who fixed the plague spot here,
With him it spreads, with him 'twill disappear;
He who professed to be the peoples friend;
And Judas-like betrayed them in the end.
Whose letter's an epitome of lies,
Known for its reckless breach of human ties.
Who spareth vice, and virtue would defame,
Completely lost to every sense of shame.
A pictured harem hands around his bed,
Ideally smiling o'er the lecher's head.
I recommend a winter at the lakes,
A cooling climate, for imbecile rakes...
The colony don't prosper, sir, for why?
Because the duty on our wheat's too high.
The colony is ruined, sir; n'import,
Sir Eardley Wilmot is our best export.'

103. Wilmot's letter to prospective Ms.L.C., undated, published in Hobart Town Advertiser, 16 December 1845 and at a later date in all colonial newspapers including the Government's Hobart Town Gazette of 24 December 1845.
sympathy in a society which was affected by the radical thinkers of England, which envied the concessions made to demands of their counterparts in New South Wales and which harboured many economic grievances. In fact his attitude and actions throughout the August and October sessions had given the colonists the impression that he was an opponent to free institutions. Few at the time saw Wilmot as the man who was so sympathetic to the colonists' plight, that he brought censure upon himself from the Colonial Office, for his remonstrances against Imperial policy, with regard to the financing of the convict system. The majority saw him as an administrator of mediocre competence who refused to listen to the voice of the colony, identified political opposition with personal criticism, and was incapable of treating his opponents with the respect owing to them. 104 Worst of all, he was viewed as a man who allowed personal vindictiveness to influence his professional behaviour. When Pitcairn, a lawyer and leading abolitionist, submitted a petition against transportation asking the Lieutenant-Governor to 'testify the truth of its allegations and the respectability' of the 1,780 petitioners (amongst whom were forty magistrates and the Patriotic Six), Wilmot grossly offended the Hobart Town and Launceston bourgeoisie and the island's gentry by, after agreeing to accede to Pitcairns' request, denouncing the petitioners as 'men who were habitually factious' and 'who attributed their difficulties to any

104. Observer, 20 February 1846.
the right cause.' He told the Secretary of State that their property was trifling, and that their discontent was due to financial embarrassment brought about by 'wild speculation.' After disputing the statements in the petition, Wilmot informed Stanley that his policies, rather than those contained in the petition, had the support of the respectable, although silent, majority of colonists. 105 So great was the resultant wrath of the Midlands Agricultural Association that Gregson and Kermode were easily able to convince that body that Wilmot be removed from the position of patron. 106 The Hobart Town Courier, grossly offended by his Excellency's conduct, discussed, as well as sympathized with, the moves afloat to petition the Queen for his recall. 107.

*  *  *

Wilmot's task in finding suitable colonists to fill the vacancies on the Legislative Council was extremely difficult in view of his own unpopularity, the widespread approbation of the action of the Patriotic Six and the continuance of the popular movement which culminated in the public meeting of 20 December 1845. The anti-government press took great delight in announcing the large number of refusals which his Excellency encountered in attempting

105. Wilmot to Stanley, 1 August 1845, C.O. 280/184.
106. John West, op. cit., Vol.1, pp. 253-4; and Leake to Grey, 10 August 1847 and its enclosure Wilmot to Leake, 12 September 1846, enclosed in Denison to Grey, 17 August 1847, G.O. 33/59.
to gain a sufficient number of members to make the legislature workable. The Launceston Examiner took pride in the support the residents in the North gave to the cause by their refusal to accept nomination to 'the tool of the government.' Charles Henty's refusal was followed by that of Watchorn and Aitken. 'There is not a respectable resident on this side of the island who would enter the Council ... under the present circumstances', it told its readers. And with tongue in cheek it suggested that Wilmot should conscript third-class probationers to fill the vacancies. 108 The Hobart Town Advertiser gloatingly gave a more adequate coverage of the Lieutenant-Governor's difficulty. It wrote:

The canvass for Legislative Councillors has been active during the week; the success has not been commensurate with the wishes of the elector. As we are at the Antipodes the system is contrary to that which prevails in the mother country. The following is, as well as we could collect, the authentic state of the poll:-

<table>
<thead>
<tr>
<th>Time</th>
<th>Refusals</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 o'clock</td>
<td>10</td>
</tr>
<tr>
<td>2 o'clock</td>
<td>two</td>
</tr>
<tr>
<td>4 o'clock</td>
<td>two</td>
</tr>
<tr>
<td>Total</td>
<td>14</td>
</tr>
<tr>
<td>6 o'clock</td>
<td>one acceptance (doubtful).</td>
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</tbody>
</table>

The pressure upon prospective nominees to refuse acceptance was considerable. Public opinion, and the majority of the newspapers, considered anything but a refusal on their part a betrayal.

108. Launceston Examiner, 5 November 1945.
109. Hobart Town Advertiser, 7 November 1845.
of the Patriotic Six and the colonists' struggle. 'Those who dare step into the place [of the Six] are subject to abuse and annoyance' reported the Colonial Times. It told its readers how one Hobart Town merchant was advised, by one of the Six, to refuse nomination, otherwise his character would be 'torn to pieces by the newspapers', and he would 'have his private affairs raked up.' Those who, in fact, dared to accept a seat on the Council, were subject to threats and abuse. The Launceston Examiner reported on the moves afoot to assault Henry Reed's dwelling place, and to break the windows of his store, in consequence of his having announced his intention to accept nomination.

By late December 1845 Wilmot was able to announce the appointment of six new legislators. They were Frederick L. von Stieglitz, a pastoralist from Fingal; Edward Bisdee, a farmer from Melton-Mowbray; John Leake, a large landowner in the district of Campbell Town; Henry Hopkins, a Hobart merchant and leading Congregationalist layman; Henry Reed, a Launceston merchant prominent in Methodist circles; and Cornelius Driscoll, manager of the Hobart branch of the Bank of Australasia. These appointments provoked an outcry of derision. The number of the Hobart Town Advertiser which listed the new members was edged with a mourning border.

110. Colonial Times and Tasmanian, 11 November 1845.
111. Colonial Times and Tasmanian, 25 November 1845; and Hobart Town Advertiser, 9 December 1845.
symbolizing the first death blow to the colonists' cause and the 'ascension of its traitorous murderers', the 'Notorious Six.' At the same time the newspaper consoled its readers by informing them that it had taken His Excellency a long time 'to find persons contemptible enough in the eyes of the community to take office.'

During early 1845 the Hobart Town Advertiser published a series of slanderous and grotesque penportraits of the six new members. Von Stieglitz, denominated 'the Disgraceful', was depicted as an 'ignorant and penniless adventurer' who was an 'insult to the colony.' 'His only claim to distinction', wrote the Advertiser, 'is that he is the husband of the wealthy mistress of a deceased convict.' In the following issue Bisdee, designated 'the Contemptible', was scurrilously attacked. The writer ridiculed him as an ox who had risen above his station in life:

The Ox is a very good and useful animal while he occupies his proper place, and is put to his proper purpose; he is even praised and admired for his ox-like qualities, but

Optat ephippia bos piger,*

and all is changed and the quiet good-natured looking, useful ox becomes a subject for ridicule, when he attempts the province of a race-horse.

He continued with reference to Bisdee's qualities:

* The cumbersome ox wishes to become the spirited steed. - Horace Epistolae.

112. Hobart Town Advertiser, 26 December 1845.
113. Hobart Town Advertiser, 30 December 1945 and 2 February 1846.
It is far easier to state what qualification Edward Bisdee Esq. does not possess, than to paint his disqualification in glaring colours. Perhaps the best mode of portraying his disqualifications is by broadly stating that he does not have a single qualification. His is a character of negatives. 114

The characterization of Reed was equally insulting. 'He was one of the Oi Polloi,' commented the unknown writer, 'who might glide tranquil and unnoticed down the stream of life, uncared for and unconsidered with nothing to praise nor deemed of importance enough to censure.' 115 While Driscoll was dismissed 'as a gentleman with a classical education.' 116 Leake was portrayed as a man of that commonplace description which abounds in this world, and who were included by the poet in the broad category of men - 'who eat drink and sleep; what then? Why he eats and sleeps again.'

'Mr. Leake obtained the honour (?) [of nomination]', it was claimed, 'merely because men of more influence could not be obtained' 117 Hopkins' character drew similar derisive comments. In conclusion, the Hobart Town Advertiser, with tongue-in-cheek, commiserated with Wilmot for being forced to make such 'ill-considered' appointments. It could 'imagine the surprise of His Excellency's successor, when he first becomes acquainted with [those] councillors, and the very

114. Hobart Town Advertiser, 2 January 1846.
115. Hobart Town Advertiser, 9 January 1846.
116. Hobart Town Advertiser, 13 January 1846.
117. Hobart Town Advertiser, 16 January 1845.
estimate he must form of either the intellect of the colonists or the judgement of his predecessors.\footnote{118} None of the new members had played a prominent part in public affairs, nor taken any marked interest in colonial politics. Labelled with the dishonourable sobriquet 'Notorious Six', they were regarded as sycophants and creatures of the executive government. Thus, at the end of 1845 public esteem and confidence in the Legislative Council was lowered, and it became fashionable to denounce it in those terms in which it had been denounced during Arthur's administration.

* * *

The new Council did not meet during 1845. The estimates for 1846 were not passed and the executive government was severely embarrassed. The Patriotic Six had won the day. James Stephen at the Colonial Office told Stanley that he agreed with their stance, for the British Treasury had 'persisted from year to year, in defiance ... of reason and justice, in throwing on the colony the whole expense of the Police and Gaols. The real blame for the crisis, he said, lay with the Imperial Government -

\begin{itemize}
  \item with the Treasury for unreasonable parsimony;
  \item with the Home Office for throwing the whole current of convicts in Van Diemen's Land by an ill-advised and unconsidered pledge to abandon transportation to New South Wales;
  \item with this office for acquiescing, without remonstrance ... in these decisions, with
\end{itemize}

\footnote{118. \textit{Ibid.}}
this office for substituting probation
 gangs for assigned service, and with the
 Committee of the House of Commons for
drawing up impractical rules regarding
transportation, which had the effect of
destroying one evil - assignment - and
producing another and much greater evil. ... 119

In consequence, the British Government undertook to pay £24,000
per annum towards the cost of the colony's police and gaol charge
showing 'an earnest of its anxiety to act in a spirit of liberal
justice towards Van Diemen's Land' which would 'bring to a close
a serious controversy ...' 120 Furthermore the Colonial Office's
subsequent decisions of that year for the temporary suspension
of transportation and Secretary of State Grey's expression wishing
to use 'every practicable opportunity for safely extending ... the
system of self-government in the form of a representative legisla-
ture,' 121 was made in a similar vein.

In spite of Wilmot's anxiety to have the estimates passed
into law, he did not convene the Legislative Council until March
1846. The members of his Executive Council, some of whom had wit-
nessed the government under Arthur function quite normally without
an Appropriation Act, convinced him of the expediency of delaying
the estimates in the hope of the arrival of despatches with news
of financial relief. 122 When the despatches arrived, containing

119. Stephen's minute to Stanley on the resignation of the
   Patriotic Six, cited in A.G.L. Shaw, The Convicts and the

120. Gladstone to Wilmot, 14 March 1846, C.O. 403/27.


122. Executive Council Minutes, 3 January 1846.
no favourable news, Wilmot once more redrafted the 1846 estimates and assembled the new Council.

Although, by this time, the colony's economy showed signs of recovery, the government's financial situation was still desperate. Wilmot was forced to borrow another £7,000 from the Commercial Bank, raising the colony's debt, to that institution, to £32,000. The amount owing to the commissariat had grown to approximately £75,000, and the arrears of salaries for government employees stood at £5,000. The total colonial debt was estimated at approximately £112,000.123

In view of this alarming situation, some of the new members proved less compliant to the executive than expected. Reed and Hopkins resolutely opposed the Bill to sanction Wilmot's latest loan and the move to issue debentures bearing interest chargeable on the Colonial Revenue to the amount of £10,000. Their arguments opposing these measures were similar to those used by the Patriotic Six in their opposition to like measures. Reed told the Council that since the £70,000 derived from customs, if applied wisely, was enough for colonial purposes, he must conclude that the amounts which the executive wished to borrow would be used for Imperial purposes. Therefore he would oppose the measure. Leake opposed the discussion of any financial legislation until receipt of the Secretary of State's intention with regard to the Imperial Government's payment of the judiciary, police and gaols expenditure. Reed's move to

123. See Hobart Town Courier, 18 February and 3 March 1846.
The Bill gained the support of only Leake, Hopkins and von Stieglitz. After it was lost, both Reed and Hopkins submitted their resignations. Public attention being focused on the movement against transportation and for representative government outside the Council, their action went by unnoticed save for Spectator's derisive comment:

The mysterious appearance and disappearance of these gentlemen from the stage borders ... closely upon the burlesque: they undoubtedly accepted their seats in order to resign and so embarrass the government and bring themselves into the public eye.

Other newspapers were not interested in what appeared to be a repeat and unimpressive performance by second-rate actors of the great scene of 31 October 1845.

Reed was replaced by William Race Allison, a 'young upstart' from Macquarie River, who, because of his unquenchable thirst was known throughout the island as the Pot-boy. William Orr, a Hobart merchant, assumed the seat previously occupied by Hopkins. The remainder of the March Session went by uneventfully. A large quantity of legislation, which had been delayed by the crisis of 1845, was enacted. The new private members made no attempt to form an opposition. It is apparent that by September of 1846, Wilmot, by his wise choice of members, had brought about a return

125. Spectator, 31 March 1846.
126. Diary of G.T.W.B. Boyes, 16 September 1846.
to the status quo ante-Franklin. From the official benches, Auditor Boyes noted the similarity between Arthur's Council and Wilmot's new Council. He also observed Wilmot's collusion with some of the non-officials:

The understanding between Sir Eardley and some of the unofficial Ms.L.C. is very apparent and reflects no credit upon His Excellency. 127

During the debate on the 1847 estimates in the Spring session of 1846, Boyes contemptuously counted the number of questions asked by Allison, von Stieglitz and O'Connor (the latter, now there was no conflict within the Council, was constantly on the scene) which were 'put with Sir Eardley's knowledge, if not at his suggestion!' He was especially disgusted when, upon one occasion, O'Connor 'actually arranged his ideas and expressed them in the same words as the Governor had done to [him] the day before.' 128

The Spring session of 1846 was subdued for reasons other than the understanding which existed between the private members and Lieutenant-Governor. In the first instance the economy showed signs of revival. As early as March the increase in trade had become evident. In August, Wilmot told the Council that economic recovery was imminent. The revival of prosperity was accompanied by an increase in revenue. In the second place the dispatch from the new Secretary of State for the colonies, W.E. Gladstone,

127. Ibid.
128. Ibid.
announcing the Imperial Government's decision to contribute towards the upkeep of the police and gaol establishment, was received. Finally, the new members, who were not involved in the movement against transportation and for representative government, found no issue about which they felt strongly enough to warrant the assumption of a firm stance.

This session was Wilmot's final and perhaps most successful. A considerable quantity of legislation was calmly and quietly passed into law. The passage of the Cleansing, Lighting and Paving Act was a personal triumph. The Act, significant because it formed the basis for municipal government, had been successfully opposed since its conception in 1839.

The session was brought to an abrupt end when Wilmot announced his recall. In a brief speech he outlined the ostensible reason for his dismissal, his 'insufficient attention to the moral and religious welfare of the convicts', and thanked the members for their co-operation in assisting him with the government of the colony. Sir John Eardley-Wilmot's career ended on an ironic note. He was dismissed after successfully steering the government through a particularly difficult financial and political crisis. Although it was claimed that he was recalled as a result of his neglect of duty, his dismissal in fact was the result of his having

offended the puritanical Gladstone's sense of propriety by not being above suspicion of behaving immorally. Several months after word had been received of his dismissal he died - 'in exile, disgrace and despair.' 130

130. K. Fitzpatrick, 'Mr. Gladstone and the Governor; the recall of Sir John Eardley-Wilmot from Van Diemen's Land 1846.' Hist. Studies, 1940-41, Vol. 1, p. 36.
PART III.

NOMINEE COUNCIL TO REPRESENTATIVE LEGISLATURE: THE TRANSITION.
SIR WILLIAM THOMAS DENISON,
Lieutenant-Governor 1847-1855.
The decline of the prestige, status and political significance of the nominee Legislative Council, which began with the resignation of the Patriotic Six, and the appointment of the Notorious Six, in the latter part of the Wilmot administration, became more evident in the period which commenced with the succession of Sir William Denison and ended with the replacement of the Council in 1851 with a two-thirds elective Council. This decline can be explained in terms of the fact that the new Lieutenant-Governor was able to control the legislature, or at least prevent it from exerting pressure in order to dictate to the executive government. In a period of economic prosperity, favourable circumstances enabled Denison to come to terms with the Council, the \textit{bête noire} of the Wilmot administration.

Four factors contributed to Denison's success here. In the first instance there was no stability in its composition: the turnover of private members was phenomenally high. Unable to form a solid \textit{bloc}, the non-officials, as individuals, were impotent. The
reinstatement of the Patriotic Six did not alter the situation. Within months of the confirmation of their reappointment, two of their number resigned, and a third was incapacitated by poor health. Their places were filled by men whose viewpoint on the issues of the day was very close to that of the Lieutenant-Governor. Second, the prorogual of the Legislative Council in 1847, as a result of the membership issue, enabled Denison to govern without reference to the legislature in his first year of office, and to assess colonial politics and politicians. In the third place a head-on conflict between the executive and the judiciary developed into a conflict between the legislature and the judiciary, and united Denison and the majority of the private members in a common cause. Fourth, because of their awareness of the imminence of an elective legislature, which, it was thought, would be more competent to deal with matters of significance, neither Denison nor any of the Council members were inclined to innovate or to raise major issues. In July 1846 the Russell administration, which, during the six years of its period in power, effected a revolution in the relationship between England and the colonies, had taken office. Earl Russell's Secretary of State for the Colonies, Earl Grey, who as Viscount Howick was parliamentary Under-Secretary during his father's ministry, and who belonged to the advanced party of colonial reformers, initiated a policy which proclaimed that colonies were to be governed for their own benefit as well as that of the mother country.
worked toward the introduction of responsible government in those colonies in which it was demanded.¹ From the very beginning Grey, whose policies were widely publicized, made it clear that the Van Diemen's Land constitution would be in the near future amended.

Denison's strategy, reminiscent of that of Arthur, enabled him to assert gubernatorial influence in the Legislative Council. Denison, unlike Wilmot, was a shrewed tactician. He was decisive, thorough and, notwithstanding the fact that he suffered from epilepsy, he had an enormous capacity for work. He had succeeded in everything to which he had turned his hand. As a captain in the Royal engineers he had worked in the area of meteorology at Greenwich, lectured at the Royal Engineers' training establishment at Woolwich, and supervised and advised in the construction of naval docks at both Woolwich and Bermuda.²

When Denison arrived in Van Diemen’s Land on January 1847 his knowledge of the island colony was already considerable. He had spent much time at Whitehall studying despatches, memoranda, statistics and other relevant material which passed between the Secretary of State for the Colonies and the Lieutenant-Governor of Van Diemen's Land in the three years prior to his appointment.³

He had also conferred with the civil servants and Under-Secretaries to learn more of the ways and means of colonial administration. Denison was thus better prepared for office than any previous Lieutenant-Governor excepting Arthur. His briefing at the Colonial Office, and his one year's experience in the colony gave him a good understanding of the aspirations, strategy and tactics of the colonial politicians. When the Legislative Council met in early 1843 he was able to handle this troublesome institution with relative ease. He gave it leadership and direction and would not allow it to go beyond its constitutional competence and function as a forum for colonial political discussion. In accordance with these views he attempted to discourage debate on issues of wider political significance such as convict transportation, which, like land and immigration, was regarded as an Imperial rather than a colonial concern. The campaign against transportation was conducted at public meetings, and from Congregationalist, Wesleyan and Presbyterian pulpits rather than in the Legislative Council which merely reflected the general hostility to convictism. By 1849 the proceedings of the Legislative Council, overshadowed as they were by the movement to end convictism, were of secondary interest only to both pro- and anti-government newspapers and the public.

The question as to whether transportation should be abolished or continued involved the whole colony. It had arisen during the latter years of Arthur's administration and during the economic
depression of the early forties. Although at that stage a large portion of the community was prepared to blame the system of transportation for all the colony's evils, there were only a relatively few people who were prepared to prescribe its abolition as a remedy for those evils. The majority were occupied with the immediate objectives of forcing the British Government to pay two thirds of the police and gaol charge, and acquiring exemption from taxation. Once the Imperial Treasury had agreed to accede to colonial demands and the depression had ended, they were free to give their support to the more ideologically-orientated anti-transportation movement which was, in fact, part of the colony's quest for representative government, for the colonists believed that the abolition of convictism should precede representative government.

The British Government itself entertained some doubts as to the wisdom of its convict policies. In 1846 the then Secretary of State, W.E. Gladstone, informed the colonial government that transportation to Van Diemen's Land would be suspended for two years. His successor, Earl Grey, reiterated this promise and led the colonists to believe that transportation would not be resumed at the expiration of the period for which it was suspended. This caused Lieutenant-Governor Denison some concern. He, like his

predecessor, believed that since the economy was to a large degree dependent upon the money derived in payment for goods and services required by the Convict Establishment, and inexpensive convict labour, a permanent suspension of convictism would result in the colony's ruin. In order to ascertain the views on the matter of the 'responsible' element in society, he circulated a questionnaire to the magistrates. Others saw this as an invitation extended to the whole colony to put its views. The Launceston Examiner, the leader of the anti-transportationist press told its readers:

The courteous application of His Excellency for advice on a question of unexampled moment to the colonists, is the first official intimation of the right to judge of the people and deserving highest praise.

The anti-transportationists rallied. In Launceston on 3 April 1847, a committee was elected to prepare resolutions in answer to the Lieutenant-Governor's questions. A public meeting held outside the Cornwall Hotel and attended by approximately a thousand people subsequently passed the committee's anti-transportationist resolutions. On 15 April 1847 the Hobart anti-transportationists

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6. The questionnaire was subsequently published in the Launceston Examiner, 31 March 1847, Hobart Town Advertiser, 2 April 1847 and Colonial Times, 9 April 1847.

7. Launceston Examiner, 31 March 1847.

8. Report of the meeting of 3 April 1847 to discuss the question of transportation, Launceston Examiner, 7 April 1847; see also Diary of William Arthur, 3 April 1847, T.U.A.

9. See the report of the 'Great Public Meeting' of 10 May 1847, Launceston Examiner, 12 May 1847 and Diary of William Archer 10 May 1847.
gathered at Mezger's Hotel, the haunt of those who were associated with the movement for legislation by representation. It was agreed amongst those present that the important questions which the Lieutenant-Governor had raised, should not be left to the magistrates who comprised but a small portion of the population; that such questions should be considered by the collective body of colonists. With this view in mind, a public meeting was called. On the 6 May a meeting attended by twelve hundred people declared transportation to be a moral evil which ought to be ended herewith. Similar declarations were made at meetings at Campbell Town and Longford.

The working classes expressed their views strongly against transportation. On 19 April the mechanics of Launceston gathered to pass resolutions requesting the end of convictism on the grounds that it lowered the tone of the community. Seven days later their counterparts in Hobart petitioned the Queen for the abolition of transportation and the introduction of representative government.

12. See Hobart Town Advertiser, 20 April 1847; Launceston Examiner, 21 April 1847 and Diary of William Archer, 7 April 1847.
13. Report of the meeting of the mechanics to petition against transportation of 19 April 1847, Launceston Examiner, 21 April 1847 and Diary of William Archer, 19 April 1847.
After the arrival of the despatch in which Earl Grey led the colonists to believe that the end of convictism was imminent, there was a lull in anti-transportation activity. However, as soon as it became known that the British Government intended to transfer convicts ('the blind, the idiots, the workless, the twice- and thrice-convicted of New South Wales'\(^{15}\)) from Norfolk Island to Van Diemen's Land, the movement was once more mobilized. Public meetings and demonstrations were held and the Launceston anti-transportationists formed the London Agency Association, a body designed to raise funds to pay for the services of an agent in London whose function it was to keep the anti-transportationists' point of view before the Imperial Government. In January 1849, after Grey had informed the colony that transportation - in an amended form - was to be resumed,\(^{16}\) opposition became even more organized and intense. An Anti-Transportation League was formed in Launceston by abolitionists who protested at Grey's failure to keep his alleged promise.\(^{17}\) The League advocated the immediate cessation of transportation and its members were pledged to refuse employment to convicts who had arrived in the colony after 1 January 1849. It was not long before similar leagues were formed

15. *Hobart Town Advertiser*, 14 October 1847.
in other centres of population in the island. Their activities were co-ordinated by the movement's headquarters in Launceston.

The anti-transportationist movement was not confined to Van Diemen's Land. The hostile response to the resumption of transportation in New South Wales, Victoria and South Australia and the development of organizations, in those colonies, committed to the cause of abolition, satisfied the conditions necessary for the plan of an inter-colonial anti-transportation league to be put into operation. On 9 April 1850 a public meeting requested the Launceston Anti-Transportation League to address a letter to the colonial secretaries, speakers of legislative bodies, municipal authorities and other influential persons throughout the colonies asking for their co-operation in the stance against convictism. The Reverend John West, Congregationalist clergyman, historian and secretary of the Launceston League drew up a circular which appealed to the inhabitants of the neighbouring colonies, 'as persons liable to the same wrongs' to ally themselves as the enemies of transportation. The argument of geographical propinquity and common origin were used to persuade the other colonies that they should abandon mere sympathy in favour of active co-operation. West reminded them that it was in their interests as well as those of Van Diemen's Land that transportation should cease, for escaped convicts and ticket-of-leave men might make their way from the island colony into other Australian communities where they might continue their wicked and
The response to the Launceston League's circular was encouraging. In February 1851 delegates from the Victorian and the Tasmanian abolitionist organization met in Melbourne. The conference then moved to Sydney in order to confer with representatives of the New South Wales Movement. The outcome of these developments was the formation of the Australian League for the Abolition of Transportation and the beginning of a period in which the colonies were drawn together in a common cause.

The success of the Launceston League's plan gave the movement new dimension and respectability, and boosted the morale of abolitionists throughout the colony. Sections of the press sensationalized these achievements and constantly kept the anti-transportationist point of view before the public. West and other members of the Tasmanian delegation were publicly feted as heroes. By 1851 the movement had reached its peak.

