The Development of Legislative Institutions in NSW 1823–1843[*]

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The first legislative institution in NSW was created in 1823, some 35 years after the establishment of the colony. Before that, Governors exercised 'almost unlimited power of legislation by orders and proclamations'.[1] Commissioner JT Bigge in the early 1820s published three reports on the state of NSW under Governor Lachlan Macquarie. As a consequence, the British Government decided to make major changes to the colony's governmental and judicial systems. A particular concern was that the practice of the Governor legislating without the involvement of a representative element was contrary to English constitutional law. One solution was some form of legislative council. The Colonial Office, however, believed that in a penal colony it was necessary for the Governor to have strong executive authority untrammeled by local factions. Moreover, Bigge had advised that there was little demand in the colony for such a body. He also doubted that there were suitable individuals available for appointment to a council. In the early drafts of the 1823 NSW bill the problem of illegality was to be remedied by the Governor legislating with the consent of the magistracy. Nevertheless, the bill as enacted contained a provision added at the last minute for a Legislative Council. This was partly because James Stephen, Permanent Counsel to the Colonial Office, believed that it was wrong to give so much power to a small unrepresentative group such as the magistrates. On a more general level, the difficulty of drafting adequate legislation to implement all of the complex changes desired also led to the decision to create a local legislature. Such a body would be better able to deal with the substratum of necessary detail and contingencies that would arise.[2]

Although the Governor now legislated with the advice of a Legislative Council his powers remained substantial. Only the Governor could initiate legislation, although he did need the Chief Justice's certification that a measure was not repugnant to

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English law. If the Governor declared a measure essential to the welfare and good government of the colony he needed only one supporting vote to pass it. In cases of rebellion or insurrection the Governor could enact laws without even a token supporter. The Council had the power to impose new taxes for local purposes. However, the Governor had sole control over all funds raised by taxes previously imposed by the Imperial Parliament. Ultimate authority was retained by London. A majority vote in the Council could defeat a bill, but the UK Government had the power to override this. The Crown could disallow a NSW statute within three years of its passage. A major limitation on the power of the Council was that it had no authority over 'the crucial matters of land policy or the transportation and utilisation of convicts'.[3]

The First Legislative Council was representative in an abstract, theoretical sense only. It consisted of no more than seven or less than five residents of NSW appointed by the Crown. The UK Government believed that any elected element was inappropriate as two thirds of the colony's population in 1823 were convicts or ex-convicts. Moreover, there was little demand in NSW for an elected legislature at this time. The Council was not intended to reflect public opinion and its members took an oath that they would not directly or indirectly reveal anything that transpired in the Council. Five officials were nominated as members of the Council which first met on 25 August 1824: Lieutenant-Governor William Stewart, Chief Justice Francis Forbes, Colonial Secretary Frederick Goulburn, the Principal Colonial Surgeon, James Bowman, and Surveyor-General John Oxley. This was an interim membership while the Secretary of State perused a list of ten names submitted by Governor Sir Thomas Brisbane from which he would select three non-official members. There was no intention that those selected would be other than supportive members of the colonial elite. Brisbane was told to include only 'principal merchants and landowners' whom he considered 'eligible' for membership.[4] On 20 December 1825 the members of the Second Legislative Council were sworn in. Lieutenant-Governor Stewart, Chief Justice Forbes, Colonial Secretary Alexander Macleay and the Archdeacon of NSW TH Scott were the official members. They were joined by John Macarthur, doyen of colonial landowners, Charles Throsby, another large landed proprietor, and the wealthy merchant Robert Campbell. ACV Melbourne has noted that although there were 'various changes in the personnel, the form of the Legislative Council, and the proportion of official and non-official members was not disturbed while the Act of 1823 remained in force'.[5] Although there was at times vigorous debate and dissent, the official majority and sympathetic non-official appointments meant that, on the whole, Governors experienced little serious obstruction in the Council. The Governor also had a 'negative independence' in legislating as he 'could refuse to submit a bill to the consideration of the legislative body'.[6]

NSW was a divided society at the time the first Legislative Council was created.[7] Political power and social status were monopolised by the exclusives, an elite caste of free immigrants who saw themselves as the natural rulers of the colony. Dominated by large landowners such as the Macarthur family, the exclusive faction

also included wealthy merchants, leading professionals, senior officials and high ranking military officers. Most exclusives despised the growing number of emancipated convicts because of their criminal past and believed they were permanently disqualified from acting as voters, legislators or jurors. Ex-convicts were excluded from the magistracy and the Council. The pretentious and status-obsessed exclusives refused to have any social contact with emancipists, even those who were prosperous and successful.

