

THE EXECUTIVE GOVERNMENT OF THE  
CAPE OF GOOD HOPE, 1825-54.

by

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THESIS PRESENTED FOR THE DEGREE OF  
DOCTOR OF PHILOSOPHY  
AT  
RHODES UNIVERSITY.

Rhodes University,  
Grahamstown.  
January, 1958.

## PREFACE.

The study of administrative processes is a relatively new one both in the field of history and sociology. In both disciplines what is required is a study of the structure and growth of administrative systems and of the impact of administrative action on the community it seeks to serve and which it often provokes. In the field of history, Professor T. F. Tout in his chapters on administrative history in 'The place of Edward II in English History' (1) gave new vitality and understanding to mediaeval studies. In the main South African history, though probably not more so than other Commonwealth countries, has been less fortunate. Much is written about the policies of Governors and High Commissioners; one frequently reads about British policy and the British Colonial Office. But a Colonial government no less than an Imperial government, has to work through a structure of higher and lower offices, staffed by men of greater or lesser mark, who, during the greater part of the nineteenth century, had attained office by means of patronage exercised sometimes according to sound principles, and sometimes according to unsound ones. In colonial affairs, though the Secretaries of State were always important, the determinants of policy were often, on the one hand, permanent officials like James Stephen, and on the other hand, the means at the disposal of these officials for receiving information about the affairs of the individual colonies, and for executing policy, with the sanction of the Secretary of State for the time being.

Dr. C. F. J. Muller, with considerable éclat, has analysed the motives of British Imperial policy in South

1. 2nd Edition, revised by H. Johnstone, published at Manchester, 1936.

Africa between 1836 and 1852 (2) ; H. T. Manning's study of the British Empire after the loss of the American colonies in 1782 (3), clearly shows how important it is to know about the administration of an Empire, and is an important contribution to the understanding of the history of the Cape Colony as well as of other British colonies. But her examination of the new Imperial pattern which emerged after 1782 breaks off at 1820, and neither Dr. Muller nor Miss Manning deal adequately with the Cape Colonial Office.

This thesis is an attempt to provide a new approach to Cape Colonial history from 1825 to 1853, and by articulating the structure of administration before 1854, to make possible a greater understanding of the parliamentary period which followed. At the same time it is hoped that it will provide a new perspective in the study of colonial and South African history.

I gratefully acknowledge generous financial assistance from the National Council of Social Research of South Africa, which enabled me to use sources in the Archives, Library of Parliament, and South African Public Library, in Cape Town.

2. C.F.J. Muller, *Die Britse Owerheid en die Groot Trek*, Cape Town, 1948.
3. H.T. Manning, *British Colonial Government after the American Revolution, 1782-1820*. O.U.P. 1933.

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## CHAPTER I

In which the political milieu in the Cape Colony is established for the period 1825 to 1854 and the first questions about the Executive Government are asked.

During the period 1825 to 1854 there were two threads of development which were in a sense complementary and in a sense diverse. The one was the growing demand for representative government and the other, confined to the Eastern Cape Colony, the persistent feeling that as long as the Eastern Province was tied administratively to the Western Province, or as long as the capital of the Colony was so far away as Cape Town, its interests and its development would be neglected. In the nature of things the two movements overlapped, but at the same time they showed what were the differences of opinion between East and West.

The West was predominantly Dutch. The Dutch of the Western villages were not politically idle, nor did they allow themselves to be led by the nose by Cape Town politicians or propagandists, though the latter were influential at all times. The leaders of the parties for reform were generally Capetonians, but they were not exclusively English. G.J. Brand, among the more important leaders, was as important as John Fairbairn; Ds. A. Faure, among the lesser lights, is equally noteworthy with Thomas Pringle. (1) Moreover, many of the most prominent attorneys and advocates were Dutch, as was even the Chief Justice,

(1) Fairbairn was the father of the free press in South Africa; Faure the editor of the first Dutch Journal; Brand the editor of the influential 'Zuid-Afrikaan'. Pringle also played a part in the press disputes in the 1820's, leading to a free press.

Sir John Truter, until 1828. The names of Brand, Watermeyer and Wicht were famous, and to be a man of law in those days meant almost automatically being a man of politics as well. Nor did these men feel very greatly that they were hindered by the fact that English was the language of the courts and of the Government; some of them, like Advocates Egidius Benedictus Watermeyer, C.J. Brand and J.H. Brand, were more proficient in English than many a tongue-tied or slow thinking Settler, and more effective in debate. (1)

The Western Dutch, then, did not have to learn from their English neighbours in the matter of striving for greater political freedom, or for the freedom of the press. Indeed they had further goals in sight than the English, who merely wanted freedom and representation: they wanted to assert themselves as old settlers with a different language and tradition, and to achieve equal dignity for their group.

Thus political development in the Western Province was very much of an Anglo-Dutch affair (2), and necessarily wherever English and Dutch farmers lived interspersed among one another, and in the metropolis, the difference between them was blurred by frequent intermarriage and social contact. (3) Political Englishmen were also bound to rely upon Dutch support, for the Dutch were much more numerous than the English. In the West, an area which had been

- (1) Vide Debates of the Cape Parliament, from the Advertiser and Mail, Publ. by S. Solomon, 1854-5, passim.
- (2) G.M. Theal, Records of the Cape Colony, (hereafter R.C.C.) Vol. 27, Report of the Commissioners of Enquiry, 6/9/1826, p. 375ff. P.F. 5/2/50, (1137) p. 16f. Memorandum of 10/4/48 by J. Montagu, paras. 19-20.
- (3) e.g. John Fairbairn's son-in-law was F.S. Watermeyer, twice a M.L.A. and a supporter of Molteno's Responsible Government policy in the 1860's.

settled for so much longer than the East, and which had largely forgotten its frontier history, it was inevitable that racialism as between non-European and European should be comparatively less than on the frontiers. In the West the Europeans had to contend with civilised Malays, whose handicrafts and sometimes whose education were recognised as superior; and also with Hottentots, who were in part as it were, a cadet branch of the European community and aroused no general suspicion or fear until the Kat River Hottentots rebelled in 1851. Thus it was that Western political thought was more liberal than that of the East, and what the Westerners applied to their coloureds they also thought was applicable to the blacks, who were the bane of the East.

It was understandable therefore that the Easterners should feel themselves different from the Westerners. In the south-east at any rate they were predominantly English. The settlers in Albany in particular felt themselves dominated by the Dutch West; ruled by a remote and unsympathetic colonial government; derided by a patronising and often critical Western newspaper (1). They disliked the constraint of Roman-Dutch law (2), objected to the Dutch law of inheritance which deprived them of freewill in the testamentary disposal of property (3), and reviled, until 1828, the amateurish and slow administration of justice. Even after 1828 neither the circuit courts nor the magistrates gave satisfaction in rural areas where employers

- (1) J.M. Bowker, *Speeches, Letters and Selections from important Papers*, p. 112, 142, 143.
- (2) Theal, R.C.C., Vol. 22, p. 288, Sir Richard Plasket to Wilmot Horton, 20/7/25. P.P. 5/2/50 (1137) p. 16. Memo. by J. Montagu.
- (3) Cambridge History of the British Empire, Vol. VIII, South Africa, p. 837. Cory, *History of South Africa*, Vol. V, p. 236. D.B. Sole, *The Separation Movement...* Vol. I, p. 66ff (unpublished thesis, R.U.)

were at the mercy of idle or improvident labourers and vagrant stock-thieves (1). Above all the racial liberalism of many Western politicians was oblivious to them, since it overlooked the dangers of frontier life, blamed them for the Kaffir wars from which they suffered so severely (if one except the profiteers of Grahamstown) (2), and denied them protection. This, and more, lay behind the movement to secure the separation of the Eastern Province from the Western Cape, or alternatively for the removal of the capital to the East. Probably lack of decision as to which of these two things to stand for was one of the chief reasons for the failure of the Eastern Separatist Party, which at times won sympathy in Government quarters at the Cape and in England. The Royal Commissioners of Enquiry, in sympathy with a petition of 1823 from Albany, which prayed for the removal of the Executive officers to a seat nearer the frontier, recommended that the Eastern province should have its own Executive officials and ultimately its own representative assembly (3). Subsequently, in 1827, in conformity with the policy of introducing colonists into the Governor's Council, the retiring Chief Justice, Sir John Truter, became the representative of the Western Districts in the Council and Andries Stockenström, the newly created Commissioner-General of the Eastern Districts, was made a member of it. (4) But the Governor and Advisory

(1) Bowker, *op. cit.* p. 126f.

(2) W.M. Macmillan, *Bantu, Boer and Briton*, p. 114f.

(3) Theal, *R.C.C.*, Vol. 27, p. 342ff, ref. to elective assembly p. 375f.

(4) Sole, *op. cit.* Vol. I, p. 17; Cory, *op. cit.* Vol. V, p. 66. E.A. Walker, *History of South Africa*, 2nd Ed., 1947, p. 168. The Advisory Council was created in 1825, *Vide* V. Harlow and F. Madden, *British Colonial Developments 1774-1834, Select Documents*, p. 111ff. Additional Instructions to Lord Charles Somerset, and see p. 61f. *infra*.



Council undermined his vague authority by controlling the whole colonial administrative network from Cape Town, and Stockenström eventually threw up the post in disgust. That Stockenström was the wrong man to have appointed is possible; he was not a comfortable man to work with, and it had been hoped perhaps that his preoccupation with the Eastern Districts would lead him to dissociate himself from John Fairbairn, whose persistent attacks upon the despotic form of government was causing some concern. But Stockenström "never lost an opportunity of declaring that the Council, as a step towards reform, was the greatest insult that could have been inflicted upon the common sense of any country." Constantly quarrelling with government officials or threatening to resign, in 1833 he was engaged in a fierce attack on the Governor when "a guarded but firm suggestion from the Imperial Government that it would be better for him and the Council if he ceased to be a member" caused his resignation. (1) That he had some cause for quarrelling is plain, for officials in the Eastern Districts referred matters directly to Cape Town without even bothering to inform their superior in the East (2), and since the Advisory Council met in Cape Town, his membership of it was practically meaningless, for it was as hazardous as it was costly to traverse a colony renowned for its excessively bad roads, mountain ranges without proper passes, and bridgeless rivers. The mere fact of these poor communications made the need for a controlling authority close to the

(1) R. Kilpin, *Romance of a Colonial Parliament*, p. 48 (hereafter 'Romance').

(2) Cory, *op. cit.* Vol. V, p.66.

frontier undeniable, and the Easterners, especially after Godlonton became editor of the Grahamstown Journal in 1834, did not cease to press for it. The sixth Kaffir War caused the British Government itself to re-appoint Stockenström to the Eastern province, this time as Lieutenant-Governor under Letters Patent which acknowledged that the government of the Eastern Province was "distinct and separate" from that of the Western Province.

The Lieutenant-Governor was appointed in order to provide the districts of Albany, Somerset, Uitenhage and "Graaff Reynet" with their own central administrative office, through which all the correspondence would pass which would otherwise be sent to the Colonial Secretary's office in Cape Town. The authority of the Lieutenant-Governor was intended to be identical, within his four districts, with that of the Governor's over the rest of the Colony, and the latter would only resume his former authority over these Eastern districts when he should be personally present within them. But the authority of the Legislative Council was still to extend over the whole Colony (1), and since the Governor and Executive Council controlled that body absolutely, it would be difficult to maintain the separation of the Eastern districts. The technical separation, then, had not gone far enough, but its failure was the more certain because Stockenström, though an Easterner, represented the political liberalism of the West (2), and Godlonton's paper had effectively

(1) G.W. Eybers, *Select Constitutional Documents Illustrating South African History, 1795-1910*, p.39.

(2) It is possible to over-emphasise the argument that Stockenström was a 'liberal' whose philanthropy was ungenerous to the White settlers. *Vide* J. Urie, *A critical study of the evidence of Andries Stockenström before the Aborigines' Committee in 1835, viewed in the light of his previous statements and policies.* (Unpubl. M.A. thesis, R.U. 1953.) And the Proceedings of, and Evidence given before the Committee of the Legislative Council on the Defence of the Eastern Frontier, 1854, p.26ff. - evidence of Stockenström.

danned him in the eyes of the British Settlers in the East for what he had said on frontier matters before the Aborigines Committee in London in 1835. Spurned by an unco-operative East, and denied his independence of action by a dominating West, Stockenström's position was so untenable that he gave way to an irascibility which in part caused his dismissal from office in 1838.(1) His successor, Colonel Hare, was neither temperamentally nor by experience fitted for an independent role in Eastern Province affairs. The office of Lieutenant-Governor therefore became insignificant. (2) - So much so that in October 1845 a proposal was made in the Legislative Council that the office should be abolished, and Governor Maitland agreed. (3) Not only was the Legislative Council unanimous in October about the failure of the Lieutenant-Governorship, but the Secretary of State, Lord Stanley, in a despatch to Governor Maitland, dated 26th May 1845, expressed 'grave doubts' as to whether the office should be continued after Lieutenant-Governor Hare's impending retirement. He asked Maitland to report on the utility of the office. The Governor's reply, on 24th October, agreed with the opinions expressed in the Legislative Council. Nor was Grahamstown enthusiastic about the Lieutenant-Governorship. The Graham's Town Journal of 28th August, 1845, stated that "it would be sheer

(1) He was mollified by the grant of a knighthood and a pension of £700 a year, charged to the Cape revenues. Grahamstown Journal, 17/5/1864 Obituary notice baldly states his death will mean the saving of £700 a year to the Colony! Sole, op. cit. Vol. I, p.55. C.W. Hutton, Ed. The Autobiography of Sir Andries Stockenström, Vol. II, p.203.

(2) Sole, op. cit. Vol. I, p.55f, 71ff.

(3) Correspondence between Pottinger and Young re Separation. p. 52, Maitland to Stanley, 24/10/45. Cf. Sole, op. cit. pp. 70ff., Cory, op. cit. Vol. V. p. 59.

fatuity to deny that the creation of this office has not fulfilled the public expectations or that its advantages have not at all been commensurate with the charge upon the public treasury. Whether this defect has arisen from defects in the constitution of the office, or want of power in the individual holding it, we need not stop to enquire. It is sufficient to know that it has not answered the original design, to be aware that prompt independent jurisdiction has not been exercised, and that no civil duties have been executed which might not have been performed by the Civil Commissioner, or even the clerk in his office." (1) This does not mean that the Lieutenant-Governor was not very busy, for a letter from Colonel Hare to Sir George Napier argues great activity. (2) Evidently as a consequence of this, on 2nd September 1845, the Executive Council advised Waitland to create what was in effect the new office of Frontier Commissioner and Agent-General. This official, it was clear, would practically (3) take over the conduct of native affairs on the frontier from the Lieutenant-Governor, and in the latter's absence "as far as possible, discharge his functions." Since the new office was a major one because Waitland suspected the abolition of the Lieutenant-Governorship by the Secretary of State was impending, (4) it must appear that it was appreciated that in native and frontier questions at any rate a local and important official was needed to look after the interests of the Eastern Province. (5)

(1) Vide. Sole, op. cit. Vol. I, p. 71f.

(2) Vide. F.P. 23/6/51 (424) p. 182f.

(3) Ibid. pp. 248, 249 and 252.

(4) Vide his despatch to Lord Stanley of 1st December 1845, pp. 246.

(5) Cf. Cory, Vol. IV, p. 403f.

During all this time the Easterners had been developing the wealth of their province to the point when in the mid-forties they claimed that the value of farm produce, of the customs revenues received from imports, and of exports from the Eastern Province, severally exceeded those of the Cape. (1) The feeling that they were not getting the appreciation and the assistance of the Western Government was therefore growing. There was positive cause for bitter complaint. For instance, the Legislative Council voted money for the development of Table Bay Harbour when the port at Algoa Bay, it was claimed, was in greater use, and the plea of the Easterners for a breakwater there was denied. It was left to local enterprise to construct shipping piers. (2) Other complaints, one suspects, arose from jealousy as well as wounded pride, because the Western Cape evidently received greater consideration. This was nowhere more apparent than in the matter of road construction. The Ordinance (3) which established the Central Road Board to manage the construction and repair of main roads for the whole Colony, was bound to spend "the entire proceeds of any such rate ... which shall be assessed in any particular Division ... wholly and exclusively ... (on) roads lying and being within that Division..."

Further, the Convict labour and money voted by the Legislative Council for the use of the Board was to be expended proportionally in all Divisions of the Colony, the proportions being arranged on the basis that the

(1) Cory, op. cit. pp. 68ff; Sole, op. cit. p.93, quotes figures used by the Executive Council in order to oppose the arguments of the Eastern propagandists.

(2) Wilnot and Chase, History of the Cape Colony, p. 293; Sole, op. cit. pp.61, 113.

(3) No. 8 of 1843.

Division which contributed the most in road rates should receive the greatest share of the supply voted by the Government. (1) But the Commissioners of the Road Board spent nearly all the money on roads in the Western districts, and D.B. Sole, an Eastern Province historian, has claimed that of £117,416 spent on the roads by the mid-forties, only £6306 had been spent in his part of the Colony. (2) In 1847 it was claimed in a letter of protest from Port Elizabeth that the contribution of the Eastern Province to the Road Board was £7,500 in 1845 (3) and Sir Henry Young estimated that between 1844 and 1846, £18,379. 6s. 7d. ought to have been spent in the East, exclusive of more than £6,000 due to it as a share of a loan taken up by the Road Board. (4) In a memorandum replying to these charges, the Secretary of the Road Board revealed patent flaws in the argument and upset the figures quoted against the Board, and showed in fact that the Board had spent £452 in the Eastern districts in excess of the amount received from it. During the period 1844-6 the Eastern Districts had contributed only 8½ per cent. of the total revenue placed at the disposal of the Board, or only £6,735 as against £26,504 by the Western districts. (5) The publication of these papers did nothing to soothe the Easterners, and if the Board could plead that in 1846-7 war and

(1) Correspondence between ... Sir Henry Pottinger, Governor ... Sir H.E.F. Young, Lieutenant-Governor, Eastern districts, and others, re separation of the Eastern and Western Provinces ... Blue Book, Cape Town, 1847, p. 29.

(2) Sole, op. cit. p. 112.

(3) Correspondence between Pottinger and Young, p. 28.

(4) Ibid., p. 31.

(5) Ibid., pp. 32-6.

upheaval had made it impossible to work on many of their roads, the fact remained that not only the progress of the Eastern districts and the prosperity of the whole Colony, but the requirements of the military authorities demanded early attention being paid to Eastern highways. These roads were so bad that it was dangerous to travel in a carriage, and sometimes in a wagon. In 1842 the Secretary of State for War and Colonies used the fact as an argument against acceding to a petition for the grant of a representative assembly for the Colony, since the Cape was 'inaccessible' to members who had to journey from the North and East of the Colony. (1) In actual fact, when Parliament did sit, from 1854 onwards, this was an element which told severely against the representation of the East in Parliament. (2)

Proposals to discontinue the office of Lieutenant-Governor in 1845, then, caused dismay and a renewal of petitions from the Eastern Province which still hoped that a fully "distinct and separate" colonial administration might be given to it, and which was opposed to any retreat to the former state of affairs, when the principle of separation was not admitted at all. The matter was sufficiently urged to cause Mr. Gladstone, then Secretary of State for War and Colonies, to call for more information so that he might advise the Queen about separation. (3) Thus, when Colonel Hare died in 1846,

(1) P.P. 1846 (400). 'Copies of all applications ... for Representative Government ... with copies of answers thereto...' 17th June. p.4, Stanley to Napier, 15/4/1842.