* * *

When Denison arrived in the colony in January 1847, changes in the composition of the membership of the Legislative Council were predicted. Anti-Wilmot newspapers maintained that the appoint-

ment of the Notorious Six was illegal and that the Patriotic Six would be, in due course, reinstated. The Notorious Six were anxious about the validity of the rumour. John Leake, on their behalf, asked Lieutenant-Governor Denison if any sudden changes were to be made in the membership of the Legislative Council. At this stage, said Leake, the six members appointed by Sir Eardley-Wilmot, in view of the rumours circulating in the community, were not inclined to appear in the place reserved for the members of the Legislative Council at the levee to be held in honour of his Excellency. It was not in accordance with their feelings to appear before the public in a position from whence they might be removed.\(^{20}\) Denison's answer in reply to the question was vague. But Leake came away believing that it would be safe for the Six to take the place reserved for Legislative Councillors. It was in their official capacity also that the Six attended the funeral of Sir John Eardley-Wilmot who had recently expired. Thus in February 1847 the Notorious Six believed their position was secure.

The arrival of a despatch from the Colonial Office in the following month once again threw them into a state of uncertainty. The Secretary of State for the Colonies, Earl Grey, informed Denison that the Patriotic Six were acquitted from the imputation of disloyalty. The fact that his department had, at the time of their

\(^{20}\) Leake, von Stieglitz, Bisdee and Orr to Grey, June 1847. enclosed in Denison to Grey, 10 August 1847, G.O. 33/59.
struggle with Wilmot, been considering the possibility of paying for a portion of the police and gaol charge, had absolved the patriots from the 'reproach of having unreasonably urged the claims of the colony' against the British Treasury. Although he would not pass any comment vis a vis their method, he assured the Lieutenant-Governor that nothing had occurred 'that would dissuade Her Majesty from availing herself of the services of any of these gentlemen in the same or any other capacity.'

The question of the membership of the Council was thrown wide open. Grey stated that, in view of the 'correctness' of their claim that the British Treasury should pay for two-thirds of the police and gaols charge, the Patriotic Six should not be forgotten. Should he consider it proper, Denison was at liberty to reappoint them to those seats they had vacated. At the same time the Secretary of State assured him that 'the utmost consideration [was] due to the gentlemen who filled the seat at a time when the Government found it difficult to find nominees.' He should 'deeply regret the necessity of requiring such service by depriving any of those gentlemen of their rank to which it has raised them', he continued. In the final analysis Grey left the choice of the Six who 'would most conduce to the public welfare' in the hands of Denison for he 'felt it undesirable to fetter' the local admini-

22. Ibid.
A difficult problem was presented to the Lieutenant-Governor. On one hand he found it difficult to by-pass the Patriotic Six in view of the fact that their action had received the approbation of the Colonial Office and was supported by the bulk of popular opinion. On the other hand it would be equally unfair, and in fact ungracious, if the Crown were to terminate the membership of the other six since they had 'exposed themselves to the vituperation and ridicule of half the colony ... and persevered in the face of scurrilous attack from the newspapers.' In the end he took a course which was calculated to cause the least offence to both parties, and 'which if successful', he told his mother, 'would relieve me of great difficulty.' He proposed to call both the Patriotic and Notorious Six together to allow them to decide who should sit at the Council board. This course of action was not in keeping with his political philosophy which was remarkably reminiscent of that of Thomas Hobbes. From the very beginning he had entertained doubts with regard to the probable success of this move; he 'feared the two parties, like children would keep aloof, each in its corner, and that all attempts to amalgamate will prove unavailing.'

23. Ibid.
26. Ibid.
Denison's pessimism was justified. On 10 March 1846 the two sextets assembled in the Lieutenant-Governor's study. After Denison had read them relevant extracts from Grey's recent despatch and expressed his desire that they 'relieve him from so invidious a position' by mutually agreeing 'who of their number would be the new members', silence reigned. Eventually Gregson spoke on behalf of the Patriotic Six. It was impossible, he said, to entertain his Excellency's proposition. The materials before him, could under no circumstances, amalgamate. The Patriotic Six, on one hand 'went out on great principles' and were approved of by her Majesty; on the other, he asserted, the six appointed by Sir Eardley-Wilmot, went by no principle at all. His action and that of his colleagues had met with her Majesty's approbation, and that was to him sufficient reason for their reappointment', he concluded. The other five patriots nodded their heads in agreement. Dry then respectfully expressed his opinion that nothing would come of further discussion since both parties were adamantly opposed to the suggested course of action. Driscoll, chief spokesman for the Notorious Six agreed, and suggested that the Lieutenant-Governor should choose six new members from the body of the colonists, excluding the present twelve.

This solution proved entirely unsatisfactory to all others including Denison who continued to insist that a compromise, via an 'amalgamation' could be reached. Gregson's tongue became
vitiolic as he grew more impatient with the proceedings. He informed Denison that since some of the twelve individuals were utterly incompetent, he would not accede to his Excellency's scheme because it involved the risk of some of the incompetents being selected for membership by other incompetents. Driscoll took umbrage at this remark which he construed as a personal slight. He could not sit there and hear such language applied to himself and his colleagues, he thundered. It was by now painfully apparent to Denison that a compromise was impossible. He called on the principal belligerents to resume their seats and did his best to pacify the Notorious Six, telling them he considered all persons present equally competent. After Gregson had apologized, although not without making a few sarcastic remarks about Mr. Driscoll's sensitivity, Denison closed the meeting. 27

Convinced that the only alternative was to appoint either one or the other party in its entirety, he called his Executive Council together. Its members advised him to reinstate the Patriotic Six believing that 'with their talents, their position in society, and the situation in which they stand in the estimation of the public' his Excellency would 'in every way be better able, with their assistance, to carry on public business. ...' 28

27. Launceston Examiner, 13 March 1847; Hobart Town Advertiser, 12 March 1847; Colonial Times and Tasmanian, 12, 16 and 26 March 1847.

28. Denison to Grey, 12 March 1847, G.O. 33/57; Executive Council Minutes, 10 March 1847.
On 11 March, the following day, Gregson and Swanston as the recognized leaders of the Patriotic Six were informed that the members of their 'party' were reappointed. Shortly afterwards each of the Notorious Six received a letter explaining the most recent developments and regretfully requesting their resignation. It was due only to the circumstances of which they were well aware that the Lieutenant-Governor was forced to take such a painful step. They were asked to resign, explained Denison, not because of any inadequacy on their part. Indeed Her Majesty's government, the community, and he himself considered them all to have excellent qualifications.29

Any effect these kind words might have had in softening the blow was cancelled out by the untimely publication in the Government Gazette30 of the termination of their membership and the reappointment of the Patriotic Six. Alexander Orr was the first to complain that

the members to whom the utmost consideration is due received no official communication from Your Excellency until two days after the public Report had acquainted them with your determination. 31

The premature publication of Denison's decision was a major cause

29. See Denison to Driscoll, undated, enc.no.1 in Denison to Grey, 12 March 1847, G.O. 33/57.
30. Hobart Town Gazette, 22 March 1847.
31. Orr to Denison, 13 March 1847, enc.no.1 in Denison to Grey, 1 April 1847, G.O. 33/57.
of the anger of the Notorious Six. The circumstances of his dismissal induced Allison to address a letter to the Lieutenant-Governor which Allison himself later described as 'lacking the tone and temper which should characterize correspondence between [him]self and Her Majesty's representative.'

Driscoll, in a letter eighteen foolscap pages in length, complained that his Excellency's failure to notify the members of their dismissal before the Gazette announcement was 'discourteous and unmerited.'

In an even more voluminous document he denounced Denison's treatment of himself and his colleagues:

> It recalls to mind ... recollections of the Second Charles, whose friends forfeited their all in support of monarchy - And how were they requited? as in our own case; by base ingratitude - contemptuous treatment for meritorious services rendered to the Government in the hour of its greatest perplexity.

In addition to complaining about the way in which they had received the news of Denison's decision, they remonstrated against the decision itself. Leake considered it at best impolitic. The Patriotic Six would not serve in the best interests of the colony. Swanston, Kermode and Fenton, he asserted, had no intention of remaining on the Council for any length of time. All three, he continued, intended to resign for 'private reasons' as soon as they could honourably do so. Doubts were cast on the sincerity

32. Allison to Stanley, 18 March 1847, C.S.O. 11/7/144.
33. Driscoll to Denison, 20 March 1847, enc.no.2 in Denison to Grey, 14 April 1847, G.O. 33/57.
34. Driscoll to Denison, 6 April 1847, enc.no.1, loc. cit.
of Gregson and Dry, for Leake had enclosed a letter from Wilmot, in which the former Lieutenant-Governor had brought serious charges of improper conduct against them. Orr considered that Denison had failed to follow Earl Grey's instructions when making his decision. He contended that Grey had ordered Denison to select an equal number of members from both parties. 'Can the appointment of every member of one party be considered a selection from both?' he asked rhetorically. What Orr implied, Driscoll blatantly stated. The Lieutenant-Governor had acted with gross partiality, he asserted. As a result of such conduct, confidence in the government had been weakened while at the same time, he continued, nothing had been done to break the 'turbulent oligarchy' which had for so long disrupted the colony. Driscoll also made it his habit during this tense period, while wandering around the streets of Hobart Town, to abuse the Lieutenant-Governor before any acquaintances he chanced to meet, tracing the cause of his dismissal to Denison's deranged mind which he attributed to the epilepsy with which that gentleman was known to be afflicted.

The Six did not give up their membership without a struggle.

35. See Leake to Grey, 10 August 1847 and its enclosure Wilmot to Leake, 12 September 1846, enclosed in Denison to Grey, 17 August 1847, G.O. 33/59.
36. Orr to Denison, 18 March 1847, enc.no.2 in Denison to Grey, 1 April 1847, G.O. 33/57.
37. Driscoll to Denison, 20 March 1847, enc.no.2 in Denison to Grey, 14 April 1847, G.O. 33/57.
Leake informed the Lieutenant-Governor in a 'polite and restrained' tone that he would take every step to vindicate his position.\(^39\)

Driscoll and Orr put their case before the Secretary of State. Orr made it widely known that he still considered himself a member of the Legislative Council and that he would not submit his resignation until he was instructed to do so by her Majesty's government. Von Stieglitz was the only one to resign quietly.\(^40\)

The intransigence of the other five tested Denison's patience. The gauntlet had been thrown down and he took it up. He decided to suspend Orr in the hope that his colleagues would 'take warning and quietly resign.' If then they refused or joined Orr they would have to 'row in the same boat as him.'\(^41\) When no resignations were submitted, Denison, on the advice of the government law officers, terminated their appointments.

That was not the final chapter in the episode. The next instalment took place inside the Council chamber. On 20 July Denison although tired and indisposed,\(^42\) prepared himself for his first meeting with the Legislative Council which, in composition, was identical to that which had troubled Sir Eardley-Wilmot. The opening of the session, as usual, was well attended by members of

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\(^{39}\) Leake to Denison, 22 March 1847 and Denison's memo to Bicheno, 5 April 1847, C.S.O. 11/7/144.

\(^{40}\) Von Stiegliitz to Denison, 22 March 1847.

\(^{41}\) Denison's memo to Bicheno, undated, C.S.O. 11/7/144.

\(^{42}\) Colonial Times, 23 July 1847.
the public. A large concourse, 'comprising of the elite of the Community in every department of business or profession' had assembled in front of the Customs House waiting for the Lieutenant-Governor's arrival and listening to the music provided by the band of the 99th O.O.L.I. As soon as Denison appeared, the guns at the battery thundered a salute. Proceedings formally commenced with the swearing in of new members. Adam Turnbull, who was to take his seat as Colonial Treasurer, and who was the first new member to present himself, was sworn in without ado. Then Fenton, one of the Patriotic Six, came forward. Much to the surprise of those present in the chamber, Chief Justice Pedder, who administered the oath of office, motioned him back and commenced a long speech in which the chamber was informed that the Patriotic Six could not take up seats in the Council. The Lieutenant-Governor, argued Pedder, did not have the power to appoint members except in special circumstances. These were defined in clause 31 of the Huskisson Act - in the case of the death, resignation, removal (by her Majesty), absence or incapacity of any members of the Council. 'No provision was made for the notification of the disapproval of the Queen of any or all temporary appointments, other than that of appointment under the sign manual', he explained. If the Lieutenant-Governor made such appointments, as had Sir Eardley-Wilmot

44. Ibid.
after the Patriotic Six had resigned, then those gentlemen (the Notorious Six) who were given the appointment in those circumstances, and providing that they had not resigned since, were still de jure members of the Legislative Council. Since he had seen no warrant under the sign manual reappointing the Patriotic Six, he could only assume that Wilmot's appointees were still members and there were no vacancies to fill.45

As soon as he had finished and after order was restored to the 'confusion' which resulted from this sensational development, Gregson, whose respect for the Chief Justice's opinions was never as great as Pedder would have liked it to have been, begged to differ with his Honor since he had it on good authority that Mr. Justice Montagu was of the opinion - an opinion which he shared - that his Excellency, as the sole representative of the Crown in the colony, did have the power to disallow any temporary appointments, and since the appointments made by the former Lieutenant-Governor were only temporary, Sir William Denison had acted within his rights when he terminated the membership of Wilmot's appointees. Fearing that a scene might result if the discussion were allowed to continue, Denison adjourned the meeting,46 and summoned the government's law officers, Chief Justice Pedder and Puisne Judge Montagu to his chamber.47

45. Ibid.
46. Ibid.
47. Bicheno's memo to the Attorney and Solicitor General, 21 July 1847, C.S.O. 24/19/463.
After much discussion the legal authorities decided that the Lieutenant-Governor was competent to dismiss temporary members. Further, it was deemed that Wilmot's appointees were temporary members since there was no evidence that they were appointed under the sign manual, and thus their dismissal was legal. 48

The objection against the membership of the Patriotic Six having been removed, Denison summoned the Council, which, after the formal preliminaries had been completed, commenced its deliberations on the numerous matters before it. 49 But the matter did not end there. It was not long before the warrants issued under the sign manual, appointing Wilmot's nominees, were discovered. Pedder's objection now became valid and Denison had no alternative but to bring the proceedings of the Council to a close, deciding that it should not meet until such time as the warrants appointing the Patriotic Six and at the same time nullifying the membership of Wilmot's appointees, had arrived in the colony and ended the matter once and for all. 50 Although Secretary of State Grey was not pleased with the manner in which Denison had handled the situation, he delivered no sharp rebuke but backed his decision. 51

51. Grey to Denison, 21 September 1847, G.O. 1/66; see also Denison to Grey, confidential, 1 March 1848, G.O. 33/60.
warrants appointing the Patriotic Six arrived on 13 January, and the Legislative Council was finally assembled five days later to deal with the business which had accrued from the previous year and to resolve the recent dispute between the executive and the judiciary.

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After the brief extraordinary session of early 1848, there were other important changes in the membership of the Council. Before the end of August of that year, two of the Patriotic Six and Roderic O'Connor had resigned. The exits of Swanston and Kermode and the entry of Leake, Sharland and Allison, spelled an end to that esprit de corps amongst the private members, which had made them in the past such a formidable force to be reckoned with in the Council.

On 7 August 1848 Charles Swanston wrote to inform the Lieutenant-Governor that he would be unable to take his seat in the Council during the oncoming session because he no longer wished to be a member of a legislature in which, apparently, the public, in view of Earl Grey's promise of a 'better form of Legislature', did not 'place ... the same confidence as they formerly did.' Denison publicly expressed surprise; he regretted that he would no longer be able to draw on Swanston's vast knowledge of matters.

52. The warrants were enclosed in Grey to Denison, 6 August 1847, G.O. 1/66; see also Hobart Town Advertiser, 14 January 1848.
53. Swanston to Denison, 3 August 1848, enclosed in Denison to Grey, 15 September 1848, G.O. 33/65.
financial. But privately Denison was over-joyed. He was, he confessed to his mother, 'not sorry to get rid of him for he has been at the bottom of all opposition I have met since I have been here.' Denison told Grey how Swanston was the chief instigator in causing a delay in the passage of the estimates, and how the banker was 'identified with the party opposed to my predecessor which has shown a similar disposition during my government.' During the Wilmot administration Swanston had lost his influence with the executive and thrown in his lot with the group of colonists which became eminent during the Franklin and Wilmot periods. When Denison arrived Swanston had attempted to manoeuvre himself into that position of prominence which he enjoyed during the late Arthur and early Franklin administration. Denison, however, because of his distrust of this man whose part in the past political intrigues was not inconsiderable, and because the Derwent Bank - which was on the verge of collapse - was no longer of importance to the economy of the colony, refused to take him into his confidence or pay special attention to his counsels. Auditor Boyes noted that

Swanson is annoyed at being considered of less importance by the Lieutenant-Governor than he [Swanston] expected and cannot easily forgive him until he gains special civility.

54. Hobart Town Advertiser, 8 August 1843.
55. Denison to Mrs. Denison, 25 August 1843, W.T.Denison, op. cit., p. 92., Swanston was not mentioned by name in the letter.
56. Denison to Grey, 15 September 1843; see also the same to the same, confidential, 25 October 1843, C.O. 290/232.
57. Diary of S.T.M.B. Boyes, 6 July 1347.
Swanston's antipathy to Denison increased when his brother-in-law, Captain Forth, Director of Roads and Bridges for the past seven years, was left without employment when the Road Department was placed under the Convict Department. In order to show his contempt, he joined forces with the colony's enfant terrible Thomas G. Gregson to add the weight of the opinion of another member of the Legislative Council to the complaints made against the administration. Hobart pressmen noted with interest how the 'two old rogues had suddenly become inseparable.' The Britannia and Trades Advocate's curiosity was aroused by the trouble the banker took in travelling from Hobart Town to Richmond in order to nominate Gregson to the chair of a public meeting called to complain about the state of the roads. Every second edition of that journal treated its readers to a new episode of the continuing saga of the 'new and mysterious friendship' of Swanston and Gregson.

During 1848 and 1849 Swanston wound up the affairs of his bank and left the colony for the greener fields of New Zealand. He died before he reached his destination. Excepting Chief Justice Pedder, Swanston held his seat in the nominee Legislative Council longer than any other member.

The member to resign during August of 1848 was Roderic O'Connor of Connoville. He told Denison in his letter of resignation that he found the task of sitting alongside Gregson intolerable.

58. Ibid.
59. Britannia and Trades Advocate, 30 September 1847.
Gregson was unbearable at the best of times, he wrote, but his latest escapade, which culminated in his thrashing Thomas Macdowell, an offense which the court did not see fit to punish, proved too much for O'Connor's patience. He could not see how anyone could abide by such a man, who, 'from having commenced a violent paper war, finds himself defeated in the controversy, and then has recourse to the cudgel to wreak vengeance on his antagonist.' Gregson was not the only one whom O'Connor found insufferable. He had little time for Denison himself with whose policies vis a vis the reinstatement of the Patriotic Six he was in considerable disagreement.

Furthermore he was convinced that Denison had a soft spot for Gregson. Moreover he was often critical of the Lieutenant-Governor. After the introduction of the amended Road Bill he told a sympathetic group of acquaintances that he considered it preposterous for a young man like the Lieutenant-Governor who knew little if 'anything of the people', to attempt to cram a bill, 'which if passed would cost him [O'Connor] £1,200 a year, down the throat of the Council.'

Although Denison was displeased that antipathy to a colleague should constitute the Connorville squire's ostensible reason for relinquishing public duty, he was nevertheless relieved to

60. O'Connor to Denison, 7 August 1848, enc.no.2. in Denison to Grey, 15 September 1848, G.O. 33/65; see also Denison to Allison, 4 September 1848, D[enison] P[apers]. Mf.R.1,T.U.A.

61. Denison to Allison, 4 September 1848, D.P., Mf. R.1.


63. Denison to Grey, 15 September 1848, G.O. 33/65.
get rid of so undependable a person at so little political expense.

He told his mother:

[O'Connor] was so full of professions of his anxiety to support me, - so full of promises to vote for the Government measures which, when brought forward, he always opposed, that it is really a blessing in every way to be rid of him. He did more harm by his promises than he could have done by his steady opposition. 64

Kermode's resignation, added to that of Swanston and O'Connor, and received just before the Council was about to reconvene, caused Denison to postpone the session. Even at the end of his political career Kermode, it appeared, was bent upon making mischief. The Lieutenant-Governor was convinced that the untimely resignation was calculated to create 'embarrassment and inconvenience to the Government.' 65 Denison had no hesitation in accepting his resignation for he felt Kermode had little to offer. 'His talents are below mediocrity, and he has always been a tool in the hands of others', the Secretary of State was told. 66

The vacant seats were offered to all Wilmot's appointees excepting Driscoll who had recently died.* Swanston's place was

* As Cornelius Driscoll's epitaph Boyes wrote: 'Superciliousness is no privilege of Genius, nor may we add ... any more is it a mark of political wisdom or common sense.' Diary of G.T.W.B. Boyes, 10 December 1847.


65. Denison to Grey, 15 September 1848, G.O. 33/65; see also Denison to Mrs. Denison, 26 August 1848, W.T. Denison, pp. 92-3.

offered to Orr. After Orr had refused it, it was given to Leake. W.R. Allison filled the seat vacated by O'Connor. That of Kermod, having been refused by both von Stieglitz and Bisdee, was accepted by W.S. Sharland of the New Norfolk district, a member of the gentry and an entirely new political figure. In inviting Wilmot's appointees to accept nomination, Denison was making a gesture of reconciliation. He wished 'to show them that their removal was due only to peculiar circumstances.' The hand extended in friendship was not refused. Bisdee had to agree with Leake that his Excellency's offer of appointment was 'virtually a reinstatement' and at the very least an expression of confidence. Allison and Leake accepted nomination gracefully. The refusals of von Stieglitz and Bisdee were couched in the most polite terms, and based on 'purely private grounds.' Bisdee subsequently filled the vacancy occasioned by the death of John Kerr in 1850.

Denison's interests were well served by this rapprochement. In Allison, Leake and Bisdee he found Councillors upon whose support he could rely on most occasions. He forged strong links with them. During his trips to the northern part of the island he honoured them by availing himself of their hospitality. He also corresponded regularly with them, feeling free to exchange confidences and openly to discuss political issues. The basis of

67. Denison to Grey, 15 September 1848, G.O. 33/65.
68. Bisdee to Leake, 7 September 1848 L[ake] P[apers], T.U.A.
69. Denison to Grey, 15 September 1848, G.O. 33/65.
the understanding between Denison and his appointees was a common antipathy to the 'factious opposition' - Gregson, Dry and Fenton, the rump of the Patriotic Six, who, by 1848, had become identified with the vigorous anti-transporation movement. The new members were as determined as Denison himself to resist the demands of the anti-transporationists. Consequently his trust in them, particularly as far as opposition to the abolition of transport was concerned, was complete. He joined with them privately to abuse leaders of the movement. Allison was complimented on his condemnation of the abolitionists Brown, Garrat, Henry Dowling and Aikenhead. He was told by the Lieutenant-Governor that his vision was that 'of a man who evidently looks at things with his own eyes, not through the wretched spectacles which so many use.' As for the anti-transporationists, he wrote, they were no more than incompetents and mischief-makers. The publicists Dowling and Aikenhead were 'beneath contempt.' Such outspokenness on Denison's part was indeed rare. It was only to persons he deeply trusted that he allowed such remarks to pass.

Denison was anxious that any rift between himself and his appointees be forestalled. Fearing the consequences of the publication of a despatch, in which he told Grey that he should like to replace some of the members of the Council with men better

70. Denison to Allison, 5 July 1850; see also the same to the same, 3 and 6 September, and Denison to Bisdee, 6 September 1850, D.P. Mf. R2; Denison to Leake, 30 October 1851 and Allison to Leake, 21 April 1851, L.P.
qualified, he wrote individually to Leake, Allison and Sharland expressing his confidence in them, in order to prevent any misunderstanding. He told them that the 'opposition press' had, by publishing an extract from his despatch to Earl Grey, deliberately attempted to misrepresent him to his friends.

The ex officio members, disposable as they were, were never treated with as much deference as were Denison's appointees. Apart from Bicheno who, as Colonial Secretary, put forward the official government viewpoint, none of their number played a significant role in Council proceedings. There were several changes in the official membership. Turnbull, as acting Colonial Treasurer, replaced Collector of Customs Barnes; while Chief Police Magistrate Burgess filled the vacancy created by the death of Comptroller of Convicts Forster, and the refusal of his successor to take the seat. Comptroller Dr. Hampton, an Imperial functionary with no sense of identification with the colony, was not inclined to become involved in colonial politics. Valentine Fleming became Attorney-General after Horne had been elevated to the Bench, and Peter Fraser, the former Colonial Treasurer, became acting Colonial Treasurer when Bicheno died in 1850.

* * *

72. Denison to Allison, private, 1 August 1850, D.P., Ms. R2.
73. Grey to Denison, 23 December 1846, G.O. 1/63.
The first significant issue with which the Council, during
Hunson's administration, became occupied, was the conflict between
the executive and judiciary - a conflict in which it itself became
embroiled. The crisis was initiated by a Supreme Court decision
in which the judges declared an act of the Legislative Council
repugnant to the laws of England, which previously, by their tacit
consent, was considered valid.

In September of 1846, John Morgan, editor of the Britomart
and Trades Advocate, began an attack on Hilmot's Don Act and other
revenue Acts on the ground that they were unconstitutional. The
agitation was focused on the Don Act because it affected more people
than did any of the other revenue Acts. Using those arguments
which members of the Legislative Council such as Ashburner and Gregson
had deployed against the Lighting and Pavino Bill and the Road Act,
Morgan hoped to identify the issue with the struggle, in 1845, against
revenue Acts, and the tyranny of the administration. The Don Act,
he claimed, was repugnant to that section of the Huskisson Act which
provided that the Legislative Council

shall not impose a Tax or Duty, except only
such as it may be necessary to levy for local
purposes; and the purpose for which every Tax
or Duty may be so imposed, and to or towards

75. Britomart and Trades Advocate, 3, 17 and 24 September 1846;
see also Hobart Town Advertiser, 1 January 1847.
76. Peter Howell, 'The Van Diemen's Land Judje Storm', University
which the amount thereof is to be appropriated and applied, shall be distinctly and particularly stated in the body of every Law and Ordinance imposing such a Tax or Duty.

Nowhere in the body of the act, argued Morgan, was there any mention of the application of the money raised by dog licences. There was only a directive requiring that it should be paid into the general revenue. This, he maintained, was not a statement of a distinct or particular purpose. Therefore the Act was not in keeping with the Huskisson Act.