The emancipists resented their second class social status and the exclusives' determination to exclude them from full civil and legal rights. Many had become honest, hard working members of society and some extremely wealthy. In 1821, there were 7,556 ex-convicts in the colony compared to 1,558 free immigrants.[8] The emancipists agitated for redress of their grievances. A particular demand was for trial by jury rather than the existing system of using military officers as jurors. If emancipists were able to sit as jurors on the same basis as all other free colonists, the exclusives' claim to superiority would be undermined.[9] The emancipists found a leader in William Charles Wentworth. Wentworth's father D'Arcy had come to NSW in 1790 as an Assistant Surgeon on the Second Fleet. Although a professional man with aristocratic connections, D'Arcy had narrowly escaped conviction as a highwayman on a number of occasions and had to leave Britain as a consequence. In NSW he held a variety of official positions and became wealthy. However, his past and a series of liaisons with convict women meant he was not socially acceptable. William Charles was D'Arcy's illegitimate son by a female convict. Educated in the UK were he was called to the Bar, Wentworth at first aspired to acceptance in exclusive circles but was rejected. A desire to take revenge and a loftier motivation to bring full constitutional rights to NSW inspired Wentworth to put himself at the head of the emancipist party. He launched a vigorous campaign for trial by jury and, what was more novel, an elected legislature. If such a body was elected on a sufficiently wide franchise, the emancipists would dominate it and the exclusives would be 'humiliated and their social pretensions made irrelevant and ludicrous'.[10] Under Wentworth's leadership the emancipist cause broadened into 'a local liberalism and in time attracted increasing support from some professional men and emigrant landowners whose sympathies were roused as much or more by the causes of English liberalism as of its local counterpart.'[11]

The exclusives, in turn, were local Tories.[12] Many had established themselves as country squires on vast estates with a beholden if not entirely subservient tenantry. The aim of the gentry was to turn NSW into an hierachical, class-based society like Britain with themselves at the summit. They espoused a conservative ideology, wanting society to be guided 'by traditional beliefs concerning class, creed and politics'.[13]

The Act of 1823 was due to expire in 1827.[14] While the British Government deliberated on a replacement measure, the legislation was renewed for a year. There was no shortage of advice from NSW. The exclusives wanted to retain a nominated legislature and put forward proposals to strengthen their hold on power by adding a

similarly constituted upper house. Wentworth and his supporters campaigned for an elected legislature. Governor Ralph Darling was firmly opposed to this. He wanted little change other than reducing the power of Chief Justice Forbes, with whom he had clashed. The liberal-minded Forbes advocated a less autocratic government and a legislative body more representative of the colonists.

The authorities in Britain distrusted the emancipists and were sympathetic to the views of the exclusives. The Colonial Office was strongly of the view that NSW was not yet ready for a truly representative legislature. The Act of 1828 thus made incremental rather than fundamental changes.[15] The Legislative Council continued to consist of members nominated by the Secretary of State. The Governor submitted recommendations but these were not always accepted. Local acts and ordinances could be disallowed by the British Government within four years of their passage, not three as had been the case under the 1823 Act. The power of the Chief Justice to decide whether legislation was repugnant to English law had proved to be a source of friction with the Governor. This responsibility was now given to all the Judges of the Supreme Court. It was tempered by allowing the Governor and the Council to override temporarily the Judges' veto while the UK Government arbitrated on the matter. Some concessions were made to liberal opinion. The size of the Council was increased to between ten and 15 members. The Secretary of State expressed the hope that this would allow the non-official membership to be more representative. It was now officially intended that the proceedings of the Council should reflect colonial opinion. To this end, the oath of secrecy was dropped. However, it was not until 1838 that the public were admitted to the Council and its debates reported in the press. Eight days public notice was to be given of legislation unless there were special reasons for urgency. Members of the Council were able to request that bills be introduced. While the Governor could refuse, his reasons had to be made public thus putting pressure on him not to act capriciously. The previously existing powers of the Governor to legislate without majority (or any) support in the Council were dispensed with. All revenue except that from the sale of land and rights and properties of the Crown was under the control of the Council. From 1832 onwards the Governor submitted an annual appropriation bill. The financial statement was made available to the public.

