Vidyodaya J. Arts, Sci., Lett, Vol. 2, *No.* 1 *pp.* 49 - 58 *January*, 1969

Imperial Attitudes and Policies to Self-Government in New South Wales with Special Reference to Precedents of British North America 1837-1842.[1] (Part I)

by

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HISTORIANS of British Imperial history have often emphasised the example of the British North American colonies in the transition of other settlement colonies of the British Empire from representative to responsible government. Though there is a substantial degree of justification in a general statement of this nature, few historians have made an attempt to critically examine the precise manner in which the constitutional history of the British North American colonies influenced Imperial attitudes and policies in effecting this transition. The colony of New South Wales evolved towards responsible government in 1856. This article attempts to examine the extent to which British North American constitutional precedents influenced Imperial attitudes and policies to self-government in New South Wales between 1837 and 1842 taking into consideration the fact that, New South Wales like any other colony had a historical situation which was peculiar and unique to itself.

Canadian constitutional history between the passing of the Constitutional Act of 1791[2] which divided the province of Quebec into Upper and Lower Canada and the passing of the Act of Union of 1840[3] is extremely complicated. Contrary to the expectations of the British Government, the colonists of both provinces came to be generally dissatisfied with the provisions of the Act of 1791. Three areas of constitutional conflict with the Imperial Government were noticeable during the period. First, difficulties arose over the question of supply in each of the provinces. As the Governor had control of certain crown revenues and the military chest, he was not dependent on the assembly (which had control of only such monies as were raised by provincial legislation) to carry on the administration of the provinces. In attempting to resolve this constitutional difficulty, the colonists came to realize that some control over appropriations was essential to any real form of self-government or representative institutions. Second, the Act of 1791 did not indicate the respective legislative spheres of the British Government and the Provincial

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1. This article incorporates some of the material presented for a M.A. thesis to the University of Sydney on Imperial Attitudes and Policies to Self-Government in New South Wales with special reference to precedents of British North America, 1837-1855. (1967).
2. The Constitutional Act, 31, George III, c. 31; W. P. M. Kennedy (ed.), *Documents of the Canadian Constitution* 1759-1915, Toronto, 1918, p. 207ff.
3. The Act of Union, 3 and 4 Victoria, c. 35, *ibid.*, p. 536ff.

Assemblies. In Lower Canada therefore, the Assembly suggested that it be given the power to alter its constitution thereby creating a barrier between the crown and the popular house. A third area of conflict was noticeable because the executive had no responsibility to the house of assembly. Though the executive was financially and constitutionally independent, no satisfactory answer was provided for linking up the executive authority with the elected chamber. Most of the schemes suggested, reuniting the provinces, the federation of British North America, elective legislative councils and even 'responsible government' were at most partial solutions which did not wholly tackle the problems inherent in the concept of 'colonial responsible government'.[4]

The Canadian rebellion of 1837 re-emphasised these constitutional problems in a new light. The rebellion though insignificant and abortive in contrast to the revolt of the American colonies, nevertheless posed two significant problems for Imperial statesmen. First, the idea of revolution and the apparent desire to break away from dependence on the Mother Country posed the need for a new Imperial idea or relationship if the colonies were to be retained by Britain. Second, partly as a consequence of the first, and partly due to colonial demands for the 'constitutional birthright of Englishmen', the Mother Country was compelled to reconsider the constitutional position of the British North American colonies. In response to this challenge the Imperial Parliament despatched the Earl of Durham to report on the affairs of British North America. *The Durham Report*[5] made an attempt to tackle these problems within the framework of the Canadian rebellion and the issues that gave rise to it. In opposition to the 'separatist attitude' that advocated an abandonment of colonies,[6] Durham strongly advocated their retention on the basis of a new imperial idea that he hoped would prove a success.

In evaluating the constitutional position of the British North American colonies, Durham observed a 'defect in the form of government, and some erroneous principle of administration common to all colonies'. That defect he felt to be 'that of collision between the executive and representative body'.[7] How was one to preserve harmony between the executive and the legislature? Durham recommended 'Responsible Government' for the settlement colonies as a solution to this particular difficulty as well as to the more significant one of retaining them within the Empire.

