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CHAPTER X

FORMING THE SOCIAL PATTERN

J. Huizinga in his book \(^{(54)}\) "The Waning of the Middle Ages" says of that period:

"The contrast between ... adversity and happiness appeared more striking. ... Calamities and indigence were more affecting than at present; it was more difficult to guard against them and to find solace. Illness and health presented a more striking contrast ... honours and riches ... contrasted more vividly with surrounding misery. Then, again, all things in life were of a proud or cruel publicity. ... Every order and estate, every rank and profession, was distinguished by its costume. ... Executions and other public acts of justice ... were all announced by cries and processions, songs and music. ... Between town and country, too, the contrast was very marked. ... The contrast between silence and sound, darkness and light—like that between summer and winter—was more strongly marked than it is in our lives. The modern town hardly knows silence or darkness in their purity, nor the effect of a solitary light or a single distant cry."

"New South Wales" in its primitive phase—its first sixty years when Queensland was a slowly growing series of tiny settlements on its north-eastern frontier—seemed a survival from the Middle Ages. In Sydney—and Moreton Bay Penal Settlement—the contrast between adversity and happiness or between honours and riches on the one hand, and misery on the other, was indeed striking. The cruel publicity of convictism, of public executions and of floggings; the vivid contrast of costume that distinguished, dignified or degraded every class and estate—high officials, judges, the clergy, the artisans and tradesmen of various crafts, the soldiers, the chain gang and so on—were all remarkable features of the time.

The division into "orders and estates" was almost extreme. So far as the "bond" and the "free" were concerned, the distinction was as great as though the convicts were an alien subject race, under a ruling caste of conquerors. The contrast between town and country in the Middle Ages was hardly more striking than the contrast in "New South Wales" between the town with its high officials, soldiers, sailors, immigrants and convicts; and, the country round Sydney with the "manor houses" of the rich landed owners and their servants; or the half-cleared holdings of the "squatters" in the bush.


Only one who has lived in an outpost town in Australia or on the reclaimed edge of the vast forested shores or ranges of New Guinea can feel, perhaps, the import of that telling phrase concerning a "solitary light, or a single distant cry." City-born residents have never had the opportunity to feel its significance.
from Victoria to Queensland with their armed and ignorant dependants, shepherds, and assigned serfs.

The mechanism of government was reduced similarly to an almost mediaeval simplicity—the governor was an autocrat; high officials and monopolists were beyond the reach of lesser men; justice was subject to caprice, relationship, social status, accident, ignorance or inefficiency—and had an indifferent relation to law.

Who were the people who gradually developed the social pattern in the limitless eastern half of this continent, with its central penal settlement, its widely separated penal offshoots and its thin rash of sheep farms, cattle holdings and struggling groups of cottages at cross-roads, ports and fords?

Australian writers have often found it difficult to be objective about the convicts: their sympathies or prejudices have been seized by isolated incidents so that they have sometimes written as though all convicts had been martyrs to principle or victims of some savage sentence for a trivial crime.

It is true that, at the time of the first settlement in Moreton Bay (1824), the criminal code of Great Britain (and of the world in general) was harsh indeed. There were over 200 crimes nominally punishable by death; and the execution of the condemned was still a public spectacle.

All gross crimes figured among the 200, but at the other end of the list there were many savagely anachronistic, as for example:

"Slaughtering butcher's meat without a licence; damaging trees and saplings to an extent exceeding £5; stealing oysters from an oyster bed; defacing marks on government property; poaching, or, being upon land armed, by night, for the purpose of taking or destroying game or rabbits." (Scott p. 55.)

These laws, however, were already recognized as barbarous, and juries often would not convict. (55)

In war years, convicted offenders were allowed to enlist in the army (as has happened before to-day even in Australia); while, from 1618, judges in England could impose transportation for seven years or for life, instead of the death penalty.