(2) Sole, *op. cit.* Vol. I, p.168f. R.W. Murray, *Reminiscences of a Life-time*, pp. 48, 54. Votes and Proceedings of the House of Assembly, 1854 onwards, end of session attendance especially; contrast the position when Parliament sat in Grahamstown in 1864. *Re state of the roads in 1854 vide e.g.* Debates of the House of Assembly, publ. S. Solomon, pp. 59, 61f, 373, remarks by Pote, Thackwray and J. Collett.

(3) Wilmot and Chase, *op. cit.* p.390f.

the office of Lieutenant-Governor, instead of being abolished, was filled by an energetic officer, Sir Henry Young, whose government, like Stockenstrom's earlier, was supposed to be separate and distinct. When he put his independence to the test, however, Mr. Justice Menzies disputed his powers, and the Executive Council produced reasons which not only persuaded Sir Henry Pottinger, but also the Secretary of State, to agree with Menzies. Moreover, sympathetic though the Governor was to the need of the Eastern Province for a separate Executive branch, he found from an examination of the documents relating to the creation and working of the Lieutenant-Governor's office that it had "merely nominal power", and that the provision for a 'separate and distinct' Eastern Province Government was "a dead letter". He declared, in fact, his substantial agreement with the observations of Governor Maitland: this "inferior office" possessed an inherent "insufficiency" which was "incompatible" with the "high functions it was supposed to fulfil." Young's office was practically meaningless. Pottinger, however, asked him to prepare evidence which the Executive Council should consider and report upon, so that a proper reply could be made to Gladstone's despatch of the year before. Young proceeded by addressing a circular to 38 prominent Easterners, inviting their detailed opinions about separate government institutions for the Eastern Province. The response of the province was electric. Letters, memorials, evidence poured in from all the Eastern towns and districts, all of which agreed, especially in view of the inadequacy of a Government centred several hundreds of miles away during



time of war that the capital must be moved to the East, or that total separation should occur. (1)

The reports which Sir Henry Young and the Governor sent to London agreed in the necessity for this change. But at the end of 1847 Young was transferred to Australia, Pottinger left for India, and Sir Harry Smith became Governor of the Cape of Good Hope. Smith, so far from favouring separation would not even allow a Lieutenant-Governor, or any agent to spoil his direct control of Eastern Province affairs, and no Lieutenant-Governor was appointed. (2) Yet the events after 1848 in both West and East were to cause him to radically change his opinion, (3) and Sir George Cathcart, his successor, actually carried on the government principally from Grahamstown, Lieutenant-Governor Darling being his representative in Cape Town, where the Executive Council continued to sit and where Parliament met in 1854. Cathcart's presence on the frontier notwithstanding therefore, the Easterners were convinced of the inferior treatment they were getting from an administration and legislature which remained primarily centered in Cape Town. (4)

(1) Correspondence between Pottinger and Young and others, op. cit. pp. 21, 45ff, 79ff, 122ff; Documents relative to ... Separate government for the Eastern Districts of the Cape Colony, Printed by Authority, Graham's Town, 1847, passim. Cf. Wilmot and Chase, op. cit. p.402ff; Sole, op. cit. Vol. I, Ch. III, passim. The second war within little more than a decade was then being waged.

(2) Ibid., pp.109ff. Wilmot and Chase, op. cit., p. 418. Smith was essentially a soldier who regarded the Eastern districts as mainly a military problem. Earl Grey tried to reverse his order re Young's transfer, but the latter had already left, and Grey failed to arrange for a replacement. Sole, Vol. I, pp. 110, 121.

(3) Sole, op. cit., Vol. I, p.149f. The Executive Council had similarly changed its opinion by 1851. Ibid.

(4) J.M. Bowker, op. cit. p. 136, is at once representative of this opinion and proof that it was not consistent: compare his pages 112 and 178.

Until 1847 no Easterner had had a seat in the nominated Legislative Council (1), so that if this body was thoroughly discredited in the West as being unrepresentative of colonial opinion, as well as for its powerlessness, it was even more contemned in the East. In the East, then, the Executive was criticised as distant, neglectful, unrepresentative, and imbued with the 'liberal' prejudices of the West; while in the West the Executive was attacked by up and coming press-men, lawyers, and patriots. To all and sundry it appeared to be oppressive.

The movement for constitutional liberty had begun at the Cape in 1826 when a plea was made by the citizens of Cape Town that they might elect representatives to the Burgher Senate, which had acted as a municipality for Cape Town and also as a liaison body between the Government and the Burghers. When this was refused, a petition praying for a representative assembly was sent to London. (2)

Again, in 1828, a large public meeting in Cape Town demanded representative government and some days later its resolutions were echoed, for the first time, by a popular appeal from Albany. (3) But it was only in 1830 that any considerate response could be got from the British Government, when a petition of that year, though refused, was answered with some care. The

(1) Kilpin, *Romance*, Annexure C. Sole, *op. cit.* Vol. I, p. 105.

(2) Walker, *op. cit.* p. 172. Harlow and Madden, *op. cit.* p. 114, *Petition re Burgher Senate*.

(3) Wilmot and Chass, *op. cit.* p. 296.

Secretary of State was of the opinion that the Cape was not fit for representative government. He feared that the Dutch and the English would be thrown into opposition by it, and that both would legislate oppressively against the slaves and coloureds. (1) Even at the Cape the later leaders of the reform party were soon at loggerheads on the question of representative government. The kind of situation which the Secretary of State had envisaged threatened when Fairbairn and Brand took opposite sides, and it appeared that the English and Dutch colonists would do likewise. Fairbairn contended that there should first be a guarantee given to the position of the non-European like that eventually given in the Masters and Servants Ordinance of 1842. Brand, through the 'Zuid-Afrikaan' saw no need to wait for guarantees. (2) Despite the clash in point of view the representations made in favour of colonial representatives sharing in the government were sufficiently strong to be part cause of the instruction given to Sir Benjamin D'Urban for the setting up of a Legislative Council in 1834, and for the establishment of municipal commissioners after 1836.

The Legislative Council, however, was not created by an Act of Parliament: there was no legal guarantee of its composition, functions, or even of its survival. It depended solely upon the Instructions and Commission issued to the Governor. This had the theoretical advantage of flexibility since the Instructions were re-issued

(1) Cory, *op. cit.*, Vol. V, Ch. VI, p. 230. And see Harlow and Madden, *op. cit.*, p. 104f, James Stephen to Horace Twiss, 25th August 1830.

(2) J.S. Marais, *The Cape Coloured People, 1652-1937*, p.199ff; Walker, *op. cit.*, p. 173f.

to each succeeding Governor. But it gave the constitutional party something of a pyrrhic victory, for, if in the Instructions given to D'Urban the unofficial Legislative Councillors were appointed for life and had the right to introduce legislation other than financial, <sup>(1)</sup> by the instructions given to Sir George Napier in 1838, both these points were omitted. Appointment was to be only during His Majesty's pleasure, and only members of the Executive Council who sat ex officio in the Legislative Council could introduce legislative proposals. Later in the year after strong protests had been made by the nominee Councillors, an amendment was made by means of additional Instructions, sent to Governor Napier, which restored the right to introduce legislation (2), but the success gained on only one point as well as the means by which correction was made showed how completely the Legislative Council was dependent upon the will of the Secretary of State.

The Instructions provided for freedom of debate in the Legislative Council. But the officials were to a considerable degree dependent upon the Governor's favour, and customarily agreed with his policy; nor would they debate in the Legislative Council about what this should be, for their decision would already have been taken in the Executive Council, or the Governor by exercising his prerogative power would simply require them to vote with him by declaring his decision to be the policy of the

(1) Harlow and Madden, op. cit., p.115ff, Instructions to Sir B. D'Urban, dated 8/11/33. Similar Instructions were given to the Governors of Ceylon and New South Wales, ibid. pp. 150 and 164, footnotes. The Executive Council was created at the same time and in the same way. See pp. 62-4 below. Cf. Cory, op. cit., Vol. V, p.230; Kilpin, Romance, p. 53.

(2) Ibid., p. 55ff; Theal, History of South Africa since 1795, Vol. II, p. 214.

Government. Only after William Porter became Attorney-General was the custom broken by which Executive Councillors at least during Napier's government, even on open questions, meekly accepted the Governor's views. (1) The official members were obliged to vote in support of measures decided upon in the Executive Council, and formally introduced into the Legislative Council by the Governor or his deputy for enactment. (2) On Government measures, therefore, the unofficial members could always be outvoted, since the Governors never appointed the full complement of unofficial members allowed by their Instructions. (3) As Chairman of the Legislative Council the Governor, or his deputy, had a deliberative vote and also a casting vote, which generally gave the official members seven votes against five. This was one of the reasons given by the four 'popular' members for their resignation from the Legislative Council in 1850, since it rendered the 'elected' representatives of a single short session in that year, like the merely nominated ones of previous years, an impotent minority against Government measures to which they were opposed. (4) Thus the Legislative Council was virtually the 'rubber stamp' of the Executive Council, and the representative character of the government given by the reform of 1834 was largely illusory.

(1) Kilpin, Romance, p. 59f.

(2) Infra. p. 100f.

(3) The Council could be composed of not less than 10 and not more than 12 members, exclusive of the Governor; there had to be 5 official members, and consequently from 5 to 7 unofficial members might be appointed. Exclusive of the years 1851-53, when the Council was 'packed', there were only 2 or 3 years between 1834 and 1853 when there were as many as 6 unofficial members. See Appendix for chart.

(4) P.P. 19/5/51, (1362), p. 91f. Address to ... the Municipalities, Road Boards and Ratepayers...

This the Cape Colonists fully realised. In the first copy of the Graham's Town Journal issued after the news about D'Urban's Instructions had been received, the Editor commented that "We are, we confess, not quite satisfied with the construction of the proposed Legislative Council;" "a legislative body wholly appointed by an individual," he quoted, "is still despotic." He expressed his nervousness about the "objectionable feature" which left the Governor free to appoint a "majority of official" members, and quoted sagely from an unnamed source: "the Legislature of every well regulated state ought to be so constructed that the members of it may have a common interest with the rest of the community; (1) that it should be composed of men belonging to various classes and professions, and be open in all its parts and on all occasions to the petitions and representations of the people." Observation of the working of the Council soon led to more positive and vigorous judgment. At first the Legislative Council had been summoned in camera, but after public protest in Cape Town, a local leader knocked upon the Council door and demanded admittance. With the crowd buzzing outside, the Council decided after lengthy debate to admit a few observers to the gallery after prayers had been said at the beginning of each session. Public attendance had a great effect upon the nominee members, for they began to behave more particularly as the representatives of the people, and began, literally, to play to the gallery. At the same time the public recognised their impotence, and the

(1) Vide. Ch. V infra, on the Cape Executive Councillors in this respect.

Legislative Council declined in prestige. By 1841 the Council had been stigmatised as being "a perfect farce". "That it is so", the speaker said, "was proved beyond dispute by the fact that when on a late occasion a member ventured to call in question the wisdom of some decision of the Whig Ministry, he was called to order by the Governor, who stated that he would not permit the conduct of the administration to be questioned or made a matter of discussion in that Council." (1) On yet another occasion Napier informed its members that they might save their breath in connection with the expenditure of money since decisions were taken elsewhere. Indeed, estimates of expenditure when laid before the Council could rarely be properly debated, and the Council had not the power to repeal taxes which were by common consent redundant. The Governor was "expressly enjoined not to propose or assent to any Ordinance which imposed new taxes, diminished the revenue, altered civil service salaries, or which provided for bills of credit, paper currency or state lotteries." (2) Apart from these limitations, the Council did not complete its business in one session but carried 'remainders' over from session to session, and the sessions were not even regular. (3) The fact that the Council adopted the rules of procedure of the House of Commons had little

(1) Graham's Town Journal, 4/11/41, Speech at a public meeting by Mr. Hadley on 30/10/41. Cf. Kilpin, Romance, p. 58.

(2) Kilpin, Romance, p. 63. Cf. Harlow and Madden, op. cit. p. 115ff. Instructions to Sir. B. D'Urban.

(3) R. Kilpin, Romance, p. 62f. A notice in the Govt. Gazette of 2nd March 1848 proclaimed that the Legislative Council would sit twice a year in future, in May and October. The stresses and strains of the succeeding years stultified this good intention. Vide F.P. 19/5/51 (1362) 19th May. Further Papers ... p. 134.

better merit, therefore, than that it provided some training and an example which would go some way towards assisting the members of the Cape Parliament in 1854.

There was also a serious flaw in legislative procedure. Formerly, in the Council of Advice, the Chief Justice had had a seat in the Council so that legal opinion concerning any legislation before the House was immediately available. When the Legislative Council was constituted, the Chief Justice was expressly omitted from membership, and it became the rule to refer Bills to the judges after the second reading, for their opinion and advice. This brought the judiciary into too close a relationship with the Legislature. (1) Judge Menzies in particular, a blunt man if honest, drove the Honourable Members to fury at times, and on one occasion the Hon. Henry Cloete even challenged him to a duel! (2) The worst incidence of conflict between the Legislative Council and Judiciary occurred in 1842, when the former body appointed a committee of inquiry, with the Governor's concurrence, on the Robben Island Convict establishment, and politely invited the judges to give evidence. The latter replied somewhat rudely, ignoring the status of the Chairman of the Committee, and declaring that they would submit their observations not to the Committee but to the Governor. This they did, setting aside the protests of the Legislative Council on the ground that it had no authority to compel anyone to give

(1) The Chief Justice became President of the Legislative Council in the Cape Parliament after 1853, and once again played a political role which was possibly disastrous before 1872.

(2) R. Kilpin, Romance, p. 64.



evidence, though evidence might presumably be voluntarily offered. The judges stated further that the Legislative Council had no right to appoint committees other than on Bills which were before the Council, and that the Robben Island Committee was therefore ultra vires. To complete the snub, they scolded the Legislative Council for communicating directly with the Judges, instead of through the Governor. A constitutional crisis followed. Advocate the Honourable Cloete moved and lost a resolution by one vote which included a statement that if the Legislative Council could not appoint committees to report, it should be entirely abolished, for otherwise the Council was impotent, and an insult to the public.

The Judges in exposing the powerlessness of the Legislative Council at this juncture, when the new Masters and Servants Law (which became effective in August 1842) had been placed on the Statute Book and the old objection to constitutional progress had thus been removed, played into the hands of the popular reform party, who, led once more by John Fairbairn through the columns of his newspaper, the Commercial Advertiser, demanded the abolition of the Legislative Council and the substitution of representative government. (1)

During 1841 and 1842, when it was suggested for the first time that the Cape should receive juvenile and military offenders in order to relieve Great Britain of a surplus of them, and at the same time provide the Colony with much needed labour, the Cape Town Municipality

(1) Kilpin, Romance..., is the principal secondary authority on the Legislative Council. C.H.B.E. Vol. VIII, p. 294 re Masters and Servants Law.

took upon itself to act as the voice of the people in protest, as if it should resuscitate in part the role of the former Burgher Senate. (1) In the following year (1843) with the establishment of the Central Road Board and Divisional Boards, a scheme got under way which, however admirable, roused the indignation especially of the Easterners, and encouraged them in their attacks upon a quasi-representative Legislative Council in which not a single Easterner had a seat until 1847. But the attack was often directed simply at the Executive Councillors. Thus at a public meeting at Fort Beaufort J.M. Bowker declared that "These gentlemen ... come from afar, know nothing of us ... do not exert themselves to become acquainted with us ... (and) do not feel in any way responsible to the colony." (2) At about the same time another Easterner J.C. Chase, directed the attention of the public away from the Legislative Council which it was popular to condemn, and stigmatised the Executive as being most responsible for the dissatisfaction of the colonists. (3) In these views the Editor of the Graham's Town Journal concurred, though he encouraged his readers to believe that "Despotism cannot exist in the atmosphere of free discussion" which prevailed at the Cape. (4) Yet it is evident that the objections to the form of government were not so very deep-rooted yet. After the arrival of

(1) P.P. 4/4/43 (217), re Transportation, pp. 1-15.  
J.F. Gohlbechts, Die Anti-Bandieten Agitation an die Kaap, p. 70. (Unpubl. M.A. thesis, Univ. of Stellenbosch, 1937)

(2) Bowker, op. cit., p.112, 19/9/43.

(3) J.C. Chase, The Cape of Good Hope and the Eastern Province of Algoa Bay, London, 1843, p. 96.

(4) Graham's Town Journal 29/6/43.

of the extraordinarily competent Montagu, as Colonial Secretary, in 1843, J.M. Bowker was as lavish with his praise and enthusiasm for the "activity and energy ... displayed by the present authorities" as he had formerly been with his contempt of them. <sup>(1)</sup> Before long he discovered that the Executive Councillors knew so much about the Eastern districts that it was a little uncomfortable for him. <sup>(2)</sup> The editor of the Journal was no less lavish with his praise of the Executive in general and Montagu in particular, by December, 1844. The future, from looking dull and uninviting had been 'magically' made bright, the Colony was becoming much more of a unity and much less of two distinct 'provinces'. In the same issue of the Journal an excited correspondent praised Montagu's Road and Convict scheme "as a striking memorial to our present Executive." <sup>(3)</sup> Even the fiery old democrat Sir Andries Stockenström does not appear to have wanted more than better representation and a more enlightened official Executive, until 1847. "I had long doubted the ripeness of the Colony for constitutional government," he recalled in his memoirs; "I thought that municipalities and elective boards of Heemraden, under a wise Colonial Minister and an enlightened Governor, were all that we were likely to require for still many years," but Pottinger's policies regarding natives on the frontier, and the Kat River Hottentots persuaded him that "some counterpoise to this fearful weight of 'I can, I will, and you shall' " was necessary. <sup>(4)</sup> Uniformity of opinion, then, on the

(1) Bowker, op. cit., p. 136.

(2) Ibid., p. 178.

(3) Graham's Town Journal 26/12/44.

(4) Autobiography, Vol. II, p. 294.

constitutional question, was wanting. An administration which in good times would be praised, would be attacked in bad times, or when the pet interest of particular individuals or groups were subjected to changed government policies. Liberals like Fairbairn would want an autocratic Executive to protect specially underprivileged classes, until laws which could be counted as 'entrenched' safeguarded them; in the meantime the attack was concentrated upon a Legislative Council which was as humiliating to the colonists as it was to those who sat in the Council. By the same token attention drifted back to the Executive, which increasingly became the object of direct attack again. But the motives and objects of the attack were mixed.