> 'The responsibility to the United Legislature of all officers of the government, except the Governor and his Secretary should be secured by every means known to the British Constitution. The Governor as the representative of the Crown should be instructed that he must carry on his Government by heads of departments, in whom the United Legislature shall

4. *Ibid.*, introduction, p. 223. For a fuller description of constitutional problems in the Canadas before the rebellions see, H. T. Manning, *Revolt of French Canada*, 1800-1835, London, 1962;
G. M. Craig, *Upper Canada, The Formative Years* 1784-1841. Canadian Centinary Series, Toronto, 1963.
For inadequacy of the system of 'responsible government' suggested at this time-see below evaluation of Durham's recommendations.
5. *The Durham Report on the Affairs of British North America*, 3 vols., (ed.), C. P. Lucas, Oxford, 1912.
6. C. A. Bodelsen, *Studies in Mid-Victorian Imperialism*, London, 1960, p. 16.
7. *Durham Report*, Vol. II, p. 73.

repose confidence; and that he must look for no support from home in any contest with the Legislature; except on points involving strictly Imperial interests'.[8]

Durham's concept of 'responsible government' for the settlement colonies contained significant limitations. He made a distinction between local and imperial affairs and, only with respect to local affairs was 'responsible government' to be conceded.[9] Secondly, Durham did not seriously tackle the practical problems inherent in the concept of colonial responsible government. Though Durham suggested that the Governor carry on his government through heads of departments, he did not seriously envisage the method of their choice or the issues on which they were to resign. Thirdly, Lord Durham's view of responsible government implied the submission of a colonial executive to the control and superintendence of a popular assembly. Though this was theoretically feasible, how was local autonomy to function easily if the executive was irresponsible and unwilling to carry out the will of the legislature? Alternately, if the executive were responsible to the popular assembly, how could imperial policy be assured of implementation? Though Durham may have assumed the existence of sound political judgement on the part of the Imperial Government and the Colonists as a solution to this particular difficulty, his concept of 'responsible government' fell short of cabinet and party government.[10] What Durham meant by responsible government was at most the individual responsibility of heads of departments to both governor and the assembly in strictly local or internal affairs.

The recommendations of the Durham Report particularly in its constitutional aspects did not have a significant bearing on the British Government which drew up the Canada Re-Union Act of 1840.[11] Only one of the major recommendations of Lord Durham was incorporated in the Act of 1840, the provision for the union of the two Canadas. The most important constitutional provision in that Act, the surrender of the hereditary revenues of the Crown in return for a Civil List[12] was in a sense in direct contravention to the recommendations of the *Durham Report* which classified public land in the colony as an imperial subject. Finally, the Act of 1840 maintained unimpaired the authority of the Governor in relation to the local assembly while the divided responsibility of the Governor to the Crown and the Assembly envisaged by Durham found no acceptance in the Act. By 1842 therefore, through the Re-Union Act Canada had made some constitutional advance from the Act of 1791, but this

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8. *Ibid.*, Vol. II, p. 327.
9. Durham reserved for Imperial consideration, 'the constitution of the form of government, the regulation of foreign relations and of trade with the Mother Country and other British colonies and foreign nations and the disposal of public lands'. *Ibid.* p. 327.
10. Of the Colonial Reformers, perhaps Charles Buller was the only one to support cabinet and party government for the colonies. This is borne out in the article on the Buller-Howe Correspondence by Chester Martin in *Canadian Historical Review*, Vol. 6, Dec. 1925, p. 310ff.
11. 3 *and* 4 *Vict.*, c. 35, Clause 1, *op. cit.*, Kennedy, p. 536ff.
12. Act of Union, 1840, Clauses, L-LVII, *op. cit.*, Kennedy, p. 548ff.

advance reflected in the Crown's willingness to surrender the hereditary revenues of the Crown in lieu of a civil list cannot be interpreted as an advance in the direction of responsible government.[13]

Meanwhile, the Australian colony of New South Wales had by the Act of 1842,[14] advanced towards representative government, that is, it admitted certain elected members to the legislature, but withheld from it that power to control the administration which is the essential characteristic of responsible government. It is therefore appropriate at this stage to assess the extent to which British North American constitutional developments of the late eighteen thirties and eighteen forties had any bearing on imperial policy when drawing up the New South Wales Government Act of 1842.[15]