Some small groups of convicts fell within the peril of the laws against political agitators—that is to say, people whose views were opposed to those of the government or who advocated parliamentary reform. It must be remembered that the global threat of Napoleon and of the apparently invincible and ferocious forces of the French Revolution was, to the Europe of 1793-1814, what the global threat of Hitler and of the apparently invincible and ferocious Nazi forces was to the world of 1939-45; or what the granite-faced leaders of the Bolsheviks and the forces of Communism have been from 1917 until to-day. To profess to be a "liberal" or a "democrat," in the Eighteen Tens to Eighteen Twenties, was as fatal to one's reputation as to be accused of "nazism," "fascism" or "communism" to-day. (55a)

The Irish rebellion of 1798 brought to Sydney a flood of bitter Irishmen who contributed a dozen streams of desperate discontent and occasional torrents of futile rebellion. In 1803 Péron, one of Captain Baudin's naturalists, reported unofficially:

"If ever the government of our country (France) should form the project of taking or destroying this colony ('New South Wales'), at the mere mention of the French name, every Irish arm would be raised"... It would be "easy to accomplish" by a descent on Sydney through Broken Bay (to the north)... "we could destroy it easily; we shall not be able to do so in twenty-five years' time." (56)

As late as 1834, another small group of prisoners fell victim to the antipathy of the Government to the Trade Union movement—then in its infancy. George Loveless, a sincere and honest man, anxious to improve conditions among the leaderless labouring classes was, with four other labourers from Dorsetshire, transported for seven years because of their connection with the Friendly Society of Agricultural Labourers, which pledge its members not to work for less than ten shillings per week! (However, public opinion was beginning to rebel and they were liberated two years later as a result of popular clamour.)

The "liberal" revolts all over Europe in 1848 had their repercussions both in the British Isles and in Australia. They resulted in the arrival of perhaps the last batch of convicts that appeal to one's sense of the romantic. These were the Irish rebels of 1848, including Smith O'Brien, John Mitchel, Thomas Meagher and other men of culture and distinction, (56a) who bore their fate with dignity and brought ability to the land of their exile.

Too much has been made, however, of these examples. Some half to two-thirds of the convicts were people of low intelligence who were a nuisance, whose lives were made miserable, and who were not fitted for social life. But large numbers of them were intelligent and well disposed, if only they could have had the fair chance of a decent life. There was a great waste of human life and talent, and the world is the poorer for it.
were unequal to the social demands of their time; or were frank scoundrels and ne’er-do-wells.

Arthur Phillip and his successors repeatedly deplored the class of convict sent out, and begged for better batches.

The very defects, it has been said, that made many of them offenders against the laws at home, made them wretchedly inefficient as a basic stratum on which to found a colony. “Numbers of them have been brought up from their infancy in such indolence that they would starve if left to themselves” Phillip reported. As more and more were sent out, he found cause to complain that the healthy and those who were masters of trades were retained in English prisons, whilst the useless were transported to Australia. It is a criticism as old and as new as assisted migration is.

Irregular as they were in type, the convicts were similarly irregular in numbers and in arrivals, though, after 1802, an attempt was made to send regular shiploads twice yearly.

On arrival they were told to fend for themselves—the settlement and the colony were in fact open jails, from which there was no escape.\(57\)

For thirty-one years—until 1919—no attempt was made by the government to house the convicts adequately in barracks. The government did, however, supply the convicts with food and clothing—when adequate supplies of either were available.

Salted meat was the staple; vegetables were rarely available in any variety; and food deficiency diseases were common. In times of famine, convicts and “assigned servants” were allowed to range the bush for food and this, it is said, led to many of them becoming experts in bushcraft and, occasionally, electing to abscond with aboriginal tribes, or to become bushrangers (as, for example, in Tasmania, where, up to 1818, bushranging was epidemic.) The colonists, it is said, often learned their bushcraft from convicts assigned to them as servants.