That particular sections of the colonists were in advance of others in their demands for reform is clear. But already in 1841 public agitation in the vicinity of Cape Town as well as in Lower Albany was becoming vehement. A large public meeting in Cape Town in August of that year was followed by another in Graham's Town in October, both of which petitioned for representative government for the Cape Colony. Characteristically the Cape Town Municipality sent its own petition, but the more popular one from the West was couched in terms possibly borrowed from Canada at that time: it begged the Queen to grant "That the government of this colony may as speedily as possible be assimilated in principle and form to that of Great Britain..." The Governor, in attaching despatches favourable to each of the Western petitions possibly overlooked the significant difference, which was already being debated elsewhere, between Repre-

representative Government and Responsible Government. (1) He wrote of 'representative government' and 'self-government' without indicating clearly whether he envisaged the introduction of colonists into the Executive as well as into the Legislature. But he used the words already quoted from the petition, and the Secretary of State, Lord Stanley in reply, began his despatch by referring to them. He, too, may not have appreciated their significance, since he saw in them a request that "the established system on which the executive Government of this Kingdom and of the British colonies is administered" should be departed from. (My underlining.) It may be that he saw in the colonial demands a suggestion that the representatives in an elected Parliament should dictate to the Crown in the matter of its choice of Ministers, a thing quite alien to the British Parliamentary system. (2) In any case, Lord Stanley believed the Colony too large and too complex in population for successful representative government, and the events which followed at the Cape seemed to prove that his views were as correct as his exposition of them had been cogent. In Britain, a new Whig Ministry under Lord John Russell, which was linked with the radical reformers, commonly known as 'the Wakefield School', together with events in the Empire, and above all in Canada, caused a change of opinion in the Colonial Office by 1846. In that year

(1) P.P. 1846 (400) p. 1ff. On the Grahamstown petition vide Wilmot and Chase, op. cit., p. 360f., and G.T.J. 4/11/41, report of a public meeting and its resolutions; it is notable that the Albany petition did not ask for Separation, and that the resolution for representative government was put by a Capetonian (J. Norton) and seconded by an Easterner (Mr. Franklin) expressly because it avoided the question of Separation. Vide infra pp. 72 ff regarding Canada.

(2) Re colonial 'responsible government', vide infra Ch. II.

Earl Grey (1) informed Sir Henry Pottinger that the British Government entertained "the strongest prepossessions in favour of (a representative form of government), and will be prompt to avail themselves of any opportunity of extending it to the British settlements in Southern Africa." He requested an answer to the questions which Lord Stanley had asked in 1842 in his despatch replying to the Cape petitions, and demanded a new report upon the subject. Despite his recognition that some of the objections, particularly with regard to relations between Boer and Briton, might now be more serious than they had been in 1842, Earl Grey urged that "some difficulties may be wisely encountered, and some apparent risks well incurred" in granting "the largest powers of self-government, in whatever relates to (the) internal and local affairs" of the colonies. (2)

With the War of the Axe in progress it was not until 1848 that the Cape Government made a reply. (3) Sir Harry Smith put the matter in the hands of the Attorney-General, William Porter, who furnished a persuasive memorandum which was circularised to his three colleagues on the Executive Council and also to the three Judges of the Supreme Court. On the basis of the opinions of these gentlemen, Porter prepared a draft constitution which had certain curious and interesting features. One of these was to the effect that the

- (1) Sir Henry George Grey, Viscount Howick, 3rd Earl Grey (1802-94), Secretary of State for War and Colonies 1846-52. Secretary of the Whig Prime Minister (1830-34) of Reform Bill fame, who was father-in-law of Earl Durham (Canada Report). Earl Grey sent Lord Elgin, son-in-law of Durham, to Canada, where he finally established Responsible Government (1847-54).
- (2) K.W. Bell and W.P. Morrell, *Select Documents on British Colonial Policy, 1830-1860*, p.91f. Pottinger is remembered, unfortunately, mainly because of his brusque treatment of A. Pretorius. It is probably unfortunate that his Governorship was so short. He rapidly gained a superior knowledge of colonial problems and in East and West actively sought information and opinions from the public. Vide Correspondence between Pottinger and Young, op.cit. passim., and Govt. Notice No. 2149, Govt. Gazette 29/1/47, in which he invited members of the public to interview him at stated times. Cf. Sir A. Stockenström's *Autobiography Vol.2*, Page 294. re Pottinger's 'immoral' despotism, and pp. 191-3 infra.
- (3) P.P. 5/2/50 (1137), Correspondence re establishment of a representative Assembly, 1848-50, p.3, Smith to Grey, 29/7/48, No. 109.

Governor should be able to summon the Legislature to any part of the Colony. The Governor and the Executive Council were of the unanimous opinion at that time that Cape Town was the only reasonable capital, but it offered a glimmer of hope for the Easterners, and the removeability of Parliament was a feature which endured in the Constitution of 1853 until Union in 1910. (1) Other proposals were that the Upper House should be composed of government officials as well as non-official members; that in addition to the high property qualification for candidates for both Houses, a very high educational standard should be set, for qualification by mere wealth failing, only doctors of medicine, surgeons, or advocates or persons of equivalent professional standing, could become members of Parliament; on the other hand, the franchise was exceedingly broad. (2) Porter's draft, all the papers connected with it, another petition from the Cape Town Municipality, together with a new petition from Albany and Uitenhage, were then forwarded to Earl Grey. The Cape Town petition, without actually adverting to Responsible Government, argued that control of the Executive by the elected representatives was desirable, and the Albany petition prayed for removal of the capital towards the East or Separation from the West. Earl Grey, in his turn, passed all these papers on to the Lords of the Committee for Trade and Foreign Plantations (the Board of Trade) for their consideration and report. (3)

Between July 1848 and mid-1850 nothing positive was heard at the Cape about the outcome of the deliberations of the Honourable Lords, though in 1849

- (1) Rybers, op.cit., p.51, clause 60; cf. p.63f. Law No. 1 of 1872, re Responsible Govt. Only for one session did the Cape Parliament sit elsewhere than in Cape Town: in 1864 when it met in Grahamstown.
- (2) P.P. 5/2/50 (1137) pp. 4-11, Porter's Memorandum, pp. 47-55 the draft constitution, clauses 17, 21 and 33 cited. Petitions pp. 94-6.
- (3) Ibid., p.98ff.

Earl Grey, indicated that the powers of the new Parliament would be circumscribed to a considerable degree and that the pleas for separation had failed. (1) This period would normally have been a time of chafing and impatience, of expectancy and disquiet at the Cape: unfortunately it was a period of near-revolution and of some violence as well, but this period enabled the Executive Council to vindicate itself, to break an all-out assault on the Executive Government, and to entrench itself in its existing form without inspiring general opposition for much more than a decade.

It happened that on the 4th of September 1848 (2) Earl Grey was empowered under an Order-in-Council to send ticket-of-leave men to certain colonies, with the object of relieving Britain of an excess of prisoners - especially Irish prisoners who had been convicted for theft or lawlessness in the recent appalling famine in Ireland - and at the same time he hoped to provide colonies which were suffering from a labour shortage with a steady source of manpower. The ticket-of-leave men were to serve out their term of conviction as registered but relatively free wage labourers who would then be released to settle unobtrusively (it was hoped) in circumstances which would give them a fresh start in life. News of the scheme, which arrived in November 1848, did not cause immediate alarm. Similar schemes in 1841 and 1842 had been averted by the simple process of petitioning the Queen. (3) Later on the Cape Legislative Council had proposed that convict labour from Britain should be employed in building a break-water in Table Bay, provided the convicts were kept in prison and should not be released in the Colony after they had served their sentences. Even under those circumstances the Secretary of State had refused

(1) Ibid., Gray to Smith 12/2/49. The Report of the Committee of the Privy Council was delivered on 30/1/50.

(2) P.P. 4/4/49 (217) p.45

(3) Ibid., pp. 1-15



to have convicts sent out without the assurance that the colonists would not object. (1)

In the despatch outlining the latest scheme, Earl Grey clearly implied that the opinions of the colonists would be consulted, (2) and they duly responded by petitioning against the scheme: but at the same time Earl Grey had written privately to Sir Harry Smith that an Order-in-Council would probably follow in which the Cape Colony would be listed as a colony to which convicts might be sent, and that he "contemplated sending some convicts to the Cape of Good Hope, without waiting for the answer to my despatch on that subject." (3) In December 1848 another private despatch to the Governor intimated that a "a ship has accordingly been taken up, and a set of convicts are going." (4) Meanwhile, under the authority of the Mutiny Act (10 Vict. c.12), Earl Grey had already arbitrarily ordered that criminous soldiers from Mauritius and Hong Kong should be sent to the Cape for "penal employment".(5) All this time the Cape colonists went about in the confident belief that their petitions would have the same effect as in the past. Then a ship brought in some English newspapers and the news of the departure of a convict ship arrived. The Cape Town Municipality at once demanded official confirmation of the reports. The Governor had none to give, but intimated that their truth was likely. The next day a monster meeting was held in Cape Town. The threat which had been made already in 1842,(6) that the public would neither employ nor in any way assist convicts was reiterated. A 'pledge' in conformity with this policy was produced which everyone was to sign. It

(1) Ibid., pp.16ff., 37. Maitland to Gladstone, 10/9/46; Gladstone to Maitland 29/4/46.

(2) Ibid., p.23, Grey to Smith 7/8/48.

Note: J.F. Gobregats, op. cit. is the best study of the Convict Question at the Cape.

(3) Ibid., p.48, Grey to Smith, 21/12/48.

(4) The same.

(5) Ibid., pp.38, 39, Despatches 1 and 21, Grey to Smith, dated 10/9/47 and 28/9/48 respectively. See infra p.35.

(6) Cory, op. cit. Vol., V, p.181.

circulated rapidly throughout the Colony, which was united in its opposition to the scheme. Petitions poured into Cape Town, while at memorable public meetings Boers, Britons and Coloureds expressed their strong disapproval and firm resolution not to receive the convicts. The belief was general that the people of South Africa had a right to be consulted before such an innovation could be made, and that Britain had acknowledged this in the past. It was felt that Earl Grey had deliberately deceived the Cape, and was about to enforce obnoxious legislation upon the Colony. In the East, Robert Godlonton talked of 'physical resistance' to the landing of the convicts; while Port Elizabeth was the first town to propose a complete boycott of any who either employed convicts or supplied goods to them or to their employers. (1) Many of the colonists mistakenly assumed that Earl Grey had made the Cape a 'penal settlement' such as Norfolk Island was, and this probably explains in part the violence of the opposition to his scheme. But in fact Grey intended to send to the Cape only such men as were fit to be set at large as ticket-of-leave men; that is to say, that "These men were in general peasants, who under the pressure of extreme want, had committed depredations, which ... implied comparatively little moral degradation ... or who had been convicted of political or agrarian offences, which out of Ireland they would have no temptation to repeat." They were men who "had been betrayed by special circumstances into crimes which they had not been in the habit of committing." Grey's fault was that he did not adequately explain the nature and objects of his scheme, for these quotations come not from one of his early despatches about it, but from the despatch which declared that the Cape would no longer be subjected to the scheme, and that the 300 convicts who had been despatched, would be sent on to Van Dieman's Land. (2)

(1) Cory, op. cit., ch. V, passim, for these details. Also J.F. Gobrechts, op. cit., chaps. IV, V and VI, passim.

(2) P.P. 31/1/50 (1138) pp. 147-50, Grey to Smith 30/11/49.

On May 31st, 1849, by which time Earl Grey had elaborated his scheme in several despatches, one of which regretfully noticed the excitement at the Cape but did nothing to allay it (1), the popular leaders of the Cape community met in the Commercial Exchange in Cape Town, and established the Anti-Convict Committee. Before long this organ practically dominated the Cape Colony through its many sub-committees and branch committees. The Anti-Convict Association, as it came to be called, obliged its members to sign a pledge, and to receive a certificate of membership before the arrival of the convicts. Persons who could not show these would be suspect and might suffer economic boycott and social ostracism on the ground that they might be convicts or that they supported the scheme. One sub-committee was set up to send propaganda abroad - not merely to Britain, but to other countries. A committee was founded in London, through which the British newspress and members of Parliament were supplied with evidence of colonial opinion and with arguments with which to attack the Secretary of State.(2) Mr. C.B. Adderley, Secretary of the Colonial Reform Society and friend of Gibbon Wakefield, was foremost in taking up the cause not merely of the Cape but of other colonies which suffered from convict immigration. (3)

Before ever official confirmation of the convict scheme was available to the colonial public, the leaders of the Anti-Convict Association were in possession of a plan of action and of the means to carry it out. When on 15th June confirmation did arrive, government and private business virtually came to a standstill. Even the banks refused to do business with anyone who could not show their certificate of membership in the Association.

(1) P.P. 4/4/49 (217) p.41, Grey to Smith, 19/3/49.

(2) J.F. Gobrechts, op.cit. p.83ff.

(3) Dictionary of National Biography, Supplement 1901-11, p.18.

On that same day the Legislative Council received a petition from Cape Town in which it was stated that 'the Legislative Council was the highest authority in the Colony and could even prescribe to the Governor': "By an enactment of your Honourable Council His Excellency the Governor may be armed with such power, and receive that support and guarantee which may justify him in preventing the disembarkation of the said convicts on their arrival and in detaining them unlanded, until Her Majesty's pleasure shall be known on the unanimous representations just despatched for her Royal consideration, or sending them back to Bermuda or some other penal settlement." Another petition, from the Anti-Convict Association, asked the Legislative Council to authorize the Executive Council to forbid the landing of the convicts at any colonial port - an attempt, perhaps, to vest in the Executive Council a constitutional responsibility which it did not possess in law. (1)

No sooner had these petitions been read, than Sir Harry Smith notified the Legislative Council that he had just received the Order-in-Council making the Cape Colony a place to which convicts with tickets-of-leave might be sent. Declaring his instructions to be imperative, he requested compliance with the Imperial order. This the official members immediately accepted, as they were bound to do, though they all recorded their disapproval of the policy with considerable forcefulness. John Montagu, the Colonial Secretary, in particular, defended himself against charges that he was to blame for the Secretary of State's attention having been drawn to the Cape as a potential receiver of convict labour. He declared that he was firmly opposed to the principle of the scheme, though as a colonial servant he had to accept it. The Attorney-General equally opposed the principle and lamented the event of the Cape becoming a part of the penal scheme, but he declared that the Colonial Government was bound to accept it. Rivers, Field and Hope concurred.

(1) J.P. Gobrechts, op. cit. p.50. The author used the Appendix of the Proceedings of the Legislative Council, 1849, I, Nos. 30 and 31, with regard to these petitions.

Consequently a drastic motion was there and then put before the Council, requiring the Governor to forbid the disembarkation of the convicts and defeated by the Executive vote, though another, to the effect that "the introduction of convicts is most injurious to the welfare and interests of the Colony; - opposed to the wishes - and calculated to estrange from Her Majesty's Government the feelings of the People" was carried by three votes. Only Montagu and Rivers opposed it, though they agreed to the first part of the motion. (1)

By these proceedings the official members had acted both in conformity with their duty and with sensible moderation; but when they denied the opinion of the popular leaders as to the powers of the Legislative Council, they finally condemned that Council to the distrust and abhorrence of the Colonists. The Anti-Convict Association in particular put their own construction upon the propriety of this constitutional decision. Despite Sir Harry Smith's promise that no convicts would be disembarked until further instructions had been received, it conceived that mere colonial opinion would not constrain the Executive from ultimately carrying out Earl Grey's orders, and it determined to prevent the 'Neptune' from being anchored at Simonstown and to force it to sail immediately to another country.(2) But the matter could not stop there. For the first time now, it was generally perceived that it was necessary for the colonists to be effectively represented in their government. Stockenstrom, for instance, who had commenced an attack upon the system of government on questions of native policy in 1847, was now more than ever convinced that a colonial parliament was necessary. The Anti-Convict Association, therefore had a more profound object than the defeat of a mere convict scheme.(3)

(1) Ibid., p.50.

(2) Ibid., p.64f.

(3) Stockenstrom, op. cit., Vol. II, p. 332. Cf. A. Duminy, The Role of Sir Andries Stockenstrom in Cape Politics, 1848-56. Unpublished M.A. thesis, R.U., 1956, p. 103f.

The challenge of the Association to constituted authority angered the Governor, who would have been pleased to take steps against the leaders of the Anti-Convict Association, but in this his Executive Council refused to support him, though they believed it to be lawful and necessary to confine the convicts to their ship after its arrival. They believed that failure to abide by this policy would cause an outbreak of violence, which, since the 'rebels' in the Orange River Sovereignty might join in an insurrection within the Colony, would be very hard to put down. Moreover, it was recognisable that no colonist would employ the ticket-of-leave men, and that if the Government did, there might be a general strike of civil servants as well as a boycott on supplying the Government. (1)

At first the Association had hoped to work with the Government. It even offered to foot the bill if the Governor would send the 'Neptune' away as soon as it arrived, and some £4,500 was collected for this purpose. But Sir Harry could not comply. Thus he drew upon himself the increased dissatisfaction of a people who disliked his despotic temper, his 'intemperate' annexations, and above all his Boomploats campaign. (2) The Governor was directly warned to abide by colonial opinion and suspend the Order-in-Council, or suffer the consequences. His continued non-compliance exposed the government itself to the enforcement of the pledge. (3)

On July 4th 1849 thousands of people stood in the rain and cold of mid-winter while their leaders harangued them for six hours, during which the Legislative Council was impugned, the Governor censured, and relations between the people and the Government were virtually declared to be broken off. (4) The sympathy of Sir Harry Smith, who

(1) Gobrechts, op. cit., p. 65f.

(2) A.E. du Toit, The Cape Frontier, A Study of Native Policy with special reference to the years 1847-56. Archives Year Book, 1954, Vol. I, p. 52. Duminy, op. cit., p. 108f.

(3) Gobrechts, op. cit., p. 86ff.

(4) Bell and Morrell, op. cit., pp. 312-4, Resolutions of Public Meeting at Cape Town (extracts), on 4th July, 1849.

had done everything possible to stop the application of Earl Grey's scheme to the Cape, was ignored. Even his promise that the convicts would be confined to their ship until the Secretary of State, learning the true state of affairs at the Cape, should signify his will anew and send them elsewhere, was met by a rudely phrased memorial.

Joy overcame the Colony when at the end of the first week of July 1849 the death of Mr. van der Byl and the resignation of Hamilton Ross reduced the hated Legislative Council to only nine members - one less than was needed to make it a properly constituted body. On the 9th July the Anti-Convict Association therefore ordered that anyone accepting nomination to the Council, enabling it to meet again, should 'come under the pledge'. Immediately it became known that three unwise men had accepted nomination, rioting broke out in Cape Town. The new members were assaulted, their properties damaged, the Governor booted - he might have come off worse had he not been an invalid - and Government officials hissed at. Mounted police had to be called out to disperse the rioters. (1)

It was fortunate that the Cape colonists did not know yet that Earl Grey had ordered that the Colony should also receive military offenders, for Sir Harry Smith withheld the information while he tried to put off this further scheme. The Secretary of State let the cat out of the bag, however, when he published his despatches in a Blue Book (2) the receipt of which caused the Anti-Convict Association to accuse the Governor of conspiring with Earl Grey against the Colony. On the 10th July, therefore, it was decided to treat the military convicts in the same way as any others. Even when Sir Harry published his correspondence with Earl Grey on this matter, he was greeted with distrust.

(1) R. Kilpin, *Romance...* p. 69ff. gives a lively account of events in Cape Town at this time. The third appointment was caused by the resignation of J.B. Ebdon just before the Council was due to meet.

(2) P.P. 4/4/49 (217) p. 38ff., Grey to Smith, 10/9/47 and 28/9/48.