Though the *Durham Report* had a minimal influence on the Canada Act of 1840 the New South Wales Government Act of 1842 contained one significant provision which was similar to a recommendation contained in the *Durham Report.* The New South Wales Act made some effort to demarcate imperial and local affairs for, the Governor and the Legislative Council were given power to frame laws not repugnant to the laws of England, but bills affecting the constitution of the legislative council, the salaries of the principal officers and the customs duties were to be reserved for the signification of Her Majesty. Another principle contained in the Durham Report, was provided for in the Act itself, colonial lands being an imperial affair, the colonial legislature was not to 'interfere in any manner with the sale or other appropriation of the lands belonging to the Crown. . . . or with the revenue thence arising'.[16] These clauses in the Act of 1842 acquire added significance largely because the Canada Acts of 1791 and 1840 did not provide for so explicit a demarcation of imperial affairs. The Constitutional Act of 1791 provided for the establishment and endowment of clergy reserves for the Protestant religion and also recited the provision of the Declaratory Act[17] which asserted the right of the United Kingdom to regulate the commerce of the North American and West Indian colonies as well as the intention to apply the nett product of the duties resulting from such regulation 'as other duties . . . were ordinarily paid and applied'. The Declaratory Act was reiterated in the Act of 1840. Save for these provisions, the reservation of bills affecting imperial policy were customarily incorporated in the Governor's instructions. In these particulars therefore it may be assumed that the Durham Report on the affairs of British North America was a precedent for the New South Wales Act of 1842. The provision for local

13. In effect Canada had representative government by 1842. Lord John Russell's despatch to Poulett Thomson of 16. Oct. 1839 on the tenure of offices has generally being interpreted as a concession to colonial demands for the political tenure of public servants, (J. L. Morison, *British Supremacy and Canadian Self-Government,* 1839-1854, Glasgow, 1919, p. 74). It is difficult to wholly substantiate this view because the Lt. Governor of New Brunswick, W. G. Colebrooke appointed his son-in-law Provincial Secretary precisely on the basis of these instructions. Colebrooke's appointment was negatived by the colonial office mainly on the grounds that the Provincial Secretary was not a 'native or settled inhabitant of New Brunswick'.
14. 5 *and* 6 *Vic. c.* 76.
15. For the events that led up to the Act of 1842 and the description of the Act see, A. C. V. Melbourne, *Early Constitutional Development in New South Wales,* 1788-1856, St. Lucia, Queensland, 1963, chaps. 12-13.
16. 5 *and* 6 *Vic. c.* 76, Cls. XXXIX, XXXI.
17. 18 *G, III, c.* 12.

government institutions in the Constitution Act of 1842 may also be traced to Canadian developments of the eighteen thirties and forties. Both the *Gosford Commission Report*[18] and the *Durham Report* stressed the importance of local government institutions as the foundation upon which increased powers of self-government should be conferred upon a colony. Though the Canada Act of 1840 made no provision for the introduction of a system of local government, the Governor-General, Lord Sydenham was able to use his personal influence to establish local government institutions in Canada with the aid of a local act.[19] In formulating the Act of 1842 it is likely that the British Government was influenced by the recommendations of the Governor of New South Wales, George Gipps who had, prior to his appointment there, sat with the Earl of Gosford and Sir Charles E. Grey in a Royal Commission to inquire into grievances in Canada.[20] His experiences with the Gosford Commission probably influenced his recommendations for New South Wales. In a despatch to the Secretary of State, Lord Glenelg, dated January 1839, in recommending that the representation of minorities be guaranteed in a future constitution for New South Wales Gipps drew upon his experiences in Canada.