The Third Legislative Council first met on 21 August 1829. It was to remain in existence until 1843. The Governor presided over the Council. He had a casting and a deliberative vote. There were seven official members: Chief Justice Forbes, Colonial Secretary Macleay, Archdeacon Scott, Attorney-General Alexander Baxter, Auditor-General William Lithgow, the Collector of Customs, Michael Cotton, and the Commander of the Military Forces, Colonel Patrick Lindesay. An equal number of non-official members were appointed: John Macarthur, Robert Campbell, Alexander Berry, Richard Jones, John Blaxland, Edward Close and John Thomas Campbell. There was little evidence of the promised diversity of representation. Macarthur was the leader of the exclusives, Berry and Blaxland were large landowners, Robert Campbell and Jones wealthy merchants and Close was a landowner associated with the exclusives. John Thomas Campbell was

something of an exception to this pattern of exclusive monopoly. He had been Governor Macquarie's Secretary and although a large landowner supported liberal causes. Campbell died in January 1830 and was replaced by Hannibal Hawkins Macarthur, John's nephew and a fervent exclusive. The balance of seven official and an equal number of non-official members was maintained throughout the life of the Third Council, as was the dominance of the exclusives. Campbell, Berry, Jones, Blaxland and Hannibal Macarthur were still members of the Council in its final session in 1843, as was John Macarthur's son James. Sir John Jamison, who served from 1837 to 1843, was the only exception. Although a free immigrant and large landowner, he was a prominent liberal. According to Melbourne, the Colonial Office's aim of broadening the membership of the Council was frustrated by two factors. The Macarthur family had much influence in London and their lobbying was a major reason for the preponderance of exclusives. The other was the lack of liberals whom Whitehall considered suitable for nomination. Apart from Jamison, the other obvious contender was Wentworth but he was not acceptable because of his unrestrained opposition to Governors Darling and Gipps and British policy in general.[16] The end result was that the Third Council 'was not representative of public opinion but opposed to it'.[17]

The Governor had an advantage in the Council in that the votes of the seven official members plus his own constituted a majority. This phalanx, however, was not as solid as it appeared as many of the officials, particularly Colonial Secretary Macleay, were aligned with the exclusives. The Governor's attendance in the chamber gave him a more intangible asset. He was at the apex of colonial society in terms of power and status and his presence could sometimes overawe opposition. Governors needed these advantages as they were increasingly in conflict with the exclusives over local policy and the decisions of the British Government. The assumption in London that the Governor's position would be strengthened by the appointment of members of the colonial elite to the Council proved to be false, especially when a liberal like Sir Richard Bourke held office. The exclusives in the Council 'sought to legislate for their own class; for the same purpose they abused their power to appropriate the general revenue, and they were able to embarrass the government in many ways …'[18] An example of the latter was Bourke's attempt to meet the emancipists' long standing demand for trial by jury. This right had already been granted in civil actions and in 1833 Bourke introduced a bill to extend it to criminal cases. There was a furious reaction:

> The non-official members offered a violent opposition, and even the official members withheld their support until the Governor had agreed to certain amendments. Ultimately it was necessary for the Governor to use his casting vote to save the bill.

The compromise reached was that although civil juries would be introduced, a military jury was still available if requested by the accused.[19]

Unsurprisingly, the Third Legislative Council had few defenders.[20] The liberals continued to campaign for a popularly elected legislature and the enfranchisement

of emancipists. The Australian Patriotic Association was formed in 1835 to make representations to London to this end. It retained a British MP as an agent. Wentworth drafted two bills which the Association had presented to the British Government. One provided for a fully elected legislature, the other for a blended Council of both elected and nominated members. Bourke advocated introducing an elected element into the Council as part of a gradual transitional to full responsible government. The exclusives admitted the Third Council's inadequacy but did not see nomination as the problem. Their solution was to increase the number of non-official members so that they constituted a majority and to allow them to introduce legislation. James Macarthur travelled to London to make use of his family's excellent connections at the Colonial Office to argue the exclusives' case.