Thus, after further pressure on the Governor had failed to get him to send the 'Neptune' away, the pledge was extended on 31st July, against all Government departments. (1) By mid-July the Anti-Convict Association threatened William Cock, the sole remaining unofficial member of the Legislative Council, and an Easterner, with starvation, but he, wealthy ship-owner that he was, taunted them by hoisting a leg of mutton to the yardarm of his ship at its anchorage in Table Bay. (2) The adamant policy of the Anti-Convict Association, together with the firmness and moderation of the Executive not less towards the spirited resistance of the colonists, than towards the Imperial scheme, was beginning to cause a revulsion of feeling. Godlonton protested that extreme measures were premature until the Colonial Secretary's response to the original petitions was known. More, Englishmen, especially in Albany, were becoming alarmed. An account appeared in the 'Observer' which stated that in June 1849 the colonial Afrikaners loathed British dominion to such an extent that in the event of war they would prove disloyal. (3) Letters to Richard Southey from Graaff Reinet, written between early September and December 1849 were in perhaps unconscious agreement with this view, and in one of them it was intimated that some people wanted to bring down Andries Pretorius "to take command of the people!!! " (4) Small wonder then that a party began to rally to the support of the Governor and the Executive Council, and that Godlonton began to divert attention from the local administration to criticism of Earl Grey, and to champion more decisively than before the cause of Separation - not merely from a remote Western Government, but from an impending government in which the representatives of the 'Dutch' colonists would be in the

(1) Gobrechts, op. cit., p. 94ff.

(2) Fragments of a diary by W. Cock in possession of his grand-daughter, Miss E.A. Cock. Cock claimed that he suffered just as much as Capt. Stanford, but never claimed compensation.

(3) 'Observer', 13/11/49.

(4) Duminy, op. cit., p. 108ff., and see p. 125ff. infra.



majority. (1)

When the 'Neptune' sailed into Simon's Bay on the 19th September the Association reached the peak of its power; it controlled nearly all the business of the Colony and could offer to indemnify anybody who suffered pecuniary loss, particularly contractors to the Government who were obliged to break their contracts because of their support or fear of the Association. Not a few people were ruined or brought into difficulties, and eventually the funds of the Association proved inadequate, so that when Parliament assembled in 1854 an attempt was made to compensate at least one contractor, de Wet, by securing him a pension. (2)

The arrival of the 'Neptune' proved the turning point in the career of the Association. John Fairbairn and his extremist colleagues, turned the more moderate Chairman, J.B. Ebdon, out; while the Cape Town Municipality (3) submitted itself as a body, to carry out the measures of the association, and expelled Benjamin Norden from his seat in the Council because he would not toe the line. After Fairbairn had been assaulted in his home, the Municipality also, with Government permission, organised an auxiliary police, which not merely assisted to keep the mob in check, but provided

- (1) Duminy makes the statement that "one is able to find little or no evidence of any racial feeling between the Dutch colonists and the English Settlers," Ibid., p. 346, which appears to warrant debate; Cf. Sole, op. cit., p. 29; W.A. Newman, Biographical Memoir of John Montagu, p. 390f; B. le Cordeur, 'Robert Godlonton as Architect of Frontier Opinion' Unpubl. M.A. thesis, R.U. 1956; M.A.S. Grundlingh, 'The Legislative Council of the Cape of Good Hope, 1834-53.' Unpubl. M.A. thesis, Stellenbosch, 1937, p. 137; P.F. 19/5/51 (1362), p. 134, Smith to Grey (para. 16 et. seq.) Cf. Duminy, op. cit., p. 192, for comments on this despatch; P.F. 31/5/53 (1636) Cathcart to Pakington 14/11/52. Duminy also (p.264) states that "whereas the Dutch inclined before 1848 not to take an interest in the affairs of the country ... the anti-convict agitation ... and the constitutional agitation which followed was directed against British rule at the Cape" and became "blatantly hostile". (My underlining) See also infra. pp. 125/6.
- (2) G.H. 23/26, No. 62 of 4/6/55 Grey to S. Herbert. G.H. 1/50, No. 47, 21/1/55, Governor Grey to Secretary of State Grey. V. and P. of Cape Parliament 1854, 1855. De Wet ultimately got £60 a year after a very stiff fight.
- (3) Cf. infra. p. 45, 48.

a guard for the leaders of the Anti-Convict movement.(1) These transactions placed some of the most able of the Western leaders, and former Association men, at the forefront of the moderate party who co-operated with the Government. (2) Fairbairn and his clique ordered a ruthless starvation policy for all aboard the 'Neptune' which was not less hard on the sea-weary and scurvy-ridden convicts than upon the crew. Seven of the former had already died at sea, and the events subsequent to the arrival of the ship proved too much for its surgeon, who got brain-fever and died. (3) But it turned out that the convicts were not all simply Irish peasants whom famine had brought within the penalties of the law, since more than a third of them were in fact criminals of an ordinary kind. (4) Government departments, civil servants, people bold enough to serve them, or found in any way to be assisting the Government with supplies which might reach the convict ship were boycotted no less keenly than the 'Neptune'. Shops and stores put up their shutters; unemployment and hooliganism followed. In the circumstances Sir Harry Smith wished to cut the Gordian knot by extreme measures. He summoned the Executive Council and asked it to sanction, amongst other measures, the arrest of the Association's leaders, or else to support him in proclaiming the proceedings of the Association to be illegal, and in "guaranteeing" the protection of the Government to those individuals who refused to submit themselves entirely to the dictation of the Anti-Convict Association leaders." (5)

- (1) P.P. 31/1/50 (1138) pp. 126-130. The houses of Benjamin Norden, who supported the Government, and of John Fairbairn, were attacked on 15th October 1849. Edden, Jerram, and other moderate leaders tendered resignations from 1st October. The Anti-Convict Association subjected several of them to the pledge. Ibid., pp. 116ff.
- (2) P.P. 31/1/50 (1138) op. cit., pp. 110-131, Smith to Grey, 18/10/49, and Enclosures.
- (3) Ibid., p. 94ff., Smith to Grey 30/9/49, and Enclosures.
- (4) Gobrechts, op. cit., p. 37f.
- (5) An instance of how necessary this was is shown in 'Bylae III' Ibid., p. 208ff., a letter by Matilda Stanford, quoted from C.O. 1411, Enclosure to Despatch of Sir H. Smith, 1851.

The Councillors, however, considered this too sharp a challenge and would not advise more than that those who should ask for protection should be given it. But the day after the total boycott of the Government began, on October 11th, the Council complied with the Governor's desire to issue a notice stigmatising agitators and offering provisions to boycotted persons. Further pressure being put upon the Council to sanction the arrest of the Association leaders, or the suppression of the Association itself, was met with a calm refusal to be swayed from the dignified and wise course which it had consistently pursued. Sir Harry Smith therefore proposed calling the Judges to attend Council meetings, in an effort evidently either to broaden the Council or to dilute the opposition within it. But Montagu, Rivers, Porter, and Field firmly reminded him of his Instructions,<sup>(1)</sup> and correctly ruled that the proposed step would be "highly unconstitutional and inexpedient." When the passionate General, still looking for a stick with which to beat his opponents, thought of bringing an action for libel against the inveterate John Fairbairn, who no doubt deserved it, the Executive Council ruled firmly that "it was beneath the dignity of a Governor not to gainsay libellous mis-statement by means of court cases."<sup>(2)</sup> Throughout this period of crisis the Executive Council plainly vindicated itself as a responsible body acutely aware of the dangerous state and of the instability of public opinion, and it planned to gain the initiative as soon as a moderate party formed. The moderate pronouncements which the Council made to the public, and the restraint it put upon the Governor converted him from the use of measures which might have led to armed insurrection and military arbitrement.<sup>(3)</sup>

(1) Vide supra. p. 13, and infra. p. 56ff., 64, 104.

(2) Governments, op. cit., p. 68ff.

(3) Cf. Bell and Morrell, op. cit., p. 313, where the avoidance of "possibly disastrous results" is attributed to Smith's "admirable blend of firmness and discretion" and his "cool head in a crisis." The model advice given by the Council is best revealed in P.P. 31/1/50, pp. 104-6, Minute of the Executive Council, dated 22/9/49.

What assistance the Government could give to its followers was quietly given by way of loans, provisions, or even by way of finding a carriage to take a distressed family home. (1) But though many were afraid to seek such assistance, the starvation programme as the Executive Councillors had foreseen, was not a success. Even the convict ship never went seriously short of provisions, for despite the size of the Association, by clandestine and devious means, supply was found. (2)

Earl Grey's first and prompt reply to Sir Harry Smith's account of the state of affairs at the Cape in May 1849, was a private note dated 23rd July. This was conciliatory but not satisfactory, for while he announced the end of the scheme in consequence of the general resistance to it, he did not instruct the Governor to send the convicts elsewhere. Indeed, he "expressed a hope that, by making this concession to the feelings of the colonists, no opposition will be manifested towards receiving the convicts by the 'Neptune' ", and as an inducement to the colonists to accept this suggestion, which he believed was humane as well as reasonable, he offered to "send out an equal number of free emigrants, at the cost of the Home Government." (3) This offer, arriving in Cape Town early in October, when Fairbairn's extremist group had control of the Anti-Convict Association, met with the prompt rejoinder that as the 'free emigrants' would probably be the wives and families of the convicts, the colonists would not "under any circumstances, knowingly employ, admit into their houses or establishments, work with or for, or associate with any of the ... wives and families of convicts, and that they

- (1) *Gobreechts, op. cit.*, p. 209. 'Bylae III' letter by Matilda Stanford.
- (2) One farmer particularly, Capt. Stanford, with great skill and daring, operated a continuous supply system for the Government, though he was ruined by it, as he must have known he would be. The gift of £5,000 and a knighthood from the Imperial Government was scarcely adequate compensation.
- (3) P.P. 31/1/50 (1138) p. 125, the contents of the letter were divulged to four leaders of the Anti-Convict Association who had been summoned for the purpose to Government House. The offer of free emigrants on these terms was in accordance with Imperial policy for all Colonies receiving ticket-of-leave men. *Vide*, p. 144f, Grey to Smith 18/7/49.

will drop connexion with any person who may give them employment."(1) Fairbairn's party therefore continued their 'system' until February 1850, when the 'Neptune' was at last ordered away to Australia. (2)

This immoderate movement was almost entirely conducted from Cape Town and gave the Albany Settlers under the guidance of Godlonton and Cock additional incentive to seek Separation; it did more, for the Executive began to appear as a last bulwark against colonial faction, civil strife, and, should the Colony be granted a Parliament, domination over Britons by antipathetical 'Dutchmen'. (3) Already by 6th October Grahamstown and the West had come to the parting of the ways on the convict issue and a week later the Graham's Town Journal had been singled out for an attack at a special meeting of the Association in the Cape Town Town Hall.(4)

The period of relative calm which followed upon the disappearance of the 'Neptune' and its unfortunate cargo, was not devoid of tension. The Legislative Council was still proscribed, and the Anti-Convict leaders addressed themselves anew to the task of achieving radical political reform. Thus, when the Letters Patent arrived under which the local Legislature was to fill in the details of the new Constitution, there was no Legislative Council to receive it. The position was delicate. Sir Harry could not nominate members from among the extremists of the Association without harm to the moderates who had supported his government; nor could he nominate moderates without incurring the wrath of the Ultras. To avoid responsibility for arbitrary nomination, he decided to get the Municipalities and

(1) Ibid., p.125. Resolution of Anti-Convict Association. Earl Grey had intimated on 18/7/49 that the families of the convicts would number among the free emigrants which the Imperial Government would send to colonies receiving convicts.

(2) F.P. 31/1/50 (1138) pp.147-50, Grey to Smith, 30/11/49, by which the convict scheme for the Cape was ended and the 'Neptune' ordered away.

(3) Cory, op. cit., Vol. V. Ch. VI passim.

(4) F.P. 31/1/50 (1138), p. 126.

Road Boards to elect a number of men from among whom the Governor would select five Councillors. Fairbairn and four 'Dutchmen' - Stockenstrom, Brand, Reitz and Wicht - were elected at the head of a list of twenty-three: it was a victory for the Ultras, which, despite some sharp practice in the elections, (1) was decisive. Smith duly appointed Fairbairn, Stockenstrom, Brand and Reitz to the Council, but, passing over Wicht, he appointed Godlonton, who stood half-way down the list of elected men. Montagu had at first argued that Smith was morally bound to appoint the five who gained the most votes, despite the fact that Stockenstrom and Wicht were perhaps amongst the bitterest foes of Montagu, Smith, and Earl Grey. But Porter who had issued the notice for the election disagreed with him, and though he overruled a technical objection to Stockenstrom's being nominated, mooted by Montagu, he justified the elimination of Wicht in favour of Godlonton. (2) Smith's intention was to increase the Eastern vote (Cock was still a Councillor) and to balance the representation of interests. There would be three 'Dutchmen' and three English, and an equal division between East and West. Thus J.J. Meintjies of Graaff-Reinet, Stockenstrom's son-in-law, who stood 6th on the list was also passed over. (3) It had been the deliberate intention of the Executive Council to secure a balanced representation, and it had been made clear in advance, (4) by Government notice, that the Governor had neither surrendered his prerogative of free nomination nor even hinted that he would choose the most numerous supported candidates. But the 'popular' members once they had assembled in Cape Town, and conferred as to

- (1) Vide P.P. 19/5/51 (1362) p. 69, statement by Montagu in Legislative Council pp.113-117, and 130, despatches Smith to Grey on 30/11/50.
- (2) P.P. 19/5/51 (1362) p.6, Minute of Executive Council.
- (3) Ibid., pp.113-117.
- (4) P.P. 19/5/51 (1362), p.3. Government Notice of 6th May, 1850; p.16ff. Smith to Grey, 2nd October, 1850; p.58ff, speech of Porter in the Legislative Council, 18th September.

their plan of action, determined to object to the membership of Cock, who could not pretend that he had been elected, and of Godlonton whose supporters were neither very numerous nor, in the main, representative of more than a single Division, Albany. Further, they declined to deal with any business other than the draft constitution, desiring to leave all else to the decision of a popularly elected parliament. Out-voted, and did they but know it, out-manceuvred on these issues, (1) they precipitately resigned within a few days of the commencement of the session.(2) It was a foolish move, for not only did it delay the inauguration of a Parliament for longer than was necessary, when their chief anxiety was to achieve it as soon as possible, but they cut themselves off from participation in the deliberations in the Council which would give the official draft constitution its shape. They had given the Executive members a wrong character, for so far from trying to cripple the movement for a popular constitution, the Executive Councillors brought a fair-mindedness and a liberal attitude of mind into the proceedings, which none but impractical politicians or mere agitators could impugn. If the 'popular' members mistakenly believed that they held the initiative while still in the Council and even for a time after their resignation, the behaviour of the Executive Councillors before, and even more after that event, shows that the initiative had been seized by cleverer men than they.

The resignation of the 'popular' members meant that once more there was no Legislature to handle the business of the Colony. Therefore the Governor resorted to turning the rump of the Council - Godlonton and Cock, and the Executive Councillors - into a Commission. It completed the work of drafting a constitution, but the constitutional expedient failed to satisfy Earl Grey, who insisted that the procedure laid down in the

(1) P.P. 23/12/52 (1581) p. 116, Porter explains how it was done. P.P. 19/5/51 (1362) p. 70, record of Minutes showing how Montagu and Porter forced the 'popular' members to show their hand.

(2) Ibid., passim, especially pp. 16 to 96, Proceedings and Debates of the Legislative Council. Tabular return of election votes, on p. 89.

Letters Patent providing for a Colonial Parliament must be carried out to the letter. When it was pointed out, in reply, that legally the Legislative Council no longer existed, Earl Grey tersely framed the (in)famous "Additional Instructions", by which the Governor's Constitution Commission might become a formal Legislature even if the last unofficial members Godlonton and Cock resigned or were absent from the Council. (1) The arrival of this instrument infuriated the Ultras for whom it was the ultimate revelation of the despotism of the Executive, or of Downing Street, which, veiled by the establishment of a Legislative Council in 1834, had been steadily exposed during a crescendo of crises since Napier's day. The Cape Town Mail declared that the Additional Instructions confirmed that the government of the Colony was now "a naked and undisguised despotism", while a public meeting in Graaff-Reinet "deplored the fact that 'political corruption and bureaucratic power' would be perpetuated."

Smith had asked for authority to legislate for and to control the Colony by means of a Council consisting only of officials, since Godlonton and Cock could not leave the frontier at such a critical time and it would not be possible to nominate other Councillors, who would agree to serve, from <sup>among</sup> other than the English colonists. This would, however, aggravate the antipathy of the Dutch. (2) Sir Harry Smith had been caught no less vigorously by the wrath which he had tried to avoid by not nominating new men to the Council, because it had led to the Executive being constituted a full Legislative body, with or without two nominated colonists - both Easterners! Therefore the Governor did what he ought to have done

God!  
What a  
blatancy!

- (1) P.P. 19/5/51 (1362) p. 203f. Grey to Smith 13th May 1851 and Enclosure.
- (2) Le Cordeur, op. cit., pp. 184-6; P.P. 19/5/51 (1362), pp. 191, 203.



in the first instance: he appointed four political nonentities (1) to the Legislative Council, thus waiving the Additional Instructions, and was able at last to send the Constitutional Ordinance to Britain for ratification.

In the meantime, however, the Cape Town Municipality attempted to usurp the functions of the Legislature by instructing the sometime 'popular' members, together with Wicht, to form a commission to draft a popular constitution. Two of these commissioners, who had secured the most votes in the recent elections (Stockenstrom and Fairbairn) were to take this document to London. The object of the 'popular party' was plain. The draft constitution which had met with the approval of the Committee of Trade and Plantations displeased them because it reserved too much power to the Secretary of State and the Colonial Executive. They feared that the Executive Councillors would not relax the 'despotism' which they exercised. The draft constitution drawn up by the 'popular' leaders therefore proposed that both Houses should be elective, with a very low franchise and relatively low qualifications for members. It also proposed that if the Assembly should be dissolved the other House had to be dissolved at the same time. It did not request responsible government, but opposed a reserved civil list because it would deprive the Houses of control of the Executive, which would, as the 'Cape Town Mail' declared, "reduce the parliament to a mere engine of popular agitation against the predominant influence of irresponsible officials." (2)

(1) The men nominated were Messrs. W. Hawkins, B. Moodie, Capt. C. Arkell, and E. Christian. The manner of their appointment is explained by Montagu, P.P. 19/5/51 (1362) p.14, and see infra. p.130.

(2) C.T.M. 8/3/51, and 6/5/51. Theal, op. cit., Vol. III, p. 112ff.

Fairbairn and Stockenstrom duly took their draft to London, where they gravitated from plaguing Lord John Russell to bullying him, while he for his part moved from being politely negative to coldly aloof. (1) They returned to the Cape not only empty-handed but much reduced in prestige at the Cape as well as in Britain, and much the worse off in health and in fortune. In the event too, their draft of 16 Articles contained nothing that was not in Porter's much more compendious and properly enacted 94 Articles, and though the latter were less 'liberal' it offered the prospect of more stable government. (2)

The lack of political realism which even the most determined and respectable of the popular leaders revealed augured ill for the Cape Parliament. Inexperience and frustration due to the absence of constitutional machinery for resistance to Government measures, had led the opposition leaders to attempt the elevation of a purely municipal body to a position of authority which it was neither competent nor designed to fill. They had exploited antipathies between English and Dutch in order to frustrate the wise measures of a considerate if arbitrary Government; and, equally reckless, they had shown themselves to be curiously blind to the sensitive feelings of whole sections of the colonial community. The repercussions of this would be felt in the panic about the rumoured plans for a Hottentot rebellion in the West in 1850, (3) while it probably had a bearing upon their rebellion in the East. Further, the methods used by the Ultras in whipping up petitions and memorials, and in organising

(1) P.P. 3/2/52 (1427) pp.51-70, correspondence between Fairbairn, Stockenstrom and Lord John Russell. That the Cape Town Municipality was regarded as the intermediary body between the 'popular party' of which other municipal boards were principal elements, and the Secretary of State, is clear. Vide P.P. 23/12/52 (1581), pp. 1-4; P.P. 19/5/51 (1362) pp. 119-130; P.P. 16/5/53 (130) p.16, Montagu to Lieutenant-Governor, 26/4/52.