As late as 1810, after twenty-two years of settlement, the convicts in the hands of the government of “New South Wales” were often entirely destitute and, frequently, were unprovided with clothing or bedding. The men could earn a little money by spare-time work, but the lot of the female convicts was obviously worse, since, as they declared with truth, they had no means but one of paying rent and prostitution was, therefore, inevitable and virtually universal.\(57a\) The best that one could do, it seems, was to obtain a “protector” who was not too brutal.

A Government barracks for 600 convicts in three stories was ultimately opened in June 1819 at Hyde Park in Sydney, and convicts in government service there were compelled to wear a distinctive dress.

A women’s factory was opened at Parramatta in 1821, in the thirty-third year of the colony, and, for twenty years, had an average of some 1,000 inmates annually. It was closed in the late forties, by which time it was generally considered “a finishing school of vice where their principal occupation was the work of mutual corruption.”\(58\) Nevertheless, there were many instances of these women and girls becoming decent members of society through proper guidance. The work of Mrs. Caroline Chisholm in this regard is well known.

Considering these disabilities, it is not surprising that every convict sought “assignment to a master” and, except for political prisoners, who were subject to especial restriction, the government assisted assignment from the beginning. Indeed, assignment began with Governor Phillip, whose recommendations on the value that convicts could be to free settlers led to the sanction of the system as early as 1789. Governor King, in 1804, consolidated existing regulations.

All employers taking convicts were to sign an agreement which required them to clothe, house and feed the convicts for at least twelve months. The hours of labour were set at ten per day for five days of the week, and six on Saturdays. Any extra time the convict had could be employed to his own gain, but his master had first call on it, if he agreed to pay for it. The value of this extra time—from 3 p.m. to sunset daily—was put at £10 per year. Actually, a system of payment in goods, tea, sugar, tobacco, rum, and other extras grew up, which was not to the disadvantage of the master; it recalls a similar arrangement existing among indentured labourers on many plantations in New Guinea and the Solomon Islands up to the present.

The convicts transported to Australia from the British Isles between 1788 and 1863 numbered approximately 155,000; those sent to “New South Wales” and “Van Diemen’s Land” from 1787-1821 numbered 33,508, of whom more than half embarked after the fall of Napoleon and the close of the World War in 1815. In the late 1820s a systematic attempt was made to ally “reform” with the older element of “punishment,” but this did not reach any very

\(57\) Some amazing attempts at escape were made, e.g. Bryant with wife and children and seven others made a boat journey from Pt. Jackson to the East Indies—3,500 miles—rivalling, if not excelling, that famous boat trip made by Bligh after he was set adrift by the mutineers of the “Bounty.” On arrival, Bryant and his party fell into the hands of an English naval captain, were arrested, and were returned to custody.

\(57a\) (c.f. Historical Records of Australia I, Vol. 14, pp. 650-1; and Vol. 22, pp. 742-3; mentioned by Dr. F. K. Crowley, “Australia—A Social and Political History” 1955, Chap. 1.)

\(58\) (Ullathorne, W., “The Catholic Mission in Australia” (1888) quoted by Dr. F. K. Crowley op. cit.)
active stage of operation until 1840 when, transportation to “New South Wales” (including Brisbane) having ceased, the “assignment” system was replaced by the “probation” system in the only remaining convict area, “Van Diemen’s Land.”

The “papers” of the convicts were frequently incomplete; the sentences upon which they were transported were often unavailable; some soldiers were forced aboard for military offences for which they had never been tried; and, certainly, many others for offences (or for none) which did not involve transportation. Remissions were available for good conduct and, sometimes, convict conduct was exemplary or exceptional.

Matthew Flinders had convicts with him to supplement his sailors when he visited the Queensland coasts; all the early explorers similarly had convicts or assigned servants; indeed, the later explorers Leichhardt, Mitchell, and Gregory, who contributed so largely to the opening of Queensland’s vast pastoral and grazing areas, were also ably served by convicts. Patrick Leslie, the first settler on the Darling Downs, was accompanied by twenty-two convicts or ticket-of-leave men, who, he said, were “as good and game a lot of men as ever existed, and who never occasioned a moment’s trouble; worth forty men I have ever seen since!”, and there are many other instances.