Morgan continued to denounce the Dog Act until March 1847, when, owing to the lack of public response, he lost heart. In July of that year, however, hope for his cause was restored. Gregson and Fenton commenced a vigorous attack on dog licences during a Council debate on a bill amending the Dog Act. They were unable, however, to maintain their offensive for long. Doubts which arose and brought into question the validity of the membership of the Patriotic Six, forced Denison to adjourn the Council session. Nevertheless, Morgan continued his own attack. He now decided that his end might most effectively be achieved in a court of law, for it had been rumoured that Puisne Judge Montagu considered the Act unconstitutional. Morgan therefore invited prosecution for failing to acquire licences

77. 9 Geo. IV cap. 33, sec. 25.
78. *Britannia and Trades Advocate*, 3, 17 and 24 September 1846; 23 and 30 September 1847; 4 and 7 November 1847.
79. See the report of the meeting of the Legislative Council of 27 July 1847, *Hobart Town Advertiser*, 30 July 1847; *Britannia and Trades Advocate*, 30 September 1847.
for his dogs. In an open letter he informed the Chief Police Magistrate that he was the owner of three dogs and that he had not paid and would not pay for the requisite licences since they were 'a most impolitic and gross violation of the Constitution.' Morgan emphasized the fact that it was his desire for constitutional government that was responsible for his vehement opposition to the Act. He wrote:

I do not oppose this, or any such local enactment, from factious or disloyal motives, but solely upon the principle, that if one encroachment of arbitrary authority is permitted to pass unnoticed and unresisted, the community will be subject to others equally objectionable.

The crown was moved to take immediate action. Morgan was brought before the Magistrates Court, found guilty, fined and ordered to pay fifteen shillings for costs. There the matter did not end. Morgan, after unsuccessfully appealing to the Justice in Quarter Sessions, brought the case before the full bench of the Supreme Court. His counsel A.O. Montagu, brother of the Puisne Judge, based the appeal on the plea that the Dog Act was unconstitutional. The crown, represented by Attorney-General Horne and Solicitor-General Fleming, argued that the Supreme Court could not sit in judgement of an act of the Legislative Council which it had already allowed to be enrolled; that if it be allowed to assume such power, anarchy and

80. Morgan to Burns, 31 August, Britannia and Trades Advocate, 2 and 27 September 1847.

81. Ibid.
confusion would follow. Even if an act was of the most oppressive character and repugnant to the laws of England, maintained Horne in his summary, any law, once it had been enrolled in the Supreme Court within fourteen days of its approval by the legislature, was to be administered as prescribed unless disallowed by her Majesty's government. 'All ... subjects must obey it', he averred: 'there is no remedy, and the Supreme Court has no power to change it.' The scandalized Chief Justice exclaimed:

'What! Do you mean to say Mr. Attorney-General, that if by circumstances of illness, or absence, or misconception for a time, the Judges have permitted the law to pass without a certificate of disapproval, when they see its injustice, when they see the injury done by it to the subject who applied to them in this Court for redress, that they cannot interfere for his protection from the operation of a bad or repressive law?'

Horne told his Honour that this was indeed the meaning. 82

The judges entirely disagreed with Horne's submission. They held that the Huskisson Act had given the Legislative Council limited powers of making laws; that the restrictions on the power of a subordinate legislature such as the Legislative Council were inseparably annexed to the power of law-making and must therefore be strictly complied with; that the Huskisson Act neither altered the common law rule that all powers must be executed according to law, nor prevented the Supreme Court from determining whether a local act or ordinance was a due execution of the power given to the

Legislative Council. It was not only within the Court's competence, but also within its duty, whenever a question arose as to the validity of a local act or ordinance to decide if the act or ordinance was beyond the powers of the legislature or repugnant to the Huskisson Act. The Dog Act had left the government to appropriate the licence money as it thought proper. This constituted a direct violation of the twenty-fifth section of the Huskisson Act which required that every revenue-raising ordinance outline the purpose for which the monies raised were to be used. The fact that the Court had been notified that the Queen had allowed the Dog Act to operate had no bearing on the question, for the Queen had no power to over-ride the authority of an act of the Imperial Parliament. Horne's contention that an aggrieved subject was left without re-dress if, through inadvertence or neglect, the judges failed to notice the unconstitutional nature of a local act within fourteen days of its enactment, was not upheld. The judges asserted that it could not have been the intention of the framers of the Imperial Statute to bind subjects permanently by local act or ordinances which were repugnant to the laws of England. 83

Public opinion, in so far as it was reflected in the press, loudly acclaimed the decision. It was thought that the Supreme Court had provided ground upon which at least four-fifths of the colonial revenue-raising acts could be successfully challenged.

83. Symons v. Morgan, Legislative Council Papers 1847-51; Peter Howell, op. cit., p. 259.
Merchants resisted the payment of the duties levied by the Differential Duties Act and other revenue-raising acts which failed to state the particular purpose of the revenues raised.

The executive government feared the consequences of the judgement. Denison concluded that the judges, in squashing Morgan's conviction, had exceeded their powers and placed the government in an invidious position. Their decision not only deprived the treasury of £3,000 per annum which the Dog Act would have yielded, but also endangered a greater part of colonial revenue. There was a fear that civil disorder might follow since the judgement threatened the Police and Quarter Sessions Act 'upon which the peace and welfare of the colony depends'.

In order to prevent a repetition of such a judgement, Denison took steps to replace Chief Justice Pedder and Puisne Judge Montagu with men whom he could trust to interpret the laws in the manner which he desired. There were sufficient grounds for the Executive Council to support the amotion of Montagu. The Puisne Judge had injudiciously used privileges especially reserved for members of the Bench to avoid paying his debts. The Chief Justice, whose professional and personal conduct were beyond reproach, was charged with incompetence and neglect of duty. Denison told his Executive Council that Pedder had failed to show sufficient interest in

84. Denison to Grey, 18 February 1848, G.O. 33/62.
Legislative Council proceedings. Denison began his case by pointing out that Pedder had not previously objected to revenue-raising acts which failed to specify the particular purpose of the monies raised. Furthermore he had never previously objected to the Dog Act. Even Lieutenant-Governor Arthur's Dog Act of 1830 had received his assent. When the present Act had been debated in the Council in 1846, no objections were made and in the recent session, when petitions against it were heard and every inducement on the government was made to negative it, his Honour said not a word against it. In fact he agreed and voted with the government in all divisions on the bill, some of which had reference to the principle, others to the detail. His worst offence, according to Denison, was his failure to report the repugnancy of the Act within a fortnight of its enactment. The Executive Council, however, found that the charges against Pedder were not sufficiently serious to warrant his motion. Denison then asked Pedder to take eighteen month's leave of absence. Pedder refused.

Denison's determination to reverse the Supreme Court's ruling was not dampened. The recent arrival of the warrants re-appointing the Patriotic Six enabled Denison to call the Legislative Council together to consider a bill which would, if passed, reverse the judges' decision, prevent the Supreme Court from negativing any act which it had already enrolled, and remove any doubts as to the supremacy of

86. Denison to Grey, 12 February 1848, G.O. 32/62.
the legislature. This, the so-called Doubts Bill declared that all Acts and Ordinances of the Legislative Council which had not been certified against by the judges, or disallowed by the Queen, should be deemed to have been valid and binding *ab initio* for all purposes; any repugnancy to the Huskisson Act, to any charter, letters patent or order-in-council issued in pursuance of that statute or to the laws of England, notwithstanding. Further, to offset Pedder's influence on the Bench, Denison prepared another bill to provide for a third judge. 87

The opening of the extraordinary Legislative Council session of 1848 on 26 January was not accompanied by the customary noon and circumstance. The Lieutenant-Governor's opening address was short and to the point. He first outlined the possible consequences of the judges' recent decision and then referred to the constitutional point at issue. The judges, he said, by assuming that they were able to declare an act of the Legislative Council repugnant even after that act had been enrolled, were contending that the judiciary was superior to the legislature. He would not countenance their claim. It was his opinion that the framers of the Huskisson Act intended the legislature to be supreme, for the twenty-second section of that Act endowed the Legislative Council with the power to adhere to acts which the judges declared repugnant, should it so desire. After laying on the table the judgments on Morgan's appeal, and the

opinions on the judgement of Horne, who succeeded Montagu to the Bench, and the new Solicitor-General Francis Smith, he introduced the Doubts Bill, which he urged members to pass without delay, in order to give validity to acts of the Legislative Council and to establish a legislative interpretation of the twenty-second section of the Huskisson Act. 38

The Bill provoked strong criticism of the executive government. The anti-government newspapers concluded that Denison, in introducing such a measure, was attempting to muzzle the judiciary and impose autocratic government. The merchants of the colony, who feared that the passage of the Bill would end their attempts to avoid the payment of differential duties, which they claimed, impeded intercolonial commerce, added weight to the opposition. The non-official members of the Council, much to the disgust of the Bill's critics, did not show any undue hostility towards it. Some even thought it to be a reasonable measure. The opponents of the Bill nevertheless did their best to enlist their support. Kermode was told that if he continued in his determination to vote with the government he would be tarred and feathered. 39 Swanston and Fenton were imposed upon to present petitions against the Bill's introduction.

The Doubts Bill passed all stages without any scenes or heated debates. The most spirited opposition was offered by Chief Justice

Pedder who spoke whenever he was given the opportunity. After the second reading he moved for a recommittal of the Bill 'with the view to the insertion of a clause, which shall save the rights of all persons who may have already brought, or may hereafter bring actions before the Act shall come into operation.' Support for his resolution was not forthcoming. Kermode, Kerr and Dunn supported the Doubts Bill without reservation and voted with the *ex officio* members in every division. Swanston, Gregson, O'Connor, Fenton and Dry, although they voted against the Bill, did not oppose it in principle: they had told the Lieutenant-Governor that had he withdrawn the Differential Duties Bill, he would have had their unqualified support. In fact, it was only after he had unsuccessfully moved for the abrogation of the Differential Duties Bill, that Gregson voted against the Doubts Bill. He had earlier supported it by speaking and voting for its first two readings.

The Doubts Bill went through the Council with the minimum delay. Denison and Bicheno, by emphasising the necessity, for the good government of the colony, that the legislature should put down the judiciary's claim of superiority, prevented the private members from assuming a hostile posture. Bicheno's strategy was instrumental in preventing debates from becoming lengthy and hostile. Only a minimal amount of delay was tolerated. Petitions were dealt


with quickly and respectfully. Swanston's request for a hearing of petitioners' counsel was defeated by a substantial majority, amongst whom were members who actually opposed the Bill.

After the Bill passed all stages, it was transferred to the Supreme Court to undergo the judges' review. Pedder, as it had been anticipated, refused to give it his assent. He conceived it to be repugnant to the Huskisson Act because it declared valid and binding, acts which the Imperial statute had especially declared to be beyond the Council's competence.\(^92\) Denison, at his earliest opportunity, reintroduced it and urged the Council to adhere to its previous decision, since the Doubts Act was the only available means of removing the uncertainty of the validity of existing legislation. After a relatively short debate in which the old arguments were repeated, the resolution 'that the Act be adhered to' was passed.\(^93\) Thus all legal actions for the recovery of licence fees, taxes and duties were checked.

The question of the Doubts Bill's constitutionality was never resolved. Secretary of State Grey, fearing that it was invalid, refused to submit it for the Queen's approval. He decided that the Act should continue in its operation until the projected new constitution of the colony became effective, in order to 'alleviate the immediate difficulties' which the judges' decision created.\(^94\)

92. Legislative Council Paper, 1847-51, No. 11.
94. Grey to Denison, 7 September 1850, C.O. 493/34.
The failure of the private members vigorously to oppose the government, in response to popular demand, diminished their status in the community. The success of the Doubts Bill and the subsequent passage of a new Dog Act caused many sections of the public to retract that confidence they had earlier placed in them as champions of popular causes. The Launceston Examiner anticipated

that some [members of Council] that have hitherto been esteemed patriots, will forfeit the title too rashly acknowledged. 95

A community which accepted a state of hostility between popular leaders and administration as a criterion of political healthiness, viewed the cordial relations between the Patriotic Six and Denison with suspicion. As a result of his outspoken admiration of Sir William Denison, 96 Gregson lost much prestige. When he attempted to defend Denison's attack on the judges at a public meeting, he was met with hoots and hisses and forced to withdraw from the rostrum. 97 Kermode, Dry, Kerr and Swanston were all adversely criticised by the press.

* * *

The amiable relations between Lieutenant-Governor and private members were short-lived. "The Council has launched a vigorous

95. Launceston Examiner, 5 February 1843.
96. See Hobart Town Advertiser, 25 January 1848.
Towards the end of the extraordinary session of 1848 the private members resumed their anti-administration posture when Denison introduced a bill to alter the system of financing education. The Bill for the Establishment and Maintenance of Primary and other Schools in Van Diemen's Land was the Lieutenant-Governor's panacea for all the evils and weaknesses associated with the public education system in the colony. Denison held that it was 'entirely wrong in principle' that the money necessary to finance public education should be drawn from the general revenue. The cost of education should be thrown directly on the shoulders of the colonists, for whose benefits the schools exist. If they were made to feel this cost, then, he argued, they would take a 'livelier' interest in the education of their children. The government had only one role to play in the system: that was the part of watchdog, exercising close scrutiny over the teachers and general conduct of the schools. The Education Bill gave expression to these ideas. Under its provisions each individual in the colony was required to contribute five shillings a year. Further local committees were to be elected by rate payers to control the expenditure, to arrange the character of instruction to be afforded, to have the

98. Journal extracts, 22 March 1848, W.T. Denison, op. cit., p.34.
entire direction of the school and, subject to the approval of the
government Inspector of Schools, to appoint and dismiss schoolmasters.

The Patriotic Six, who by this time were convinced that the
system of transportation should be abolished, were adamant that no
additional taxes should be raised to allow the government to carry
on the administration of a system which they considered iniquitous.
They saw the Education Bill in the same light as the Lighting and
Paving and Road Bills of 1845. The government was once again
attempting to unload its financial responsibilities on to the should­
ers of the colonist, in order to allow it to allocate more of the
general revenue to the administration of the convict system. Gregson
moved a series of resolutions denouncing the mode of financing the
proposed education scheme. His objections were, first, that the
Bill made provision for a capitation tax, which, apart from being an
evil in itself, placed an additional burden on the colony; second, it
was calculated to cause religious dissention; third, the colony,
rather than the British Treasury, would be paying for the education
of children of convicts. It was the duty of the Imperial Government,
he asserted, to pay for the education of these children in order to
'neutralize the moral degradation they have poured into our shores.'
Gregson's resolutions, embodying these points, were carried by the
Patriotic Six and Dunn. After Swanston had introduced a petition
against the Bill on behalf of the Presbyterian Church, whose promin­
ent position in education was threatened by its provisions, the
second reading was negatived. The action of the private members, despite their strong opposition to the government, failed to restore universal confidence. Although they were applauded by Presbyterians, Independents and Baptists, they were jeered by Anglicans, who supported Denison's scheme.

By the end of the extraordinary session of early 1848 the non-officials' traditional suspicions about the intent of the executive government returned. On 27 March, Dry, following the example of Wentworth in the New South Wales Legislative Council, moved for a committee to inquire into the grievances of the colony. By grievances he 'meant those things which deprived the colonists of their rights, and in the fiscal regulations which applied the Colonial money to improper purposes.' Dry envisaged that such a committee would, in the course of its investigations, look into the various administrative departments to seek out evils that caused grievances. He no doubt realized that the findings of the committee could be used against the government. For this very reason and because the terms of reference were too vague the executive government successfully opposed such a committee of inquiry.

The Denison government met its first vigorous attack during the estimates debates. On 14 March Bicheno moved that the estimates

be read in committee so that they could be discussed item by item. The private members refused to contemplate any discussion whatsoever. As an amendment to the motion, Dry successfully moved that the estimates be rejected because they were 'excessive in amount', and the 'charges on the Colonial Revenue which in justice ought not to be borne by the Colony.' Denison, anxious to prevent a crisis similar to that of 1845, disguised his disgust and invited the dissenting members to use their constitutional rights and submit alternative estimates.

It was not long before that Swanston, a recognized expert on matters financial, had presented a set on behalf of a group of the dissentients. These were unacceptable to the executive. Swanston, by cutting back the colony's contribution to the total cost of the administration, had raised that of the British Treasury. The salary of the judges, usually paid by the colony, was placed under the head of judicial expenses, of which the British Treasury was expected to pay two thirds. Also, the salary of the Bishop was moved to be included under general Ecclesiastical expenses. A further cut in the colonial expenditure was proposed, by retrenching the salaries of the public functionaries, and reducing education expenditure. Swanston's estimates took credit for £16,556.17s.6d. which the private members considered justly due from the Imperial Government together with the £24,000 already granted to make up the

103. Report of the meeting of the Legislative Council of 14 March 1848, Hobart Town Advertiser, 24 March 1848.
104. See Journal extracts, 22 March 1848, W.T.Denison, op.cit., p.34.
Denison considered the demands inherent in these estimates 'unfounded and unreasonable.' He told Earl Grey that the private members, in making their calculations, appeared to have kept out of view the enormous benefits which they have derived individually and collectively from the labour of those convicts whose presence they now chose to denounce as the worst and most crying evil which has been applied upon the colony, and they have forgotten that they themselves have been raised from comparative indigence ... by the exertions of [convicts].

In order to prejudice the Secretary of State against the private members' recommendations, the Lieutenant-Governor attempted to cast doubts upon their integrity. They were, he said, a group 'responsible to neither the Government or any constituted body, ... blown about by every temporary outcry'; they were, he asserted, 'slaves of the press.' Furthermore they lacked proper ideals or principles. He wrote:

Composed as they are of the representatives of the landed and monied interests of the colony they have one common bond of union, and that is a feeling of self-interest which leads them to resist every attempt to raise money for themselves from themselves, and to exact as much as possible from the "other Country."

Denison informed Grey that he would not allow the Council to

105. Denison to Grey 3 July 1848 and enclosed private members' estimate, C.O. 280/229.
106. Denison to Grey, 3 July 1848, C.O. 239/229.
107. Ibid.
intimidate the executive government by withholding its approval of the estimates. At the same time he would not allow himself to be drawn, like his predecessor, into a conflict with the legislature. He intended, without reference to the Council, to be guided by his own estimates. Realizing that he might eventually be faced with a censure motion, and fearing that the 1849 estimates might also be rejected, he requested permission to dismiss and replace unobliging members of the Council. 108

Secretary of State Grey approved of Denison's course of action which, although contrary to the spirit of the Huskisson Act, he regarded as justified, since it 'was a less evil than that of throwing the Establishment of the colony into confusion.' At the same time the Lieutenant-Governor was made
to understand distinctly that the same course must not again be adopted should a similar case recur: and more especially, after a Representative System shall have been established. 109

Earl Grey also acceded to Denison's request for permission to dismiss members who persisted in voting against the government's estimates. Furthermore Denison was free to stack the legislature with _ex officio_ members. Grey conveyed her Majesty's authority for Denison to depart from the established practice, of maintaining approximately equal numbers of official and private members, and to appoint as many officials as may be requisite. Such members, he wrote,

108. _Ibid._
will understand that Her Majesty expects that they will not refuse their assistance to the Lieutenant-Governor in endeavouring to put an end to the state of things so injurious to the general interests ... 110

At the same time he cautioned Denison to avail himself of such powers only after all other attempts to prevent the colony from being thrown into 'extreme confusion' had failed. It was only 'with extreme reluctance that Her Majesty's Servants have been led to take so very strong and unusual a measure as that of dismissing the members for a vote which they have given....'111

Denison was not forced to use those powers given to him by the Secretary of State. Before the Council had assembled to reconsider the estimates, O'Connor, Kermoda and Swanston had resigned, and were replaced by Leake, Allison and Sharland; all of whom were political moderates and personal friends of the Lieutenant-Governor. The estimates for 1848 as well as those for 1849 were passed with only the opposition of Gregson, Fenton, Dry and Kerr.112

* * * *

The Legislative Council played only a minor part in the popular movement against convict transportation, in spite of the fact that the majority of non-officials who considered themselves duty-bound to stand in the forefront of any popular movement, assumed an

110. Ibid.
111. The same to the same, confidential, 30 January 1848, C.O.408/32.
112. See Denison to Grey, 16 July 1849, G.O. 33/69.
anti-transportationist position. Of their number, the most committed to the cause was Richard Dry. This was not unnatural since he came from Launceston, the centre of anti-transportationist activity. From the beginning, Dry was associated with the movement. He was a founding secretary of the London Agency Association and a member of the first Anti-Transportation League. Because of his prestige and popularity, he assumed the role of principal spokesman for the Launceston League at public meetings. Fenton's part in the movement was more modest. Although a fervent supporter of abolition, he did not take a leading part in the activities of the Hobart League. He was, however, more prominent in its smaller and less important New Norfolk counterpart. Gregson, too, opposed transportation. When the question came to prominence in April 1847, he was the most fervent supporter of abolition. At the first Hobart meeting at which it was specifically discussed, he skilfully deployed fiscal, oolitical, social and moral arguments to show why transportation should cease. At a subsequent public meeting he used powerful rhetoric and logical argument to dispose of the proposals of those who sooke in favour of convictism. It would appear, however, that Gregson became involved in the movement to maintain his reputation as a popular politician. He never joined the League, or contributed to its funds and continued to employ convict servants transported after 1 January 1849. Nevertheless in Council debates he proved to be one of the

113. Report of the preliminary meeting of 15 April 1847, Hobart Town Advertiser, 16 April 1847.
most outspoken critics of convictism. Other members of the Council who supported abolition were John Dunn, who became treasurer of the Hobart League, W.S. Sharland and John Kerr. Although these members were prominent in their advocacy of abolition, they were not responsible for giving the movement, which became a symbol of moral regeneration, its direction. The ideology and leadership were afforded by churchmen such as West, Brown, Dowling, the publicist Aikenhead, and the landed proprietor, W.P. Weston.

Not all the private members opposed transportation. Denison's appointees, Leake, Allison and Bisdee, agreed with the Lieutenant-Governor that economic decline would necessarily follow abolition of transportation. Leake and Bisdee, because they kept their views to themselves, attracted little attention. Allison, who was quite outspoken about his convictions, was subjected to roisterous attacks by the press and anti-transportationist orators.

Denison insisted that transportation was an Imperial matter which ought not to be discussed in the colonial legislature. Fearing that, if the Legislative Council were to become the main forum for debate on the matter, a situation analogous to that of 1845 might develop, he minimized the opportunities for members to raise questions. Debates were kept to the point and sessions were kept as short as possible. Only legislation that was absolutely necessary was introduced. Matters of less urgency were considered best left alone until the projected representative legislature had been instituted.
Nevertheless some non-official members - Gregson, Dry and Fenton in particular - were able to put the anti-transportationists point of view. The opportunity for them to exhibit their anti-transportationist stance came during the estimates debates. They were unable, however, to make transportation a central issue. The Legislative Council only made one direct statement of its attitude to convictism. During the spring session of 1848 Sharland successfully moved for the adoption of resolutions condemning transportation and recommending, should transportation continue, that convicts be evenly distributed around the Australian colonies in order to neutralize to 'a certain extent ... the evils' consequent upon the concentration of felons in Van Diemen's Land.\footnote{Report of the meeting of the Legislative Council of 14 October, \textit{Hobart Town Advertiser}, 17 October 1848; Denison to Grey, 17 November 1848, G.O. 33/65.}

Although the Legislative Council was ready enough to declare itself for the anti-transportationist principle, it made little attempt to put this principle into practice. Members hoped that by exposing the evil consequences of convictism they might have struck a blow for the cause. Dry called for statistics which he believed would show that the convicts in the police force constituted a menace to society.\footnote{Report of the meeting of the Legislative Council of 21 September 1848, \textit{Hobart Town Advertiser}, 26 September 1848.} Others requested returns of criminal convictions, emigration, government spending in areas associated with convictism, and almost anything which might in the vaguest way, be construed as evidence to exhibit the detrimental effect of transport-
ation. Every opportunity was seized in order to digress upon that issue. It seemed as if those private members who espoused abolition strove to show the colony that they moved in the mainstream, if not the van of the popular movement. In this they were not successful. Even Gregson's spectacular attack on the government for employing ex-convicts as schoolmasters was ineffective. Although, his colleagues in the legislature were scandalized when he spoke of pederasty, and other unmentionable doings, in order to substantiate his claim that ex-felon pedagogues mis-led rather than led colonist youth, the press was unimpressed. The Hobart Town Advertiser showed its lack of concern by glibly telling its readers:

The relation between master and pupil are of a nature which has led to abuses in countries more fortunately placed than Van Diemen's Land, before and since the days of Eloisa and Abelard.

Gregson's attack on ex-convict schoolmasters revealed the contempt in which emancipists, few of whom had reached social or political prominence, were held by the established landowning, professional and merchant classes. This attitude alienated the emancipists who, after 1850, became increasingly important as a force opposing the abolition of transportation.

Not even during the estimates debates did the private members draw public admiration. Although all private members, including

118. Hobart Town Advertiser, 14 September 1849.
Leake, Allison and Bisdee now firmly believed that the British
Government should pay for two-thirds of the police and gaols charge,
as well as all colonial expenditure that was incurred by convictism,
only the old guard - Gregson, Dry and Fenton - were prepared to
adopt strong measures to achieve their ends. These members believed
that only a policy of non-co-operation such as that adopted in
October 1845 with the government, would produce concessions on the
part of the British Treasury. During the discussion of the estimates
in October 1848, Dry attempted to rally the Council in opposition to
the costs which had been imposed, upon the colony, by Britain's
convict policies. He told the members that so far the Imperial
Government had only conceded a paltry £24,000 which fell far short
of the two-thirds of the police and gaols charge it had undertaken to
pay, and that because the Secretary of State had not responded to
their more recent entreaties, the Council should 'assume the defensive'
and exclude from the estimates any amount that was incurred upon the
colony as a result of the practice of transportation, or decline to
dvote for the estimates altogether. Leake and Allison, and even
the anti-transportationists Dunn and Sharland, rejected such a course.
They were not inclined to believe that such tactics, which they con-
sidered illegitimate anyway, would produce results. Allison ques-
tioned the belief that it was the action of the Patriotic Six in 1845
that induced the Home government to pay £24,000 towards the cost of

119. Report of the meeting of the Legislative Council of
10 October 1848, Hobart Town Advertiser, 13 October
1848.
the police and gaols charge. He and the other members of like mind refused to accede to Dry's proposal. Strong action was unnecessary for 'a government that had only so recently made great concessions only had to be reminded to do the colony justice.'\textsuperscript{120} Although a majority in the Council refused to disrupt the government, in order to increase the British Government's expenditure in the colony, it was prepared to make recommendations and register protests to bring about this end. The minority, Gregson, Fenton and Dry, considered the tactics of the majority naive, if not weak.\textsuperscript{121} Although they concurred with 'the spirit' of the requests and protests of Leake and Allison, they considered them 'a waste of time.' In adopting such tactics their cause was doomed to failure, for even Lieutenant-Governors who 'had done much more than the resolutions of the honourable members had ever contemplated' were unsuccessful in their humble supplications, contended Fenton.\textsuperscript{122}

Denison did not take kindly to even the most moderate demands on Britain for a greater contribution to the finances of the colony. After Sharland had moved a resolution appealing to the Imperial Government to pay for the entire two thirds of the judicial police and gaols charge, Denison rose from the presidential chair to express in uncommonly warm tones his disapprobation of the motion. Any demand

\textsuperscript{120} Ibid.