The Colonial Office was aware that the system of representation in NSW needed reform but was uncertain how to proceed. Fears lingered about the suitability of colonial society for an elected legislature. While government solely by one faction as was presently the case was undesirable, the wholesale hand over of power to ex-convicts was seen as equally unacceptable. One solution that was considered was indirect election. Under this scheme, elected municipal councils would be created which would in turn provide members for the Legislative Council. The popular will would thus be represented but in a diluted, safer form. While the British Government prevaricated, conditions were changing rapidly in NSW with the end of transportation in 1840 and rapid growth in free immigration. In 1839, 10,549 free emigrants entered NSW compared to 407 in 1831.[21] By 1841, 64% of the population was free.[22] The introduction of trial by jury had removed a major source of conflict. The old division between exclusives and emancipists was becoming less relevant and the colony now seemed more suited to traditional English constitutional government. Governor Sir George Gipps, who took office in 1838, strongly argued against indirect election and for a blended Council. The liberals through their agent in London continued to press for an elected legislature. The changed circumstances of NSW had turned James Macarthur from 'an enemy of liberal constitutional reform into its most respectable advocate'.[23] Increasingly hostile to British Government policy, he had decided that self government was the surest way to protect the interests of the landed gentry. He could not credibly argue that NSW was ready to govern itself but not fit for a more representative legislature. A consequence of more autonomy being granted to the colony would be a struggle between liberals and conservatives for power. Macarthur's aim was to forge an alliance between the exclusives and wealthy emancipists which would create a new hegemony in a self governing NSW.

The pressure for change was irresistible. The British Government decided that a blended Council represented a safe compromise for a society that was divided and politically inexperienced and a bill to create such a body was introduced in June 1840. It did not proceed because of the political weakness of the Whig Government which fell soon after. The new Tory administration accepted the need for a blended Council and expeditiously passed the *Australian Constitutions Act (No. 1)* in

1842.[24] It created a Legislative Council of 36 members, 12 nominated and 24 elected by the people of NSW. Not more than six of the nominated members could be officials. Members were to be nominated by the Crown. This power was delegated to the Governor soon after the passing of the Act. Both categories of member had a term of five years. The Council was able to increase its size but the ratio of nominated to elected members had to be maintained. It could determine the boundaries of electorates and the number of members for each. Former convicts could vote and become members. However, the right to stand for election was restricted to the relatively well-off. Only those who possessed freehold property worth £2,000 or producing £100 annually in rent were eligible to be members. The qualification for electors was less restrictive. Male British subjects over 21 who were not convicts and had for six months or more possessed freehold valued at £200 or paid £20 per year in rent were able to vote. The rental qualification enfranchised many working men in Sydney. In rural electorates, the working class was generally disqualified from voting.[25]

The Governor was no longer to be a member of the Council and a Speaker was to be elected to preside in his place. The Council's choice of Speaker had to be approved by the Governor. The Speaker had a casting but not a deliberative vote. A quorum was one third of the members (exclusive of the Speaker). The Council was to draw up its Standing Orders but they were to be submitted to the Governor for approval. Although the Governor lost his monopoly on introducing legislation, he retained the sole right to introduce money bills. The Governor could request that legislation be introduced and could suggest amendments to bills passed. Legislation was not to be repugnant to English laws and the Crown could disallow NSW statutes within two years. Bills passed by the Council went to the Governor for his assent. He had the right to withhold this and could reserve bills for the Royal Assent. The Act specified that bills amending electoral boundaries, altering the size of the Council, adjusting gubernatorial and judicial salaries and affecting customs duties were to be reserved. The Governor's Instructions also directed him to reserve other types of bills. As well as these constraints, the British Government kept control of land policy and revenue. The Governor was given independent sources of finance. The Council had no control over funds raised from fines, forfeitures and other penalties. Three schedules to the Act gave the Governor £81,600 annually. Schedule A allocated £33,000 for his salary, that of the judges and for the administration of justice. £18,600 was provided in Schedule B for the civil administration and £30,000 in Schedule C for public worship. The circumscribed powers of the new Council disappointed both liberals and Macarthur and his allies.