Convicts, who by good conduct or exceptional service were liberated, were called “emancipists” and the same term was applied to those whose sentences had expired, although these were also known as “expirees.” “Tickets-of-leave” were issued also, which permitted convicts to work for their own benefit (subject to certain restrictions) instead of for a master. It must be remembered that there was no provision whatever for repatriation to England—unless a freed convict could make his own way back, he was in Australia for life.

Convict versus Colonist

At the time of the discovery of the Brisbane River, Commissioner Bigge’s report of 1823 included the following (1820) category of the social origins of the inhabitants of the Australian colonies, i.e. “New South Wales” and “Van Diemen's Land”:

<table>
<thead>
<tr>
<th>Civil condition</th>
<th>N.S.W.</th>
<th>V.D.L.</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Free immigrants</td>
<td>1,307</td>
<td>714</td>
<td>2,021</td>
</tr>
<tr>
<td>Born in colony</td>
<td>1,495</td>
<td>185</td>
<td>1,680</td>
</tr>
<tr>
<td>Holding pardons</td>
<td>1,121</td>
<td>231</td>
<td>1,352</td>
</tr>
<tr>
<td>Expires</td>
<td>3,255</td>
<td>362</td>
<td>3,617</td>
</tr>
<tr>
<td>Tickets of leave</td>
<td>1,422</td>
<td>368</td>
<td>1,790</td>
</tr>
<tr>
<td>Convicts serving</td>
<td>9,451</td>
<td>2,588</td>
<td>12,039</td>
</tr>
<tr>
<td>Children</td>
<td>5,668</td>
<td>1,020</td>
<td>6,688</td>
</tr>
<tr>
<td>Colonial Ships</td>
<td>220</td>
<td></td>
<td>220</td>
</tr>
<tr>
<td></td>
<td>23,939</td>
<td>5,468</td>
<td>29,407</td>
</tr>
</tbody>
</table>

Apart from these, there were the officials and the army personnel.

The ever-increasing moiety of free immigrants claimed that the convict atmosphere undermined the morality, and the autocratic system of government undermined the political rights, of the colonists, as British subjects. The contest grew increasingly keen as the convicts lagged more and more in numbers. The rise of the “free” as against the “bond” is often credited to the discovery of gold and the vast rush of fortune-seeking immigrants, but comparative figures for arrivals in Australia up to 1850 (the year before the discovery of gold) are as follows:

- 1788-1830: 63,000 convicts; 14,000 immigrants.
- 1831-1840: 52,000 convicts; 65,000 immigrants.
- 1841-1850: 30,000 convicts; 103,000 immigrants.

It is obvious the change in balance had become well established before gold influenced the picture at all.

A sweeping phrase or two describe the change that overtook Australia so far as the civil condition of the settlers was concerned. After the abolition of those restrictions on immigration that existed till 1816: Convicts, “ticket-of-leave” men, and emancipists dominated the ‘Twenties; assisted immigrants more and more captured the field in the ’Thirties; and they flooded it in the ’Forties.

The period 1820-1850 covers the gradual growth of pastoral ascendancy in Australian affairs; but it was, too, one in which marked changes occurred in public opinion all over the world.

Slavery, in a great variety of forms, had existed for thousands of years—it had been excused as “scriptural”—but the new factor of steam power from water by coal, the first railways in England in 1824-25, and other applications of mechanical power were already making manpower uneconomic. Great Britain was soon to free all slaves (1833) and to ban the slave trade; serfdom was to disappear (even in Germany and in Russia) within a generation more; assigned services—so like slavery in their “property in the person of
the assigned servant"—were to be abolished in 1838; and transportation itself was soon to be slain by comparisons of costs and performances.