\textsuperscript{121} Ibid.

\textsuperscript{122} Report of the meeting of the Legislative Council of 11 October 1848, Hobart Town Advertiser, 13 October 1843.
upon the Imperial Government to contribute more towards the upkeep of convicts was ill-considered, he asserted. Besides the fact that the colony should be grateful to the presence of convicts, from whose 'labours we derive our very subsistence', the convicts contributed far more toward their upkeep than many were prepared to admit. It was a well known fact, he contended, that the convicts - who were the colony's greatest consumers of alcohol - paid at least two-thirds of the revenue derived from the duty on spirituous liquors. Furthermore, he argued, the Home Government contributed £28,000 directly to the Colonial Treasury and paid for 'clergy men as convict chaplains who were after all colonial chaplains.' The Council should not ask the British Government for any further indulgences, he warned. If the Colonial Office were to be constantly pressured for further concessions, a close investigation of the advantages already derived would follow and 'cause the Home Government to withdraw part of the support which they now gave up.'

The Lieutenant-Governor's statement of his attitude served only to spur on the old guard. In both the 1848 and 1849 sessions Dry moved for a rejection of the estimates. These attempts to disrupt the government were, however, thwarted by Allison, Dunn, Sharland and Leake who, on both occasions, voted with the ex officio to negative Dry's resolutions.

124. See the report of the meeting of the Legislative Council of 15 October 1848, Hobart Town Advertiser, 20 October 1848 and 28 August 1849, Hobart Town Advertiser, 31 August 1849.
Frustrated by a lack of success the old guard resorted to recriminations against those in authority. Earl Grey, who was deemed to have treated the Councillors 'like a parcel of school boys', was subject to much 'abuse.\textsuperscript{125} Denison too received his share of criticism. Gregson complained about the 'hard manner in which Mr. Dry had been put down' - a manner which was 'arbitrary in the extreme.' The Lieutenant-Governor, by his present conduct, contended Gregson 'was assimilating [the Council] to a military tribunal instead of a legislative assembly where freedom of debate is allowed.' After delivering a lecture on the rights of members, he turned toward Denison and proclaimed: 'His Excellency might look contemnously at him but a supercilious look would not prevent him from freely expressing himself.'\textsuperscript{126}

The old guard did not only express their contempt verbally. At the opening of the 1850 session of the Legislative Council, Gregson, contrary to etiquette, took his seat dressed in a pea-jacket, common waistcoat and corduroy trousers. His appearance in such indecorous apparel, 'which he seemed to exhibit to the benches', was calculated to insult the Lieutenant-Governor.\textsuperscript{127} Further, both he and Dry made it their habit to leave the chamber after they had delivered a tirade against Denison, the convict system or Earl Grey, and force

\textsuperscript{125.} Report of the meeting of the Legislative Council of 28 August 1848, \textit{Hobart Town Advertiser}, 31 August 1849.

\textsuperscript{126.} Report of the meeting of the Legislative Council of 27 August 1848, \textit{Hobart Town Advertiser}, 31 August 1849.

\textsuperscript{127.} Leake to Elizabeth Leake, 6 August 1850, L.P.
the Council to adjourn for want of a quorum. 128

The failure of the Legislative Council to involve itself to any marked extent in the transportation question, owing to the attitude of the Executive and its supporters, attested to the widespread belief that its present constitution was inadequate. In consequence the Council was reduced in stature in the public eye. Further, formerly colourful characters like Gregson, Dry and Fenton lost their lustre. Their interminable speeches became intolerable. The diarist Boyes who sat on the official bench as Colonial Auditor, was disgusted by the 'expostulatory nonsense' that was continually repeated by Gregson, Fenton, Allison and Dry. He failed to see the purpose of their activity. He wrote:

They performed to empty benches. The other members paid no attention to their Rhodemontade, and the [newspaper] reporters refuse to jot down a single sentence. They say, and justly say in excuse that they cannot hear; if they hear, [they] do not understand what the Hon[ourable] Gentlemen are mumbling about. 129

Debates were generally dull. The Lieutenant-Governor and the officials refused to be provoked to answer any abuse that was levelled at them. Dry, Fenton and Gregson, realizing their impotency in a Council dominated by the Executive, and aware of the imminence of an elective legislature, frequently absented themselves during the 1850 session. Furthermore the latter lost favour with the press

128. The same to the same, undated, L.P.
129. Diary of G.T.W.B. Boyes, 14 October 1848.
after he had thrashed his old enemy Thomas Macdowell. Interest in
the Council was on the wane. The Hobart Town Advertiser sensed the
demise of this institution. It felt that the opening of the 1850
session bore

the aspects of a funeral - not the pomp and
circumstance which attends the obsequies of a
hero, but a parish burial. Nobody laughed,
nobody cried; all was decently dull. We do
not mean that the Council is dead, but growing
familiar with the idea of mortality [wrote its
editor.] Like Charles V, who laid down his
sceptre and passed through a funeral ceremony,
that he might know what would happen before
hand what would probably happen at his death,
the Legislative Council have gone through a
rehearsal of their last performance and are
learning to die. 130

*   *   *

The nominee Legislative Council had been overshadowed by the
imminence of a representative legislature, from the beginning of
Denison's administration. Secretary of State Grey, who believed
that Great Britain

has no interest whatever in exercising any
greater influence in the internal affairs
of the Colonies, than is either indispensable
either for the purpose of preventing any one
Colony from adopting measures injurious to
another, or to the Emoire at large; or else
for the promotion of the internal government
of the Colonies, by assisting the inhabitants
to govern themselves. ... 131

130. Hobart Town Advertiser, 16 August 1850.
worked toward the implementation of representative and responsible government. In his second despatch to Van Diemen's Land he expressed his readiness to use 'every practicable opportunity for safely extending to the British Colonies the system of self-government in the form of a representative legislature.'

Unlike his predecessors at the Colonial Office, he did not consider convictism as an obstacle to representative government. He wrote:

I do not perceive the impossibility of reconciling the system of constitutional government with the decision and promptitude of action necessary for the effective rule of a large [felon] population. ...

Throughout the late 1840s and the very early 1850s Grey maintained a dialogue with Denison on the subject of representative government. Denison in turn conscientiously kept the colony informed of the developments in this area. In his first address to the Legislative Council in 1847, the Lieutenant-Governor made much of Grey's intentions. During the 1848 session he tabled all correspondence on the subject between himself, Earl Grey and Governor Fitzroy of New South Wales and explained that the delays in instituting a representative assembly was not the result of indifference on the part of the Secretary of State, but caused by a desire on Earl Grey's part 'to frame the Elective System upon the most popular basis...'

132. Grey to Denison, 30 September 1846, C.O. 403/29. The despatch was published in the Hobart Town Advertiser, 12 March 1847.

133. Ibid.

134. V. & P., 26 January 1848.
The colonists were not uninterested in the moves afoot to implement representative institutions, despite lack of public discussion on the matter. Official despatches and parliamentary debates on the subject occupied much space in the colonial press. Developments in Canada, where Governor-General Lord Elgin was establishing the pattern of responsible government, were also followed closely. The news that the Imperial Parliament had assented to a bill for the purpose of instituting a two-thirds elective legislature in Van Diemen's Land and other Australian colonies was sensationalized.

In 1851, the nominee Legislative Council, assembled as it was for the specific purpose of making arrangements for the introduction of the newly-constituted two-thirds elective legislature, briefly became the focal point of the colonists' attention. The opening meeting was attended by a capacity audience of three hundred people. The arrangements for the new legislature were contained in a bill ... to provide for the Establishment of a Legislative Council, the division of the Colony of Van Diemen's Land into Electoral Districts and the Election of Members to serve in such Legislative Council. Since the bill was of a technical nature (it merely gave effect to

135. 13 and 14 Vict., cap.59.
137. 15 Vict. No. 1.
the Australian Colonies Government Act\textsuperscript{138} in the colony) Denison did not expect any disputes or conflict in the Council. However all did not go as smoothly as the Lieutenant-Governor anticipated. Gregson was opposed to any discussion on the bill until such time as the 'outcome of the revised New South Wales Constitution could be gauged.' After his resolution, to the effect that the second reading of the bill be postponed, was defeated, he and those who supported the motion, namely, Dry, Fenton, Dunn and Sharland petulantly walked out of the chamber and left the Council without a quorum.\textsuperscript{139} During subsequent debates in late May of 1851 a number of anomalies and imperfections were discovered in the bill. These led to trivial disputes between the members which only served to delay the bill further. On 3 June, the date set for the final reading, a quorum could not be obtained. Chief Justice Pedder was in the Supreme Court, Auditor Boyes was confined to bed, Gregson 'was suffering from indisposition' and Dry 'was out of town owing to a domestic loss.' Fenton's absence could not be explained.\textsuperscript{140} The interest of the Council members as well as that of the public was once again on the wane.

The Electoral Bill was finally read a third time and passed on the 2 July 1851. On that day the Council as constituted by the

\textsuperscript{138} 13 & 14 Vict., cap. 59.
\textsuperscript{139} Report of the meeting of the Legislative Council of 2 May 1851, \textit{Hobart Town Courier}, 7 May 1851.
\textsuperscript{140} Report of the meeting of the Legislative Council of 3 June, \textit{Hobart Town Courier}, 4 June 1851.
Huskisson Act of 1828 met for the last time. 'The scene was as dull as it could be,' reported the Hobart Town Advertiser. 'There was an air of solemn, serious earnestness on the faces of all present as if they felt by instinct that the dissolution of the August assembly was close at hand.' All the old political activists were there. Anthony Fenn Kemp, whose political career spanned the period from the Rum Rebellion to abolition of transportation, later boasted that he was present at both the birth and the death of the Council. All the Council members excepting Chief Justice Pedder, Fenton and Dunn were present. They 'dropped in one by one, and instead of grouping together according to their usual wont', reported the Advertiser, 'stalked silently and softly around the chamber ... as tho [sic] oppressed with deep thought and painful apprehension of the part they were about to play in the death of the Council was but a foreshadowing of the scene which would one day be enacted over themselves.' The Advertiser was struck by the solemnity of this final session. It is noted that even the spectators 'assumed a seriousness that suited the situation.' Nobody expected any 'rows'. 'Even the chief actors realized that they had a silent part to play.' The proceedings were brief. After the Electoral Bill was read a third time Denison closed the session with a brief valedictory address

141.  Hobart Town Advertiser, 4 July 1851.
142.  Colonial Times and Tasmanian, 4 July 1851.
143.  Hobart Town Advertiser, 4 July 1851.
144.  Ibid.
in which he alluded to the advantages of the new legislature and acknowledged the non-official members for their past services. A few minutes after he had finished the chamber was deserted. 'All seemed anxious to escape from such a house of mourning' wrote the Advertiser. The life of the nominee Legislative Council had finally come to an end. It 'had not only outlived public respect, but public curiosity', wrote the Hobart Town Courier as a final comment.

145. Ibid.
146. Hobart Town Courier, 4 July 1851.
CHAPTER 7.


Although the Australian Colonies Government Act of 1850 altered the form of the Legislative Council, it failed to make provisions which would allow the Legislative Council to assume a significantly greater part in the government of the colony. While the links between the Colonial Office, the Lieutenant-Governor and the Legislative Council were made somewhat more flexible, the structure of the relationship between these institutions, and their function in the administration of the colony remained essentially unchanged. The Lieutenant-Governor, as head of the Executive, was still responsible to the Colonial Office. He was empowered to assent to, or withhold his assent from, any bill that had been passed by the Legislature. At the same time, the Crown, on the advice of the Colonial Office, retained the right to disallow any law which may have passed through the legislature and received the Lieutenant-Governor's assent. Further, the Lieutenant-Governor was given

1. 13 & 14 Vict. cap. 59, sec. xxxiii; see also 7 & 8 Vict. cap. 74 sec. vii and 5 & 6 Vict. cap. 76, sec. xxxi and xxxii.
financial resources which made it impossible for the Legislative Council to use the 'power of the purse' as a means by which to gain control over the executive. The Australian Colonies Government Act included the provision that certain sums of money were to be set apart from the consolidated revenue for the maintenance of the various public services, and public worship, and these sums were set out in detail in the schedules of the Act. Moreover, the monies accruing from Crown lands, fines and forfeitures were withheld from Council appropriation. The Act included the provision that, subject to the statutory restrictions, payments from the consolidated revenue were to be made, on appropriation by the Legislative Council, in response to recommendations made by the Lieutenant-Governor.

These limitations, together with the fact that the members who had sat in the nominee Council, set the tone in the new legislature, tend to explain why the behavioural pattern of the two-thirds elected Council remained essentially the same as the old Council. The members appeared very little interested in taking routine business out of official hands; instead they thwarted and condemned the Lieutenant-Governor on every possible occasion.* They were intent on bringing about first, the abolition of transportation, and second,

* This was also the case in Victoria, see J.M. Main, 'Making Constitutions in New South Wales and Victoria 1853-4,' Hist. Stud., Vol. 7, No. 28, p. 271.

2. 13 & 14 Vict. ccap. 59, Schedule C, see Appendix D.

the introduction of responsible government.

* * *

The Australian Colonies Government Act laid the basis for responsible self-government in the various colonies of Australia. In the first instance its provisions extended partly elective institutions to Van Diemen's Land, South Australia and Victoria which it established as a separate colony, and made modifications to the already existing two-thirds elective Legislative Council of New South Wales. In the second place it empowered the newly instituted Councils either to increase their membership or to create a bicameral legislature consisting of a 'Council and a House of Representatives.'

The provisions for the new Legislative Council of Van Diemen's Land were outlined in the seventh section of the Act. The new legislature was to consist of no more than twenty-four members; one-third to be nominated by the Crown while the remaining two-thirds were to be elected by the inhabitants of the colony. It made the existing legislature (the nominee Council) competent to make provisions for dividing the colony into electoral districts, for appointing and declaring the number of members of Council to be elected from each district, for the compilation and revision of lists of all persons qualified to vote at elections to be held within such districts, for the appointment of returning officers, for determining the

validity of disputed returns, and 'otherwise for ensuring the orderly, effective, and impartial conduct of such Elections.'\(^6\)

These provisions of the Act were made effective in the colony by the passage of the ordinance - *An Act to provide for the Establishment of a Legislative Council, the division of the Colony of Van Diemen's Land into Electoral Districts and the Election of Members to serve in such Legislative Council.*\(^7\) This so-called Electoral Act divided the colony in fifteen electoral districts and fixed the representation of each. The electoral district of Hobart was to return two members, while the other districts - Launceston, Cornwall, Westbury, Longford, Morven, Campbell Town, Oatlands, Cumberland, Richmond, Brighton, Sorell, Buckingham, New Norfolk and Huon - were each to return one member.\(^8\) Elections were to be conducted under the supervision of the Lieutenant-Governor who was empowered to appoint returning officers\(^9\) and to fix polling-places.\(^10\) The Electoral Act defined the qualifications for electors. Every man, twenty-one years of age, either a natural born or naturalized subject; or made a denizen of Van Diemen's Land with a freehold estate in possession, situated within the district for which his vote was to be given, of the clear value of £100 above all charges and encumbrances in any way affecting the same, or a householder in any such district

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7. 15 Vict. No. 1.
8. 15 Vict. No. 1, sec. ii.
paying rent of at least £10 per annum.11 Persons who had been convicted of treason, felony or any other infamous crime were not entitled to vote unless such persons had obtained a free or conditional pardon for such offence. Further, persons who had not paid their rates and taxes were ineligible to vote.12 The Electoral Act also set up machinery to deal with disputes arising from the electoral roll and out of election returns.

* * *

Although the Act was not passed until early July 1851, and the elections were held in October of that year, candidates brought themselves to public notice as early as February 1851. Electoral committees backing the various candidates were spasmodically active until the day on which the polls were conducted.

The central issue of the elections was the question of transportation. Candidates identified themselves, willingly or unwillingly, either as opponents or supporters of the present system of transportation. The political climate of the day favoured the anti-transportationist candidates. The abolitionist cause still attracted a popular following. The opinion-makers, the press, the politicians and popular demagogues, continued to focus attention on the question. In 1851, the year in which the first elections were held, the anti-transportation movement was at its zenith. The Australasian Anti-

12. Ibid.
Transportation League had recently been formed, and the activities of abolitionists, not only in Van Diemen's Land, but also in the mainland colonies were fully reported by most sections of the press.

This movement, which symbolized the moral regeneration of a new society, gave the colony a sense of purpose. 13

Pro-transportationist candidates were few and far between. Some who had earlier announced their acceptance to stand, withdrew their candidature once they realized the extent of the opposition to transportation. Feeling that his abolitionist rival for the electorate of Cumberland, W.S. Sharland, could more adequately represent the views of the electors of Bothwell and Hamilton than himself, Captain William Langdon, a pro-transportationist, withdrew from the contest. 14 Frederick von Stieglitz would not stand even when implored to do so, against the abolitionist Robert Q. Kermoda, the son of the midlands squire and former member of the nominee Council William Kermoda, for the seat of Campbell Town.

Nevertheless there were sufficient pro-transportationists willing to stand to make the elections interesting for the prospective electors. At least eight avowed sympathizers of the system of transportation offered themselves to the electors. However other than in the electoral district of Hobart, the focal point of pro-transportationist activities, no serious challenge to the abolitionist

candidates was offered.

In Hobart the sympathy for transportation seemed very much a reaction of the ex-convict element in the working classes, to the commercial and landed classes, and their values, which dominated the anti-transportation movement. Patrick O'Donohoe, an Irish patriot transported for crimes against the state, who edited the *Irish Exile and Freedom's Advocate* urged the working orders to stand firm in the face of the encroachment of the upper classes of society which were attempting to consolidate their political monopoly. By championing the pro-transportationist cause he sought to challenge their political prominence. Van Diemen's Land, he believed, was a region where the disgraced and the degraded are enabled to retrieve their position - where a great experiment in the philosophy of human nature is being carried out.

He would demand the discontinuance of transportation only if it could be proved injurious to the colony and an alternative source of labour were to be found. O'Donohoe praised Denison and the other champion of transportation and the ex-convict working orders, Thomas Young, a mechanic, who presented himself as a candidate for one of the seats of Hobart.

After the decline of the *Exile*, another Irishman John Donnellan

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17. *Irish Exile and Freedom's Advocate*, 7 September 1851.
Balfe, took the lead in the attempt to consolidate pro-transportation and emancipist opinion. Unfortunately for the emancipist cause, Balfe, despite his testimonials from Earl Grey and Lord Clarendon, was a man of dubious repute. His activities in Ireland as a spy and informer led many of his compatriots to regard him as the reincarnation of Judas Iscariot. To those who opposed transportation he was looked upon as the archetypal villain, who, as Assistant-Comptroller of Convicts collaborated with the government to administer the savagery of the penal system. Soon after his arrival in Hobart in 1850, Balfe allied himself with the now strongly pro-government Hobart Town Advertiser. During 1851 he posed as its most vociferous correspondent, violently criticising the anti-transportation movement and its leaders. Balfe followed that line of argument used by O'Donohoe. The patrician qualities of his adversaries were emphasized in order to give the struggle the appearance of a class war.*

He wrote:

All the 'oldest colonists' come before the electors ... with their claims based upon a long residence in a country the very atmosphere of which they declare to

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* John Mitchell, an Irish political prisoner, wrote in his Jail Journal: 'The policy on which the [pro-transportationists] rely is almost too base and diabolical for belief. It is to represent the anti-transportation movement as a thing hostile to the prisoner-population and their descendants....'

Denison's return from Launceston, 25 August 1851. The pro-transportationists sought, by giving him a tumultuous welcome, 'to vindicate his character' and express 'their confidence in his government'. The 'Triumphant Arch', through which Denison and his retinue passed, was erected at the top end of Elizabeth Street near the offices of the Advertiser. 

_Hobart Town Advertiser_, Supplement, 5 October 1851.
be more pestilent than that of hell itself. 19

Balfe's vitriolic pen portrayed the leaders of the anti-transoortation movement and the abolitionist candidates as a cabal with sinister objectives. He denied the popular basis of the movement. There are upwards of 75,000 people in the island, ... the country is studded with hard-working industrious farmers and flockmasters. Our seas are traversed by hundreds of enterprising fisherman, yet our oversensitive patriots usurp the power, authority and title of the people ... in furtherance of their own special views and interests. 20

As the elections drew nearer and the position of the anti-transoortationists became stronger, Balfe became desperate. He now initiated a programme of personal attacks upon the motives of his opponents. The abolitionist leader John West was the chief target of his vituperation. The Reverend West, he wrote 'was employed in the forenoon expounding the Gospel of the God of Truth and Charity' and 'in the afternoon [dripping] slanderous poison on the character of the people of his adopted home.' 21 21 Balfe increased his influence when he became joint owner of the Advertiser 22 which subsequently came under attack for its 'clap-trap', designed to appeal 'to the worst passions of the ex-convicts.' 23

19. Letter to the editor, Hobart Town Advertiser, 18 April 1851.
20. Ibid.
21. Letter to the editor, Hobart Town Advertiser, 1 July 1851.
22. See Registrar to Champ, undated, C.S.O. 24/141/16.
23. Launceston Examiner, 24 September 1851.
The anti-transportationist press tore Balfe's arguments to shreds. Yet Balfe's blarney, invective and promises seemed to hold together a substantial pro-transportationist group, in Hobart, consisting mainly of emancipist mechanics and publicans. The success of the public demonstration expressing confidence in Lieutenant-Governor Denison's policies can be attributed to the Assistant-Comptroller's energetic propaganda campaign. Further, he organized this group so as to give a substantial amount of support to the pro-transportation candidate. In the election Young managed to poll thirty-five per cent of the votes.

Balfe, however, was unable to extend his influence outside Hobart. His attempts to consolidate the pro-transportationist forces throughout the colony were unsuccessful. Pro-transportationist candidates, with the exception of John Archer who stood for the seat of Westbury, shied away from the advances of this self-appointed champion of their cause. Balfe's personal behaviour, and his association with ex-convicts failed to win their confidence for they, on the whole, were members, or saw themselves as potential members, of that patrician class which the Assistant Comptroller so vehemently denounced.

Balfe failed to observe any of the norms of colonial political behaviour. No attempt was made to lend to the pro-transportation cause an air of respectability, a quality essential to the success of

25. See Appendix E.
any colonial cause. Balfe's political methods were crude and unsophisticated, even when judged by colonial standards. Stand-over tactics and physical force were blatantly used to enlist support and silence opponents. The respectable deplored the fact that he resorted to violence when his arguments 'were found defective.'

In September of 1851 he came to blows with James Aikenhead, editor of the abolitionist Launceston Examiner. For this offence he was bound over to keep the peace for six months in security of fifty pounds. A year later he assaulted two other political opponents, namely Gregson and Cleburne, outside the Hobart Town Court building.

Much alarm and disgust was voiced by various elements in the community at the turn colonial politics had taken. A certain Captain Neilly made repeated complaints to Denison about the fact that the executive saw fit to continue availing itself of the services of Balfe 'in the Commission of the Peace.' The anti-transportationist press made political capital out of the public reaction to the Assistant-Comptroller's tactics. The editor of the Hobart Town Courier wrote:

The riotous band of continuous-pollution wishers know their only chance of returning

26. Diary of William Archer, 26 September 1851.
27. Ibid.
29. Neilly to Champ, 31 December 1852, enc. no.3 in Denison to Pakington, 5 January 1853, G.O. 33/78.
a transportationist member is a terrorist demonstration. 30

The abolitionist press played on the anti-government sentiment which had been bred in the colony over the past two and a half decades in order to make the pro-transportationist candidates less appealing.* No opportunity was lost to identify them with the Denison administration. The discovery that the executive had allowed the pro-transportationists the use of the Public Market Hall for a carousel to celebrate their success in breaking up an anti-transportationist meeting, gave rise to allegations that Denison had co-operated with Balfe and his associates. John Mitchell, who, like O'Donohoe, Smith O'Brien and others had been transported for participation in the Young Ireland rebellion of 1848, maintained that the Lieutenant-Governor attempted, through Balfe and every agency at his command, to get up a convict esprit du corps. 31 Although it is impossible to substantiate these allegations, it can be proved that Denison collaborated with pro-transportationists on other occasions. He encouraged W.R. Allison to stand against the abolitionist R.Q. Kermode. 32 Further, he had attempted to organize leading pro-trans-

* Denison was appalled by the fact that many colonists felt that anything the government did was to their disadvantage and therefore should be opposed. See Denison to Mrs. Denison, 13 February 1852; W.T. Denison, op. cit., p. 186; same to the same, 28 July, W.T. Denison op. cit., p. 193; Denison to Newcastle, 27 October 1853, D.P. Hf. R.2.