(2) P.P. 19/5/51 (1362), p. 171ff.

(3) P.P. 3/2/52 (1427), p. 39ff; and P.P. 23/12/52 (1581) pp. 8-95.

the agitation were sometimes unscrupulous. Intimidation together with almost a monopoly of the newspress (1) obscured the true state of public opinion when it did not mislead it, so that public confidence in parliamentary elections was reduced even before the first of them had occurred. In addition many Easterners were more than ever estranged from the West and believed that their interests would be worse than neglected by a Parliament which sat in Cape Town.(2)

As it happened the great Kaffir War of 1850 to 1852 gave not only greater strength to the plea for Separation, but confirmed Earl Grey's opinion that either the capital should be Grahamstown, or that the Colony should be federalised, with two Provinces, under a Governor-General who would reside in Cape Town. Even the Executive Council, formerly quite opposed to either reform, divided on the issue, three of its members favouring the removal of the capital, and two of them Separation. Even Sir Harry Smith agreed that one of these alternatives should be adopted. (3) The issue, in part, caused a postponement of the second reading of the Constitution Bill, until Sir Harry Smith was succeeded by Sir George Cathcart, and Earl Grey by Sir John Pakington and a Tory Government, which decided temporarily to withhold the granting of the constitution. In the meantime, as an earnest of his desire to ensure closer and more immediate government for both Western and Eastern Provinces, the Secretary of State appointed a Lieutenant-Governor to remain at one end of the Colony while the Governor was at the other. During the Governorship of Sir George Cathcart, who ruled from Grahamstown, Lieutenant-Governor Darling stayed in Cape Town. (4)

(1) See infra. pp. 13<sup>e</sup>.

(2) Sole, op. cit., Vol. I, p. 129ff.

(3) Wilmot and Chase, op. cit., pp. 467-71, quoting two despatches from Earl Grey, dated December 1849 and 14/6/51, and the individual opinions of the Executive Councillors. Montagu and Hope evidently favoured the removal of the Capital, Porter, Rivers and Field favoured Separation. Vide Sole, op. cit., Vol. I, p. 146ff.

(4) See infra, p. 152f3

During 1851-3, the dislocation of business caused by war, the separation of the Governor from his Executive Council, changes in the Colonial Office and Government in England, kept the colonists in an unhealthy state of unrest. Uncertain about the constitution which was to be granted, the colonists were dismayed by the Hottentot rebellion in the East, and in the far West farms were deserted and laagers formed on the strength of mere rumour of plotting among the Coloured servants in that part. Yet, during this time the Ultras went to all lengths in accusing the British Government of bad faith. The Cape Town Municipality once more organised a popular meeting to authorize it to draw up another draft constitutional bill which it sent to Britain with the request that the British Parliament enact it. The attempt was as silly as it was unwarranted, for Pakington had ample cause to postpone the granting of a constitution while a major war was being fought in the Eastern colony as well as beyond it, while the Governor was absent on active service, and the Government and people were rent by disputes. The question whether the franchise should be high or low had split colonial society from top to bottom. Even the Executive Councillors, hitherto usually united, fell out on this issue. (1) But Pakington had never intended to completely withhold the Constitution; and as it was the Tory Government fell from office before the year was out, and Lord Newcastle hastily rid himself of the political troubles of the Cape by sanctioning the Constitution Ordinance. It arrived at the Cape in July, 1853, when the Colony was, thankfully, at peace.

The vast business of organising an electoral roll, and carrying out the elections was completed during the following year. In the Eastern districts candidates were hard to find in several districts, and in many places throughout the Colony there was a considerable degree of apathy about voting. Two questions which had

(1) Vide, infra. pp. 145 ff.

been extraordinarily prominent during the previous six years, the position of the Executive Council, and the government of the Eastern Province, were left for Parliament to decide. As to the former of these questions, the Executive Councillors had wished to go further than the Lords of the Committee of Trade and Plantations, and even further than the Cape Town constitution committee which drafted the 16 Articles. The Executive, and Godlonton and Cock, detested though they were as the instruments of despotism, pointed out that to grant the Executive officials seats in the Houses of Parliament in order that they might explain Government measures, but without the right of voting, would not ensure a "non-political" Executive. They would still be involved in party contests in the Houses, and as the advisors of the Governor, should they be found to be in opposition to popular demands, they would have to bear the brunt of popular disfavour. (1) A consequent Memorial bearing the names of 88 prominent colonists concurred in this view, which was tantamount to a plea for the introduction of responsible government. But, in fact, colonial opinion was generally not in favour of responsible government, even in 1850. Parliament itself would not even investigate the possibility of introducing it until 1855, and in 1856, though Stockenström was to carry a motion in favour of it in the Upper House, it was decisively defeated in the Assembly. (2) It is noteworthy too that even Stockenström, at a time when his detestation of the Executive Council might be thought to have clouded his vision, in February 1851, could write in a letter to his admirers: "Now, gentlemen, I myself have been a high official in this colony, and I am bound to say that I believe the public functionaries of South Africa, as a body, to be respectable, honourable, and as efficient a set of men as you will find in any part of Her Majesty's possessions. I know very few of them personally..

(1) P.P. 19/5/51 (1362) p.153f. Report of the Govt. Commission to draft a Constitution, and see pp. 90ff. below.

(2) S.A. Advertiser and C.P.M. 15/4/56 Editorial on Responsible Government.

but I cannot help entertaining a profound respect for the high characters of many of these men ..." (1) In another place he admitted his profound respect for the Attorney-General, Porter, for the Auditor-General, Hope, and for W. Field, the Collector of Customs. (2) Field himself, in the hectic debates of the Legislative Council in September 1850, was to retort against Fairbairn's accusation that the Executive were out of touch with the colonists that, "I do not consider that we - the official members of this Council - have any interests apart from the people of this colony, but that we are trustees and servants for the people." And he exclaimed after interjections had been made: "I am here for the people and I say I am not less a representative of their wants, wishes and interests, than the honourable and learned gentleman (C.J. Brand). Show me," he demanded, "where are the different interests of the Government in contradistinction to those of the people." (3) On the same occasion the Governor drew public applause for defending the wakefulness of the Government and declaring how indebted the Colony was to Montagu in particular. (4) Lastly, the Cape Town Mail itself, 'popular' paper that it was, while favouring the development of Responsible Government, declared that there were few in the Colony who could become Ministers in the place of the existing Executive Councillors; it went even further and stated that "certainly no possible successors of our present 'Ministers' seem likely to have a stronger hold on the country than they have", and it implied that it would "be years before any party or parties, over which they had not strong personal influence, would lead the Legislature." "The Executive certainly do enjoy what was said of the entire Government three years ago - the strongest means of influencing the decisions of the Legislature, and guiding the affairs

(1) Quoted in Duminy, *op. cit.*, p. 208.

(2) Stockenström, *op. cit.*, p. 331, and *infra* p. 207.

(3) P.P. 19/5/51 (1362), p. 82ff.

(4) *Ibid.*

of the country, of any other individuals or bodies in the Colony ...". As if it had not said enough to weaken the effect of all its bitter attacks on the Executive officers during the past six years, the 'Mail' pressed the point home: "all parties now, at least in the West, with the exception of a few snarlers at the Queen's gift, who are irritated at the hopes of peace and good humour which begin to be entertained (between Government and people), look with confidence to the present authorities ... the Legislature itself will be, not a body raised in opposition to the Executive, but one most willingly working together with it, for the true happiness and prosperity of the colony." (1)

The questions arise then, as to the nature of the Executive Council, and how it was composed, and what its position was in the colonial and Imperial administrative structure, for the Council seems to be as worthy of study as it was of appreciation, even from its opponents.

(1) C.T.M. 10/5/1853; and see infra, Chaps. II, III and IV.

## CHAPTER II

The nature of the Government of the Cape Colony, and the differential development of the Executive Council at the Cape, 1825-54.

In the broad development of British Colonial Policy, these years are remarkable for the growth of parliamentary government in Canada, Australia and New Zealand. Though in 1825 an Advisory Council was created for the Cape very similar to the one set up in New South Wales, when the Cape was granted representative government in 1854, the Australian colonies had already achieved responsible government two years before. Because the Cape would not advance as far until 1872, it does not follow that the executive at the Cape was a cinderella. To the contrary. It is easy to proceed from the tacit assumption that all 'irresponsible' governments are bad or dangerous, that they are careless of the best interests of the people whom they govern, that their personnel are less well-informed and perhaps of inferior quality than democratic governments with their popularly composed Cabinets. To overlook the principles which actually guided an 'irresponsible' Executive, to condemn its methods out of hand and to avoid the question of what sort of government was not only best suited to the circumstances but at all feasible, is a common failing, and it is often present in judgments of South African history before parliamentary government was introduced. Whether the Cape Executive be compared with similar institutions elsewhere, or is examined, as it should be, in the political and economic context of the Cape, it warrants careful study. It seems to have been unique in its efficiency, and if, as is true, it lacked particular responsibility as a constitutional attribute, it developed an esprit de corps and a high sense of public duty which smoothed



the transition to responsible government in 1872. Indeed, when responsible government was introduced in 1872, while it may legitimately be argued that it reduced political turbulence in the Colony, it did not, generally speaking, bring into the Executive Council more capable or conscientious men. (1) In fact, had he accepted the Governor's invitation, the former Attorney-General, William Porter (2) might have become a popular Prime Minister. Richard Southey, the retiring Colonial Secretary, might himself have headed the Cabinet, or, had he wished, might have made it impossible to eliminate him from the Cabinet. (3) The Auditor, Cole, unpopular though he was, and mediocre too, remained the Government auditor, though without a seat in the Cabinet.

If the 'irresponsible' Councillors of 1871, target of bitter criticism, became so nearly the indispensables of 1872, this was even more true a generation earlier. In the early days of the Cape Parliament, not only was the 'responsible government party' often defeated in a freely elected Assembly, but it was generally admitted that men better than those already serving in an official capacity in the Executive Council could not be found. Nor was the admission merely tacit. (4) Sir George Grey, in his old age, recalling his years at the Cape stated that he often urged Cape Colonists 'to go in for a system under which the ministers should be directly responsible to the people, (and) not to the Governor', only to be told that they could always get rid of him, if he did anything wrong, by an appeal to the Colonial Office. (5) This was a plain indication that for the time being the colonists were content with the existing system, and that the remarks in the colonial press in 1853 were not ill-considered. (6)

(1) Except perhaps in the case of the Attorney-General, Griffith, 1866-71.

(2) W. Porter, Attorney-General 1839-66, was a member for Cape Town, 1869-73, when he retired from public affairs.

(3) Having served as Lieutenant-Governor of Griqualand West 1873-5, R. Southey sat in the Assembly as member for Grahamstown, 1877-8, after which he retired from public affairs.

(4) Vide V. & P. of the Cape Parliament.

(5) J. Milne, Romance of a Pro-consul, p. 125.

(6) Supra, p. 44f.

Yet this was remarkable, for throughout the period from 1825 until 1854, despite the element of representation brought into the Governor's Council after 1827, the effective control of the Colony was vested simply in the Governor and his Executive officers, and they were the objects of almost ceaseless attack. The Legislative Council might, as it sometimes did, after 1834, bring in measures which could be called popular in origin, but the prime mover in legislation as well as in the execution of it was the Governor or his senior official, the Colonial Secretary, and the colonists registered their discontent with this state of affairs with increasing frequency and urgency. Especially between the years 1849 and 1853, though they were deeply divided amongst themselves, the colonists were unanimous in their demands for constitutional reform of one kind or another, with the dual objects of obtaining more popular and, they believed, more efficient government. Even the Britons, who saw in the official Executive Council a bulwark against the 'oppression' which might occur under a 'popular' or 'Dutch' Cabinet, thought that if they could get Separation for the East, or constitutional checks such as a nominated Upper House of Parliament, they could dispense with an Executive which to them was 'irresponsible'. Thus, the middle years of the century saw the Executive being accused of all the vices of despotism, of being incompetent, of being a body filled with aliens appointed by a corrupt or careless patronage, and of being too far removed and out of touch with the peoples and problems with which it ought to have been most concerned. Even when it behaved correctly, and showed both political wisdom and proper vigour, it was still decried in the long run because it was 'irresponsible'. (1) The problem arises, then, as

(1) P.P. 1849 (217) re Convicts; and all subsequent Imperial Blue Books re the granting of Representative Government to the Cape, contain petitions from local government bodies, minutes of meetings, reports of debates in the Legislative Council, and other papers, listed in the schedules, which indicate the weight and persistency of the attack.

to why an 'irresponsibility' which was so generally unpopular before 1853 should have been tacitly accepted thereafter for nearly twenty years. It is true that between 1854 and 1871 the Executive was not immune from attack, but there was no effective vote for responsible government until 1871; neither was there a popular demand for it. It is the purpose of this and the two succeeding chapters to contribute to the solution of this apparent illogicality in Cape History, during a period of transition from a period of despotic government to one of parliamentary government, and to establish that the technically 'irresponsible' Executive Council, from the point of view of constitutional theory, acted on the whole with intelligence and rectitude in its political as well as in its administrative responsibilities.

During this period, the Governor was always very important, not only because of his powers but because of the personal influence which each of the succeeding Governors exercised upon the administration. The Governor was as important for his absences, as he was for his personal control of affairs when present in Cape Town. He had often to repair to the frontier, to engage in an attempt to ensure peace with the tribes, or in warfare as Commander-in-Chief of the military forces, when he had to leave the conduct of the administration temporarily to a civil officer in Cape Town. Further delegation of duties followed as the Eastern half of the Colony developed, and the Governor found it increasingly necessary to have senior civil officers located in its principal town, Grahamstown. Thus the legal and proper power of the Governor devolved periodically and in effect permanently, up to a point, upon the permanent head of the Executive in Cape Town, the Colonial Secretary; while a parallel development, to a lesser extent it is true, occurred in Grahamstown from 1852-3 onwards. (1)

(1) R. Venter, Introduction to G.H. Records, Cape Archives.

Broadly speaking the charge that the Governor had despotic powers can only be certified as true. "The outstanding characteristic of the Government of the Cape Colony," says Manning, "was the concentration of authority in the hands of the governor, whose powers were greater than in any other colony except New South Wales." (1) Between 1811 and 1854 - from Caledon to Grey - all the Governors were Commanders-in-Chief of the military forces of the Colony, thus obviating the awkward relationships with the military which both Caledon and Grey experienced. Vested with the rank of Vice-Admiral, and disposing of a Vice-Admiralty Court with jurisdiction over the coasts and seas of Southern Africa, (2) with regard to trans-frontier territories the Governors after 1847 were provided by a separate Commission with the vague but almost plenary powers of the High Commissioner. (3)

The authority vested in the ruler of the Cape, then, extended in various directions, but the trunk, as it were, out of which grew these branches of authority, was the Governorship. Even after the Sand River and Bloemfontein Conventions, the Governor as High Commissioner exercised power in a dimension not to be found elsewhere in the Empire at the time. In a way then that was unique, the Governor in the Cape was the hub of power, in many often conflicting and overlapping directions. The Governor received his authority by a Royal Commission, to which was added his Instructions, drawn up by the Secretary of State. Thus Imperial Acts relating to

(1) H.T. Manning, *op. cit.*, p.418; and see C.H.B.E. VIII, p.197ff.

(2) See Theal, R.C.C., Vol. VI, p.31f., and Vol.VIII for Cradock's Commission. J.M. Orpen drawing on Theal's Records and British documents supplied by W.F. Schreiner when Attorney-General of the Cape, forcefully argued that the jurisdiction of the Vice-Admiralty Court at Cape Town extended from Cape Negro near Mossamedes to Cape Corrientes in Mocambique, but it is not clear what the true geographical area was in which it had jurisdiction; see Cory MSS. 1193, p.4.

(3) See Ch. VII below.

the colonies might specify particular powers which governors should apply, as, for example, under the Navigation Acts, (repealed in 1849) but his general instructions and his commission would in each individual appointment define his position and direct his behaviour for the term of his particular office. Thus Sir Benjamin D'Urban was directed to establish an Executive Council and a Legislative Council which had their legal basis solely in the Governor's Commission. The Municipal Institutions which he was equally instructed to establish were of a slightly different order: they were enacted (as Ordinances) by the new colonial legislature and sanctioned by the Secretary of State. But these enactments proceeded from the Governor; amendments to ordinances had to be sanctioned by him, and he might easily use the Executive Councillors in the Legislative Council to do what he willed with legislation. More: the Secretary of State could, if he wished, after consideration of evidence, support the Governor by over-ruling, or withhold royal consent from local legislation, or, by Order-in-Council, or Parliamentary Act, he could impose legislation upon a colony, so that obedience to the Governor was virtually automatic. One comes back, then, to the powers vested in the Governor in the instruments by which he was appointed, and the importance which attached to any changes which might be introduced into their terms. The nominated Legislative Councillors were horrified to discover, for instance, how in Napier's Commission they had not only not been appointed for life, as they had been in D'Urban's Commission, but that their rights in the Council had been drastically reduced. In this latter respect their position was restored by a simple amendment to the Governor's Instructions.(1) Each governor, then, would nominate his own Legislative Councillors, subject to the approval of the Secretary of State for each nominee.

(1) See p. 16 above; cf. R. Kilpin, *Romance*, p. 58.

Not being a despot with quasi-sovereign or vice-regal powers, since his powers were deputed and defined by the Secretary of State and might be elaborated or limited by subsequent instructions or even by a circular despatch to Governors in the Colonies, the Governor was wholly and simply responsible through the Secretary of State to the Crown for his administration. That is to say, that vis à vis the Colony he, personally, had every appearance of being a despot. He was "without check in executive affairs."<sup>(1)</sup> Even in colonies with legislative bodies his powers were in theory and often in fact, absolute. Bills were brought in by him, or with his authority, and he had "the prerogative of summoning, adjourning, proroguing, and dissolving all legislative assemblies; of veto on all their Bills, of reprieving and pardoning under certain restrictions; of suspending for misconduct all officers, civil, naval, and military in this colony," without necessarily having the sanction of his Legislative bodies or his Executive Council. His powers of appointment to salaried offices were large, for though "on general principle, the colonial appointments are vested in the Crown and made by the Secretary of State ... it is understood ... that appointments under £300 a year are left to Governors, while their recommendations are very generally followed as to others. He is custodier of the Public Seal of the Colony. Process is issued by him, and tested in his name. He has the general superintendence of education within his Colony...", he appointed to ecclesiastical benefices, and his warrant was necessary for the expenditure of money from the Treasury of the Colony.<sup>(2)</sup>

(1) Sir H. Jenkyns, *British Rule and Jurisdiction beyond the Seas*, p. 104; H. Merivale, *Lectures on Colonization* (1841) p.10.