The pattern of settlement in "New South Wales" (including Queensland) was determined by successive waves of very different incomers driven forward by economic causes in their homelands (and ultimately attracted by economic chances in Australia itself). Apart from the convicts, their guards, and their administrators, they comprised gentlemen and their assigned servants and personal staffs, adventurers and squatters, surplus labourers and assisted immigrants of every sort (including paupers of whom the local authorities were glad to be unburdened), and, like the froth of these waves, a thin spray of intellectuals, negligible and (largely) neglected.

The general calibre of the soldiery, their officers, the landed monopolists and others has already been mentioned. This curious agglomeration of "all types and nondescripts" was hardly the sort of community that invited the gift of responsible government, but it was inevitable that some steps should be taken in that direction. Before referring to these, however, it may be well to mention more specifically the situation at Moreton Bay, where even after the evacuation of the penal settlement and after the colonies of the south had violently indicated that they would have no more convicts, there were advocates for transportation—especially among the pastoralists.(58)

In Queensland the numbers of convicts had never been great—a score to begin with, less than 1,100 at maximum, and usually, a few hundred.

Captain Millar had been succeeded, as mentioned previously, by Captain Bishop, who was followed by Captain Logan, upon whose death Captain Clunie took command.

In 1835 Captain Foster Fyans succeeded Captain Clunie and the following year was visited by two Quakers, James Backhouse and George Washington Walker.

Backhouse and Walker were received with all necessary respect and their printed narrative is curiously illuminating.

"Adjacent to the Government House"(59)—they said of Brisbane—

(58) The few free immigrants, who came in the earliest days, were disappointing; they demanded excessive wages, exercised to the verge of caprice their freedom to change employers or to withdraw their service; and often affected an ostentatious freedom of speech and familiarity of behaviour to emphasise the distinction between their servile convict forerunners and themselves. "Afflicted both in pride and in pocket," the aristocracy (and there definitely was one) looked earnestly for relief towards any other source of labour—Indian, Chinese, Kanaka, or, somewhat longingly back to the dwindling stream of convict transportees.

(59) This stood near the present Government Printing Office: the garden stretched along the area now occupied between George and William Streets.

"are the Commandant's garden and 22 acres of Government gardens(60) for the growth of sweet potatoes, cabbages, and other vegetables for the prisoners. Bananas, grapes, guavas, pineapples, citrons, lemons, shaddocks, etc., thrive luxuriantly in the open ground. The climate being nearly tropical, sugar canes are grown for fencing, and there are a few thriving coffee plants, but not old enough to bear fruit. . . . The treadmill is generally worked by twenty-five prisoners at a time but, when it is used as a special punishment, sixteen are kept upon it fourteen hours, with only the interval of release afforded by four being off at a time. . . . Many of the prisoners were occupied in landing cargoes of maize or Indian corn from a field down the river" (one near Eagle Street and one, later, at "New Farm") "and others in diverting it of the husks. To our regret, we heard an officer swear at the men and using other improper and exasperating language. . . . We visited the prisoners' barracks—a large stone building calculated to accommodate 1,000 men, but now occupied by 311. We also visited the penitentiary for female prisoners, seventy-one of whom are here. . . . employed in washing, needlework, picking oakum and nursing."

Cooe points out (op. cit. p. 25) that there were forty women at "the Eagle Farm," employed in field labour, strictly watched in the daytime and kept in close confinement at night, some wearing chains to keep them fromabsconding.

"What the life must have been," writes Cooe, "that rendered association with the blacks of Moreton Bay preferable to its endurance must be left to those who choose to dwell upon the subject to conceive."

This is, of course, an extreme assumption; these women were bent on breaking jail to escape into the city, rather than the jungle. J. J. Knight in his book, In the Early Days, gives us a picture of their double walled-and-palisaded prison enclosure and the means they used to make assignations or to escape and return at will, with the assistance of some of the low-class soldiers ("diamonds" as the convicts called them). Little or no attempt was made at this or any other penal settlement to reform or protect the morals of the convicts. Those in Queensland were "doubly convicted."