30. Hobart Town Courier, 22 December 1852.
32. See Denison to Leake, 13 October 1851, and 30 October 1851, L.P.
portationists to petition in favour of the employment of convicts. 33

The novelty of the first election attracted a great deal of attention. 'There is great excitement', wrote Irish exile John Mitchell; 'everybody [is] delighted to have another opportunity for mimicry of the "old country".' 34 Candidates in all districts where seats were contested conducted vigorous campaigns. The business was comparatively expensive. For example, James Cox spent £300, and John Archer found himself £400 out of pocket after the elections. 35 Activities reached a climax at the hustings. In Hobart excitement was particularly high on the day set (21 October 1851) for the candidates to present themselves to the electors. At an early hour the first candidate, T.O. Chapman, president of the Southern Council of the Anti-Transportation League, arrived at the city boundary where a brass band and a vast number of his supporters were waiting to form a procession. At 11 a.m. Chapman, escorted by his supporters, preceded by the band and three bearers carrying the anti-transportationist standards, made his way to the hustings. The second candidate, John Dunn, treasurer of the League, appeared at the head of a similar procession. Young, a mechanic and the pro-transportationist candidate, who made a rather belated appearance which 'gave cause for much hilarity' did not make an entry as grand as that of either Chapman or Dunn. Young apparently found difficulty in making his way through

33. Denison to Allison, 6 September 1850, D.P. II f. R.2.
34. John Mitchell, op. cit., p. 263.
35. Diary of William Archer, 8 December 1851.
the crowd to the hustings until the two other candidates descended and brought him forward themselves. The candidates were then put forward. Dunn and Chapman were favourably received. Young's candidature however was received 'with cries of execration.' After a motion, to the effect that Dunn and Chapman be elected, was passed, Young exercised his right and called for a poll to be conducted in one week hence.\(^36\) The scene on the similar occasion at Launceston was equally as colourful. A procession consisting of 2,000 people bearing anti-transportation banners accompanied the abolitionist Dry to the hustings. His opponent the pro-transportationist lawyer Adye Douglas, whose seventy supporters were described as 'an intoxicated rabble', was soundly defeated on the show of hands. Nevertheless he called for a poll.\(^37\)

In the rural electorates the struggle between candidates was more fierce. Here the personal character of the candidate was as important a matter as the transportation question, especially in those districts where candidates did not differ greatly in their opinion on this issue. The support which one or other candidate received at the hustings was not a reliable indicator of the final result. For example, Walker, who was returned for Brighton, was earlier defeated at the hustings. Edward Dumaresq, who at the hustings seemed to have as much support as his rival Joseph Archer,\(^38\) was beaten at the polls.

\(^36\) Colonial Times and Tasmania, 31 October 1851.
\(^37\) Colonial Times and Tasmanian, 24 October 1851.
\(^38\) Ibid.
The election was a resounding victory for the anti-transportationists. Every candidate returned was a pledged abolitionist. This success caused much jubilation. T.D. Chapman received a hero's ovation and was chaired around Hobart. This victory celebration was interrupted, when the procession passed the corner of Elizabeth and Liverpool streets, by a group of Young's supporters who poured out of the Glasgow wine vaults where they had been drowning their sorrows. Several people were injured in the brawl which followed. The Hobart Town Courier warned that such an unprovoked attack would only foster class feeling. Victory dinners were held all over the island. Even the rank and file members of society were encouraged to join in the jubilation. William Archer described how he further ingratiated himself with the working orders in his electorate by providing fifty-six gallons of beer for their consumption.

The majority of names which appeared on the list of successful candidates were well known. Six of the members, namely Dry, Cox, Gregson, Dunn, Fenton and Sharland had held seats in the nominee Council. William Archer was the son of Thomas Archer who had been a member from 1827 to 1844. Joseph Archer was Thomas' brother. H.F. Anstey was the son of Thomas Anstey, a member from 1827 to 1844. R.Q. Kermode was the son of William Kermode, one of the Patriotic Six. The lawyers J. Gleadow and R.W. Nutt and the merchant T.D.

39. Hobart Town Courier, 22 and 29 October 1851; 1 November 1851.
40. Diary of William Archer, 8 December 1851.
Chapman had established reputations as prominent anti-transportationists. Cleburne, Walker and Morrison, all landed proprietors, were the only elective members who had not established a political reputation.

Once the election was over, Denison was free to appoint eight nominees to the Council. Although the election results were not finalized until 8 December 1851, the Lieutenant-Governor had as early as April of that year, selected the nominees.41 They were chosen from the ranks of Denison's supporters in the nominee Council, and from well-known, although respectable, pro-transportationists. Gregson asserted that they were all men who 'would constitute a solid phalanx and on all occasions vote for the Government.'42 They were W.R. Allison, J. Leake, E. Bisdee, and W.G. Talbot, Acting Colonial Secretary P. Fraser, Acting Colonial Treasurer Adam Turnbull, Attorney-General Valentine Fleming, and Solicitor-General Francis Smith. Since the Lieutenant-Governor would no longer sit in the Council, either as president or in any other capacity, he relied on the ex officios and to a lesser extent the private nominees to represent the government viewpoint.

* * *

The new Legislative Council was summoned to meet on 30 December 1851. Suitable alterations had in the meantime been made to the

41. See Denison to Bisdee, private, 15 April 1851, D.P. If. R.2.
42. Colonial Times and Tasmanian, 25 December 1851.
Council chamber to accommodate the members and add to the dignity of the institution. The press reporters were amazed at the transformation of the Long Room of the Customs House. The walls were now wainscotted with 'indigenous wood in rich and bold panelling.' A bench seventeen feet long graced the centre of the room. The chairs of the Speaker and Lieutenant-Governor were 'handsomely carved.' The members' benches were covered in maroon morocco leather and two wood stoves had been installed. The chamber, wrote the political reporter of the Courier, 'has been fitted with every regard to the convenience of members.'

The new Legislative Council first met on 30 December 1851, but merely to make preliminary arrangements. Proceedings commenced with the reading of the proclamation which summoned the members together. Next, the oath of office was administered to each member, and finally the Speaker was elected.

The Speakership was regarded as an office open only to the most prestigious members. R.W. Mutt, member for Buckingham, finally refused nomination in deference to Dry in spite of the fact that Denison considered him an equal to the task. The Lieutenant-Governor told Allison that Mutt,

being a lawyer and therefore in the habit of deciding questions not in accordance with his

43. Hobart Town Courier, 31 December 1851.
44. Report of the meeting of the Legislative Council of 30 December 1851, Hobart Town Courier, 31 December 1851.
own particular fancy, but according to the rules of precedent, and ... being a steady sober-minded man will be ... best fitted for the office. 45

Gregson, whose long experience in colonial politics might have made him a strong contender for the position, declined in favour of Dry who, in the end, was elected unopposed. 46

The formal opening of the new Legislative Council session on 1 January 1852 occasioned much excitement. A large crowd assembled outside the Customs House to witness the arrival of the public dignitaries, the members and the Lieutenant-Governor. The chamber itself was packed to capacity. The prominent ladies were seated on the members' benches. The Colonial Times, 'for the benefit of those unable to be present', reported the scene in great detail. It noted that the presence of the 'foremost inhabitants' - the Chief Justice, 'the Lord Bishop Nixon', the Catholic Bishop and the Chief Police Magistrate - lent dignity to the occasion.

At two o'clock Lady Denison entered. She was graciously conducted to her seat by the Speaker. A few minutes later, a seventeen-gun salute announced the presence of the Lieutenant-Governor. The Speaker ceremoniously ushered Denison, resplendent in full dress uniform, to his seat. Dry then humbly requested his Excellency to read the opening address. Denison, once having outlined the Govern-

ment's legislative programme for the session, retired and the Council adjourned to the following day, \(^{47}\) when routine business was commenced.

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The Council, from which so much had been expected, for the four years of its existence, was rarely prepared to assume the initiative and take policy out of official hands. The vast majority of bills continued to originate from the executive. \(^{48}\) This is not to suggest that members were lax in carrying out their legislative duties; quite the contrary is true. \(^{49}\) However their energies, particularly before the cessation of transportation, were mainly spent on attacking and thwarting the executive. The fact that the majority of members automatically assumed that the interests of the government were constantly at variance with those of the community, annoyed the Lieutenant-Governor, \(^{50}\) and frustrated his attempts to encourage them to acquire 'habits of consideration and self-confidence' and generate 'a power of discriminating and judging as to the matters in which the public are interested.' \(^{51}\) He described them as 'an impractical set' with no conception of their proper function, who feared responsibility


\(^{48}\) W.A. Townsley, *op. cit.* , p. 108.

\(^{49}\) Ibid.

\(^{50}\) Denison to Mrs. Denison, 28 July 1852, W.T.Denison, *op. cit.* , p. 193.

and craved power. The Secretary of State, Earl Grey, was told:

They are running the course of men who are unaccustomed in the practice of legislative assemblies, are full of ideas of their own infallibility and their own wisdom, being at the same time ignorant of the great and acknowledged principles of political science.

Approximately thirty per cent of the bills introduced by the executive during the life of the two-thirds elective Council were rendered ineffective. Many of the numerous select committees set up to inquire into areas such as government departments, immigration and colonial grievances were used as spring-boards from which opposition against the executive was launched. This opposition was aimed primarily at the government's policy of continuing transportation. Once it was realized that this opposition was ineffective the more extreme members vented their fury on Denison.

From the very beginning the majority of members indicated that the transportation issue was their principal interest. The Council adopted a strongly-worded reply to Denison's opening speech of 1 January 1852 reprimanding him for failing to mention that 'all-important question of transportation.' 'None of the matters mooted in the speech were of equal importance to this,' thundered T. O. Chairman, chairman of the committee constituted to draft the reply. In spite of Attorney-General Fleming's insistence that the reply to his

53. Denison to Grey, 16 February 1852 (private correspondence) J.P. "Mr. R2.
54. See the figures given in W. A. Townsley, op. cit., p. 108.
Excellency's speech was not the legitimate channel for expressing political opinions, the address was adopted by a majority of six votes.55

Transportation became the subject of almost every debate, even though such debate might originally have been unconnected with the question. In a Council dominated by those who regarded the cessation of transportation as the panacea to all problems, this was difficult to avoid. Yet in spite of its preoccupation with the issue, no strong action was attempted to force the hand of the policymakers. It is true that Sharland introduced a series of resolutions condemning the system of transportation. But these were mild in tone. The Colonial Times bemoaned their ineffectiveness and their failure to condemn the executive.56 Nevertheless the resolutions found support amongst the most extreme anti-transportationist members. Denison was convinced that the members were not sincere. They mouthed anti-transportationist slogans merely for the purpose of redeeming promises made on the hustings, he told his mother.57 He thought that once their consciences had been satisfied, they would pass over the issue.58

55. Report of the meeting of the Legislative Council of 2 January 1852, Tasmanian Colonist, 5 January 1852; see also Colonial Times and Tasmanian, 6 January 1852.
56. Colonial Times and Tasmanian, 13 January 1852.
58. Denison to Grey, 16 February 1852 (private correspondence) D.P. ii. R.2.
This was not to be the case. They continued to 'bellow and whine' about the government's policy of transportation even though the emigration caused by the gold discoveries in Victoria caused a severe contraction in the labour supply and 'paralyzed the energy of the [Anti-Transportation] League'.\textsuperscript{59} And now they clamoured for an alternative labour source as well as for the cessation of transportation.

While the executive was unable to satisfy either demand, little willing co-operation was to be expected from the Council. When the executive requested the ratification of extra money to pay for the increase in wages for public servants there was an uproar. R.Q. Kermode, following in the political footsteps of his father, reacted violently to what he termed a preposterous demand and proposed that, since fifty per cent of colonial public servants' time was spent dealing with convict matters, the Home Government should pay half the cost of the civil establishment. Although his colleagues did not treat the proposal seriously, they were intent upon making things difficult for the executive. Gregson persuaded the members that any consideration of the matter should be delayed for a fortnight beyond the period at which the extra money was to be paid.\textsuperscript{60} It seems that Gregson and his supporters hoped that Denison would take upon himself the responsibility of making the payments before they were sanctioned.

\textsuperscript{59} Denison to La Trobe, 30 December 1851; see also Denison to Grey, 9 June 1852 (private correspondence) C.P. 'f. R.2.

\textsuperscript{60} Report of the meeting of the Legislative Council of 5 February 1852, \textit{Tasmanian Colonist}, 29 February 1852.
by the legislature and thereby leave himself open to attack.

Denison, who took pride in immediately detecting the purpose of the moves, declined to take further action. This tactic succeeded, for fearing the loss of public servants to the Victorian Goldfields, the Council without further ado voted the money necessary for the salary increases.  

The labour shortage caused by the gold rush took some of the edge off the elective members' campaign against transportation. In spite of their earlier avowal to pay only one-third of the increase in the police and gaol charge, the estimates as presented by the executive were passed without any substantial alteration.

At the end of the early session of 1852 the elective members realized that there was little they could do to change the convict policies of the government. They gave expression to their frustrations by attacking the Lieutenant-Governor. The first attack was made at the beginning of the second session of 1852. At the end of the first session, Denison, in his speech proroguing the Council, had, on behalf of Her Majesty and Her loyal and faithful subjects in the colony, expressed his sorrow at the improper language in which the anti-transportationist resolutions, contained in an Address to

61. Denison to Grey, 16 February 1852 (private correspondence) D.P., Mf. R2.

62. The same to the same, (private correspondence), 8 July 1852, D.P., Mf. R2.

63. The same to the same, (private correspondence), 24 March 1852, D.P., Mf. R2.
the Queen, were couched. The most fervent anti-transportationists amongst the elective members, namely, T.D. Chapman, Gregson, Fenton, Gleadow, R.Q. Kermode, W. Archer and Nutt let it be known, with a display of much indignation, that they were insulted and hurt at what they chose to construe as libellous imputations contained in Sir William's closing speech. Kermode claimed that the anti-transportationist members had been charged with gross 'disloyalty and unfaithfulness.' Gregson saw Denison's remarks as 'a foul insult' which was grossly unjust. R.W. Nutt prepared an Address to the Queen rebutting every imputation of disloyalty, recapitulating the demands of the anti-transportationists, and the demands made by the Council vis à vis transportation, reviewing and reprimanding the course pursued by the Lieutenant-Governor, requesting her Majesty to honour Grey's broken promise and praying for absolution from all imputations of unfaithfulness and disloyalty.

Few believed that this was a spontaneous and justifiable response to an outrage. The press believed that the Chapman-Gregson faction was merely looking for a causa belli. It was asserted that:

The whole affair is an afterthought and has not even the merit of originality, but borrowed from the close of Sir Eardley-Wilmot's life. Wilmot used the expression and was censured by...

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64. Hobarton Guardian, 19 June 1852.
65. Hobart Town Courier, 19 June 1852.
67. Tasmanian Colonist, 21 June 1852.
the Secretary of State; and it now looks as if a number of gentlemen, being at their wit's end what to do to create a division, had at last hit upon the expedient of appropriating upon themselves the charge of disloyalty, on which they slumbered so long.

Nutt gave notice of the motion for the adoption of the Address on the first day of the session immediately after the Lieutenant-Governor had delivered his opening speech. The attack on Denison began two days later during the debate on the motion. The Courier told its readers that Lawyer Nutt, by introducing the Address into Council, had issued 'a writ against His Excellency for five years' arrears of misdeed.' Those in favour of the Address repeatedly condemned Denison for failing to take into account the wishes of 'the people' and their representatives on the question of transportation. Gregson, in a long and fiery speech unsurpassed 'for graphic effect and senatorial eloquence ... by a Burke or a Pitt, a Sheridan or a Fox', suggested that his Excellency was a latter-day Nero.

The moderate anti-transportationist members, as well as the nominees were disgusted by the attack. The Hobart Town Courier, the voice of moderation, condemned the Chapman-Gregson factions' confrontation tactics. It feared that the conflict between the Council and the executive which might arise, were Nutt's motion to be pursued further, would seriously impede 'their mutual exertions for

68. Hobart Town Courier, 19 June 1852.
69. Ibid.
70. Hobarton Guardian, 23 June 1852.
THOMAS DANIEL CHAPMAN,
Member of the Legislative Council
1851-1856.
Sharland and Dunn sought to tone down the personal attack on the Lieutenant-Governor. An amendment to the effect that an alternative address, requesting his Excellency to explain any 'obnoxious language' that he might have used in his speech, be prepared, was moved. After further heated debate, the forces of moderation prevailed. Cleburne, Morrison and Walker and the nominees voted with Sharland and Dunn.72

The attack upon Denison drew wide criticism which tended to discredit the more radical and well as the moderate anti-transportationist members. The Guardian told its readers:

The alacrity with which so slight a cause has been seized upon for so large a display of rancour and of rage shows that the personal vituperation of His Excellency is a far more pleasant occupation for these Anti-Transportationist Legislators than adopting proper measures to meet the ... exigencies of the colony. 73

Nevertheless the attack was continued.

On 24 September, Fenton, member for New Norfolk, gave notice of a motion for the adoption of another address to her Majesty expressing want of confidence in Sir William Denison. He explained to the chamber that he was moved to take such a painful step by his Excellency's attitude to the question of transportation, an attitude

71. Hobart Town Courier, 12 June 1852.
72. Report of the meeting of the Legislative Council of 17 June 1852, Hobart Town Advertiser, 22 June 1852; see also Colonial Times and Tasmanian, 18 June 1852.
73. Hobarton Guardian, 23 June 1852.
which would not under any circumstances 'facilitate or preserve that harmony and good understanding which should exist between the Legislative and the Executive.'  

Four days later, on the evening of which the debate was to take place the public gallery was packed by the 'most esteemed and respectable' citizens of the community, 'all extremely anxious for the result of Captain Fenton's motion.'

The debate was indeed lively. The two groups among the elective members, the radical anti-transportationists under the leadership of Chapman and Gregson, and the moderate anti-transportationists led by Sharland, already discernible during the earlier attack on Denison, became more obvious. The latter group, which stopped short of a personal attack on the Lieutenant-Governor for (in Sharland's words) 'personal reasons', voted with the nominees against Fenton's motion.

This attack upon Denison was more vigorous. Fenton recapitulated the old grievances and emphasized the Lieutenant-Governor's failure to reply in the 'proper tone' to the Council's address containing the 'impressive' resolutions against transportation. Chapman attributed sordid motives to Denison's advocacy of the continuation of transportation. He argued that if transportation were to be abolished, the Lieutenant-Governor would no longer receive £2,000 currently being paid by the British Government in return 'for advocating


75. Report of the meeting of the Legislative Council of 23 September 1852, Tasmanian Colonist, 30 September 1852.
the present system of transportation' and superintending the convicts.76 Gregson delivered a speech, perhaps more properly termed a vicious tirade, on the subject of tyranny in the Denison government. He repeated the accusation that Denison had continually flouted the wishes of the colony, particularly with regard to the subject of transportation. Anstey and Kermode who had already gained reputations as masters of political invective, added to the attack.

The members against the adoption of the address, with the exception of Leake and Allison, considered that the best strategy under the circumstances was to remain silent.77 Allison expressed, while frequently appealing to the tumbler, 'his hemphatic opposition to the helected members, and his hardest habition to support His Hecellency' in the dispute.78 Leake, with an unusual amount of heat, contended that since Sir William had displayed more energy and wisdom than any of his predecessors, the present motion of want of confidence was grossly unjust. The members opposite were not so much influenced by the humanitarianism of Wilberforce as they were by the greed and snobbery of the nouveaux riches, he concluded. Nevertheless the motion was adopted.79 Denison calmly received the address from the Council, and promised to forward it to the Secretary of State.

76. Ibid.
77. Ibid.
78. Colonial Times and Tasmanian, 7 January 1853.
The attack did not cease with the adoption of the address.

Three days later Gregson arose and announced that the Lieutenant-Governor had been responsible for the aspersions cast upon the Speaker of the Legislative Council by the latest number of the *Hobart Town Advertiser*. He quoted the offending section of the Advertiser's editorial column:

> The Resolutions scouted by the Legislative Council at the commencement of the sitting when proposed by Mr. Mutt, have at length [found] favour under the patronage of the member for New Norfolk. Virtually and substantially the resolutions rejected on 17 June are the same as those adopted on 28 September. Indeed so obvious is it that we were not aware of the unusual activity recently exhibited by the hon. the Speaker in canvassing for Legislative recruits to the ranks of the Governor's personal enemies.

This species of attack, which in fact amounted to a libel on the Council itself, asserted Gregson, originated with the Lieutenant-Governor. He introduced circumstantial evidence to justify his claim. It was a well-known fact that the *Advertiser* was the mouthpiece of the Government, he argued; Denison had himself contributed many articles and anonymous letters under several *noms de plume* attacking the Anti-Transportation League and the elective members of the Council, and of this there was ample proof, contended Gregson. His friend Mr. Edward Abbott, the former proprietor of the *Advertiser*, had been shown letters, written by Sir William, by the present


81. *Hobart Town Advertiser*, 31 September 1852.
proprieto the pro-transportationist O'Heile-Wilson. Gregson then turned upon, and severely castigated, the Lieutenant-Governor for forgetting his high station and becoming 'an anonymous scribbler to a rag like the Advertiser.' While the Council had recently prayed to the Queen, he would pray to God for Sir William Denison's removal.\(^{82}\)

This attack upon Denison was not taken seriously. Even Gregson's associates, with the exception of Chapman, on this occasion considered that his personal disputes with the Advertiser had obscured his political judgement. The matter was not discussed for any length of time. Nevertheless the member for Richmond persisted. Five days later he commenced another attack on both the Lieutenant-Governor and the Advertiser (for to him the two were insensurable) and ended by asking the Attorney-General Fleming what legal steps he intended to initiate on behalf of the Council and the Speaker against the Advertiser. Fleming told him he was not competent to take action on his own initiative; that he could only act on the instructions of the chamber. By this time the Council, wearied by the abusiveness and invective which had recently characterized its debates, lost heart. No inclination was shown by any member to pursue the matter further.\(^{83}\)

The majority of the newspapers disapproved of the attack upon the Lieutenant-Governor. It was felt that some elective members

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82. Report of the meeting of the Legislative Council of 31 September 1852, Hobart Town Courier, 6 October 1852.

were, rather than adopting means to end transportation, following a course by which they hoped to enhance their personal glory. The Courier considered that they had acted without reference to their electorates. Should they be allowed to continue in their present course, it warned, they would annihilate the representative system. The attack upon the executive, it was believed, had lowered the tone of debates. The Advertiser told its readers:

What bill or measure is before the Council is a question nobody asks when meeting first in the day. Was there a fight? Did the Governor come in for it? How many times did the member for Richmond insinuate the Governor was a liar? Did T.D. Chapman again allude to 'that man' or his salary? Who did the member for such and such insult first? Was Alison sober? Such are the principal items in the category of questions addressed to each other by friends, inquisitive after the proceedings of senators, who are now regarded as amusing mountebanks rather than useful competent legislators.

The Courier bemoaned the dearth of lofty ideals and the plethora of 'intolerance and vituperation.' 'Extravagant excursions', wrote the editor, 'which would be hooted out of "Codgers' Hall", are dignified by the name of debate, and the barren clap-trap of the last five and twenty years is served up for an intellectual banquet.'

Some sections of the press turned on the authors of the attack on the Lieutenant-Governor. The Guardian hoped that T.O. Chapman would, 'like Cincinnatus of old retire to his estate and grow cabbages.'

84. Hobart Town Courier, 19 and 23 June 1852.
85. Hobart Town Advertiser, 22 October 1852.
86. Hobart Town Courier, 27 October 1852.
87. Hobarton Guardian, 2 November 1852.
The *Advertiser* wrote:

A perusal of the course and vindictive character of Gregson, the diatribes of Chanman—a struggle for prominence taking place between the ignorance of the boor and the vulgarity of the clown, and the incoherent rhapsodies of Kerrnod, exhibit the style of our legislative Solons.

It was generally agreed upon the few of the present members of the Council would survive another election.

The difference between the Legislative Council and the Executive over the personal attack on the Lieutenant-Governor, did not reach crisis proportions. Denison, unperturbed by the elective members' hostility, told his mother that 'things were going well.' He felt himself master of the situation until disunity appeared in the ranks of the *ex officios*.

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Denison had inherited a well-disciplined official component of the Council. During the Franklin administration, *ex officio* members realized they were subject to dismissal if they did not vote at the executive's call. The strenuous opposition of the private members welded them more strongly together during the Hilmot period. Denison understood their function to be that of support for the executive on every conceivable occasion. The Colonial Secretary's role

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88. *Hobart Town Advertiser*, 22 October 1852.
89. *Colonial Times and Tasmanian*, 23 June 1852.
as principal spokesman for the executive had become, particularly
after the introduction of the Australian Colonies Government, very
important. The Lieutenant-Governor, after the death in 1850 of
Bicheno, which left the Colonial Secretary-ship vacant, cautioned
the Colonial Office against the appointment of mediocre and poten-
tially troublesome candidates. He would not hear of J.A. Jackson,
the London agent of the London Agency Association and Anti-Trans-
portation League, being proposed as Bicheno's successor. What
Denison wanted least was a 'nigger in the woodpile.'

In Henry Samuel Chapman, the successful candidate, the Colonial
Office authorities felt they had a first-class Colonial Secretary.
Chapman, at the time of his appointment, was a judge on the New Zea-
land bench. He was well-versed in colonial administration and had
acquired some insight in the problems arising out of the implementa-
tion of new colonial constitutions. The appointment, however, was
made under unusual circumstances. Wishing to avoid undue delay in
filling the vacancy, Earl Grey came to the final arrangements, not
with Chapman himself, but with 'some person [in England] in Chapman's
confidence who would accept the office on his behalf', and give
'assurance that he [Chapman] would proceed to the colony with as little
delay as possible.' That person was Chapman's aged father.

91. Denison to Grey, private, 26 February 1851; Denison to
Merrivale, 26 February 1851 (private correspondence). P.P. 1852.
92. Memorandum of the circumstances relative to H.C. Chapman's
appointment as Colonial Secretary of Van Diemen's Land, Appendix
A to the letter Chapman to Denison, 23 October 1852, enc.no.1 in
Denison to Pakington, 3 November 1852, P.P. 23/77; Also located
The appointment was well-received in Van Diemen's Land. The colonists were flattered that one of Chapman's rank and calibre should be appointed to their government. The *Hobart Town Courier* wrote:

There was never a public man in [New Zealand] who so much deserved and received the esteem of the settlers generally than our esteemed judge. His talents, inmartiality and discretion were in every way worthy of the position he filled.  

Denison found him

a man of information, well-acquainted with the general system of colonial politics and a fair appreciation ... of the character and motives of the men who opposed the government.  

There was some conjecture as to his views on the subject of transportation. The anti-transporationists were pleased to note that he had strongly opposed Grey's plan to send convicts to New Zealand. Further, they placed great significance on the fact that, on his arrival, he had advertised for a free rather than a convict cook. It was not, however, until Chapman refused to vote against a motion calling for the abolition of transportation, that his position on the subject became clear.