Under the 1842 Act it was left to the existing Council to create the machinery for the first election. Early in 1843 the Third Council met for the last time and passed the *Electoral Districts Act*. It dealt with the compilation of lists of eligible voters, the appointment of returning officers, the issuing and returning of writs, adjudicating on disputed returns and other measures necessary for ensuring the 'orderly, effective, and impartial' conduct of elections.[26] Most importantly, the

Act specified the boundaries of electorates and the number of members each would return. Electorates were based on the 19 counties within the 'Limits of Location' as prescribed in 1829, with some combined to form one electoral district. Areas outside the settled districts were thus unrepresented. In recognition of the growing significance of the region that was to become Victoria, Port Phillip was allocated five members and the town of Melbourne one. Sydney returned two members as did the County of Cumberland on the outskirts of the city. All other electorates had one representative. The boundaries were based on the representation of interests, chiefly landed proprietors, rather than equality of population or geographical contiguity. Northumberland and Cumberland were separated into County and Borough electorates, the former consisting of the rural areas and the latter the major towns. The electoral map shows the towns as small islands in a thinly populated rural sea. There was, in general, a deliberate under-representation of urban areas. Three-quarters of the members represented country seats although 58% of the population lived outside Sydney and the main towns. The 6,000 voters in Sydney returned two members while the 600 in Durham were represented by one.[27]

The Third Council had one final duty to perform. Since 1829, the Legislative Council had met in a room at the northern end of the former Principal Surgeon's quarters of the 'Rum' Hospital in Macquarie Street. The increase in membership of the Council meant that larger accommodation was needed. Colonial Architect Mortimer Lewis outlined a number of options to a committee set up by the Council to investigate the matter. One was to use the old Government House, as the Governor was moving to new premises in the Botanic Gardens. He did not favour this option as it would entail considerable expense. In addition, as the building stood 'across the line of a proposed principal street (Phillip Street)', its use would 'prevent the sale of land which might be expected to realise a very large sum'. Even then, development was an imperative in Sydney. Another proposal was for an addition at the rear of the present chamber. Lewis preferred adding a chamber at the northern side of the old Hospital building. He suggested that the foundations 'should be of stone, but that the walls be of brick, with a facing of Roman cement'. The proposed chamber would be

> 28 feet in height, being about two feet higher than the Hall in the New Government House. The pillars for the ornamental work on the front would but slightly increase the expense, as those now on the north side of the building would be available for the purpose.[28]

The committee agreed with Lewis and his proposal was accepted by the Council. This was the chamber in which the first representative legislature met and in which the Legislative Assembly still meets.

By the time of the creation of the Fourth Council, the old division between emancipist/liberal and exclusive/conservative groups was fading. A process of political realignment was underway. DWA Baker has observed that two issues were sharply debated:

> One was whether NSW was now able to govern itself instead of being ruled by Great Britain; the second was which people in NSW should do the governing. Should political power be confined to the educated, to the well-to-do, to those with a stake in the country or should it be spread among all citizens?[29]

There were many differing views about the second question. Wentworth was by now moving towards a political alliance with his former exclusive enemies, convinced that the wealthy needed to combine to defend their interests. James Macarthur's vision was of a NSW ruled by an enlightened landed gentry with a sense of *noblesse oblige*.[30] Many middle class merchants and professional men were opposed to the attempts of the old landed gentry to keep power in their hands but had no desire to widen the franchise. Radicals and democrats had visions of a new, egalitarian society in a new land. [31]

Many of these differences were, however, submerged in the demand for self government. The actions of the British Government had aroused widespread hostility in NSW and a consequent desire for greater autonomy.[32] As the local representatives of the Crown, Governors could not escape the backlash of colonial hostility. A major grievance was the British Government's insistence since 1835 that NSW pay the cost of police and gaols. The conservatives who dominated the Third Council had vigorously but unsuccessfully resisted this impost which they and many others saw as unfair and excessive. The limited powers granted to the first representative legislature were resented. The Schedules to the 1842 Act which gave the Governor some £81,000 annually over which the Council had no control were a particular sore point. Lack of local control of land policy and revenue was a further source of complaint. Land was the issue in which almost all colonists had an interest. Those who possessed much wanted to hold on to it. Those without saw obtaining land as the way to better themselves. The attempt by Secretary of State Lord John Russell in 1840 to partition NSW into three colonies and impose a high, fixed price for land outside the settled districts in accordance with the theories of Edward Gibbon Wakefield[33] outraged most sections of colonial opinion. Although Russell soon abandoned his scheme, a legacy of distrust of London's competence to determine policy for NSW remained. All of this meant that the Fourth Council was not predisposed to be supportive of either the local or Imperial governments. As JM Ward has observed, the Council was 'so constructed that respect for property, profits and privilege was guaranteed, but respect for Downing Street and for governors was less well assured'.[34]