(60) In the book "Botanical Miscellany," by Wm. Jackson Hooker, 1830, it has been pointed out to us by Mrs. Charles Young of "Como," Orrinthere, there are several excerpts from the "Journal of a two-months' residence on the banks of the Rivers Brisbane and Logan on the East Coast of New Holland," by C. Fraser, Colonial Botanist. It is recorded in the introduction, that Fraser had been directed to establish a Public Garden at Brisbane Town to collect the vegetable products of the country; to make observations on their uses and importance, especially on the forest trees; and to report on the nature of the soil and the extent to which it is fitted for agricultural purposes or grazing. He arrived on 30th June 1828 in the "Lucy Ann," and spent the next three weeks laying out the new gardens with Captain Logan and Allan Cunningham; inspecting various areas, and "examining a neglected cotton plantation."

Dr. Thompson, Inspector of Government Hospitals in New South Wales, forwarded some Sea Island cottonseed to an overseer he employed at a property near Mt. Flinders in the Moreton Bay area. It grew excellently, but after Dr. Thompson's death was neglected by the people who took over the property. Dr. Ballow in 1845 had some cotton from this area flourishing in his garden in Brisbane. W. Wilson, in 1847, had splendid returns from the same source near Mt. Flinders, and exported the first sample of it.
"Moreton Bay Penal Settlement" was set up when the dispute about transportation was reaching a stage of acerbity that demanded that convicts should be put out of sight if they could not be assigned to private masters; and it was closed when the fight against convictism was already won.

The conflict between the view of "New South Wales" as a penal settlement, on the one hand, and as a free and growing pastoral community aiming at nationhood, on the other, was adequately emphasised by the rigid restriction of access to the "Moreton Bay Penal Establishment" and to any place within fifty miles of it, except with formal official permission. For this reason, as will be shown later, pastoral settlement swept on north and west, outflanking the coastal area. (The maps of the area round Moreton Bay, with few exceptions, remained for quite a number of years as Flinders and Oxley had left them.)

It must be repeated that up to the close of the 1820s, the convicts had made Australia, such as it then was! As George Nadel says: (61)

"Convicts were welcome as a labour force while immigrant labourers were few, public works had to be built and shepherds were needed; that was the basis of the landholders' acceptance of the transportation system... But when British policy, in the person of the Governor, busied itself with matters other than assigning free convict labour to the landholding settlers, the fundamental cleavage between penal and colonial objectives was revealed... At last in 1819 Bathurst appointed a Commissioner of Enquiry to visit the colony and decide whether the time had not yet come when the benign laws of free trade would enable the government to encourage the free settlers and abandon the penal aspects of the colony."

Bigge, who arrived in 1819 to report and recommend, included in his writings the vital observation that "the penal as well as the colonial aspects of the establishment in New South Wales had always been in a state of conflict."

But how were the differences to be resolved? How could the wide, and perhaps widening, gulf be bridged? What was to be done with freed men unable to leave Australia? And what of Moreton Bay where labour was so scarce that anything whatever seemed acceptable, "bond" or "free!"

The official view, which is always the view of the moment, had varied necessarily with the times, and was confused and confusing.

Governor Phillip had said, for example:

"As I would not wish convicts to lay the foundations of an Empire, I think they should ever remain separated from the garrison and other settlers that they may come from Europe."

and he classed ex-convicts with convicts. However, he appointed

convicts as constables; Governor Hunter appointed Barrington (62) chief constable; Governor King showed recognition and favour to Bellasis and Fulton. In the conflict between the "emancipists" (and those who supported them) and the "exclusivists," Macquarie staunchly upheld the principle that "once a convict has become a freeman, he should in all respects be considered on a footing with every other man in the colony, according to his rank in life and character."