On Wednesday, 3 September 1852, the member for Cornwall, J.H. Gleadow, a hundred guinea Leaguer* gave notice of his intention to

* A hundred guineas was paid by the top class of subscribers to the Anti-Transportation League.


move an address to the Queen declaring the Council's opinion to be against convictism and praying that the Order-in-Council, authorising transportation, be revoked.\(^\text{96}\) Denison strongly opposed the motion for he feared that such a demand from the Legislative Council might carry undue weight with the men at the Colonial Office. On 10 September he 'conferred with Chapman as to the best means of meeting the motion.' It was not long before Chapman made his position clear and 'professed his inability to vote against the address.'\(^\text{97}\) Denison was 'thunderstruck' by this revelation.\(^\text{98}\) After regaining his composure he informed Chapman that it would be quite impossible for him, as an employee of the government to vote for the address, because the principle it advocated was contrary to the policy of the Imperial Government. Chapman refused to accept this argument. He pointed out that Francis Smith, the Solicitor General, was an employee of the government, yet no objection was raised when he voted against transportation. Denison agreed that this was the case but explained that the anomaly was the result of special circumstances. Smith, an anti-transportationist, had accepted appointment only on the condition that he be permitted to vote on that issue according to the dictates of his conscience. Denison told Chapman that his position was entirely different. As Colonial Secretary he was the 'authorized

\(^{96}\) V. & P., 8 September 1852.

\(^{97}\) Denison to Mrs. Denison, 13 October 1852, W.T. Denison, op.cit., p. 195; Denison to Pakington, 22 October 1852, C.O. 33/77.

agent of the Government in the Council, and the exponent of its views. His conduct and viewpoint would be taken by the public, rightly or wrongly, as indicators of official policy.

Chapman and Denison met on the following day. The Lieutenant-Governor felt that Chapman, in view of his position on the transportation question, had acted improperly in accepting the office in a convict colony. Further, the Colonial Secretary had treated the executive and the nominees 'unfairly' by failing to express his views earlier. Chapman countered these charges by arguing that the Colonial Office authorities, who were aware of the doubts he entertained about the value of transportation, deliberately appointed him in order 'to elicit the opinion of a new mind, brought freshly into contact with convictism'. He did not inform the Lieutenant-Governor of his position earlier because it was only recently that he had come to a final decision on the matter.

Denison, in part at least, accepted Chapman's explanation, and sought to find ways and means to combat Gleadale's motion without violently clashing with the Colonial Secretary. Chapman was instructed to confer with Attorney-General Fleming to devise schemes to delay, or evade, the anti-transportation address. Then Turnbull,

99. Denison to Pakington, 22 October 1852, G.O. 33/77.
100. Ibid.
101. Memo in defense of charges brought forward by Lieutenant-Governor W.T. Denison on 11 September 1852, enc.ro.1 in Denison to Pakington, 22 October 1852, G.O. 33/77. The memo is also located in Paper No. 54, V. & P., 1853, Vol. 3.
102. Ibid.
who since relinquishing his temporary post of Colonial Treasurer sat on the Council as Clerk of the Executive, was summoned. After the Lieutenant-Governor had explained the situation, Turnbull agreed to draft a series of resolutions which, if accepted as an amendment to Gleadow's motion by the Council, would remove the string from the radical anti-transportationist bow. Turnbull, however, did not agree willingly, for his attitude to transportation had also undergone a change. He now revealed that he had always had serious reservations about the wisdom of the policy of transportation. As early as 1832, when called upon by Arthur to look into the practicability of introducing an immigration scheme, he had arrived at the conclusion 'that it was to the introduction of Free Families and not to Transportation that the Colony ought to look for its permanent settlement.'

Further, the findings of a board of inquiry into the state of female factories in the Colony which he chaired, in 1843, were 'such as could not fail to make [him] earnestly desire the discontinuance of Transportation.' As recently as February 1852 he had drafted resolutions which acknowledge transportation to be undesirable. He declared that he had never supported transportation in principle, but only for so long as its continuation was necessary to maintain a labour supply. Its effect until recently had been beneficial. It assured that the supply of labour exceeded demand and kept wages

103. Turnbull to Pakington, 18 October 1852, enclosed in Denison to Pakington, 25 October 1852, G.O. 33/77.
104. Ibid.
Low wages prevented the inhabitants from indulging in drunkenness, lechery and other form of low vice. Now, however, because of migration to the goldfields, the demand for labour exceeded supply. Wages soared and there was an increase in drunkenness and immoral activity, he asserted. 105

In the meantime Chapman decided that he could not, in all honesty, obey the Lieutenant-Governor's instructions that he must find a way to prevent Gleadow's motion from coming before the Council. At his next interview with Denison he reiterated his opposition to transportation and further affirmed that, in his opinion, representative government and transportation could not co-exist. On the grounds that his opinions would present difficulties for the executive, he offered his resignation. Denison refused to accept it. He once again ordered him to confer with Attorney-General Fleming in order to work on a solution. Chapman obeyed. 106

As he left the Lieutenant-Governor's chamber he noticed Turnbull waiting apprehensively in the vestibule with copies of his recently prepared draft resolutions. After reading them carefully he made the observation that Denison would find them entirely unsatisfactory. This was indeed the case. The Lieutenant-Governor was

105. Turnbull's draft resolution, Appendix F1, and Turnbull's memorandum on the draft resolutions, Appendix FC2, in Turnbull to Pakington, 12 October 1852, enclosed in Denison to Pakington, 25 October 1852, G.O. 33/77, also located in Paper 54, V. & P. 1852, Vol. 3.

106. Denison to Pakington, 22 and 26 October 1852, G.O. 33/77.
of the opinion that the principle upon which they were based was 'little different' from that upon which Gleadow's address was founded. Turnbull then attempted to convince him that transportation was no longer a viable policy. Denison reacted angrily, refusing to continue the conversation. Turnbull was told that it was not his function as a government official to make policy, but only to implement it. Further, that as an *ex officio* member of the legislature, it was his duty to support rather than to oppose the policy of the government. Finally he was castigated for 'having changed his mind on so important a subject between Friday night and Monday morning' and 'taking up a position so damaging to the Government', and ordered to confer with Chapman and Attorney-General Fleming.  

That evening, over dinner, Fleming proposed a course of action which he believed might prove acceptable to the two recalcitrant officials. He suggested that an amendment be moved opposing the adoption of the address. The grounds for the opposition were to be based on the argument that Gleadow's address, alleged to be the second address to the Queen on the subject of transportation, would constitute an insult to the throne. Such an amendment was to be moved by the Colonial Secretary. If there were no division then the scheme would be successful. Trouble was to be taken to inform Allison not to call for a division, as was his wont. Turnbull and Chapman

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agreed to follow this plan. However, they warned the Attorney-
General that, should a division occur, they would not cast an af-
firmative vote for the amendment. 108

They were still doubtful of their ability to maintain the
grace of the Lieutenant-Governor and safeguard their consciences.
On the following morning Chapman attempted to convince Denison to
allow him to speak and vote for Gleadow's address. A sympathetic
attitude to the anti-transportationists' demands, he argued, would
ameliorate their attitude to the 1853 estimates which had already been
delayed. Denison remained intransigent. Chapman was admonished for
acting unwisely and improperly, and reminded of his duty as an offi-
cial. 109 Denison was no more sympathetic towards Turnbull. The
Clerk of the Executive Council was quite upset by the coldness of
the manner in which he was received by his Excellency. 110

The Council met at four o'clock that afternoon. Allison com-
menced proceedings by requesting the returns for the number of people
who had left the colony for the mainland in the period 1847 to 1852.
Gregson, eager to move on to the discussion of Gleadow's address,
unceremoniously told him he was out of order. After some committee
proceedings were dealt with, Gleadow arose from his seat and moved

108. Turnbull to Pakington, 19 October 1852, enc. no.1 in Denison
to Pakington, 25 October 1852, G.O. 33/77.
109. Denison to Pakington, 22 October 1852, G.O. 33/77.
110. Turnbull to Pakington, 18 October 1852, enclosed in Denison
to Pakington, 25 October 1852, G.O. 33/77.
the adoption of his address. In the course of his speech he made significant reference to the support his address drew from an official member who was a leading layman of a church which had expressed a decided opinion on the subject of transportation. That leading Presbyterian layman and ex officio member, to whom attention was drawn, was Adam Turnbull.111

Chapman, in moving the amendment to delay the consideration of the address, praised the terms and tone of the anti-transportationist statement. Strong opposition to its adoption came only from Allison and Attorney-General Fleming. The amendment was then put and lost on the voices. Then Dry, the Speaker, put Gleadow's motion. Turnbull was busy trying to prevent the nominees from calling for a division. In the meantime the members on the other side of the chamber had convinced the Speaker that the house should divide. There was complete confusion as the count was being taken. Gregson, noticing Colonial Secretary Chapman's sudden dive for the door, appealed to the Speaker to call him back. Meanwhile, Turnbull, muddled and overcome by confusion crossed the floor and voted 'in accordance with [his] convictions.'112 The motion was carried by a majority of twelve votes. Only Attorney-General Fleming, Allison, Bisdee and Leake voted against it. Turnbull, turning to Solicitor-General

111. Report of the meeting of the Legislative Council of 14 September, Hobart Town Courier, 19 September 1852; Tasmanian Colonist, 15 and 20 September 1852.

112. Turnbull to Pakington, 18 October 1852, enc.no.1 in Denison to Pakington, 25 October 1852, G.O. 33/77: Report of the meeting of the Legislative Council of 14 September, Colonial Times and Tasmanian, 17 September 1852.
Smith, said: 'I have saved my conscience, but have ruined my prospects.' Chapman, who returned after the division, congratulated the despondent Turnbull. He said: 'Do not be alarmed, - you have acted very well, - you are in no danger.' And whilst Turnbull contemplated upon his fate, now completely in the hands of Denison, the jubilant elective members left the Council chamber to celebrate their victory and drink to the Queen's health.

The failure of H.S. Chapman and Turnbull to support the government infuriated the Lieutenant-Governor. He believed their insubordination had caused irreparable damage to the government. Their sympathy with the anti-transportationists was regarded as indicating a change in government attitude toward convictism. The Hobart Town Courier told its readers:

The proceedings of Dr. Turnbull and of the Colonial Secretary, standing as they have done in such intimate relationship with the Governor, were hailed as harbingers of a change in his Councils, or those of the Home Government upon this important question.

Denison's anger increased when he read the Courier's editorial which suspected that he had 'at last come alive to the utter impossibility of the co-existence [of transportation] with a Legislative Assembly' and that 'after a faint show of resistance had abandoned the citadel

113. Turnbull to Pakington, 18 October 1852, enclosed in Denison to Turnbull, 25 October 1852, S.O. 33/77.


to the onward march of irresistible public opinion. He complained to the new Secretary of State, Sir John Pakington, that Chapman and Turnbull's conduct 'had a very prejudicial effect upon the feeling of those who have hitherto supported the Government.'

It seemed to indicate [he wrote] that the Government was vacillating between two opinions and that no reliance could be placed upon its steady adherence to either.

Immediately after the Council had risen, Bisdee complained bitterly about the failure of the official members to support the nominees. The other non-official nominees 'were so seriously annoyed as to threaten to resign.' Moreover, Denison asserted, the defection of Turnbull and Chapman had prevented the 'cementing' of the 'coalition' between 'the moderate party and the nominees' which, had it been allowed to materialize, would have 'greatly increased the efficiency of the Council.' The Lieutenant-Governor held Turnbull and Chapman personally responsible for the fact that the Government was 'at the mercy of a bare majority.'

Turnbull was immediately dismissed from the Council and Chapman was suspended from the office of Colonial Secretary at the end of October. A public outcry followed. Denison was attacked for

116. Ibid.
117. Denison to Pakington, 22 October 1852, G.O. 33/77.
118. Ibid.
119. Tasmanian Colonist, 27 September 1852.
120. Denison to Pakington, 22 October 1852, G.O. 33/77.
121. The same to the same, 26 October 1852, G.O. 33/77.
'endeavouring to tyrannize over Messrs. Chapman and Turnbull.' If
Sir William had the power, wrote the editor of the *Tasmanian Colonist*,
he would have tried them with a 'drumhead court-martial, and dis-
missed them with the knout, according to the Russian.' It was con-
cluded that Denison

was fond of usurping in his own person the
authority of the state - he brooks no control [sic]
and is by nature a despotic man. 122

The *Cornwall Chronicle* called upon him to resign. 123 The T.D. Chapman-
Gregson faction seized the opportunity to begin another attack upon
Denison.

The press sang the praises of the two dismissed officials who
were portrayed as having been sacrificed to the cause of transport-
ation. Biographies of H.S. Chapman, which extolled his virtues
and eulogised his stand against convictism and Denison, were published
in the leading newspapers. Turnbull, as a churchman, moralist, and
as one who had sacrificed position for principle, was highly praised.
Even Gregson, who, a decade earlier had sarcastically referred to him
as the learned physician *cum* metaphysician whose carpings reminded
him of 'tartared antimony', 124 predicted that his noble deed would
not go unrecorded in colonial history. 125

123. *Cornwall Chronicle*, 4 October 1852.
125. Report of the meeting of the Legislative Council of 7
October 1852, *Tasmanian Colonist*, 11 and 19 October 1852;
*Colonial Times and Tasmanian*, 1 October 1852; *Hobart Town
Courier*, 5 November 1852.
In the Council T.D. Chapman and Gregson attempted to acquire justice for the two deposed officials. Denison was called upon to justify his action and the papers relating to their dismissal were called for. Gregson told the chamber that he hoped his Excellency had nothing to conceal and would cheerfully lay the relevant papers on the table in order to relieve the Council and the people of Van Diemen's Land of the mystery of the affair. In spite of Gregson's spectacular oratory and assertion that the elective members presented a compact and mighty phalanx designed to protect the inhabitants of the isle, the Lieutenant-Governor refused to accede to the Council's demand. He feared that the legislature was attempting to assume responsibilities that belonged to the executive. The new Colonial Secretary William Thomas Napier Champ, the former commandant of Port Arthur, read Denison's message outlining the reasons for this refusal:

> It is essential that the functions of the Legislative Council and the Executive Council be kept separate and distinct. While I shall carefully abstain from any interference with the attributes of the Legislative Council, I shall be equally careful to withstand any attempts to weaken the function of the Executive.

This reply did not satisfy the T.D. Chapman-Gregson faction. Early in the 1853 session T.D. Chapman requested that the despatches relating to the dismissal of Turnbull be placed at the disposal of the


Council.\textsuperscript{128} After the documents were tabled, Chapman presented a petition on behalf of Turnbull requesting that he be allowed to plead his case at the Council Bar.\textsuperscript{129} The Council listened sympathetically to the former official member, and then, on the initiative of T.D. Chapman presented the Secretary of State with an address, signed by all the elective members with the exception of Sharland, refuting Denison's charge that ex-Colonial Secretary H.S. Chapman had consorted with the elective members in opposition to the government.\textsuperscript{130}

The issue was another which some of the elective members used as a springboard to launch opposition to the executive. On 23 September 1853, Gregson moved for the adoption of an address which outlined Denison's proceedings against Turnbull, and accused the Lieutenant-Governor of damaging the constitution by having acted improperly in the case. The member for Richmond asserted that:

The trial of any member of the Government for anything done by him in the House in the exercise of that discretion which he undoubtedly possesses under the Constitution of the House, if indeed anywhere, cannot be considered as otherwise than highly derogatory to the necessary privilege of the Council, and is even an interference of the Executive Government with that freedom of speech and vote without which this Council must cease to possess the confidence of the Colony.\textsuperscript{131}

\textsuperscript{128} V. & P., 14 August 1853.

\textsuperscript{129} Report of the meeting of the Legislative Council of 2 September 1853, Tasmanian Colonist, 5 September 1853.

\textsuperscript{130} Report of the meeting of the Legislative Council of 20 September 1853, Tasmanian Colonist, 24 September 1853.

\textsuperscript{131} Report of the meeting of the Legislative Council of 23 September 1853, Tasmanian Colonist, 24 September 1853.
This section of Gregson's address is interesting in so far as it reveals the viewpoint of the elective members (with the exception of Dunn, Clerke and Sharland) on the position of the legislature in the constitution. Gregson's statement meant that Turnbull, even though he was an official, was answerable for anything he had done in the chamber, to the Legislative Council and no other body including the executive. This conclusion rested on the premise that the legislature was superior to the executive.

This was in fact not the case. Denison, in a message read to the Council on 29 September 1853, defended his action, declaring that it had been necessary in view of the peculiar nature of the constitution. Gregson's address had been founded on a gross misconception, the message read. The ex officio members sit in the Council as exponents of the policy of the Government; should any of them be disposed to the course pursued by the Government with relation to questions of importance, it is obvious that they can no longer perform the duty for which they were placed in the Council; and they would as a matter of course, be removed from office, and therefore cease to sit as members of the Legislature.

Denison, in other words, declared that the legislature had no right to interfere with the prerogative of the Crown, or to intrude upon the jurisdiction of the Executive.

132. W.A. Townsley, op. cit., p. 129.
134. W.A. Townsley, op. cit., p. 129.
The Lieutenant-Governor, armed with Secretary of State Newcastle's verdict on the Turnbull-Chapman affair, had been able to respond to Gregson's address in a firm manner. Newcastle told Denison that 'the position of Governor would be devoid of authority' if strong action had not been taken against the recalcitrant officials. If a Governor did not have the support of his officials in the legislature, wrote the Secretary of State, 'he would find it impossible to calculate beforehand on the support which his policy would receive, or to manage with any steadiness the affairs of his Government.'

Newcastle's final word on the matter brought hostilities between the elective members of the legislature and the executive to an end. A few months earlier the other bone of contention, the question of transportation, had been removed. The subject of abolition was first mentioned in the Queen's address opening the 1852 session of parliament. The first official communication revealing that transportation was to cease was received in March of 1853. Denison was informed by Secretary of State Pakington that 'because of the strong repugnance in Van Diemen's Land and in the adjacent colonies to the reception of convicts' and because, owing to the discovery of gold in Victoria, transportation no longer acted as a

deterrent to crime, no more convicts would be sent to the island colony. The news was received 'with a feeling of relief.' On 10 August the anti-transportationists celebrated the occasion with a holiday and a high festival.

Denison, when placing the despatches which bore the 'glorious news' before the Council, expressed the wish that hostilities between the executive and the legislature cease, now that 'the cause of variance between them' had been removed. At the same time he took the opportunity to remind them that he, 'in advocating the continuance of the system, was actuated solely by a conscious conviction that the prosperity of the Colony was dependent ... upon the supply of labour it ... annually placed at the disposal of the Colonists.' He regretted that in adopting such a course, he should have found himself in opposition to the feelings and wishes of a majority of the Council.

The cessation of transportation heralded a new era of cooperation between Denison and the Legislative Council. The Lieutenant-Governor announced his intention to work with the legislature to promote 'the introduction of an adequate number of free immigrants to relieve the pressure on the labour market.'

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137. See Hobart Town Courier, 3 May 1853; Colonial Times and Tasmanian 12 April and 19 May 1853; Tasmanian Colonist, 11 March and 15 August 1853.

138. Ibid.

139. Ibid.
Immigration Committee, under the chairmanship of H.F. Anstey, made remarkable progress as soon as Denison had given its work his blessing. By late September it had produced a scheme, which, although rejected by Secretary of State Newcastle, was praised by Denison, who subsequently ridiculed Newcastle's objections and persisted in his belief that it was superior to that recommended by the Secretary of State. 140

It was during this period of co-operation between the Lieutenant-Governor and the Legislative Council that members, when tackling the education question, evinced an inclination to innovate policy. Denison's 1848 Education Bill had been reintroduced in January 1852. However, after its second reading had been postponed nine times, it lapsed. It lapsed once again when it was introduced for a third time in June 1853. The Legislative Council, however, was not as indifferent to the colony's educational problems as its treatment of the bill might suggest. 141 In September 1853, a Select Committee consisting of Colonial Secretary Champ, Attorney-General Fleming, Colonial Treasurer Fraser, A. Clarke, Leake, Dry, Chapman, Nutt, Anstey and Gledow, examined a report submitted by the Board


of Inspection,* which had been created to examine the state of education in the colony. The Board's report condemned the existing penny-a-day system which, it found, was the principal cause of the low state of education. It recommended the abolition of the system and the payment of a moderate fixed income from the public funds supplemented by fees and a small grant proportional to the number attending a school. Further, it recommended the retention of denominational schools in Hobart Town and Launceston, but found that they had failed in the country areas and suggested their replacement by one general school per rural township. The Select Committee envisaged more sweeping changes than those proposed by the Board of Inspection. It recommended the abolition of the penny-a-day system, the immediate appropriation of £10,000 for education expenditure, and the rejection of the Board's proposed retention of denominational schools in Hobart Town and Launceston. All church schools were to be deprived of the government grant which was only to be provided to general schools under the supervision of a Central Board, consisting of members of the Executive and Legislative Councils.

* The Board of Inspection, appointed by Denison at the suggestion of the Inspector of Schools, Thomas Arnold (son of Arnold of Rugby) after the failure of the Education Bill to win the Legislative Council's support, consisted of Archdeacon Davies, representing the Church of England, Vicar-General W. Hall, representing the Roman Catholic Church, Dr. J. Lillie, representing the Presbyterian Church and Thomas Arnold jnr.

R. Q. KERMODE,
Member of the Legislative Council
1851-1855.
which would devise and administer a non-sectarian system of education. The Select Committee's recommendations were adopted by the Legislative Council nemine contradicente. The principles contained in the Select Committee's report provided the foundation upon which public education was to develop.

The Lieutenant-Governor gained the Legislative Council's cooperation in securing the passage of the controversial Sale of Liquor Regulations Bill. This Bill, initiated by the executive to curb an alleged increase in intemperance and to maintain sobriety amongst the colony's depleted work force, imposed stringent regulations on the drinking establishments of the island and forced licensed victuallers to close public houses on Sundays. Adherents of the Chapman-Gregson faction were, in fact, amongst the Bill's most ardent supporters. Fenton advocated the introduction of a Maine Liquor Law. Gleadow, Kermode, Officer and Cleburne attended a temperance meeting in order to be instructed as to how to proceed in the Council debate on the Bill. In the Council chamber, Kermode announced that he would 'go to any lengths to impose the Bill because they

144. V. & P., 28 September 1853.
145. M.D. McRae, op. cit., p. 84.
146. See the report of the temperance meetings, Tasmanian Colonist, 20 March and 10 April 1854.
148. Hobart Town Advertiser, 6 September 1854.
[licensed victuallers] were, with the exception of a few ... only licensed murderers. 149 Chapman, the only member to introduce petitions on behalf of the publicans against the Bill, both spoke and voted for its passage.

Even during the estimates debates, the improvement in the relationships between the executive and legislature was manifest. At the beginning of the year the police and gaols estimates for the first quarter had been passed in the face of the usual hostile opposition. In March the Council grudgingly sanctioned spending for the following three months. In July the Council, being visibly affected by the decision to end transportation and to a lesser extent the increase in the consolidated revenue, not only assented to the estimates without protest, but also sanctioned a further increase in the salaries of public servants.

During the spring session of 1853 the elective members, for the first time, became concerned with the individual interests of their electorates. Gleadow sought to introduce measures to improve, on one occasion, the Launceston water supply, and on another, the Perth Bridge. 150 Cleburne constantly drew the Council's attention to the poor state of the roads in the Huon district and W. Archer pointed out the need for Courts of Request and Petty Sessions in the Westbury police district and for improvements to be made in the jetty at

149. Hobart Town Advertiser, 20 September 1854.
150. V. & P., 23 August and 1 September 1853.
In the absence of a major issue the Council turned to parish-pump politics.

The Chapman-Gregson faction, in the light of the recent developments, no longer sought to offend the executive. When making protests, strong and abusive language was avoided. William Archer's address, remonstrating with the British Government for its decision to transfer felons from Norfolk Island to Van Diemen's Land, was acceptable even to the ex officio members and nominees. Anstey's and Allison's protest against the British Treasury's demand for the debt of £60,000 owed by the colony, passed without a division.152

The executive, for its part, sought to avoid further conflict. To this end Denison made no attempt to interfere with, or exercise undue influence on the Council's deliberations on the proposed new constitution.

* * *

Once the question of transportation had been settled, the Council was free to focus its attention upon altering the constitution of the colony and introducing responsible government. The New South Wales Legislative Council had, as early as June 1852, set up a select committee to draft a new constitution centred around the concept of responsible government. The committee's report and

151. V. & P., 15 and 28 September 1853.
152. V. & P., 27 September 1853.
The proposed constitution drew favourable comment from the Colonial Office authorities. The principles of ministerial responsibility and independent government in local affairs received the approval of Secretary of State Pakington and his successor Newcastle. These vital principles were recommended to the legislatures of Victoria and South Australia. 153

The fact that the Secretary of State failed to put these principles before the Van Diemen's Land Legislature aroused the suspicion that it was not the Colonial Office's intention to extend responsible government to the island colony. 154 T.O. Chapman initiated moves to alter the present constitution before the actual view of the British Government could be ascertained. On 19 August, he moved for the appointment of a select committee, whose function it was to be to draft a new constitution.

The proposed constitutional change was an issue which divided the Council. The Chapman-Gregson faction, feeling that the Colonial Office was again victimizing Van Diemen's Land, on this occasion by discouraging the introduction of responsible government, went out of its way to ensure that measures similar to those proposed in New South Wales, Victoria and South Australia, were introduced. The select committee was filled, with the exception of Colonial Secretary Champ and Attorney-General Fleming, with the faction's adherents,

Chapman (the chairman), Gregson, Nutt, Gleadow, Anstey, Dry and Cox. 155

On 4 October Chapman, on the basis of the select committee's report which was presented on 23 September, moved a series of resolutions upon which the new constitution was to be based. These resolutions proposed that the new legislature be bicameral; that the Lieutenant-Governor, with supreme executive power, be appointed by Her Majesty; and further, that the Lieutenant-Governor be removable on an address carried by two-thirds of the members of each chamber; that the Lieutenant-Governor be empowered to call together and prorogue parliament; that the upper chamber, to be called the Legislative Council, be elected on free-hold suffrage of twenty-five pounds per annum and consist of twelve members; that the lower chamber, to be called the House of Assembly, be composed of thirty members, each to be elected on the franchise fixed by the Act 13 & 14 Vict. cap. 59; and that certain powers such as foreign policy and defense remain the prerogative of the Crown. 156

It is interesting to note that the select committee did not display an abhorrence of elected upper chambers as did its New South Wales counterpart. The Vandemonian legislators, who, generally speaking, had been in the van of popular movements, felt threatened, not by the 'democratic masses', but by a nominee system. A nominated

155. Colonial Times and Tasmanian, 30 August 1853; V. & P., 19 August 1853.
156. Report of the meeting of the Legislative Council 4 October 1853, Tasmanian Colonist, 10 October 1853.
upper house, such as that proposed by the New South Wales select committee would constitute a contradiction to those principles for which they fought. Further, the members of the select committee were influenced by the attitude of the Colonial Office which agreed with Denison that nominated upper chambers would serve only as a disruptive element. Chapman told the Council that he believed, in view of Newcastle's opposition to the principle of a nominated upper chamber, that the constitution of New South Wales would not be accepted, whereas those of Victoria and South Australia, which applied the elective principle to the upper house, would pass through the Imperial legislature unopposed.