> No person shall vote in more than one District, nor for more than one Candidate, whatever be the number of Members to be returned by the District. The effect of this method of voting, in giving to a minority its due influence, is exhibited in the Report of the Commissioners for Lower Canada.[21]

It is also likely that Gipps was influenced by his association with the Gosford Commission when he made a strong plea for local government institutions for New South Wales prior to any extension of self-government.[22] Both recommendations of the Governor were incorporated in the Act of 1842 providing an instance of Canadian precedents indirectly influencing Imperial attitudes and policies to self-government in New South Wales.[23]

In addition to these precedents derived from Canada, Lord John Russell when introducing the New South Wales Government Bill in Parliament stated that, 'as the colony increased in wealth and population, the colonists would expect institutions similar to those of the North American possessions and

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18. *Gosford Report*, Commons Papers, 1837, 50.
19. Thomson to Russell, 16 Sept., 1840. Thomson regretted that the Act of 1840 had no provision for municipal institutions. See also Sydenham to his brother, 28 Aug., 1841, *op. cit.*, Kennedy, p. 551.
20. F. Bradshaw, *Self-Government in Canada*, London, 1903, p. 87. See also, A. C. V. Melbourne, *Early Constitutional Development*, Part III, Ch. XI, p. 250. "From his experiences in Canada, during 1835 and 1836, Gipps acquired much information which he applied in New South Wales, particularly concerning the relation of the executive to the legislature, the franchise, local government, and the problems associated with the administration of Crown Lands".
21. Gipps to Glenelg, 1 Jan. 1839, *Historical Records of Australia.* (H.R.A.,), Series I, Vol. 19, p. 719.
22. *Votes and Proceedings, Legislative Council of New South Wales*, (V. and P., L.C., N.S.W.) 25 May, 1840. He stated that, local government was 'especially necessary at a time when the people of the colony (were) anxiously expecting an alteration in the Constitution of their government, which shall give it a more popular form, for it is, I believe, impolitic, if not unsafe, to entrust any people with a control over their government in the exercise of its higher functions, who have not been previously trained to the temperate exercise of their own powers in the management of their local affairs.'
23. 5 *and* 6 *Vic., c.* 76, Cls. XLI-L, III-VII.

the other colonies of Great Britain'.[24] Though this particular Bill was abandoned, the recognition that, after the decision to abolish transportation, New South Wales would eventually approximate to constitutional developments in Canada was, in the context of the pre-eighteen forty two period a significant advance. In effect the statement and the resultant Act may be said to have paved the way for the future operation of British North American constitutional precedents in New South Wales.

This does not mean however that with the Act of 1842, New South Wales came constitutionally into line with Canada. A comparison of the New South Wales Act of 1842 and the Re-Union Act of 1840 shows also that the degree of self-government prevailing in the two colonies were fundamentally different.

The most significant clause in the Canada Act was that which surrendered the hereditary revenues of the Crown in return for a Civil list.[25] This provision read in conjunction with the Declaratory Act implied that in some respects, that is over revenue outside the civil list, the Canadian Assembly had some financial control. The corresponding clause in the New South Wales Act though providing for a civil list, did not recite the provisions of the Declaratory Act.[26] The implication of this omission is obvious enough. The Act of 1842 gave to the Governor financial resources which made it impossible for the Legislative Council to use the power of the purse as a means by which it could gain control of the Executive. In another important respect the New South Wales Act differed fundamentally from the Canada Act of 1840. Whereas in Canada, the sums mentioned in the Schedules were accepted by the Crown as a civil list in lieu of the territorial and other revenues of the Crown, in New South Wales, the sale of crown land and the expenditure of the land revenue were regulated by an Act of Parliament.[27] It provided that the land fund be charged with the costs of survey and management (sec. 18) and that the nett proceeds be devoted to the public service in accordance with instructions issued by the Crown or the Treasury, but subject to the general provision that one half of the amount be used for the removal of emigrants from the United Kingdom to the colony (sec. 19). The withdrawal of the land revenue from legislative appropriation once again prevented the Legislative Council from using financial pressure to control the Colonial Executive. These two provisions in the New South Wales Act help to illustrate the wide gap in the degree of self-government prevailing in the two colonies by 1842.