Macquarie went so far as to appoint ex-convicts to be magistrates, and he treated them as gentlemen if they deserved it (and sometimes when they did not, for he lacked discrimination and resented advice). The exclusivists opposed him openly and secretly both, and belittled his emancipist experts. In respect of the law, he had especial difficulty. The first three Judge Advocates were not lawyers at all: the third of them, Judge Advocate Atkins, was a drunken and dishonest reprobate as well.

The criminal and civil jurisdictions were separated in 1814 under the two brothers Bent, both men of legal education but, unhappily, both flatly opposed to Macquarie's emancipist friends. This paralysed the arms of justice till the death of one, and the recall in 1816 of the other brother.

Macquarie felt sympathy also for the convict settlers and had reported officially: "The best description of settlers are emancipated convicts or persons become free by servitude, who have been convicts."

To those free immigrant settlers who traded with the emancipists or used their special knowledge or abilities freely but who, nevertheless, rejected them socially, Macquarie said, bluntly, that they had come to a penal colony of their own free will, and that they should not have come if they were "too proud or too delicate in their feelings to associate with the population of the country."

In that question, all the controversial aspects of convictism (and emancipation), of responsible government, and, ultimately of Separation, had their origin.

The Growth of Public Opinion and Representative Institutions

Great land and river discoveries, the flood of immigrants that was attracted by their advertised promise, and the inadequacy for their needs of a political and administrative system based merely upon the needs of a penal settlement, disturbed public relationships more

(62) Barrington is wrongly said to have been the author of the well-known lines:

"True patriots we, for, be it understood,
We left our country for our country's good
No private views disgraced our generous zeal—
What urged our travels was our country's weal!"

He had been a pick-pocket, but, in Sydney, he became conscience-stricken and converted, and was ultimately a well known local preacher.


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and more. "New South Wales" began to be seen as an area of arrested development, on the pattern of the late Middle Ages. The period 1820 to 1850 was crucial in many ways. Feudalism in England had been succeeded (two centuries earlier) by a period of wool growing; followed, a century later, by the age of industrialisation; and, finally, by those reforms in responsible government that agitated Great Britain as the aftermath of the French Revolution, the Napoleonic wars, and the rise of "liberalism." With a variable lag, all these phases had appeared—telescoped in point of time—in "New South Wales," and the demand for modernisation of status and policy now became insistent.

It was no longer possible to say to the ever-increasing part of the population that was "free" (and it already far exceeded the "convict," "expiree" and "exile" moiety), that "they had come to a penal colony of their own free will" and must conform to its conditions, as though these were for ever immutable.

Australia had served its turn as a penal colony; the convicts had served Australia in their turn, and had a great part to play for a generation more; the break with the former system was to lead, first, to Separation for Victoria and Queensland and to some divorce of interest and policy between those colonies that were still starved for labour of any sort, and the older colonies that were not; and secondly, to a growing demand for Unity that led, in the end, to Separation from Great Britain—with her consent and blessing—and Federation as the Commonwealth of Australia. (See Chapter XV.)

Governor Sir Thomas Makdougall Brisbane was the first Australian governor whose powers were definitely limited. Until 1823 the governor had had no local Council to advise, to assist, or to check him. There was no court of appeal beyond him; the whole of the financial administration was in his hands, as were land grants and the assignment of convict labour. He appointed the civil officers: and a serious source of conflict continued to be the appointment of "emancipists." There was no trial by jury: a court, with a Judge Advocate and six military officers, tried such cases as were referred to it.

A definite proposal for a Council in 1812 was fervently opposed by Macquarie, and the Secretary of State, himself, was doubtful of the wisdom of setting up, in a turbulent penal community, a body which might overrule or weaken the authority of the representative of the Crown.