The proposals put forward by T.D. Chapman, with several outstanding exceptions, were based on ideas current in New South Wales. The Victorian and South Australian experience was also drawn upon. The constitutional developments in the other Australian colonies were brought before the public by the press which had also created an awareness of the virtues of the more developed Canadian constitution.

With the exception of the proposal whereby the Governor might be dismissed at the will of two-thirds of the members of each house, there was nothing new or peculiar in the select committee's recommendation. This particular proposal was an assertion of the

supremacy of the legislature over the executive, a principle which Gregson had recently expressed in an address to Denison. It arose, it would appear, from the colonial experience whereby seemingly unpopular administrations had imposed unacceptable measures on the inhabitants.

The moderate elective members, namely Dunn, Sharland and Clerke* and the nominees - both non-official and official, stood firm against what they regarded as 'steampace constitution-making.' It would seem that they did not think the colony presently to be ready for responsible government. As to whether or not Denison inspired their stance, it is not clear. Documentary evidence does not suggest that he did. Nevertheless, while he did not publicly assume a position on the issue, it would be reasonable to assume that he agreed with his Colonial Secretary who, notwithstanding his membership of the select committee, opposed the adoption of its recommendations on the ground that the deliberations on so important a matter were too rushed. 159

Others opposed Chapman's proposals in principle. The nominee Langdon spoke vehemently against the resolution providing for the dismissal of the Governor. This, he asserted, smacked of republicanism and cast reflections upon Sir William Denison. Allison opposed an elective upper chamber. Nevertheless this was only a

* Alexander Clerke, member for Longford replaced Joseph Archer who died in mid-1853.

minor skirmish in terms of the political battle which was to follow.

As soon as the resolutions were passed, although only by a slight majority, Allison arose to propose a counter-measure. He moved that the Council, before continuing with its consideration of an entirely new constitution, extend its membership from twenty-four to thirty-six. He argued that in order to get a broader spectrum of opinion on the issue, it was necessary to increase the present membership. This move, calculated to prevent hasty constitutional legislation and to offset the initiative of Chaoman, Gregson and their supporters, was welcomed by the more conservative elements who feared to support constitutional change without specific instructions from the Colonial Office.

A heated debate was sparked off by Allison's motion. Gregson appealed to the colonial patriotism when speaking against the proposal. He told the Council that Tasmania should, for the sake of its self-respect, remain abreast of its neighbours in the area of constitutional development; Allison's motion would only cause the island colony to drag behind its mainland sisters. There were other grounds for his opposition. He believed the motion to be part of a sinister plot devised by the present executive to perpetuate its own power. Allison's proposal involved an increase in the number of nominees; these, he said, as everyone knew, were tools of the administration.

160. Ibid.
Gregson’s assertions provoked an uproar from the nominee benches. Dry, the Speaker, was forced to call upon Langdon to withdraw slanderous remarks directed at the member for Richmond. Allison, in reply, put the case for the extension of the Council. The aim of the move, he said, was first, to improve representation in certain under-represented districts; and second, to break the present close borough system in which all political power was concentrated in the family compact.

The motion was lost on the casting vote of the Speaker who revealed that he could not countenance any resolution which might constitute ‘an impediment to the new constitution.’ Nevertheless the supporters of the principle of extension did not lose spirit. The by-election for the seats of Buckingham and Brighton*, and the press kept the issue alive. By the time the Council reassembled in April 1854 the extensionists were able to draw on a wider area of support. Officer and Butler who were returned for Buckingham and Brighton were pledged to work for an enlarged Council.

During the 1854 session the extensionists took the initiative. Clerke introduced a bill which made provision for four new electoral districts, redefined existing electoral boundaries, and increased the number of members from twenty four to thirty six. To prove

* Mutt and Walker resigned their respective seats at the end of the Spring session of 1853 in consequence of pressure from personal business.

161. Ibid.
162. Hobart Town Advertiser, 22 April 1854.
163. Tasmanian Colonist, 2 April 1854.
that the measure had wide appeal, he also introduced a petition from the inhabitants of the Longford, Mersey, Westbury and Circular Had districts, requesting the introduction of the bill. The Chapman-Gregson faction threw every impediment in the way in an attempt to prevent discussion on the subject of extension. First Anstey, Kermode and Gleadow separately raised different points of order; then Fenton attempted to discredit the petition by questioning the propriety of Clerke going around the country with a petition and having it signed by 150 persons, the majority of whom might be ignorant of the circumstances, or might not authorize the parties to affix their names.

Chapman cast further doubts on the validity of the petition by pointing out that some fifty signatures were written by the same hand.164 Nevertheless Clerke moved that the petition be printed. To this the Council would not agree. Unperturbed Clerke gave notice that he intended to move his Extension Bill.165

'There seems no doubt that the question of the session will be the extension of the Council' predicted the Hobart Town Advertiser on the basis of the early prominence of the issue. This was not the case.166 Clerke did not again raise the subject, until questioned by Chapman. A week later he then revealed that he had taken Butler's advice and withdrawn his bill in order to allow members to

166. Hobart Town Advertiser, 22 April 1854.
gauge the feeling of their electorates. 167

In the meantime the controversy was continued by the press. Editors seized upon the opportunity to expound their particular political philosophy and ideas not only as to what the final constitution should be, but also as to how it should be decided and by whom. The second question was of foremost concern to the Launceston Examiner. It suggested that any new constitution should be, like the American constitution, a product of a convention elected by the people. 168

The Council could function as a constitutional convention, the Examiner argued, only if there were more representatives of 'the people' and fresh elections. For this reason it supported the principle of extension and deserted the Chapman-Gregson faction which it had previously championed. The extensionists now emphasized the right of the people to determine their constitution, a principle which, contrary to the impression given, was not disputed by the Chapman-Gregson faction. Extension, it was argued, merely gave expression to this right.

Support for an enlarged Council was steadily increasing. The electorate of Norven* returned the extensionist J. Sinclair who was a landed proprietor; and William Archer was taken to task by some of the Westbury electors for failing to support increased represent-

* James Cox, member for Norven and an adherent of the Chapman-Gregson faction, retired on the ground of ill health at the end of the Autumn session of 1854.

168. Launceston Examiner, 2 March 1854.
When the Legislative Council reconvened for the spring session, the struggle between the Chapman-Gregson faction, on the one hand, and the nominees and elective moderates on the other, began in all earnestness. On 25 July 1854 Chapman gave notice of a Constitution Bill and announced that the select committee responsible would present a report within the next few weeks. An attack was then launched upon the extensionists. Kermode raised objections against Sinclair’s credentials of membership. He claimed that Sinclair was not a properly qualified elector of the district of Corwen at the time of his election. Gregson, who agreed that there were doubts as to Sinclair’s qualification, successfully moved that the matter be referred to the disputed electoral returns committee. The petitions praying for extension were discredited. Anstey refused to present a petition bearing sixty-five signatures in the same hand. Kermode questioned the authenticity of another presented by Allison on behalf of the inhabitants of Cambell Town. After questioning the propriety of the methods by which the signatures were obtained, he dismissed the petition as merely representing the view of Allison, his father and half-dozen of his brothers.

169. Hobart Town Advertiser, 10 May 1854.
On the very day the select committee presented its report on the constitution, Clerke sought to introduce his Extension Bill. As soon as he rose to move the first reading Gregson raised a point of order. Gregson claimed that Clerke, in introducing a bill which had already been withdrawn that session, was displaying gross contempt for established parliamentary practice. The honourable member for Longford could not proceed with his bill if the rules as outlined in May's History of Parliament were to be observed. Havoc was created when Colonial Secretary Champ interrupted the Speaker who was in the process of making a ruling. Gregson, assuming the guise of watchdog of parliamentary proceedings chastised Champ for his blatant rudeness. Champ continued speaking. An indignant Anstey then attempted to call the Colonial Secretary to order but to no avail. Uproar broke loose. Eventually, when order was restored, Attorney-General Smith* revealed that Gregson's objections were serious since, Clerke having neglected formally to retract the bill, technically it was still before the Council.  

The press was united in expressing its disgust at the absence of useful debate. The Tasmanian Colonist wrote:

The public time which should by public men, be husbanded as a precious trust, for the

* Smith became Attorney-General after Fleming was promoted to the bench in early 1754.

purposes of utility, is now wasted and frittered away in angry vituperation and offensive recrimination. 174

Disgusted by the fact that two-thirds of the time had been occupied in 'mere squabbles', it suggested, with tongue-in-cheek, that it would not be long before some enterprising member would move that the Council appropriate an armoury 'in which a supply of Bowie knives, and revolvers should be kept ready for the use of hon[ourable] members who should desire recourse to that emphatic mode of argument.' 175

The Hobart Town Courier agreed that there 'had never been a more disgusting exhibition.' 176 The Hobart Town Advertiser blamed the Chapman-Gregson faction which by fortuitous circumstances is placed in a position that gives it considerable powers of obstruction. It is a little oligarchy, the members of which are held together by fear, or hope, or feeling of personal enmity to some portion of the government. It knows that the extension of members will be fatal to its influence. 177

Discussion on the Extension Bill was not continued until a month later. On 20 September Clerke once again moved its first reading. Chapman who had by this time recovered from the humiliation of having been taken into custody by the Serjeant-at-

175. Ibid.
176. Hobart Town Courier, 19 August 1854.
177. Hobart Town Advertiser, 23 August 1854.
Arms*, led the attack on the proposal. The traditional arguments for and against the Bill were repeated and the debate was richly laced with invective and personal attacks. 173

The Bill, in the face of energetic and hostile opposition, passed the first and second stage. Then it was referred to a special select committee which presented its report a week later, on the very day that the committee on the new constitution also reported, and Chapman moved the first reading of the Constitution Bill. It was now an open question which bill would pass through all stages first. 179

The report of the committee on the constitution was a carefully prepared document. Conservative in tone and sober in temperament, 180 it bore the mark of a competent constitutional lawyer. It would appear that the committee had been, to a great extent influenced and guided in making their recommendations, by the former Colonial Secretary, H.S. Chapman. Chapman, after his dismissal, became closely associated with the T.D. Chapman-Gregson faction, adherents of which were in the majority in the select committee. As a former

* T.D. Chapman was arrested by the Serjeant-at-Arms at the direction of the Chamber for a breach of parliamentary rules, to wit absenting himself from the Electoral Qualifications committee. The Council was satisfied with his explanation for his conduct, and no punishment was meted out. See Hobart Town Courier, 29 August 1854 and the report of the meeting of the Legislative Council of 24 August 1854; Hobart Town Advertiser, 25 August 1854.

180. Ibid.
colonial judge and administrator of liberal inclinations, he was vitally interested in Australian constitutional development. In August of 1854 he published a treatise on 'parliamentary government as applicable to the Australian colonies.' Those principles which he stressed in his pamphlet, namely bicameralism, ministerial responsibility, independent government in local affairs, and an elective upper chamber, were recommended in the committee's report and contained in the Constitution Bill. Furthermore the committee heeded his advice and made no attempt to press further with its earlier attempts to define the limits of the power of the executive, and to arm the legislature with power to dismiss the Governor.

After the report had been presented, the Constitution Bill was read a first time. The following evening H.S. Chapman, at a dinner given in his honour by his 'friends and admirers', pronounced that the colony could look forward to a constitution superior to many of those of other British colonies.

The third reading of the Extension Bill, was moved some three weeks later. In spite of the fact that it obviously had the support of the majority of members, the Chapman-Gregson faction continued its

184. Hobart Town Courier, 3 October 1854.
energetic opposition. Anstey claimed that the Lieutenant-Governor was not competent to give his assent to a bill of this nature. Gregson caused further delay by labelling the moderate, W.S. Sharland, a 'cowardly mischief-maker' and precipitating an uproar. In the meantime the Constitution Bill was read a second time. Then, after another heated debate, the Extension Bill finally passed the final stage.

For the next few days the Constitution Bill was debated in committee. The opponents of the Bill, pacified now that the principle of extension had been adopted, were content merely to contribute constructive criticism. Attorney-General Smith proposed that the judges be made ex officio members of the upper house in order to increase its stability. Butler's move to make the Colonial Secretary an ex officio member, which only indicated that he failed to understand the concept of ministerial responsibility, was supported

* The Extension Act (13 Vict. No. 15) (a) provided for an increase in the membership of the Council from 24 to 33; three of the nine new members were to be nominees while the remainder were to be elected (b) redefined the boundaries of Westbury and Oatlands and established the new electoral division of Glamorgan and Wellington (c) gave an additional member each to Hobart, Launceston and Buckingham.

some of the elective moderates and nominees including the Solicitor-General. Neither proposal was accepted. The Bill, when it passed its third reading on 31 October 1854, embodied most of the recommendations made by the select committee. Together with the Extension Act, which received the Lieutenant-Governor's signification on the following day, it was confirmed by an Order-in-Council and proclaimed in the colony in 1856.

* * *

Now that the Constitution of the colony had been settled there seemed to be little reason, at least on the grounds of the argument put forward by the extensionists, for the implementation of the Extension Act. Nevertheless elections, which were centred around no particular issue, were held in March of 1855 in order to fill the new seats the Act created. They aroused little interest except in Hobart where the successful candidate, Arthur Perry, a lawyer, stood on a policy of opposition to the 1854 Sale of Liquor Regulations Act. The Courier was disgusted by the apathy of the electors who displayed a 'most shameful indifference to [the colony's] political fate and fortunes.'

The enlarged Council, which first met in June 1855, soon became embroiled in another dispute with the Executive. This conflict,

190. Russell to Young, 4 May 1855, enclosure, G.O. 1/82.
which raised the questions of parliamentary privilege, and liberty of the individual, altered the political groupings within the Council. The Chapman-Gregson faction as such, ceased to exist. Many of its adherents such as Gleadov, Kermode, Archer, Mutt and Cox had retired from the Council. Fenton, on the resignation of Dry, took over the a-political role of Speaker. New elective members, such as Adye Douglas, W. Crooke and J.H. Wedge, assumed the lead in the new conflict which drew old enemies like Gregson and Allison (now the member for Campbell Town) and Anstey and Sharland together. The new Lieutenant-Governor H.E. Fox-Young*, unlike Denison, was unable to command the personal loyalty of at least a small number of the elective members. He was forced to rely on the support of the eleven nominees.

Shortly after it was convened, the Council, in the absence of any issues, turned its attention to the allegations of maladministration in the Convict Department. The Convict Department had, as early as October 1852, come under the Council's scrutiny. On that occasion investigations were impeded by Dr. Stephen Hampton's (the Comptroller-General of Convicts) refusal to answer questions. It was alleged he feared exposure. In April of 1854 Gregson made

* Fox-Young was a trained lawyer and career administrator. He served in the West-Indies and briefly in South Africa before being appointed Lieutenant-Governor of South Australia in 1849. He continued in this capacity until he was selected to succeed Denison.

192. Tasmanian Colonist, 28 October 1852.
specific allegations of corruption. He told the Council that it had come to his notice that upwards of one hundred convicts were employed in decorating the houses of the Comptroller-General and the Commandant of Port Arthur. The Council was satisfied that the matter was in hand after Denison subsequently circulated instructions disallowing Convict Department officials the use of convicts in the service of the Government.

In May of 1855, the *Tasmanian Daily News*, a new journal out to make a name for itself, repeated the allegations of corruption. Its editor wrote:

> It has been alleged that officials in the Convict Department have been allowed to avail themselves of their peculiar position in order to secure for their private profit the services of trained artisans from amongst the prisoners, at a time when labourers of a similar description have been denied to others.

So persistent was that newspaper in its allegations* over the next month that Lieutenant-Governor Fox-Young was forced to call upon the Executive Council to hold an inquiry. After a short investigation the Executive Council concluded that the charges of fraud,

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* It was alleged that Hamiton, Soyd, the Civil Commandant at Port Arthur, Hay the Superintendent of the Hobart penitentiary, and Lieutenant-Colonel Hamilton used government labour to quarry and transport government stone for private building, to make boots and saddles from government materials, and to grow potatoes which were sold for personal profit.


COLONIAL SECRETARY WILLIAM THOMAS NAPIER CHAMP.
Member of the Legislative Council
1852-1856.
peculation and embezzlement which were levelled at the accused could not be sustained. It found too, that breaches of the regulations had occurred, and recommended that the responsible officers be admonished. 105

Some of the new elective members were not satisfied with the result of the Executive Council’s investigation. On 24 July 1855 J.H. Wedge, who bore a personal grudge towards corrupt officials, reopened the question by asking Colonial Secretary Champ to outline the abuses which existed and to explain the course the administration had taken. 106 The Council, agreeing with Wedge that the recent inquiry was unsatisfactory, passed a motion that a select committee be empowered to reopen investigations 107 and requested the Lieutenant-Governor to direct the attendance of officers of the Convict Department before the committee and require them to produce books, papers and records. 108 Allison’s suggestion, that the select committee sit thrice weekly and its proceedings be open to the public, was accepted by all except the nominee members. 109

* Wedge blamed his failure to gain promotion while employed in the Survey Department on corrupt officials.


Fox-Young refused to accede to the Council's request, firstly, because the matter had already been dealt with by the Executive Council and, in the second place, because the Legislative Council could not legitimately intervene in matters concerning her Majesty's penal establishments for transported offenders. 200

The elective members saw the Lieutenant-Governor's refusal as a challenge to the privileges of the legislature. To a man they supported T.D. Chapman's resolution which asserted the Council's right to investigate 'into all matters not merely exclusively colonial, but into all matters in which the welfare of the colony may be involved' without the authority of the Secretary of State. The resolution also stated the Council's intention to call witnesses before the select committee. 201

The fourteen-man select committee started proceedings by questioning minor witnesses such as Champ, and a medical officer who had served at Port Arthur. Before long Hampton, the key witness, was called upon to give evidence. The Comptroller, however, declined to attend. Gregson, the committee chairman, immediately reported Hampton's refusal to the Legislative Council. Douglas lost no time in moving that the Council instruct the Speaker to order the Comptroller to the bar. In the face of strong opposition from the

200. Message No.12, report of the meeting of the Legislative Council meeting of 22 August 1854, Colonial Times and Tasmanian, 23 August 1854.

nominees who claimed that the Council could not, as the elective members with the exception of Allison contended, summon witnesses and commit for contempt, the motion was adopted. On the 7 September Hampton received Fenton's letter requesting his attendance at the Bar on the 11 of September. Hampton, however, had no intention of submitting himself to interrogation. When he did not appear on the appointed day, Douglas successfully moved that in view of the Comptroller's contempt, the Speaker issue a warrant for his arrest. On the 12 September Serjeant-at-Arms Fraser attempted to implement the warrant, but Hampton refused to co-operate. He declared the warrant illegal and an attempt to deprive him of his liberty. He told Fraser that any person who attempted to implement the warrant would be regarded, and dealt with, as a trespasser.

The elective members, on being confronted by Hampton's response, waxed furious. Douglas demanded that the civil power be called upon to assist in the execution of the warrant. Gregson predicted bloodshed, responsibility for which would rest with the intransigent executive. Chapman declared that the Council should withhold its assent to the estimates until its privileges were recognized. In the end the Council decided to instruct the Speaker to issue his warrant requiring all sheriffs, bailiffs and constables to aid and assist in the apprehension of the Comptroller.

204. Ibid.
At this juncture, the executive, which until then had remained passive, made a move. On the grounds that the Speaker's warrant was illegal, it advised Chief Police Magistrate Burgess to refuse the Serjeant-at-Arms assistance. Fraser, unable to enlist the support of Burgess, appealed to the Sheriff John Burnett. Burnett claimed he was too feeble to be of any use.* Fraser then reported his inability to muster support, to the chamber. The elective members became even more angry and frustrated. It was suggested that they themselves should march on Hampton's residence and take him by force. However, the knowledge that Hampton was being guarded by forty constables under the command of Assistant-Comptroller Balfe deterred them from undertaking such a wild scheme.205

In the meantime the Executive Council, fearing that a serious breach of the peace might occur, authorized the colonel commanding her Majesty's troops to hold the military forces in readiness.206 The newspapers sensationalized these developments and the inhabitants thrilled and shivered at the exciting course of events. Was the legislature, as in the days leading up to the English civil war, challenging the Executive? asked the Colonial Times.207

Before the Council could decide upon further action Hampton offered to submit himself into the custody of the Serjeant-at-Arms

* Burnett, who had been Colonial Secretary during the middle years of Arthur's administration was then in his seventy-third year.

205. Colonial Times and Tasmanian, 15 September 1855.
206. Executive Council Minutes, 14 September 1855.
207. Colonial Times and Tasmanian, 15 September 1855.
until such time as a writ of Habeas Corpus was issued and a judgment by the proper tribunal, given as to the legality of the warrant. In a debate described as 'warm and very prolonged', the nominees expressed their willingness to accept the Comptroller's conditions. The elective members saw no cause to bargain. Gregson, 'anxious to show that the Speaker's warrant was not to be treated with contempt', successfully moved that Hampton's letter 'be repudiated and the warrant issued by the Speaker be put into execution to bring Dr. Hampton to the Bar of the House.'

Hampton was placed under house arrest. Then on the 18 September the chamber was informed that the Speaker and the Serjeant-at-Arms were summoned before the Supreme Court. The Executive Council had in the meantime decided that, in view of the fact that Fraser had ordered Hampton to appear at the Bar at four o'clock that afternoon, civil strife was still imminent. It agreed with Champ that a crisis could only be avoided by a prorogation of the Legislative Council. Guided by the Executive Council's advice, Lieutenant-Governor Fox-Young made off for the Customs House where the legislature was in session.

The Council was stunned into silence when Fox-Young, like a

latter-day Cromwell lacking only an escort of musketeers, entered, determined to arrest the tyranny of the legislature. He told the chamber:

It is with great reluctance that I feel compelled to interfere between the assertion and the practical enforcement of powers and privileges which you have thought proper to assume, but the law officers have advised that the [Sneaker's] Warrant was illegal. It would be satisfactory that the legality or illegality of the Speaker's Warrant were disposed by the ... Supreme Court of Justice: but as your votes and proceedings are directed so as not to abide that issue, now pending, there is no alternative left to me. The Speaker's Warrant to the Serjeant, sheriffs, bailiffs, constables pose comitatus to deprive a subject of Her Majesty of his liberty, is an act which, unless warranted by law, is the supremacy of tyranny over law. In order, then, to enable the Judicial tribunals to pronounce judgement I prorogue the House ...

The Council was left dumbfounded by the prorogation. The press declared it no less than a coup d'état. The Colonial Times announced:

The struggle ... is not over, nay - we warn Sir Henry Young - it is now but begun. Let him beware the issue. 211

The Courier predicted that his Excellency's advisors, Colonial Secretary Champ and Attorney-General Smith, would, in consequence of their crooked counsels, be impeached, if indeed they were not dismissed in the meantime. 212

210. Ibid.
211. Colonial Times and Tasmanian, 10 September 1855.
212. Hobart Town Courier, 16 October 1855.
The question of the privileges of the legislature was discussed by Tasmanian and even Sydney and Melbourne newspapers, the majority of which sided with the Council in the dispute. A public meeting in Melbourne expressed its support of the Council's assertions and condemned Fox-Young for his action.

The case of Hampton vs. Fenton, Speaker of the Legislative Council, and Fraser, Serjeant-at-Arms was opened in front of the full bench of the Supreme Court on 13 November 1855. The submissions entered by the counsels of both parties were lengthy and protracted. Both judges concluded that the Speaker's warrant was illegal and found for the plaintiff.213

On 28 November 1855 a day after the judgement had been given, Fox-Young assembled the Council to inform it of the Court's decision and to enable it to move on to consider the estimates. The Lieutenant-Governor, although anxious to make his peace with the legislature, did not have sufficient sense of tact and diplomacy to prevent him from airing his sense of triumph. He referred to the Council's inquiries which sparked off the conflict between legislature and executive as 'superfluous and impolitic'; for 'the investigation had been made and disposed of by the Executive Council.'214

213. Report of the proceedings and judgements of Hampton vs. Fenton and Fraser, supplement to the Hobart Town Advertiser, 29 November 1855; H.A. Townsley, op. cit. pp. 159-161.

The Legislative Council, incensed by the decision against its Speaker and Serjeant-at-Arms and offended by the haughty and condescending tone of Fox-Young's address and his assumption that they accepted defeat, reacted sharply. The address-in-reply provided the occasion for an expression of their dissatisfaction. Chapman successfully proposed that the Council express its disapproval of, first, the Lieutenant-Governor's condemnation of the Council's inquiry; and second, the 'very arbitrary and unjustifiable mode in which [his] Excellency saw fit to prorogue the Council at so unreasonable a period, to the damage of great interest both public and private.'

The Legislative Council's animosity to Fox-Young was so great that it passed Gregson's motion for the adoption of an address, to the Crown, expressing want of confidence in the Lieutenant-Governor. The address condemned both the conduct and demeanour which he had exhibited before the Council during the last session. The 'abrupt and discourteous manner in which, without any previous intimation, he prorogued its Session' was 'an injudicious .. measure' calculated to not only render him generally unpopular but to 'bring the Legislative Council and the principles of Legislative Representation into contempt and disrepute.' The address also prayed for measures to prevent similar conduct on the part of the present, or any future, Governor of Tasmania and the 'maintenance of the honour of the

Legislative Council. 216

The Council, not content with the Court's decision depriving it of powers to commit for contempt and to summon witnesses, adopted Douglas' motion and defrayed £2,000 from the estimates in order 'to bring the decision of the judges in the action Hampton versus the Speaker and Serjeant-at-Arms to the Judicial Committee of Her Majesty's Privy Council.' 217 The Judicial Committee, more than two and a half years later, upheld the Judges' decision. 218

In the meantime the select committee to investigate the allegations of maladministration in the Convict Department was reappointed. Its findings, which were presented in January of 1856, substantiated the allegations made by the Tasmanian Daily News. The Council subsequently requested the executive to dismiss Hampton, Hamilton and May. The Secretary of State, Labouchere, vindicated both the Council and the Lieutenant-Governor. The Council, he wrote, had every right to hold such an inquiry. At the same time he held that Fox-Young had acted properly both in pointing out to the Council that the administration was the responsibility of the Imperial Government, and in ororoguing the session to prevent a conflict of jurisdiction.