The reasons for this disparity in constitutional development are to be mainly found in the structure of colonial politics and society in New South Wales and the response of the Colonial Office to them. The fact that Canada had representative government since 1791,[28] helps to explain the constitutional concessions granted the colony in 1840. Between 1791 and the rebellion of 1837 the Canadian colonists had come to realize the implications of representative government, that harmony between the executive and the legislature and increased powers of self-government could not be satisfactorily achieved

24. *Parliamentary Debates*, (P.D.) 3rd Series, Vol. IV, p. 360.
25. Act of Union, Cls. L-LVII, *op. cit.*, Kennedy, p. 548ff.
26. Schedules A. B. and C. attached to the Act of 1842, Sections XXVIII and XXXIV.
27. 5 *and* 6 *Vic.*, *c.* 36, Act for Regulating the Sale of Waste Land Belonging to the Crown in the Australian Colonies.
28. Constitutional Act 1791, *op. cit.*, Kennedy, pp. 207ff.

within that system. It was this realization that prompted the colonists to demand for some form of responsible government as early as 1829.[29] A series of constitutional conflicts with the mother country perhaps convinced the Colonial Office that the system of government prevailing in the Canadian colonies contained some inherent weaknesses. However, the solution implemented, that of re-uniting the Canadian provinces and granting the United Legislature the hereditary revenues of the Crown in lieu of a civil list, though a constitutional advance in the context of the pre-eighteen forty period, was admittedly not an advance in the direction of responsible government.[30]

In contrast, the structure of colonial politics and society in New South Wales retarted its constitutional development. The decision taken by the British Government to establish a convict settlement in New South Wales had far reaching constitutional and social effects on the colony.[31] Constitutionally, because the colony was established for a special and peculiar purpose, it was natural that the government which was consequently created, should be a special and peculiar government.[32] The system of government established made the governor the head of the executive, legislative and judicial spheres of the administration. The social consequences of the decision to establish a convict settlement in New South Wales was to create in the colony, two classes of people, the convicts and the officers who supervised them. When free emigrants began to enter the colony particularly in the first decades of the nineteenth century, the polarization of the two classes became accentuated and contributed later to the antagonism that existed between those who came to be called the 'Exclusives' and the 'Emancipists'.[33] The conflict for political power within the colony between these two classes prevented the formation of a united front to agitate for political concessions from the Mother Country.[34] Because of the predominantly penal character of the colony and, because of the authoritative form of government, New South Wales was not considered a prototype of a normal British settlement colony. Neither did she resemble the tropical dependencies of the east which were treated as conquered colonies. Being neither a colony of conquest nor of settlement it seems doubtful if one of the unwritten rules of British constitutional law, that the first settlers who go out found a new colony take with them the 'common law' of England, operated in the initial years of the convict settlement in New South Wales.

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29. There seem to be some differences of opinion as to when Canada made the first demand for responsible government. C. P. Lucas (ed.), *Durham Report*, Vol. I, p. 137 says that according to the commonly held notion it was first demanded in May 1829. Kennedy, *op. cit.*, 421ff says that the earliest reference to responsible government in clear terms was made in 1836.

30. Responsible government as introduced in the British North American Colonies after November 1846 implied the accountability of a colonial ministry to the assembly, See, Grey to Harvey, 3 Nov. 1846, *op. cit.*, Kennedy, p. 57off.

31. Sydney to the Lords Commissioners of the Treasury, 18 Aug. 1786, *H.R.A.*, Vol. I, Part II, p. 14.

32. *Op. cit.*, A. C. V. Melbourne, p. 5.

33. The 'Exclusives' were those who came to the colony free. The 'Emancipists' were those convicts who became free after serving their sentences in New Souch Wales.

34. For a suitable contemporary description of the antagonism between the 'Exclusives' and the 'Emancipists', See, F. Forbes to James Stephen, 31 March, 1837, *Colonial Office* (*C.O.*), 201/266. For the nature of constitutional agitation in New South Wales, See, the Emancipist Petition of 1821, Macquarie to Bathurst, 22 Oct., 1821, *H.R.A.*, Series I, Vol.X, p. 549. There was no mention of constitutional or representative government in the petition.

W. J. V. Windeyer in his *Lectures in Legal History*[35] has cast some doubt on how far the common law rules about the introduction of British law into settled colonies applied to New South Wales because it was initially founded as a penal establishment. According to him, the introduction of British law into New South Wales did not legally take place till 1828 when the Crown by Section 24 of the Act, 9 *Geo. IV, c.* 83, provided that all laws and statutes in force within the realm of England on 25 July 1828, should be applied in the administration of justice in the courts of New South Wales, and Van Diemen's Land in so far as the same could be applied within those colonies.