While responsible government is rightly celebrated as a key milestone in the political history of NSW, the advent of representative government is now largely overlooked. The colonists, however, had no doubt as to the significance of the occasion. During the campaign for the first election, which was held in June and July 1843, the 1842 Act was described as 'the very dawn of the political liberty of the colony', an opinion shared by many in NSW at the time.[35] ▲

End Notes

[1] WJV Windeyer, *Lectures on Legal History*, Law Book Co, Sydney, 2nd edn 1957, p 305. I am indebted to Dr JM Bennett for this reference.

[2] This account of the First Legislative Council is largely drawn from ACV Melbourne, *Early Constitutional Development in Australia*, UQP, 2nd edn, 1963, pp 88–103; JM Ward, *Colonial Self-Government: the British experience 1759–1856*, Macmillan, London, 1976, pp 130–9; A Twomey, *The Constitution of New South Wales*, Federation Press, Sydney, 2004, pp 2–3; and T Richards, *An Epitome of the Official History of NSW*, Government Printer, Sydney, 1883, pp 34–8.

[3] J Hirst, *Freedom on the Fatal Shore: Australia's first colony*, Black Inc, Melbourne, 2008, p 159.

[4] T Richards, *An Epitome of the Official History of NSW*, Government Printer, Sydney, 1883, p34.

[5] ACV Melbourne, *Early Constitutional Development in Australia*, UQP, 2nd edn, 1963, p 113.

[6] ACV Melbourne, *Early Constitutional Development in Australia*, UQP, 2nd edn, 1963, p 114.

[7] The following paragraphs are largely based on J Hirst, *Freedom on the Fatal Shore: Australia's first colony*, Black Inc, Melbourne, 2008, pp 139–52; A Tink, *William Charles Wentworth: Australia's greatest native son*, Allen and Unwin , Sydney, 2009, pp 42–67; ACV Melbourne, *Early Constitutional Development in Australia*, UQP, 2nd edn, 1963, p 56–73; M Roe, *Quest for Authority in Eastern Australia 1835–1851*, MUP, 1965, pp 35–44, 54–5; and JM Ward, *James Macarthur: colonial conservative, 1798–1867*, SUP, 1981, pp 30–2.

[8] ACV Melbourne, *Early Constitutional Development in Australia*, UQP, 2nd edn, 1963, p73.

[9] J Hirst, *Freedom on the Fatal Shore: Australia's first colony*, Black Inc, Melbourne, 2008, p 149.

[10] J Hirst, *Freedom on the Fatal Shore: Australia's first colony*, Black Inc, Melbourne, 2008, p 152.

[11] J Hirst, *Freedom on the Fatal Shore: Australia's first colony*, Black Inc, Melbourne, 2008, p 150.

[12] On conservative ideology and power in NSW see M Roe, *Quest for Authority in Eastern Australia 1835–1851*, MUP, 1965.

[13] M Roe, *Quest for Authority in Eastern Australia 1835–1851*, MUP, 1965, p 34.

[14] The following account of the 1828 *Australian Courts Act* and its genesis is largely drawn from ACV Melbourne, *Early Constitutional Development in Australia*, UQP, 2nd edn, 1963, pp 125–62; JM Ward, *Colonial Self-Government: the British experience 1759–1856*, Macmillan, London, 1976, pp 138–48; and A Twomey, *The Constitution of New South Wales*, Federation Press, Sydney, 2004, p 3.