(2) Arthur Mills, *Colonial Constitutions*, London, 1856, (dedicated to his friend, the Under-Secretary of State for Colonies, Herman Merivale) p.25. For the Governor's powers in respect of his Executive Councillors, see p. 62; infra.

Thus, "in a colony which is not self-governing the Governor is not a constitutional sovereign, but the actual ruler". (1) No wonder that Sir George Grey, speaking of the Cape even after 1854, should say that "Under the constitution which had been granted, the Governor remained, to all purposes, the paramount force in the country. His ministers had practically no power over him, and everything was more or less in his hands."(2)

The Governor, would, however, be careful in his use of authority. In respect of all his actions he had to report to the Secretary of State, to receive disapproval, sanction or advice. Thus, the greater the powers of the Governor, and the more active he was in using them, the greater the responsibility and the practical power of the Secretary of State, whose responsibility for good local administration, and for the political and economic well-being of a colony, was equal to that of a colonial ministry after the grant of responsible government. Necessarily, therefore, in a colony with representative government, such as the Cape had after 1854, let alone in a Colony with a mere Legislative Council, the Secretary of State could request a Governor "to dismiss ministers for refusing to initiate legislation desired by the Home Government, or for submitting a budget disapproved by that Government," (3) and, of course, the veto right held good, as did the other overriding powers, in respect of colonial legislation. (4)

At the Cape the powers inherent in the Commission of the Governor and in the support of the Secretary of State which he could normally rely upon, were broadened not only by the High Commissionership, but by his rather special position with respect to the civil service.. It was the rule early in the 19th Century for different departments of State to exercise their own patronage in the colonies without reference to one another.

(1) H. Jenkyns, op. cit., p. 122.

(2) J. Milne, Romance of a Pro-consul, p. 125.

(3) H. Jenkyns, op. cit., p. 92f.

(4) Ibid.

Particularly the Treasury, Post Office, and the Customs Board insisted, in the first instance, on making appointments to the offices connected with their services in Cape Town. (1) But already in 1809 a breach in this system was made in favour of the Governor, and in any case he controlled the officials at the Cape more than was the case in other colonies. Regulations for trade (2) and the postal system at the Cape were unlike those in the rest of the Empire. The departments in England, ill-informed originally, faut de mieux, "left it to the Governor to frame instructions and rules for the services." Further all salaries were paid out of the colonial revenues, which were disposable according to the Governor's directions until the Board of Colonial Audit began in 1814 gradually to supply the Imperial authorities with knowledge and data by which they might ensure their supervision of colonial finances. (3) But even so, promotion and recognition of all but the most important officials rested in the Governor's hands, and patent offices and absentee-office-holders were unknown at the Cape. An index of the large appointing powers left to the Governor at the Cape is available in the large number of Dutch officials, taking all grades and departments of the Colonial service together, who were appointed by him, and who looked to him for promotion and preferment. (4) The administration of the Cape Colony, therefore, was controlled fairly absolutely by the Governor.

(1) Manning, op. cit., p. 419.

(2) In 1820 Cape Town achieved an almost unique position in the British Empire when it was granted the status of a 'free port' on the basis of a reciprocal admission of British trade into the ports of other nations. (Ibid., p.434f; Harlow and Madden, p.315f. Order-in-Council of 12/7/20). In the terms of cession to Britain in 1814 Dutch shipping was already granted the right "to resort freely to the Cape of Good Hope for ... refreshment and repairs" on the same terms as British shipping. (Eybers, Select Documents, p.22) Mauritius received the same treatment as the Cape in 1820 (Harlow and Madden, p.36; cf. Manning, p.434f.

(3) Ibid., pp. 513ff. and 423f.

(4) Lists in the Court Calendar of the Cape of Good Hope 1806 onwards, and in the Cape Almanacs reveal a clear overall preponderance of Dutch officials; See also Theal, R.C.C. Vol. V, pp. 356, 387f. Out of 14 original appointments made by Sir David Baird, there was only one Briton appointed, who was not placed in the most important vacancy. The Records also contain the Commissions of Governors up to 1833 in which their powers of appointment are defined.



Having noticed the important position of the Governor, it is necessary to examine the more complex structure given to the Executive branch of the Government after 1825, beginning with the Council of Advice. This Council was created in 1825 "to advise and assist in the Administration of Government", (1) and appears to have been to a certain degree simply a resuscitation in effect of the former Dutch Council of Policy. (2) The functions and constitutional position of the Secretary to the Government, or Colonial Secretary, was practically identical in both the Dutch periods of administration and during the periods of British rule before and after 1803. (3)

Little chance was given to the new Council to develop any organic unity. It was originally composed of seven members, counting the Governor among them. Three of these besides the Governor obtained their seats by virtue of their offices, namely the Chief Justice, the Secretary to the Government, and the military officer next in rank to the Governor. The other three were nominated by Lord Bathurst, (4) and included, by name, the Auditor-General, the Treasurer and Receiver-General, and the man who succeeded to the Secretaryship to Government in 1827, Lieutenant-Colonel Bell. In short, it included those key officers whose administrative acts were necessary for the procedure and business of government. (5) Then, in 1827, the old Dutch local government boards were abolished, and Lord Goderich (6) deprived two Councillors of their

- (1) Harlow and Madden, op. cit., p.111ff. Additional Instructions to Lord Charles Somerset, 5/2/25; Eybers, op. cit., p.24: Proclamation by Lord Charles Somerset dated 2 May, 1825.
- (2) See R. Kilpin, Romance, p.35; W.P.M. Kennedy and H.J. Schlosberg, The Law and Custom of the South African Constitution, O.U.P. 1937, p.9ff.
- (3) Kilpin, Romance, p.35. Dr. F.J. Venter, Govt. Depts. of the Cape of Good Hope, 1806-1910, p.8ff.
- (4) Secretary of State for War and Colonies 1812-27, under whom the Colonial Office as we know it began to develop. Vide H.T. Manning, British Colonial Government after the American Revolution, passim.
- (5) Theal, History of South Africa since 1795, Vol.I, p.338. Bell retired in 1840.
- (6) Successor to Bathurst in 1828 (after W. Huskisson's short tenure of the office.)

seats, and directed Lieutenant-Governor Bourke, as Acting-Governor, to nominate in their places two colonists, subject to his approval of their names. The council then consisted of the Chief Justice, the officer who was second in command of the troops, the Colonial Secretary, the Treasurer, and two 'representatives'. Within months of this, however, the Chief Justice was deprived of his seat (he had proved an awkward member of Government in personal as well as in other senses), and the clerk of the Council, while retaining his clerkship, succeeded to the office of Auditor-General and to a seat in the Council. Thus the Council, if one exclude its chairman, the Governor, was reduced to five members. (1) The Advisory Council was again modified in 1834, when it became the Executive Council, when for the first time a more or less settled form was given to the Governor's Council. It was to be composed of the principal office holders: the military officer next in rank to the Governor, the Colonial Secretary, the Treasurer-General, and the Attorney-General. All of these, and also the Auditor-General, (2) were to have seats, ex officio, in the Legislative Council in which the Governor also sat as President. (3) In 1840 the number of officials in the Legislative and Executive Councils was enlarged by the addition of the Collector of Customs (William Field). (4) When there was a Lieutenant-Governor, if he was also the military officer next in rank to the Governor, he also had a seat in each Council; but until the appointment of Lieutenant-Governor Darling in 1852 the Executive Council, like the Legislative, was presided over by the Governor, or in the latter's absence, by the Colonial Secretary. (5)

(1) Ibid., p. 434.

(2) See pp. 192-3 below for the peculiar position of the Auditor.

(3) Theal, op. cit., Vol. II, p.47.

(4) Ibid., p. 214.

(5) Harlow and Madden, op. cit., p.115ff. Instructions to Sir. B. D'Urban. Cf. P.P. 27/6/51 (457), Commission and Instructions to Sir H. Smith. Re. Darling vide P.P. 16/2/53 (130) p.5f.

The Lieutenant-Governors and military officers entitled to seats in the Councils were practically always absent from Cape Town.

The Councillors now emerge as a powerful group with legislative as well as executive functions. They generally deliberated and voted on legislation which the Governor wished to lay before the Legislative Council. Proper minutes were kept in which members who dissented from the majority or from the opinion of the Governor might record their votes, and copies of the Minutes were regularly despatched to the Imperial Colonial Office. Since the officers of Government always held a majority of the seats in the Legislative Council and were bound to vote uniformly on Government measures, whether they had been dissentient voters in 'another place' or not, the proposals of the Executive were always carried.

Every time a Governor was appointed to the Cape, by a passage inserted in his Commission, the Executive Council was re-appointed, and its position was defined in his Instructions, both of which instruments were granted under the Royal Sign Manual. Thus, in November 1833, Sir Benjamin D'Urban's Commission declared it to be the Queen's will that there should be an Executive Council with whose advice he should act, and on the 8th November in his Instructions he was informed who should have seats in his Council, and what their particular functions should be. (1) The words used are almost identical with those in the Instructions to all the succeeding Governors until the introduction of Responsible Government in 1872 (2): "We do direct and declare," Sir

(1) Harlow and Madden, *op. cit.*, p.115. Instructions of 8/11/1833, paragraphs 35-8.

(2) P.P. 27/6/51 (457) appointment of Sir Harry Smith, Royal Commission and Instructions of 15th Dec. and 22nd Dec., 1847. These Instructions were repeated to both Sir George Cathcart and Sir George Grey. *Vide* P.P. 16/2/53 (130) for Cathcart, and report of Parliamentary Debates in the Cape Advertiser and Mail of 27th and 31st March 1856 for Grey. In Cathcart's Instructions the Lieutenant-Governor was restored to both Councils, and the change repeated in Sir George Grey's.

Benjamin D'Urban's Instructions read, "that the said Executive Council shall consist of the several persons following..." (already mentioned above); "And," they continued, "We do hereby direct and require, that in the execution of the powers and authorities committed to you by your ... Commission, you do in all cases consult with the said Executive Council excepting only when the matters to be decided shall be too unimportant to require their advice, or too urgent to admit of such advice being given by the time within which it may be necessary for you to act in respect of such matters. Provided, that in all such urgent cases you do subsequently, and at the earliest practicable period, communicate to the said Executive Council the measures which you may so have adopted, with the reasons thereof." They stated further: "And We do authorise and require the said members of the... Executive Council to meet in obedience to any summonses which shall by you for that purpose be addressed to them, and to consult with and advise you upon any question connected with the Executive Government... which may by you be proposed for their consideration: Provided always, that two of such members at the least be always present on any such occasion, and that distinct minutes be kept of their deliberations and proceedings... and We do require you to transmit to Us, twice at the least in each year through one of Our Principal Secretaries of State full and exact copies of all such minutes." Finally: "And We do authorize you in your discretion ... to act in the exercise of the power committed to you ... in opposition to the advice which may, in any such case be given to you by the members of your ... Executive Council, provided nevertheless that in any such case you do fully report to Us by the first convenient opportunity every such proceeding with the grounds and reasons thereof."

While at one stage no less than four of the Advisory Councillors were Dutch Colonists - J.W. Stoll, P.G. Brink, Sir J. Truter and Captain Stockenstrom, (1)

(1) Brink was even a temporary incumbent of the influential Colonial Secretaryship during 1824.

after the 1830's appointments to the Executive were always made from among Britons, whether colonists or from overseas, patronage at this level being vested in the Secretary of State for War and Colonies. Stoll and Truter had died and Stockenstrom had resigned by 1834; Brink retired in 1849, when W. Hope was appointed from Britain to replace him.

Until 1857 the Executive Councillors at the commencement of each Governor's term of office took four oaths: one of allegiance to the Queen and her House, and abjuring the Stuart succession; one simply to the Queen herself; one of belief in the absolute sovereignty of the Queen against any deposition, excommunication or other act of the Pope, Roman Church, or any person; and one to do diligent and faithful service on the Executive Council. (1) All the Executive officers - the Governor, Lieutenant-Governor, and other high officials, as well as the Executive Councillors themselves, took other oaths as well, as holders of particular offices. Thus, for example, Petrus Johannes Denyssen, temporarily taking William Porter's place simply as Attorney-General in 1862, took oath as such but not as an Executive Councillor. W.D. Griffith, Attorney General from 1866 to 1872 after Porter's retirement, took both oaths. (2)

(1) From 1857 only the second and last of these were sworn, and from March 1859 when Richard Southey was sworn in as Auditor-General, only the last of these oaths was taken; it read as follows: "I - - - do promise and swear that I will faithfully and diligently execute to the utmost of my abilities, the several duties of the office of a Member of the Executive Council of the Cape of Good Hope, so Help me God." The form of the oath was changed by April 15th 1872, when Simeon Jacobs took oath, and it was in this new style that the first Responsible Ministers took oath on December 2nd 1872. The contrast with the old oath is interesting: "I - - - being chosen and admitted of Her Majesty's Executive Council in the Colony of the Cape of Good Hope, do swear that I will, to the best of my judgment, at all times when thereto required, freely give of my council and advice to the Governor, Lieutenant Governor, or officer administering the Government of the Colony for the time being, for the good management of the affairs of the Colony: that I will not directly nor indirectly reveal such matters as shall be debated in Council and committed to my secrecy, but that I will in all things be a true and faithful Councillor. So Help me God." E.C. 284, Oath Book, Cape Archives. S. Jacobs was Attorney General, 1873-7.

(2) Under Responsible Government, Ministers did the same; thus J.C. Molteno took oath as an Executive Councillor and also as Colonial Secretary, in December 1872. E.C. 285. Oath Book. Cape Archives.

The usefulness of the Executive Council was apparent from the moment of its creation in 1834. Within a year of its creation the Governor Sir Benjamin D'Urban, was called to the frontier by the alarms of war, and the Colonial Secretary "was empowered to carry on the administration of the Colony with the advice of the executive council under the title of provisional government", (1) thus setting a precedent which made the Colonial Secretary in the 1840's and until 1852 the de facto Governor of the Colony whenever the Governor was absent, as he so frequently was, on the Eastern frontier. And this course of events, assisted by the Colonial Secretary's longer tenure of office and more immediate and continuous relationship with all the government offices, gave him a hold on the government which it would take a strong Governor to upset. Both John Montagu (1843-53) (2) and Rawson W. Rawson (1854-64) in their dual capacities as legislators and chief executive officers under the Governor, achieved positions which fully warranted the general acceptance by 1854 of the title 'Colonial' Secretary, as opposed to the old one of 'Secretary to the Government'; (3) the former title, perhaps, implying that this official was vis à vis the Cape what the Secretary of State for Colonies (4) was vis à vis the Empire. He was, in other words, the principal officer administering the Colonial Government, and upon his shoulders rested in practice the responsibility not merely of being the great co-ordinating agent in the administration, but from time to time for making important political decisions.(5)

(1) Theal, History of S.A. 1834-54, London 1893, p.13.

(2) Infra, Ch.III, passim.

(3) In respect of Montagu, see infra pp. 117-152.

(4) The other "Colonial Secretary".

(5) Cf. F.J. Venter, op. cit., p. 8ff., and J.A.R. Marriott, English Political Institutions, p.108f.

But, unlike the Governor, he could not act in any matter 'proprio motu'.<sup>u</sup> Because his position was weaker than that of the Governor, he sought the advice and support of his fellow Executive Councillors on every important matter. In his hands, then, the Council, sometimes casually used by Governors, (1) achieved a weight and character at the Cape which makes it peculiarly noteworthy. This is perhaps one reason, though not the most important, why the elected parliament after 1854 did not demand an immediate introduction of Responsible Government, for the Executive Council had often acted collectively, with a marked sense of responsibility towards the Cape as well as to the Crown. Its growth as a corporate body is easily discernible. By 1836 it had virtually legislated itself into a permanent position with regard to the procedure to be followed before the enactment of municipal ordinances, and by the mid-1840's by firm establishment of precedent had further strengthened its position so much that a Governor like Sir Henry Pottinger who was not renowned for meekness of temper, but who had some civil training, did not choose to question it. An event occurring in 1847 shows how this came about. At that time a complaint reached Governor Sir Henry Pottinger from the inhabitants of Port Elizabeth, that an application to the Colonial Secretary in Cape Town for the enactment of a Municipal Ordinance for their town had elicited the reply that, the Governor being absent, the measure could not be proceeded with by the Executive Council, without whose concurrence it could not be introduced into the Legislative Council. Montagu's reply evidently caused as much surprise to Port Elizabeth as it did to Lieutenant-Governor Sir Henry Young, and to the Governor. The latter declared it was emphatically not because the Executive Council was not meeting in his absence, since to his certain knowledge it met formally twice a week, and he appealed to Montagu for enlightenment. The result was a formal memorandum

(1) Infra, p. 117 ff.

from the Executive Council and signed in the usual style by all its members. By Ordinance No. 9 of 1836, for the creation of Municipal Boards, they declared, it was enacted that the Regulations adopted by a town meeting for incorporation into a Municipal Ordinance, had to "be transmitted to the Governor of the Colony ... for the approval, amendment, or disallowance thereof of the said Governor, by and with the advice of the Executive Council." Since Ordinance No. 9 had been enacted, all Municipal Regulations had been considered by the Executive Council in the presence of the Governor, because "great circumspection in regard to their formal sanction has been deemed necessary," so as to allow no chance of a legal argument being sustained against the lawfulness of an Ordinance. Referring to the Royal Instructions which gave the Executive Council its being, the Councillors stated that they evidently intended the Council to meet and consult with the Governor in person "in the same manner as the Queen, as we believe, is always present in the Privy Council, when passing Orders which require her to act by and with their advice." "As advisers to the Governor upon matters not of strictly legal character," the Councillors affirmed, "the Executive Council can meet at any time and place, and act as advisers upon any subject required of them, although the Governor is not present; for in these cases a substantial compliance with the Royal Instructions, and not a formal and ultimate adherence, is all that seems to be required." They allowed, however, an escape from the immediate inconvenience which might arise from the Governor's absence when new Municipal Ordinances, or amendments to existing ones, were urgently required, by suggesting that an Ordinance might in the meantime be drafted and introduced which would make "some temporary provision in regard to Municipal Regulations."

Pottinger seized upon this suggestion and instructed Montagu to proceed in this manner. The Attorney-General was then in his turn requested to prepare a Draft Ordinance. There followed, however, a ruling by the Attorney-General which upset the practice and



beliefs of a decade. For Porter decided that under the Royal Instructions the Executive Council was a distinct body of which the Governor was not a member. His personal attendance in order to obtain advice was not therefore necessary since advice could be conveyed by means of a formal document, in this matter, evidently, as in all others. (1) Since such documents, signed by all the Councillors, were already commonly used it only required the Governor to refer all Municipal Regulations to the Council, for the same procedure to be made applicable to them. The advice of the Attorney-General was duly followed from 1847 onwards. This episode demonstrates the degree of flexibility which might be achieved within a rigidly constituted government, and how for a number of years an evidently dispensable part of the government made itself absolutely necessary to the procedure of legislating for the colony, achieving a strength which did not essentially lie in the Royal Instructions which gave the Council its being. It is readily observable that Royal Instructions, like other formal and customary documents governing appointments and endowing authority, tended to be given a form and content which changed as little as possible, (2) so that institutions might develop under their authority, having customary rules, procedures and characteristics which would be almost as strong as the law itself. This was clearly happening at the Cape, though, as this instance shows, without sufficient lapse of time to sap the law of its original vigour.