The events that led up to the temporary abolition of convict transportation in 1840,[36] the increase in the free population,[37] and the new interest created in England by Edward Gibbon Wakefield of the possibilities of settlement in the Australian Colonies,[38] and the value to the Mother Country of the colony as a pre-eminent producer of wool,[39] all contributed to New South Wales transforming itself into a settlement colony of the British Empire.

The inclusion of some constitutional features derived from Canadian precedents in the Act of 1842 was in a sense a recognition by the Colonial Office that New South Wales was increasingly becoming a predominantly settlement colony and that the colony was fit to receive some form of self-government consistent with that transformation.

In analysing the extent to which Imperial attitudes and policies to self-government in New South Wales were influenced by British North American constitutional precedents, so far, emphasis has been placed on the degree to which Canadian developments influenced the colony. An attempt has been made to show that, because of the obvious disparity in the manner of settlement, social structure and constitutional position of the two colonies, only a few marginal features derived from Canadian precedents were included in the Act of 1842. Looking to constitutional developments in other British North American colonies, the case of Newfoundland acquires special significance in comparison with New South Wales.[40]

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35. W. J. V. Windeyer, *Lectures in Legal History*, Second Ed., Sydney, 1957, p 304. Enid Campbell has examined the extent to which Australian parliamentary privileges have been derived from English domestic law. See, *Parliamentary Privilege in Australia*, Melbourne, 1966. She is of opinion that, before 1850, the Legislative Councils of the Australian Colonies did not enjoy quite the same measure of autonomy in domestc affairs as the American provincial assemblies (p. 21). For the significance of common law in founding colonies, See, E. Jenks, *The Government of the British Empire*, London, 1918, p. 62.
36. A. G. L. Shaw, *Convicts and the Colonies, A Study of Penal Transportation from Great Britain and Ireland to Australia and other parts of the British Empire*, London 1966.
37. The 1841 census revealed that whereas in 1835, free emigrants had been arriving at the rate of 1300 per year, in 1842 the figures were, 10,832. See, *Cambridge History of the British Empire*, Vol. VII, Part I, *Australia*, Cambridge, 1933, p. 169.
38. W. P. Morrell, *British Colonial Policy in the Age of Peel and Russell*, Oxford, 1930, p. 82ff. Morrell seems to have over-emphasised the importance of Wakefield in the transformation of the Australian colonies from penal to settlement.
39. For a proper evaluation of the pastoral industry in changing New South Wales to a settlement colony, See, A. G. L. Shaw, *The Story of Australia*, London, 1960, p. 60; Chap. VI, p. 74ff.
40. Unless otherwise stated, for the early history of Newfoundland I have relied mainly on the *Cambridge History of the British Empire*, Vol.VI, Cambr. 1930, Sir Alexander Harris, Newfoundland, p. 429ff.

Up to the close of George III's reign, Newfoundland was considered only a fisheries centre for cod and seal. Consequently, till about eighteen eighteen there was no settled government in the province. An admiral was granted a commission as governor for a period of three or four years coming out each summer to reside in the settlement for some four months. The first resident governor was appointed as direct representative of the Crown in 1818. Save for the penal origins of New South Wales, the progress of the two colonies up to about 1820 were similar in many respects with small populations,[41] an authoritative form of government and in the sphere of economic development. In the North American context, Newfoundland was also a special type of colony because of its importance mainly as a fisheries centre.