[15] The 1828 *Australian Courts Act*, as its title implies, made major changes to the colony's legal system as well as altering the Council. For the early history of the legal system see JM Bennett, *A History of the Supreme Court of NSW*, Law Book Co, Sydney, 1974, ACV Melbourne, *Early Constitutional Development in Australia*, UQP, 2nd edn, 1963, and A Twomey, *The Constitution of New South Wales*, Federation Press, Sydney, 2004.

[16] ACV Melbourne, *Early Constitutional Development in Australia*, UQP, 2nd edn, 1963, pp 170–2.

[17] JM Ward, *Colonial Self-Government: the British experience 1759–1856*, Macmillan, London, 1976, p 150.

[18] ACV Melbourne, *Early Constitutional Development in Australia*, UQP, 2nd edn, 1963, pp 174–5.
[19] JM Bennett, *A History of the Supreme Court of NSW*, Law Book Co, Sydney, 1974, pp 80–89; ACV Melbourne, *Early Constitutional Development in Australia*, UQP, 2nd edn, 1963, pp 194–7. The use of military juries was finally abolished in 1839.
[20] For the background to the creation of the Fourth Legislative Council see ACV Melbourne, *Early Constitutional Development in Australia*, UQP, 2nd edn, 1963, pp 202–68; JM Ward, *Colonial Self-Government: the British experience 1759–1856*, Macmillan, London, 1976, pp 148–68.
[21] JM Ward, *Colonial Self-Government: the British experience 1759–1856*, Macmillan, London, 1976, p 163.
[22] MMH Thompson, *The Seeds of Democracy: early elections in colonial NSW*, Federation Press, Sydney, 2006, pp 18–9.
[23] JM Ward, *Colonial Self-Government: the British experience 1759–1856*, Macmillan, London, 1976, p 163.
[24] On the 1842 Act see ACV Melbourne, *Early Constitutional Development in Australia*, UQP, 2nd edn, 1963, pp 269–76, 283–9; JM Ward, *Colonial Self-Government: the British experience 1759–1856*, Macmillan, London, 1976, pp 168–71; and A Twomey, *The Constitution of New South Wales*, Federation Press, Sydney, 2004, pp 3, 232.
[25] J Hirst, *Freedom on the Fatal Shore: Australia's first colony*, Black Inc, Melbourne, 2008, pp 223–4.
[26] *Votes and Proceedings of the NSW Legislative Council*, Session 1843 (Extraordinary), 24.1.1843, p 1.
[27] MMH Thompson, *The Seeds of Democracy: early elections in colonial NSW*, Federation Press, Sydney, 2006, pp 74; ACV Melbourne, *Early Constitutional Development in Australia*, UQP, 2nd edn, 1963, pp 282, 286; E Clifford, A Green and D Clune, eds, *The Electoral Atlas of NSW, 1856–2006*, NSW Department of Lands, 2006, p 2.
[28] *Votes and Proceedings of the NSW Legislative Council*, Session 1843 (Extraordinary), 8.2.1843, p 5.
[29] DWA Baker, *Days of Wrath: a life of John Dunmore Lang*, MUP, 1985, p 189.
[30] On Macarthur and his beliefs and attitudes see JM Ward, *James Macarthur: colonial conservative, 1798–1867*, SUP, 1981.
[31] See J Hirst, *Freedom on the Fatal Shore: Australia's first colony*, Black Inc, Melbourne, 2008, pp 209–28.
[32] See ACV Melbourne, *Early Constitutional Development in Australia*, UQP, 2nd edn, 1963, pp 181–7, 252–5, 282–9.
[33] JM Ward has summarised Wakefield's theory of systematic colonisation as follows: '… settlement should be concentrated in carefully regulated areas. In this way land prices would be kept up, labourers would have to work for wages for some years and standards of comfort and civilisation would be high enough among proprietors to attract the middle classes, whose capital, political ideas and social preferences were essential to the enterprise. The social structure so engendered would induce responsible attitudes in all classes …', *Colonial Self-Government: the British experience 1759–1856*, Macmillan, London, 1976, p 228.
[34] JM Ward, *Colonial Self-Government: the British experience 1759–1856*, Macmillan, London, 1976, p 168.
[35] MMH Thompson, *The Seeds of Democracy: early elections in colonial NSW*, Federation Press, Sydney, 2006, p 44. See Thompson's book for a detailed account of the first election.