The constitutional status of the colony grew and matured, however, during the next few decades. Its first expression was in the New South Wales Judicature Act of 1823, which set up a Legislative Council. It was a poor thing, but a beginning—it was merely advisory in essence, since it could not initiate legislation; it consisted of nominees; it could only pass such laws as were submitted to it by the Governor; and it permitted him to override its own majority-decision against a proposed law, and bring it into force pending reference to the Imperial Government. (Parallels in the grudging grant of piecemeal measures of constitutional government to the Territories of the Commonwealth at the present time (1958) will readily occur to the mind.)

Trial by jury represented a great difficulty in a country peopled largely by convicts, but in 1830 it was instituted after earnest and persistent advocacy by W. C. Wentworth and others. That period is also distinguished for the active protection afforded by Chief Justice Forbes to the press, particularly in respect of certain ill-advised and reactionary attempts at autocratic intransigence by Governor Darling.

In 1842 bureaucracy, drawing a deep breath, made the Legislative Council two-thirds elective and actually inaugurated a new era, more or less by chance. Fully representative institutions, however, had to wait until another generation had passed, and the convict system had been long abolished. Australians themselves did not desire a mere transfer of power from the government to the leaders of the pastoralists and the squatters, whose self-interest was blatant. The home government in England, rendered timid by uncertainty and by broad changes in political opinion at home, alternated between a conservative fixity of authority, and an almost too willing transfer of it—both perhaps evidences of indifference there.

Indifference was the commonest reaction of the Australian public also. Why not? The "Moreton Bay" area under the new arrangements for responsible government, for example, was entitled to representation, but the electoral area was huge while the franchise was restricted to a tiny group. The constituency extended north to the limits of settlement; and west to include Ipswich and the Darling Downs; while, southerly, it took in the Logan area, the Upper Hunter area of New South Wales and Port Macquarie. The polling place was at Maitland—400 miles distant! It is little wonder that the prospect of the election of one member out of thirty-six by an electorate where the weight of the population not only lay in the "far south" but consisted of people who were quite uninterested in the north, was a matter of negligible interest to what was, later, to be Queensland. At the first election, Alexander Macleay (aged 77), a member of the Port Macquarie and Upper Hunter group, was elected

(63) It must be remembered that at this time in England, there were no votes for women and only about one man in forty had a vote. The Chartists were pressing for electoral reforms that were "seditious" then, but have, in most cases, become commonplace procedures now.
and gave good service—but it is unlikely that he ever regarded Morton Bay as anything more than a negligible outpost on the remote northern edge of his electorate. (63a)

The Reverend Republican

The times demanded a man of quite another calibre and they found him in Rev. Dr. John Dunmore Lang, who came to Australia in 1823 and first visited Brisbane in 1845. Intelligent but almost blindly impulsive, unflinchingly courageous, indefatigable, self-sufficient, aggressive and intolerant, he was to figure prominently in the struggle that now was imminent. To it he brought initiative and vigour, expressing both in his crusade against transportation; his practical scheme for assisted immigration of first-class free colonists; his plans for the establishment of four self-governing colonies along the seaboard to replace unwieldy “New South Wales,” and, particularly, his ideas of tropical settlement based on tropical agriculture.

The officials of the abandoned penal colony and their successors stood aloof, hoping, it has been sourly said, “to die at some distant date at their posts with their drawn salaries in their hands”; the pastoralists ignored everything but their interest in wool and the shortage of labour and credit. Lang, however, in the face of active opposition from both, set out to make his “Colony of Cooksland” an actuality.

He had far to go, but Time has won victory from his seeming defeat.

(63a) Though representative institutions were of slow appearance in Australia they were often of quick growth, and have frequently anticipated those of older countries. Victoria introduced the first Ballot law of any country (1856); the other Colonies of Australia followed her example promptly; it was not until 1872 that England did so; then British Columbia (1873); Canada (1874); Belgium (1887); Massachusetts and other U.S.A. groups (1888-1903) all took over or modified the procedure in the half century after Victoria initiated it. By 1893 similarly New South Wales had manhood suffrage (one man, one vote at 21 years of age) without property qualification. In 1894 South Australia had universal suffrage (including women).