It is an interesting fact that the appointment of the first civil governor and the establishment of the first supreme court in Newfoundland took place as late as 1825. New South Wales on the other hand seems to have had a more efficient civil and judicial administration before that date.[42] Despite the apparent political backwardness of the colony, Newfoundland was granted a representative assembly in 1832. The Governor was instructed to summon a council of six members which was to have legislative powers concurrent with those of the assembly when constituted.[43] The assembly was elected and met in 1833. The Council, in its debut in representative government held that the newly constituted assembly had no power to pass a revenue bill. Even after reference to the Home Government the council persisted in a course of bickering which, unwisely handled by the members of the assembly reduced representative government to a hollow mockery. The council tried to cut down the assembly's revenue and supply bills while the Governor unduly strained his constitutional rights by issuing warrants on the Colonial Treasury for civil expenses. All this political wrangling introduced a state of discord into the public life of the colony. This state of affairs continued intermitently as late as 1840 when a Committee of the House of Commons was appointed to inquire into the political instability of the colony. It directed the Governor to dissolve the Legislature and the Constitution was suspended for two years. Then as a temporary measure the Crown took power to constitute by instructions to the Governor an Executive Council of Advisers. The Legislative Council was abolished as a seperate unit and its members were merged with the Legislative Assembly. This new arrangement which worked tolerably well for six years was in effect a single legislative chamber partly nominated. The old constitution was revived in 1847.

In analysing the reasons which induced the Colonial Office to grant representative institutions to a politically backward colony like Newfoundland as early as 1832 while denying them to New South Wales till a decade later, two significant factors emerge. First with regard to New South Wales, the importance of convictism in retarding the constitutional development of the colony becomes abundantly clear. In 1835, the wealthy emancipists of New South Wales formed the Australian Patriotic Association to lay before the British

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41. Population of Newfoundland in 1804 was 20,000.
42. This fact is however not surprising because a convict settlement required an advanced civil and judicial administration for the maintenance of law and order.
43. Commission appointing Sir John Thomas Cochrane, Governor of the colony and authorizing him to convoke a Legislative Assembly. *Parliamentary Papers*, 1831-32, (515), XXXII, 255.

Government the political and social grievances that affected their own class.[44] As the difficulty of easy communication between London and Sydney required 'a man on the spot' to represent the Association's interests in England, Charles Buller[45] was appointed agent in December 1837. Though the Australian Patriotic Association was anxious to obtain some form of representative institutions, it also wished that transportation be continued to New South Wales largely because there was a labour shortage in the colony. Buller soon realized that a continuation of convict transportation was inconsistent with any increase in self-government.

> ... if the inhabitants of the colony insist on the supply of convict labour as the most essential of their privileges, I am sure that this Country, were it inclined on other grounds to accede to that demand, would accompany that concession by declaring that the continuance of transportation is incompatible with the establishment of representative government . . . I feel therefore bound to pursue the primary object proposed by the Association, and to make no exertions for an object which seems to me inconsistent with that of obtaining a liberal constitution for the colony.[46]

Second, it is likely that the grant of representative institutions to Newfoundland as early as 1832 was influenced by the colony's geographical situation in the British North American land mass. As the Canadian colonies had had representative institutions as early as 1791 it seems likely that the British Government was influenced by Canadian precedents in extending the same form of government to Newfoundland. If this were so, the argument generally suggested by some Imperial historians and statesmen that, some degree of political maturity was important if a colony was to have an extension of self-government would seem to have diminished relevance in the constitutional history of Newfoundland between 1832 and 1840.

The establishment of a 'blended chamber' on the elective and nominative principle in New South Wales and Newfoundland almost simultaneously poses the question whether the constitutional history of Newfoundland influenced Imperial attitudes and policies towards self-government in New South Wales. On the basis of available historical evidence, the most that can be said on this point is the fact that the Colonial Office expressed a partiality for the system of 'blended chambers' as a transitional arrangement in colonies yet unfit to receive increased powers of self-government within a traditional bi-cameral system.[47]

(To be continued)

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44. For a fuller description of the activities of the Australian Patriotic Association, See, *op. cit.*, A. C. V. Melbourne, Part II, p. 202ff.

45. Buller was then a member of the House of Commons and William Molesworth's associate in the Select Committee on Transportation.

46 *Australian*, (Aust.), 3 July, 1838. See also, Buller to A. P. A., 31 May 1840. *Aust.*, 12 Nov. 1840, 'I am perfectly convinced, that it is idle to make any effort for the establishment of representative institutions in New South Wales as long as transportation to it continues. I am always met by the answer that it is a penal colony'.

47. Martin Wight, *The Development of the Legislative Council*, 1606-1945, M. Perham (ed.), *Studies in Colonial Legislatures*, London, (n.d.), p. 71.