(1) All the documents referred to here in 'Correspondence between Pottinger and Young, re Separation', 1847. pp. 129-134.

(2) Beaglehole, J.C. 'The royal instructions to colonial governors, 1783-1854: a study in British Colonial policy.' Bulletin of the Institute of Historical Research, Vol. VII, No. 21, Feb., 1930.

Important though the Cape Executive Council was in the government of the Colony, its constitutional position was little better than that of the old Council of Advice; for, as had been indicated, whether during the period of the Legislative Council (1834 to 1853) or of the Representative Parliament (1854 to 1872) "the responsibility of government was centred, absolutely and exclusively, in the governor." The Executive Councillors "though accountable to the Crown for the faithful discharge of their respective official duties, were not answerable, either individually or collectively, for the result of the advice they might offer to the governor. He consulted them at his own discretion; and the responsibility of government in no way devolved upon them." And the Governor, naturally, was responsible only to the Secretary of State. (1)

In New South Wales, where the Executive Council was constituted in the same way as at the Cape, though a weak Governor might "tend to lean upon the permanent officials," a "strong Governor would actually be a ruler;" and though, as at the Cape, the Executive Council "directed by the Governor, supervised the routine work of administration ... considered the estimates before they were submitted to the legislative body, ... scrutinised draft Bills which were intended to give effect to the Governor's policy; and, not infrequently, ... reported on specific questions which were submitted to it for consideration," yet "the Governor was the effective head of the administrative system."<sup>(2)</sup> More, one finds

(1) Alpheus Todd, *Parliamentary Government in the British Colonies*, p.25f. (London, 1894). Cf. J.A.R. Marriott, 'The Mechanism of the Modern State'. Oxford 1927, Vol. II, p.55ff: " 'no minister can shelter himself behind the throne by pleading obedience to the orders of his sovereign. He is ... answerable for the justice, the honesty, the utility, of all measures emanating from the Crown as well as for their legality.' " "Ministers of State are ... both legally responsible for their individual acts, and politically responsible for their collective advice. But the two responsibilities are separable and distinct."

(2)<sup>C.H.E. vol. VIII, pt. 1, p. 174.</sup> The information provided by a modern colonial official on this point is of interest: "Every Governor," he writes, "establishes an ascendancy over his Council. He attaches great weight no doubt to the opinions of his Councillors official and unofficial, but his own opinion carries still more weight with them." Only on extraordinary occasions does a Council offer opposition to a Governor's "considered policy". - Sir Anton Bertram, 'The Colonial Service', p.16ff. London, 1930.

that despite the representative element introduced into the Legislature in New South Wales in 1842, "the Governor... continued to wield his executive powers without reference to that body," since the Executive Councillors were appointed by the same body that sent the Governor his Instructions and were "particularly susceptible" to his influence. In New South Wales, then, "the executive authority of the Governor was complete; its legality beyond dispute, and it was supported by the whole influence of the Colonial Office". (1) This was true throughout the Empire at that time. Yet the Governor did not always enjoy the support of the Secretary of State. For example, the Colonial Secretary of Van Dieman's Land, John Montagu, found that the Secretary of State justified his stand against his Governor. (2) Similarly at the Cape, Lieutenant-Governor Darling found himself overruled when he pitted himself against the Acting-Colonial Secretary at the Cape in 1852-4. (3) If Montagu was exonerated and transferred, Southey, who had been suspended from office, was forced back upon Darling who detested him. Darling himself was shortly after transferred, though Southey was replaced by Rawson as Permanent Secretary before then. In general, however, the authority of the Governor was not questioned, and as James Stephen had pointed out as early as 1828, all public officers, other than the judges, and including the Governor, held office only during pleasure; (4)

(1) C.H.B.E. Vol. VII, Australia, p. 171.

(2) Newman, op. cit., p. 26.

(3) A. Wilmot, Life and Times of Sir Richard Southey, pp.100-107. The Secretary of State implied his fault for not taking the advice of his Council. Vide also infra. pp.162, 164, 165.

(4) In 1825 Governor Darling, in Australia, was authorised to appoint and to suspend executive councillors, subject only to confirmation of his actions by the Colonial Office. F. Knaplund, James Stephen and the British Colonial System, 1813-1847; Madison, 1953, p. 62.

During the 1830's, in order to prevent the spectacle of a Colonial Secretary consistently opposing his Governor, as had occurred in New South Wales, Lord Glenelg confirmed the right of a Governor to dismiss a non-co-operative civil official: "the Government," he said, "must be free to dispense with the services of any man, when the public interests require it." In yet another despatch the Secretary of State made it clear that when an official acted in opposition to the Governor he must resign or be suspended. (1) But, in fact, Executive Councillors were not intended by the Colonial Office to be treated casually; they were not dispensable at the mere whim of a Governor, and as the 19th Century progressed and the complexity of government everywhere increased, they became increasingly important.

Their anomalous position in law attracted quite as much attention as the need for constitutional changes of a more general nature. Opposing views of the position of the colonial Executive Councils were prominently aired between 1838 and 1847. The Colonial Reformers in Britain made them an especial target of their criticism, and particularly in Canada they became the focal point of public criticism. The Durham Report, in fact, was neither the first nor the last, if it is the best-known, exposition which favoured a reform of the Executive Councils.

The deliberations on the place of the Executive Council in the Government hierarchy in Canada were very closely followed in the Cape newspaper, and not least in the *Graham's Town Journal*; it is not a digression, therefore, to give some account of them. Moreover, while these deliberations were still in progress the nature of the Executive Council was subtly modified in all colonies. But it should be noted here,

(1) Lord Glenelg to Sir F. Bone Head in Upper Canada, 5/12/35; *Vide* P. Knaplund, James Stephen and the British Colonial System, 1813-47, p. 62.

with some emphasis, as it possibly was not generally noted at the Cape at the time, that the Canadian Executive Councils were not like the Council at the Cape: they differed in several important respects. First, the members were advisors of the Governors, but they did not always represent departments of government; that is to say, the Councils contained members of two kinds - departmental heads and persons who did not represent departments. The description of the Canadian Councils by H.E. Egerton (1) evidently goes too far: "There was no division into departments", he wrote, "and no individual responsibility, and no individual superintendence". Nor was he quite right in stating that "each member of the Council took an equal part in all the business brought before it". Lord Sydenham, for example, informed the Secretary of State in 1841 that he had formerly appointed the Provincial Secretary of Lower Canada, the Civil Secretary of Upper Canada, and the Receiver-General of Upper Canada, to corresponding offices in the Executive departments and Executive Council of the newly established Canadian Union; and that he had just additionally appointed the Attorney-Generals and Solicitor-Generals of the two former colonies to the same Council. (2) At least one of these officers, Dominic Daly (who earned the nickname of 'The Perpetual Secretary') had a long career (1827-40) as assistant secretary to the government, and, after promotion in 1829, as provincial secretary, in Lower Canada. (3)

- (1) A Short History of British Colonial Policy 1606-1909, 9th Ed., Revised by A.P. Newton, 1932, p.225.
- (2) Annual Register, 1841, p.444f. Copy of Despatch Sydenham to Russell, 16/2/41.
- (3) He was to take the normal route of promotion for chief secretaries in Colonial service by becoming a Lieutenant-Governor, in Tobago and then in Prince Edward Island, and finally by becoming Governor of South Australia. Vide D.M.B., op. cit., Vol.XIII. p. 439.

Departmental heads of long standing, appointed to their offices by the usual warrant issued through the Secretary of State, and to the Council under the normal terms of a Governor's Commission and Instructions, would be individually responsible for their departments, and were expected in Council, or in giving advice to the Governor, to deal particularly with matters which concerned their departments, as at the Cape, but the non-departmental members in the Canadian Executive Council might easily blur the responsibility of the departmental heads.

Secondly, not only did the Canadian Councils, unlike the Cape, have non-departmental members, but the Chief Secretary to the Government did not necessarily sit in the Council. Thus, Dominic Daly only became a member of the Council in Lower Canada in 1840, and he retired from the Council of the Canadian Union in 1846, while retaining the provincial secretaryship for two more years. Moreover, he was also elected as a member of the Union Parliament, in which he sat until his departure for Britain in October, 1849. (1)

If, therefore, the Canadian Executive was "singularly weak" (2) it was evidently less for the reasons supplied by Egerton and much more because in Canada there were representative institutions dating back to 1791, in which the Executive could not on every occasion control the votes of the representatives. (3) But the absence of the provincial secretary in the council must have been a contributory factor, especially when one bears in mind that it was probably to the Canadian provincial secretary's office that Wakefield was referring when he said that this office was "the central

(1) D.N.B., Vol. XIII, p. 439.

(2) Egerton, *op. cit.*, p. 225.

(3) A.B. Keith, *Responsible Government in the Dominions*, Oxford, 1912, Vol. I, p.9ff.

chaos".(1)

Thirdly. There was a further difference between the Canadian and Cape governments; in Lower Canada, especially, Sydenham almost lost heart because, he wrote, "There is positively no machinery of government; everything is to be done by the Governor and his Secretary. There are no heads of departments at all, or none whom one can depend on, or even get at; for most of them are still at Quebec, and it is difficult to move them up (to Montreal) because there are no public buildings.(2) The wise system hitherto adopted," he went on, "pointing to an evil which a wiser dispensation had avoided in the Anglo-Dutch Cape Colony, "has been to stick two men into some office whenever a vacancy occurred - one Frenchman and one Britisher! Thus we have joint Crown surveyors, joint sheriffs, etc., each opposing the other in everything he attempts. Can you conceive a system better calculated to countenance the distinction of race? ... The hand of the government," he continued, "is utterly unknown and unfelt at present out of Montreal and Quebec, and not the slightest means exist of knowing what is passing in the rural districts."(3)

- (1) Infra. p. 52. For Nova Scotia, Earl Grey laid down that "as a rule, public officers should hold as in the United Kingdom by a permanent tenure, while a limited number of officers should be political officers, viz., the Attorney-General, the Solicitor-General, the Provincial Secretary, and possibly two more offices, and he advised that salaries be attached to two or three places in the Executive Council to secure the services of qualified men." Subsequently in 1848, the Executive Council resigned with the exception of the Provincial Secretary, but significantly, no ministry could be formed until the Lieutenant-Governor dismissed the Provincial Secretary, and surrendered the office to political control. Keith, op. cit., p. 21f. Text of Grey's despatch in H.E. Egerton, and W.L. Grant, Selected Speeches and Despatches relating to Canadian Constitutional History, London, 1907, p.302ff.
- (2) It was just after the two Canadas had been united in 1840.
- (3) W.F.M. Kennedy, the Constitution of Canada, p.92.

The Chief Secretary to the government in Canada, then, might not only be weak in the Council, but he was not strong in relation to the control of the colonial civil service, and as a member of the Parliament, while not in the Council, could pit his knowledge and experience against other Executive officers.

Fourth, and lastly, the criticism which Sydenham levelled against the Executive in Nova Scotia seems to have been equally applicable to the Canadian Executive Council: "by far the most serious defect in the government is the utter absence of power in the Executive, and its total want of energy to attempt to occupy the attention of the country upon real improvements, or to lead the Legislature in the preparation and adoption of measures for the benefit of the colony. It does not appear to have occurred to any one," he lamented, "that it is one of the first duties of the Government to suggest improvements where they are wanted..." The result, he intimated, was that not only were the improvements neglected which the people had a right to expect, and the prosperity of the country checked, "but that the popular branch of the Legislature will misuse its power..." (1)

There is some evidence, then, that though the two Canadas were politically more mature, their administrative structure, especially the organisation of local government, was not as highly developed as that at the Cape had already become by 1839. Furthermore, after the unification there were two bureaucracies to fuse, two groups of provincial interests to reconcile, and though much research has been done into the constitutional development of Canada following the publication of the Durham Report, little has been done into the process of administrative re-organisation necessitated as much by Union, as by the subsequent development of responsible government. And because in Canada the Executive Council, however energetic it might become under a Sydenham, could still be checked,

(1) Sydenham to Russell, July 1840, Egerton and Grant, op. cit., p.308f.



and frustrated by an old-established and headstrong parliament, reform when it did come would not get thoroughly under way until the old discredited Executive gave way to responsible ministries, the first of which appeared in Nova Scotia in 1846 and in Canada in 1848.

None of this was true of the Cape: the civil service as well as the chief executive officers were fully alive to the primacy, under the Governor, of the Colonial Secretary; the Legislative Council might be a place in which tempers flared, but the non-official members were powerless to check the authority of the official members; and finally, the public was fully aware, from 1843 at all events, that the initiators of reform and of bold measures to improve the colony in every respect were, nine times out of ten, members of the Executive Council. Certainly, if the function of the Executive Council be to determine upon measures and to supervise their execution, then the Councillors at the Cape must have been among the most able in the Empire. In as much as sound administration is itself the groundwork of parliamentary government, it is arguable that the Cape was in practice fortunate in that vigorous administration and local government ante-dated the grant of representative institutions; while the development of popular criticism of the actions of the Executive meant that in an expanding and changing Colony, men were being forced to crystallise their views on public affairs in general, and not more specifically and simply on the question of constitutional 'irresponsibility' of the Executive Council. At the Cape, the heads of departments were in the open and easily recognisable, they were the Executive Council, their experience and thorough knowledge of the administration, and of the public their departments served, was immediately available at the Council board. For all the faults of their position, seen from a democratic point of view, the Cape Executive Councillors must have felt themselves more open to criticism for their management, and more responsible than the Canadian Executive Councillors. Even in New South Wales, where the Executive Council was perfectly similar to that at the Cape, even to a large extent during the 1840's as to

the character of the Colonial Secretary, the great Edward Deas Thomson, who was not unlike Montagu, (1) the Council was differently placed with regard to the legislative body. The Legislative Council of New South Wales was two-thirds elective and the Executive officers who sat in it formed less than one-third of the House, and could be outvoted. (2) In other words, the elected members could lead, or check the Government.

In both Canada and Australia, then, there were more or less strong elected assemblies, and the conventions of Government evolved differently from those at the Cape, which in 1842 not only had yet to achieve an elected legislative body but had an Executive which in the public eye had far more importance than the nominated legislature. The single point upon which the Canadian and Cape Executive Councils could be attacked in common was their constitutional irresponsibility to the colonists through their legislative bodies.

Still, the Canadian case had a bearing on the Cape situation; it forced the pace of constitutional speculation and experiment at a time when in Britain itself the implications of the Reform Bill of 1832 were barely understood, while the relations between the Cabinet and the administration were the result, not of theory, but of two centuries of evolutionary adaptation. (3) The Durham Report, and the events which preceded and followed it in Canada, had an educative effect upon public opinion in other colonies, since it raised the question of how to reconcile constitutional growth in the colonies, with the maintenance of the kind of imperial direction and co-ordination then considered necessary. The ideas advanced by Durham and brilliantly propagated by Wakefield, were as educative in Britain and the colonies as they were in Canada itself.

(1) Vide D.N.B. op. cit.; C.H.B.E., Vol.VII, Pt.1, p.430f; Morrell, The Colonial Policy of Peel and Russell, pp. 361, 364, 365, 415.

(2) Morrell, op. cit., p.84.

(3) J.H. Plumb, The Organisation of the Cabinet in the Reign of Queen Anne; Transactions of the Royal Historical Society, Vol. VII, 1957, p.155f.

In "A Minute on the state of affairs in Lower Canada in November 1836" which was a summary of a report made to Lord Glenelg by certain Commissioners (1) the history and the duties of the Executive Council from 1791 was briefly outlined, as were the demands that were currently being made by the Legislative Assembly about the Council. There was a popular demand for 'Cabinet' government in the English fashion, though it was limited to a desire for control of only internal matters; the Commissioners opposed it since, they argued, "it is the essence of a Colonial Administration that it should be carried on in conformity with, and subject to the general policy of the mother country. This can be effected only by enforcing the responsibility to the Metropolitan Government of the Executive power in the subordinate country ... if the arrangements demanded by the Assembly were agreed to," the Minute continued, "this responsibility must be much circumscribed, if not altogether done away with." For, it argued, "The Executive Council being responsible to the Assembly for the conduct of public affairs, must of course be allowed to direct them. Thus, the Governor, though retaining the title of King's Representative, would cease to be the administrator of the Government, and would be incompetent to carry into effect the Instructions which he might receive from His Majesty..." and the colony "would in fact enjoy a real independence." The Commissioners then held that the scheme was "based on an attempt at a perfect parallelism in cases which were widely dissimilar, that, namely, of a metropolitan and a subordinate Government." Any mere modification of the current system was equally opposed, on the grounds that Imperial authority must remain sovereign, and the Governor would be obliged to overrule the Executive Council where its proposals or actions trenched upon Imperial policies or interests. This would increase "in a serious degree, the odium which would attach to

(1) Evidently the Gosford Commission of 1835-6, vide C.H.B.R., Vol. VI, Canada, pp. 247-8.

his administration, and at the same time cause the Council and the Assembly to become the objects of popular esteem. (1)

Several years later, in 1844, Edward Gibbon Wakefield was to deny this argument. Even under Colonial Responsible Government, he argued, the Governor does not act in the same way as the King, by sharing with, or shifting responsibility for his actions onto his Ministers; for the Governor remains fully accountable "for every act of his administration" to the Imperial authorities whose servant he is, and from whom he takes his instructions. The question of what are 'provincial' (as he wrote, meaning 'colonial') and Imperial matters does not arise, since "The higher authority ... must always define its own sphere of action." The Imperial Government then would always decide what questions were Imperial, and what 'provincial'. Since this resolved no practical difficulties, Wakefield pursued the matter further: "On questions of purely Imperial policy, (the Colonial Office) may be peremptory, and (the Governor) must execute (Imperial instructions) to the letter ... On questions of provincial concern they must be held to be conditional; and he will have to try to carry them out, - but if the temper of the Province be such that he cannot act on them without thereby setting it against him, the general command laid upon him to govern through his Assembly will be his warrant for deferring to its wishes, and reporting home the difficulty he has met with as an insurmountable obstacle. It will be for the home Government," he continued, "simply to judge of the sufficiency or insufficiency to bring his Ministers and House to their views. Satisfied of his fidelity and judgement they must rest content. He has disobeyed no order..." (2)

(1) Vide A.G. Doughty, Report of the Public Archives for the year 1923, The Durham Papers. Ottawa, 1924, pp. 232ff.

(2) E.M. Wrong, Charles Buller and Responsible Government, p. 262 and cf. p. 178f., Text of Wakefield's 'Sir Charles Metcalfe in Canada, 1844'.

Wakefield, after all held the view that a "colony is ... nothing more than a powerful municipality of the Empire" with its "local laws made valid" and its very existence in a corporate sense given to it by Imperial authority.

The difficulties discussed by Wakefield had grown, possibly out of one of the things which, despite its arguments, the Gosford Commission had suggested, namely (1) "That the appointment of the Councillors should not last during good behaviour, nor require for its termination the assignment of any fault, but be liable to revocation whenever, on general grounds, the Governor might deem it advisable; a report of the circumstances, and the reasons which led to it, being immediately made to the Secretary of State." Lord Glenelg, in a Minute placed before the Cabinet, himself suggested that the Executive Council might contain representatives from the Legislative Council and also two members who were not members of other Government bodies. The Councillors, he thought, might also "be drawn from the different districts of the province and from each of the great separate interests..." And, he went on, they might "hold their seats during the pleasure of the Crown; and as it might frequently be desirable to remove, for mere unfitness, members to whose charge no positive fault could be laid" he proposed that the entire Council might be reconstituted from time to time, or that its members might retire in rotation.(2) Some months later, on 14th July, 1837, Lord Glenelg actually instructed Lord Gosford to implement these proposals (3) but this Gosford appears to have been unable to do before insurrectionary movements switched, for the time being, the attention of the Government to other things.