217. Report of the meeting of the Legislative Council of 3 and 11 December 1855, and 7 February 1856, Colonial Times and Tasmanian, 9 and 12 December 1855 and 3 February 1856.
and a possible breach of the peace. 219

In early 1356 the Legislative Council briefly reconvened to wind up its business and pass the Electoral Bill; which both changed existing, and established new, electorates for the bicameral legislature established by the proclamation of the new constitution. Proceedings were uneventful. Many elective members, apparently preoccupied with the forthcoming parliamentary elections, did not bother to attend. The conflict with the executive and the appeal to the Privy Council were now considered matters of 'trifling interest.' 220

The Council sat for the final time on 7 February. The colony which looked forward to responsible self-government paid little attention to the occasion and it was left to the Courier's 'sepulchral correspondent' to write its obituary:

It devolves upon us in our duty as public journalists to announce the death of one long known to the colony at large, and whose decease will, for some time at least, leave a void not capable of being filled up. We allude to the personage familiarly recognized by all classes under the name of the OLD COUNCIL.

For some length of time it had been known that his days were numbered: his dissolution, therefore, will occasion no surprise.

Possessed in his best days of a full share of vigor, he was observed to display excessive feebleness for a considerable interval prior to the late final event, mixed with a degree of irritability strongly indicative of a break-up in the system.

219. Labouchere to Fox-Young, 1 January and 25 March 1356, G.O.1/85.
220. Hobart Town Courier, 7 February 1356.
At intervals there were also symptoms of wandering in the head, to which the deceased had been subject at various stages of his existence, though not to the same extent as latterly.

Under these circumstances it was confidently expected he would not have outlived the last week in January; at which period indeed the Governor of the colony, who felt deeply interested in his fate, was called to his bed-side in momentary expectation that he would be no more.

Contrary to anticipation he rallied, and being kept alive by stimulants, administered by various members of his family, chiefly supplied by the Publicans and some hired servants, who were very pressing in their final attentions, he survived until three o'clock precisely this afternoon, when he quietly breathed his last.

His Constitution was completely gone.

He will be succeeded by the families of Legislative Council and House of Assembly, who are not likely, however, to come into their possessions until towards the close of the year. 221

221. Hobart Town Courier, 8 February 1856.
CONCLUSION.

The role and status of the Legislative Council of Van Diemen's Land were, at any given time in the period 1825 to 1856, determined by the interaction of three crucial factors: the extent to which the Lieutenant-Governor was prepared to use his constitutional powers; the prevailing economic conditions; and the coincidence, or conflict, of interests between the Lieutenant-Governor as the representative of the Imperial Government and the colonists.

The hegemony of Arthur was dependent upon the existence of a substantial body of opinion which would consistently be favourable towards such policies as the Lieutenant-Governor was likely to articulate. Such conditions could be ensured only by, first, the selection of members whose interests, real or imagined, were in accord with his own; and second, strong direction of the proceedings of the legislature. A relatively prosperous economy, Arthur's personal sympathy with the colonists' opposition to the Imperial Government's land and immigration policies and his attentions to the needs of the classes which the members represented enabled the 'most perfectly good understanding' between the Lieutenant-Governor and members to prevail. Hostility towards Arthur and Imperial policies were

expressed outside of the Legislative Council by various sections of the community who aspired toward a greater participation in government and who were adversely affected by Arthur's government. These elements in society were critical of the Legislative Council's constitution which enabled Arthur to use it as a 'screen for the Executive Government.'

Much of this criticism declined during Franklin's administration, when the Legislative Council became the arena for colonial politics. Franklin, temperamentally unsuited to authoritarian government, failed to give leadership and direction to a Council composed of officials whose loyalty was often unreliable, and non-officials united in their common opposition to Imperial policies, and disgruntled by the declining state of the economy. Franklin sympathised with the demands for greater participation in government on the part of a growing number of colonists, and nominated members who were prominent in the movement for legislation by representation and did not object to the Legislative Council dealing with matters more properly left in the hands of the Executive Council. During the Franklin period and particularly during the Hilmot administration when the economic crisis was at its worst and opposition to Britain's convict policies increased, the Legislative Council became the battle ground on which the forces representing colonial interests - the non-officials, - and those representing the Imperial Government - the Lieutenant-Governor

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and the officials - clashed.

The Legislative Council, however, did not occupy the centre of the stage for long. Lieutenant-Governor Denison during a period of prosperity, and expectations of constitutional change, reasserted gubernatorial influence by nominating members whose interests did not conflict with those of the executive government; and by firm direction of proceedings. In this way the opposition to convict transportation, which was vigorously pursued by colonists throughout the island during the late forties and early fifties, was reflected only minimally in Council proceedings.

During the period in which the Legislative Council was two thirds elective, the Lieutenant-Governor, who no longer chaired proceedings, lost much of his influence. Nevertheless the Council did not take a significantly greater part in the government. It had no control over the strong executive nor complete control of appropriation. Its legislation increased, although its clashes with the executive, which principally arose from opposition to transportation, were ineffectual. Its major concern after transportation was to enact legislation for a bicameral legislature and await, with scarcely-concealed anticipation, the implementation of responsible government.
APPENDICES.
APPENDIX A.

MEMBERS OF THE LEGISLATIVE COUNCIL:

I.

As constituted by the New South Wales Judicature Act of 1823.

1825  Chief Justice  J.L. Pedder
       Colonial Secretary (acting)  W.H. Hamilton
       Chief Police Magistrate  A.W.H. Humphrey
       Edward Curr
       Edward Abbott

1827  Chief Justice  J.L. Pedder
       Colonial Secretary  John Burnett
       Chief Police Magistrate  A.W.H. Humphrey
       W.H. Hamilton
       Thomas Anstey
       Thomas Archer

1828  Chief Justice  J.L. Pedder
       Colonial Secretary  John Burnett
       Chief Police Magistrate  A.W.H. Humphrey
       W.H. Hamilton
       Thomas Anstey
       Thomas Archer

II.

As constituted by the Huskisson Act of 1828.

1830  Chief Justice  J.L. Pedder
       Colonial Secretary  John Burnett
       Attorney-General  Algernon Montagu
       Colonial Treasurer  J. Thomas
       Senior Chaplain  H. Bedford
       Collector of Customs  Rolla O'Ferral
       W.H. Hamilton
       Thomas Anstey
       Thomas Archer
       Edward Abbott
       John Kerr
       James Cox
       James Gordon
       Richard Willis
1833
Chief Justice J.L. Pedder
Colonial Secretary John Burnett
Attorney-General (acting) Thomas Macdowell
Colonial Treasurer (acting) John Montagu
Senior Chaplain W. Bedford
Collector of Customs W. Proctor
Thomas Anstey
Thomas Archer
John Kerr
James Cox
James Gordon
Richard Willis
Charles Swanston
Charles McLachlan

1834
Chief Justice J.L. Pedder
Colonial Secretary John Montagu
Attorney-General A. Stephen
Colonial Treasurer John Gregory
Senior Chaplain P. Palmer
Collector of Customs (acting) W. Proctor
M. Forster
Thomas Anstey
Thomas Archer
John Kerr
Richard Willis
Charles Swanston
Charles McLachlan
W.A. Bethune

1837
Chief Justice J.L. Pedder
Colonial Secretary John Montagu
Attorney-General A. Stephen
Colonial Treasurer John Gregory
Archdeacon W. Hutchins
Collector of Customs George Barnes
W. Forster
Thomas Anstey
Thomas Archer
John Kerr
Charles Swanston
Charles McLachlan
W. Ashburner
W.E. Lawrence
1839 Chief Justice J.L. Pedder
Colonial Secretary (acting) M. Forster
Attorney-General Edward Macdowell
Colonial Treasurer (acting) John Gregory
Archdeacon V. Hutchins
Collector of Customs George Barnes
Thomas Anstey
Thomas Archer
John Kerr
Charles Swanston
Charles McLachlan
W. Ashburner
W.E. Lawrence
J. Spode

1840 Chief Justice J.L. Pedder
Colonial Secretary (acting) M. Forster
Attorney-General Edward Macdowell
Colonial Treasurer (acting) Adam Turnbull
Collector of Customs George Barnes
Colonial Auditor G.T.W.B. Boyes
Thomas Anstey
Thomas Archer
Charles Swanston
Charles McLachlan
W. Ashburner
W.E. Lawrence
J. Spode
H. Fenton

1841 Chief Justice J.L. Pedder
Colonial Secretary John Montagu
Attorney-General Edward Macdowell
Colonial Treasurer (acting) Adam Turnbull
Collector of Customs G. Barnes
Colonial Auditor G.T.W.B. Boyes
Thomas Anstey
Thomas Archer
Charles Swanston
Charles McLachlan
W. Ashburner
H. Fenton
H. Forster
John Kerr
1842
Chief Justice J.L. Pedder
Colonial Secretary (acting) G.T.H.B. Boyes
Attorney-General Welsh
Colonial Treasurer (acting) Adam Turnbull
Collector of Customs G. Barnes
Colonial Auditor (acting) S. Carr
Thomas Anstey
Thomas Archer
Charles Swanston
W. Ashburner
H. Fenton
J. Kerr
W. Kerndoe
T.G. Gregson

1843
Chief Justice J.L. Pedder
Colonial Secretary J.E. Bicheno
Attorney-General (acting) T. Horne
Colonial Treasurer Peter Fraser
Collector of Customs G. Barnes
Colonial Auditor G.T.H.B. Boyes
Thomas Anstey
Thomas Archer
Charles Swanston
W. Ashburner
H. Fenton
John Kerr
W. Kerndoe
T.G. Gregson

1844
Chief Justice J.L. Pedder
Colonial Secretary J.E. Bicheno
Attorney-General T. Horne
Collector of Customs G. Barnes
Colonial Auditor G.T.H.B. Boyes
Comptroller of Convicts W. Forster
Thomas Anstey
Thomas Archer
Charles Swanston
W. Ashburner
John Kerr
W. Kerndoe
T.G. Gregson
R. Dry
Roderic O' Connor
1845  
Chief Justice J.L. Pedder  
Colonial Secretary J.E. Bicheno  
Attorney-General T. Horne  
Collector of Customs G. Barnes  
Colonial Auditor G.T.W.B. Boyes  
Comptroller of Convicts H. Forster  
Charles Swanston  
M. Fenton  
John Kerr  
W. Kermodc  
T.G. Gregson  
R. Dry  
Roderic O' Connor  
John Dunn  

1846  
Chief Justice J.L. Pedder  
Colonial Secretary J.E. Bicheno  
Attorney-General T. Horne  
Collector of Customs G. Barnes  
Colonial Auditor G.T.W.B. Boyes  
Comptroller of Convicts H. Forster  
John Dunn  
Roderic O'Connor  
L. von Stieonlitz  
E. Bisdee  
John Leake  
H. Hopkins (later replaced by H.R. Allison)  
H. Reed (later replaced by H. Orr)  
Cornelius Driscoll  

1843  
Chief Justice J.L. Pedder  
Colonial Secretary J.E. Bicheno  
Attorney-General V. Fleming  
Colonial Auditor G.T.W.B. Boyes  
Colonial Treasurer (acting) Adam Turnbull  
Chief Police Magistrate F. Burness  
J. Dunn  
Roderic O'Connor (replaced in August by H.R. Allison)  
Charles Swanston (replaced in August by John Leake)  
M. Fenton  
W. Kermodc (replaced in August by W.S. Sharland)  
T.G. Gregson  
John Kerr  
R. Dry
1849
Chief Justice J.L. Pedder
Colonial Secretary J.E. Bicheno
Attorney-General V. Fleming
Colonial Auditor S.T.W.B. Boyes
Chief Police Magistrate F. Burgess
Colonial Treasurer Peter Fraser
John Dunn
M. Fenton
T.G. Gregson
John Kerr
R. Dry
John Leake
W.R. Allison
W.S. Sharland

1851
Chief Justice J.L. Pedder
Colonial Secretary (acting) Peter Fraser
Attorney-General V. Fleming
Colonial Auditor S.T.W.B. Boyes
Chief Police Magistrate F. Burgess
Colonial Treasurer (acting) Adam Turnbull
John Dunn
M. Fenton
T.G. Gregson
R. Dry
John Leake
W.R. Allison
W.S. Sharland
E. Bisdee

III.

As constituted by the Australian Colonies Constitution Act of 1850 and the Electoral Act of 1851.

1851 (a) Nominees:

Colonial Secretary (acting) Peter Fraser, replaced in June by H.S. Chapman who in turn was replaced by H.T.A. Champ.
Colonial Treasurer (acting) Adam Turnbull, replaced in October by the Lt.-Gov.'s private secretary A. Clarke

Attorney-General V. Fleming
Solicitor-General F. Smith
John Leake
W.R. Allison
E. Bisdee
W.G. Talbot (replaced in June by Roderic O'Connor)
(b) Elective Members

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<td>Sorell</td>
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1853 (a) Nominees

Colonial Secretary W.T.W. Champ
Attorney-General W. Fleming
Solicitor-General F. Smith
Andrew Clarke replaced in June by Colonial Treasurer Peter Fraser
John Leake
W.R. Allison
E. Bisdee
Roderic O'Connor replaced in August by W. Langdon

(b) Elective Members

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<tr>
<td>Campbell Town</td>
<td>R.W. Kermode</td>
</tr>
<tr>
<td>Cumberland</td>
<td>W.S. Sharland</td>
</tr>
<tr>
<td>Richmond</td>
<td>T.G. Gregson</td>
</tr>
<tr>
<td>Brighton</td>
<td>J. Walker</td>
</tr>
<tr>
<td>Buckingham</td>
<td>R.W. Nutt replaced in November by R. Officer</td>
</tr>
<tr>
<td>Huon</td>
<td>R. Ceburne</td>
</tr>
<tr>
<td>Electorate</td>
<td>Name of Member</td>
</tr>
<tr>
<td>------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>Hobart</td>
<td>T.D. Chapman</td>
</tr>
<tr>
<td>Hobart</td>
<td>John Dunn</td>
</tr>
<tr>
<td>New Norfolk</td>
<td>M. Fenton</td>
</tr>
<tr>
<td>Sorell</td>
<td>Askin Morrison</td>
</tr>
</tbody>
</table>

1854  

(a) Nominees

- Colonial Secretary: H.T.N. Champ
- Colonial Treasurer: Peter Fraser
- Attorney-General: V. Fleming replaced in August by F. Smith
- Solicitor-General: F. Smith replaced in August pro tempore by E. Macdowell.
- John Leake
- E. Bisdlee
- W.R. Allison
- H. Langdon

(b) Elective Members

<table>
<thead>
<tr>
<th>Electorate</th>
<th>Name of Member</th>
</tr>
</thead>
<tbody>
<tr>
<td>Launceston</td>
<td>R. Dry</td>
</tr>
<tr>
<td>Westbury</td>
<td>William Archer</td>
</tr>
<tr>
<td>Longford</td>
<td>Alexander Clerke</td>
</tr>
<tr>
<td>Morven</td>
<td>James Cox replaced in August by J. Sinclair</td>
</tr>
<tr>
<td>Cornwall</td>
<td>J. Gleadow</td>
</tr>
<tr>
<td>Oatlands</td>
<td>H.F. Anstey</td>
</tr>
<tr>
<td>Cambell Town</td>
<td>R.W. Kermode</td>
</tr>
<tr>
<td>Cumberland</td>
<td>W.S. Sharland</td>
</tr>
<tr>
<td>Richmond</td>
<td>T.R. Grasden</td>
</tr>
<tr>
<td>Brighton</td>
<td>J. Walker replaced in March by H. Butler</td>
</tr>
<tr>
<td>Buckingham</td>
<td>R. Officer</td>
</tr>
<tr>
<td>Huon</td>
<td>R. Clebourne</td>
</tr>
<tr>
<td>Hobart</td>
<td>T.D. Chapman</td>
</tr>
<tr>
<td>Hobart</td>
<td>John Dunn</td>
</tr>
<tr>
<td>New Norfolk</td>
<td>M. Fenton</td>
</tr>
<tr>
<td>Sorell</td>
<td>Askin Morrison</td>
</tr>
</tbody>
</table>
As constituted by the Extension Act of 1855

1855 (a) Nominees

-56

Colonial Secretary W.T. H. Champ
Attorney-General F. Smith
Solicitor-General J. Rogers
Colonial Treasurer Peter Fraser
Collector of Customs G. Barnes
John Leake
W. Langdon
E. Bisdee
H.G. Elliston
R. Knight
R.C. Gunn

(b) Elective Members

<table>
<thead>
<tr>
<th>Electorate</th>
<th>Name of Member</th>
</tr>
</thead>
<tbody>
<tr>
<td>Westbury</td>
<td>William Archer</td>
</tr>
<tr>
<td>Longford</td>
<td>Alexander Clarke</td>
</tr>
<tr>
<td>Wellington</td>
<td>J.A. Gibson</td>
</tr>
<tr>
<td>Launceston</td>
<td>A. Douglas</td>
</tr>
<tr>
<td>Launceston</td>
<td>T.W. Field</td>
</tr>
<tr>
<td>Cornwall</td>
<td>W. Goodwin</td>
</tr>
<tr>
<td>Cornwall</td>
<td>W. Bonney</td>
</tr>
<tr>
<td>Morven</td>
<td>J.H. Wedge</td>
</tr>
<tr>
<td>Campbell Town</td>
<td>W.R. Allison</td>
</tr>
<tr>
<td>Oatlands</td>
<td>H.F. Anstey</td>
</tr>
<tr>
<td>Glamorgan</td>
<td>C. Meredith</td>
</tr>
<tr>
<td>New Norfolk</td>
<td>H. Fenton</td>
</tr>
<tr>
<td>Richmond</td>
<td>T.G. Gregson</td>
</tr>
<tr>
<td>Hobart</td>
<td>T.D. Chapman</td>
</tr>
<tr>
<td>Hobart</td>
<td>J. Lord</td>
</tr>
<tr>
<td>Hobart</td>
<td>A. Perry replaced in December 1855</td>
</tr>
<tr>
<td>Buckingham</td>
<td>R. Officer</td>
</tr>
<tr>
<td>Buckingham</td>
<td>W. Crooke</td>
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<tr>
<td>Huon</td>
<td>R. Cleburne</td>
</tr>
<tr>
<td>Sorell</td>
<td>Askin Morrison</td>
</tr>
<tr>
<td>Cumberland</td>
<td>W.S. Sharland</td>
</tr>
<tr>
<td>Brighton</td>
<td>H. Butler</td>
</tr>
</tbody>
</table>

R. Officer replaced in December 1855 by C.B. Brewer
APPENDIX B.

LIEUTENANT-GOVERNORS OF VAN DIEMEN'S LAND
1824 - 1856

George Arthur
May 1924 to October 1836

John Franklin
January 1837 to August 1843

J.E. Eardley-Wilmoth
August 1843 to October 1846

W.T. Denison
January 1847 to January 1855

H.E. Fox-Young
January 1855 to December 1851
APPENDIX C.

IMPERIAL SECRETARIES OF STATE FOR WAR AND THE COLONIES.

<table>
<thead>
<tr>
<th>Ministry</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIVERPOOL Ministry (Tory)</td>
<td>June 1812 to April 1827</td>
</tr>
<tr>
<td>Henry Bathurst, Earl Bathurst</td>
<td>June 1812 to April 1827</td>
</tr>
<tr>
<td>CANNING Ministry (Tory)</td>
<td>April 1827 to September 1827</td>
</tr>
<tr>
<td>F.J. Robinson, Viscount Goderich, Earl of Ripon</td>
<td>April 1827 to September 1827</td>
</tr>
<tr>
<td>GODERICH Ministry (Tory)</td>
<td>September 1827 to December 1827</td>
</tr>
<tr>
<td>William Huskisson</td>
<td>September 1827 to December 1827</td>
</tr>
<tr>
<td>WELLINGTON Ministry (Tory)</td>
<td>January 1828 to November 1830</td>
</tr>
<tr>
<td>William Huskisson</td>
<td>January 1828 to May 1829</td>
</tr>
<tr>
<td>Sir George Murray</td>
<td>May 1828 to November 1830</td>
</tr>
<tr>
<td>GREY Ministry (Whig)</td>
<td>November 1830 to July 1834</td>
</tr>
<tr>
<td>F.J. Robinson, Viscount Goderich, Earl of Ripon</td>
<td>November 1830 to May 1833</td>
</tr>
<tr>
<td>E.G.G.S. Stanley, Viscount Stanley, Earl of Derby</td>
<td>May 1833 to June 1834</td>
</tr>
<tr>
<td>Thomas Spring Rice</td>
<td>June 1834 to July 1834</td>
</tr>
<tr>
<td>MELBOURNE's First Ministry (Whig)</td>
<td>July 1834 to November 1834</td>
</tr>
<tr>
<td>Thomas Spring Rice</td>
<td>July 1834 to November 1834</td>
</tr>
<tr>
<td>PEEL's First Ministry (Conservative)</td>
<td>December 1834 to April 1835</td>
</tr>
<tr>
<td>G.H. Gordon, Earl of Aberdeen</td>
<td>December 1834 to April 1835</td>
</tr>
</tbody>
</table>
MELBOURNE's Second Ministry (Whig)
- Charles Grant, Baron Glenelg
- C.H. Phipps, Marquis of Normanby
- John Russell, Earl Russell

PEEL's Second Ministry (Conservative)
- E.G.G.S. Stanley, Viscount Stanley, Earl of Derby
- W.E. Gladstone

RUSSELL's First Ministry (Whig)
- H.G. Grey, Viscount Howick, Earl Grey

DERBY's First Ministry (Conservative)
- Sir John Pakington

ABERDEEN's First Ministry (Peelite and Whig)
- H.P.L. Pelham Clinton, Duke of Newcastle
  (Remained Secretary of State for War; the new Cabinet rank of Secretary of State for the Colonies was then created.)
- Sir George Grey

PAMERSTON's First Ministry (Whig)
- Sidney Herbert
- John Russell, Earl Russell
- Sir William Molyneux
- Henry Labouchere

April 1835 to September 1841
April 1835 to February 1839
February 1839 to September 1839
September 1839 to September 1841
September 1841 to July 1846
September 1841 to December 1845
December 1845 to July 1846
July 1846 to February 1852
July 1846 to February 1852
February 1852 to December 1852
December 1852 to February 1855
December 1852 to June 1854
June 1854 to February 1855
February 1855 to February 1858
February 1855
February 1855 to July 1855
July 1855 to October 1855
October 1855 to February 1858
### APPENDIX D.

13 & 14 VICT. CAP. 59. SCHEDULE (C)

#### Part 1

<table>
<thead>
<tr>
<th>Position and Expenses</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Governor</td>
<td>£2,000</td>
</tr>
<tr>
<td>Chief Justice</td>
<td>£1,500</td>
</tr>
<tr>
<td>Puisne Judge</td>
<td>£1,200</td>
</tr>
<tr>
<td>Salaries of Attorney and Solicitor General, Crown</td>
<td>£13,300</td>
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<tr>
<td>Solicitors, and contingent and miscellaneous Expenses of Administration of Justice throughout the Colony</td>
<td>£18,000</td>
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#### Part 2

<table>
<thead>
<tr>
<th>Position and Expenses</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Colonial Secretary, and his Department</td>
<td>£2,800</td>
</tr>
<tr>
<td>Colonial Treasurer, and his Department</td>
<td>£1,900</td>
</tr>
<tr>
<td>Auditor General, and his Department</td>
<td>£1,600</td>
</tr>
<tr>
<td>Salary of Clerk of Executive Council, and miscellaneous Expenses</td>
<td>£700</td>
</tr>
<tr>
<td>Pensions</td>
<td>£2,000</td>
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</table>

| Total                  | £8,900 |

#### Part 3

<table>
<thead>
<tr>
<th>Position and Expenses</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Worship</td>
<td>£15,000</td>
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### APPENDIX E.

#### ELECTIONS 1851

<table>
<thead>
<tr>
<th>LAUNCESTON POLL</th>
<th>HOBART POLL</th>
</tr>
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<tbody>
<tr>
<td>R. Dry</td>
<td>Chauman</td>
</tr>
<tr>
<td>A. Douglas</td>
<td>Dunn</td>
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<tr>
<td>516</td>
<td>892</td>
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<tr>
<td>140</td>
<td>853</td>
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<table>
<thead>
<tr>
<th>HUON POLL</th>
<th>CAMPBELL TOWN</th>
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</thead>
<tbody>
<tr>
<td>Cleburne</td>
<td>R. Kermode</td>
</tr>
<tr>
<td>Watchorn</td>
<td>Allison</td>
</tr>
<tr>
<td>Abbott</td>
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<td>35</td>
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</tr>
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<td>49</td>
<td>77</td>
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<td>70</td>
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<table>
<thead>
<tr>
<th>OATLANDS POLL</th>
<th>LONGFORD POLL</th>
</tr>
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<tbody>
<tr>
<td>H. Anstey</td>
<td>Jos. Archer</td>
</tr>
<tr>
<td>Meredith</td>
<td>Sumaresq</td>
</tr>
<tr>
<td>125</td>
<td>110</td>
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<tr>
<td>96</td>
<td>81</td>
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<table>
<thead>
<tr>
<th>BRIGHTON ELECTION</th>
<th>CUMBERLAND POLL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Walker</td>
<td>Sharland</td>
</tr>
<tr>
<td>Butler</td>
<td>T. Cellibrand jnr.</td>
</tr>
<tr>
<td>112</td>
<td>129</td>
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<tr>
<td>102</td>
<td>90</td>
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<table>
<thead>
<tr>
<th>MORVEJ POLL</th>
<th>WESTBURY POLL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cox</td>
<td>W. Archer</td>
</tr>
<tr>
<td>Sinclair</td>
<td>J. Archer</td>
</tr>
<tr>
<td>137</td>
<td>164</td>
</tr>
<tr>
<td>0</td>
<td>66</td>
</tr>
</tbody>
</table>
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- Index to Correspondence
- Register Books of Correspondence
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- Index to Secretary of States' Despatches (2 Vols.)

Public Records Office.

- Lieutenant-Governors' Despatches, C.O. 280. (microfilm)
- Secretary of States' Despatches, C.O. 488 (microfilm)

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- Papers in the possession of Christ College, University of Tasmania
- Papers of Sir William Jenison (microfilm, T.U.A.)
- Papers (incomplete) of Sir John Franklin (typescript copy, T.S.A.)
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Papers of George Meredith (T.S.A.)
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III. Unpublished Theses


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Colonist

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Hobart Town Advertiser
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