(1) Quoted from the Minutes referred to on p. 79 supra.

(2) A.G. Doughty, op. cit., p. 246ff. The Minute dates at about October 1836.

(3) Cf. Ibid., p.296ff, Despatch, Lord Glenelg to the Earl of Gosford, dated Downing Street, 31st August, 1837.

In the meantime, however, Lord John Russell, Home Secretary in Melbourne's Cabinet, moved a series of resolutions in the House of Commons (1) one of which was to the effect, "That while it is expedient to improve the composition of the Executive Council in Lower Canada, it is unadvisable to subject it to the responsibility demanded by the House of Assembly of that province," and by the end of April the Commons had agreed to this, as did also the House of Lords. (2) That some change in the composition, and therefore of the position, of the Executive Council was necessary, was emphasised once more by both the Governor and the Assembly of Lower Canada: "Certain recent proceedings of the executive," Lord Gosford wrote on 30th August 1837, "which appear to be only the prelude to divers others, lead us to regret that the head of the local administration should not, under existing circumstances, have been surrounded by men possessing the confidence of the public, and uniting, with great experience in business, a perfect knowledge of the feelings and disposition of the people; and who as such would not have advised the head of the executive to acts which can only increase the difficulties already existing." (3) An Address from the Assembly to the Queen, dated 13th March 1837 once more urged the granting of a Responsible Executive. To this request Lord Glenelg replied that "To any such demand Her Majesty's Government must oppose a respectful but .... a firm declaration that it is inconsistent with a due advertence to the essential distinctions between a metropolitan and a colonial government, and is therefore inadmissible." (4)

(1) Ibid., p. 240.

(2) A.G. Doughty, Report of the Public Archives, 1930, Ottawa 1931, p. 407, Despatch, Glenelg to Gosford, 22/5/37.

(3) Doughty, op. cit., The Durham Papers, p. 296.

(4) Ibid., p. 310.

Then came the Durham Report which was not a scheme for the government of nations with an independent status, but for merely provincial autonomy within the framework of Empire. This is clearly shown by the proposed reservation of specific powers for the Imperial Government, which would regulate the alteration of the constitution, foreign affairs, defence, external trade, and Crown lands. In all other respects, there was to be complete autonomy, and the will of the duly elected colonial assembly was to prevail in legislation and administration alike, subject to constitutional convention and propriety. The Governor would necessarily continue to be a potent medium of control, and be responsible primarily to the Secretary of State, but he would be instructed to choose ministers who had the confidence of the assembly and who might 'secure the co-operation of the Assembly in his policy.'<sup>(1)</sup> A Committee of responsible heads of departments each responsible to the Assembly for the efficient control of his office, but not bound together by that collective responsibility broadly characteristic of the British Cabinet in the 19th Century, nor looking to a single head of the committee, nor resting upon a party organisation in the assembly, would obviously leave the Governor in a position dissimilar to that of the monarch in Britain, but it would be a step, possibly, towards the evolution of a truly unified Cabinet, when the Governor would play a rôle such as Elgin played in Canada after 1847. The Report states emphatically that "Every purpose of popular control might be combined with every advantage of vesting the immediate choice of advisors in the Crown, were the Colonial Governor to be instructed to secure the co-operation of the Assembly to his policy by entrusting its administration to such men as could command a majority, and if he were given to understand that he need count on no aid from home in any difference with the Assembly that should not directly involve the relations between the Mother country and the colony. This change," it suggested, "might be effected by a single despatch containing such instructions ..."<sup>(2)</sup>

(1) Report, p. 279.

(2) Chester New, Lord Durham, Oxford, 1929, p. 501.

Earl Durham also proposed that the Governor and his Secretary alone of the Executive should not be responsible to the Legislature; but quite clearly, his recommendation was that the British Cabinet system should be fully adopted in British North America. "The Canadian people were to be permitted to govern themselves in matters of purely Canadian concern, in precisely the same way as the British people governed themselves." (1)

A 'single despatch' was subsequently sent in October 1839, though it fell short of implementing Durham's grand scheme. Appointments to the chief offices of colonial departments and to Governor's Councils had always been made 'during His Majesty's pleasure', but in practice, for life, and Lord John Russell (2) determined to change this. He acted not only à propos of Canadian developments (3) but because of a proposal from the Chairman of the Colonisation Commissioners for South Australia, who, in turn, borrowed it from James Stephen, who evidently considered that the principal executive officers might best be appointed only for the duration of the tenure of office of the Governor under whom they served. The notion that senior officials once appointed were in for life was so deeply entrenched that it was felt that some radical reform was impending. It was Stephen himself who subsequently pointed out that officers were appointed during His Majesty's pleasure and could be dismissed at any time. And it has been shown (4) that in several individual despatches it had been expressly declared that civil officers might be dismissed or suspended, even from the Executive Council. It was only necessary therefore to issue a formal notice that 'Her Majesty's

(1) Chester New, Lord Durham, Oxford, 1929, p. 495ff.

(2) Secretary of State for War and Colonies, September 1839 to September 1841.

(3) Lord John Russell had been profoundly moved by the Durham Report; his two despatches of 14th and 16th October (infra) stemmed directly from it. New, op. cit., p. 544f.

(4) p. 74 above.



pleasure' would cease with the termination of office of each Governor. Lord John Russell accepted this, and minuted that "persons hereafter appointed" might be informed "that on the appointment of a new Governor they will have no claim to be continued in office" and further, that "care must be taken not thereby to give any new right to those hitherto appointed." James Stephen thereupon drafted a 'Circular to the Governors of all the Colonies', which, with slight alterations, Lord John sanctioned on 8th September 1839. The circular was not immediately despatched, since it was intended that it should be made to apply first of all in Canada. (1) On 14th October he requested that it should be sent to the North American Colonies; two days later he made it clear in another despatch that in future officers might be "called upon to retire from the public service as often as any sufficient motives of public policy may suggest the expediency of that measure." The Colonial Secretary and his colleagues, by titles familiar at the Cape, and also any other members of the Executive Council were directly referred to. Though Russell had not intended, and did not desire it, the way was opened to the development of 'cabinet' and party government on the English model in the Colonies. It is important to notice that cabinet government, in its commonly understood form was not introduced; that it was only made possible for it to come into being in the colonies. Further, it would only come into being when in practice the Governors did not dismiss ministers, but accepted their resignation when the ministers themselves felt assured that they did not have the confidence of the Parliament. Not only the Governors, but the members of the Executive Council would have to see themselves from a new perspective, and under the letter of Russell's instruction adopt conventions of parliamentary management about which even in Britain there was confusion, because there was no clear definition of the Cabinet, or even of

(1) See Appendix for Precis of the Circular.

Cabinet government at that time. And in the Colonies the adaptation of notions about what was the British practice, to real political behaviour could not have the sub-conscious quality of British political evolution through two centuries: it had to be achieved within a decade; it was in fact in part an act of faith, based on rapidly conceived constitutional dogma, and in part a leap in the dark, when colonial statesmen lead their governments into full parliamentary ways. (1)

- (1) The Cambridge Historical Journal, Vol.II, No.3, 1928; J.R.M. Butler, 'Origin of Lord John Russell's Despatch of Oct. 16th 1839, on the tenure of Crown Officers in the Colonies. Text of these despatches in Egerton and Grant 'Canadian Constitutional Development', pp. 266, 271; and See W.P.M. Kennedy, Documents of the Canadian Constitution 1759 - 1915, pp.516 - 525, three despatches Russell to Poulett Thomson (later Lord Sydenham) dated 7th September and 14th and 16th October 1839; P. Knaplund, op. cit., p. 62; Arthur Mills, op. cit., pp. 27-9, writing in 1855-6, stated that the despatch of 16th October had been regarded as the 'charter of responsible government' which "principle is now established and acknowledged in the North American provinces, but partially introduced in Jamaica, and prospectively adopted throughout the five Colonies of the Australian group." The power of suspending officials was written into the Cape Governor's Commission and Instructions, Vide P.P. 27/6/51 (457) pp. 2, 11. Re The British Cabinet and Constitution, Vide B.E. Carter, The Office of Prime Minister, London, 1954; Prof. A. Aspinall, The Cabinet Council, 1783-1835, The Raleigh Lecture on History, British Academy, 1932; Cf. E.M. Wrong, op. cit., p. 76; I.W. Jennings, Cabinet Government; D.L. Keir, The Constitutional History of Modern Britain 1485-1937, 3rd Ed. pp. 373f., 405-9; W.C. Costin and S.F. Watson, The Law and Working of the Constitution, Documents, 1660-1914, especially p. 392, Vol. II, where Gladstone is quoted as writing to Sir R. Peel on 24th July 1846 that "Your government has not been carried on by a cabinet, but by the heads of departments each in communication with you." - To which Peel agreed. New, op. cit., p. 503f.

It was the more fortunate then that Lord Russell did not press the matter of executive reform by attempting a fixed constitutional formula such as the British Constitution does not even now possess, which would hinder the development of ministerial responsibility by stages and according to conditions in the several colonies. Better still, he cautioned Poulett Thomson, in his masterly despatch of 14th October to make no hard and fast pronouncements on constitutional subjects. "Every political constitution," he wrote, "in which different bodies share the supreme power, is only enabled to exist by the forbearance of those among whom this power is distributed... Each must exercise a wise moderation. The Governor must only oppose the wishes of the Assembly where the honour of the Crown or the interests of the Empire are deeply concerned; the Assembly must be ready to modify some of its measures for the sake of harmony and from a reverent attachment to the authority of Great Britain."<sup>(1)</sup>

Comments on 'the Russell reform' were soon forthcoming. Lieutenant-Governor Sir John Harvey of Nova Scotia observed that it enlarged the powers of the Governor, while at the same time it increased his responsibility not only towards the Imperial Government, but also towards the inhabitants of the Colony; it ensured for him, too, the cordial support of every officer of government in carrying out the Government's policy, and he noted that the retention of office by an Executive Councillor implied his acceptance of that policy. (2)

(1) E.M. Wrong comments that while Durham seems to have conceived Cabinet government as practiced in Britain to be not impossible in a Colony, Lord John Russell "took Durham to advocate little more than tactful non-partisan action by the Governor, who should himself select ministers popular with the assembly and govern through them," and in a footnote states that "His despatch of 14th October 1839 conveys this view."

(2) A.G. Doughty, op. cit., The Durham Report, p. 205.

Gibbon Wakefield, some time later, interpreted what he called "the Russell Rule" as implying that "the tenure of the higher offices would henceforth be political." The wish was father to the thought. Russell had ruled, in effect, that for the executive convenience of the governor he might legally change his advisers and departmental heads. This did not necessarily involve a Durhamite reform, since as a legal rule it could and did operate in colonies where no representative institutions then existed. It was not until 1846 that by an application, not of the rule, but of British political conventions, that Lieutenant-Governor Sir John Harvey in Nova Scotia, or, with more éclat, until 1848 that Lord Elgin, Durham's son-in-law, gave effect to the sense of the Durham Report. (1)

Wakefield was an intelligent and shrewd radical with an almost fanatical belief in parliamentary government. Already famous, with Charles Buller, who had been Durham's lieutenant in Canada, for the vigour with which he attacked the Colonial Office in London, Wakefield proceeded as sharply to assail the colonial Executive Councils. His zeal was often greater than the extent of his information, but there is no doubt that it was effective. He singled out for particular notice the office of the colonial Secretary to Government, which, he wrote, "is the central chaos, where all business meets, and whence all matters issue."<sup>(2)</sup> This "chaos" was intolerable, because the Secretary's office was the nerve centre, and ought to have been the 'brain' of the whole administration. What irked Wakefield was that responsibility remained simply the Governor's, so that <sup>on an official was an attack</sup> any attack upon the Governor, especially as the official was shielded by the secrecy of the Executive

(1) Vide Kennedy, The Constitution of Canada, Ch.13 and 14, passim.

(2) Re the Cape office, cf. infra. Ch. III.

Council. In his opinion there was therefore (and the reformers all agreed with him) (1) still too much 'irresponsibility' in the advice which the Executive Council might give the Governor and the Governors themselves were not in a proper relationship with either their Councils or the Legislatures. (2) This was particularly lamentable because a Colonial Governor was seldom long in office; (3) and he would be "generally selected with(out) any sort of care". He admitted that examples could be cited where the qualifications of the Governor were suited to the solution of a particular problem which had arisen in the colony to which he was sent, (4) "But otherwise," he wrote, "the selection is a mere affair of patronage; and the influence of a man's friends a much weightier recommendation of his claims than any reputation for ability he can possibly bring to back them..." Even worse, he stated, "Colonial Governorships ... (are) especially devoted to the benefit of middle-aged and elderly gentlemen" of the army or navy, who have "a little more interest with the powers that be than their fellows." Therefore the chief Executive officers of a Colony, from superior experience, from having the administration effectively in their hands before the arrival of a new Governor, and exercising a patronage of their own - exercising what he called "The Oligarchy of the Bureau" - might easily dominate the Governor. (5) Whatever may have been Lord Durham's views, and there are no grounds for dissociating him from Wakefield's enthusiasm, Wakefield and his fellow radicals were determined to substitute for "the oligarchy of the bureau" the practice of a parliamentary

- (1) Charles Buller wrote: "Among those whom in this country or in the Colonies have made 'Responsible Government' their political watchword, there has never been the least difference of opinion as to the object in view: all have confined themselves to demanding that the Crown, while retaining the present unlimited choice of its servants, should nevertheless make a practice of selecting them from among those who possess the confidence of the Legislature." Wrong, op. cit., p. 96.
- (2) Ibid., pp. 215 and 221.
- (3) "In pursuance of a rule first prescribed by Mr. Huskisson, his appointment is usually understood to last for six years." Arthur Mills, op. cit., p. 25. W. Huskisson was Secretary for War and Colonies 1827-8.
- (4) For Cape appointments, see pp. 271-4 below.
- (5) E.M. Wrong, op. cit., p. 209ff. Cf. J.M. Bowker, op. cit., p. 235. The question of patronage is examined in Chap. VI. infra.

executive in the colonies. (1)

The eagerness with which Canadian and Australian affairs were followed at the Cape, (2) suggests that much criticism of the executive councils was grounded on the contagion of example rather than on realistic examination of facts and circumstances within the Cape Colony. For much in Cape politics before 1854 is only comprehensible when read against the changing pattern of colonial development elsewhere.

Certainly, criticism of the position of the Executive Council vis á vis both the Governor and the public, despite the 'Russell reform', was put as forcefully as the Colonial Reformers could have desired it by the individual members of the Cape Colonial Executive. (3) Thus Montagu proposed on 10th April, 1848, that in the Parliamentary constitution to be conferred upon the Cape Colony, the members of the Executive ought to "obtain their seats (in the lower House) by the suffrages of some one of the constituencies." He was quite clear on the point that "To send men who have no seat in the House to speak and conduct business in it, in their official capacity, is wholly opposed to the spirit of constitutional government in the mother country; to grant them ex officio a seat in the house, is equally at variance with its free institutions, and the popular character of such an Assembly." Nor would he accept any arguments that Executive Councillors should be limited to sitting as "Government functionaries", in the Upper House, for that would be "a departure from the usages of constitutional government in the mother country." Yet, it is not made clear in this document how Montagu would define a 'cabinet'. He seems clear

(1) Wrong, op. cit., pp. 215, 221; Herman Merivale, Colonisation and Colonies, passim, especially p. 636, also showed how small a change the 'Russell Rule' had made.

(2) Supra. p. 72f

(3) P.P. 5/2/50 (1137) p. 13ff. and P.P. 19/5/51 (1362) pp. 162-171.

no question  
of the form

enough on the point that an Executive "as in England" was the least that should be given to the Colony: "Those members of the Executive necessary for conducting its business in the lower House, and for explaining, when fit and required, any one of its measures", he declared, should be elected members of Parliament. But he goes on to propose "that the Executive Council should not consist exclusively of men holding public office. I would propose", he continued, "to invite such members of both houses, as the Governor might consider qualified to advise him, to become honorary members of the Executive Council. With this understanding that none but official members would attend the meetings unless specially summoned for that purpose." Was he suggesting a kind of 'mixed' cabinet, an official 'inner' and an 'honorary' or even ad hoc outer cabinet? Or, in accordance with British Constitutional theory, a Privy Council and a Cabinet? Evidently not, for he wrote: "All matters of a purely administrative (1) kind would, as a matter of course, be reserved exclusively for the consideration of the official members of the Executive." "By this means", he hoped, "officers of the Government would receive valuable support in conducting its business in both houses, whilst those unseemly collisions between the House of Assembly and the Executive would, in a great measure, be prevented, which are not of infrequent occurrence in the history of constitutional government in our colonies." Nearly three years later, a Montagu wearied by Anti-Convict and constitutional upheavals, and heavily engaged in the business arising out of another Kaffir War, still stood by the principle of his earlier proposal, though the constitutional machinery of the Executive was suggested in a new form: "the principal officers of the government", he wrote, "should not be excluded from the Legislature... some should be nominated to the Upper and the others rendered eligible for seats in

(1) My underlining: the British Cabinet was not then, if at any time, a purely administrative committee.

the Lower House." (1)

The Attorney-General, William Porter, was far less open in his Memorandum on a Constitution for the Cape, in March 1848; he did not so firmly disapprove of a system in which conflict must arise between an elected Parliament and 'irresponsible' Executive, but he did suggest that "To hold office under Her Majesty, ought not ... to disqualify a man for being chosen to represent the people", and stated that such a rule was "exceedingly desirable". (2) Even in January 1851 he failed to express himself strongly: "the utter exclusion of all official men from both Houses will not, in this colony, work well", he wrote, but "at the same time to declare official men eligible to be elected, would lead to many inconveniences." He would have "the Governor nominate some of the chief officers of Government to be members of either House, but without the right of voting, which right, however, I should wish to see bestowed, if it were not considered that to bestow it would involve too great a departure from the elective principle upon which the Houses of Parliament are to be constituted." Yet Porter was a signatory, three months before, of the Report of the Government Commission appointed to draft a Constitution for the Colony, which drew the attention of the colonists, and of the Governor, to the danger of having an 'irresponsible' Executive in a parliamentary system. (3) Governor Sir Harry Smith, echoing Montagu, was far more outspoken. He "strongly deprecated" "the proposed exclusion of members of the Executive Government from both Houses", which the Imperial authorities had proposed. (4) He wanted the Colonial Secretary, the

(1) P.P. 19/5/51 (1362) p. 165.

(2) P.P. 5/2/50 (1137) p. 9.

(3) P.P. 19/5/51 (1362) pp. 167 and 154 respectively.

(4) Ibid., p. 135, Smith to Earl Grey, 21/1/51.



Collector of Customs, the Treasurer-General, Attorney-General, and Auditor-General to "have seats and votes in the Legislature", and that some of these should be nominee members of a nominated Upper House, and "some made eligible to the Lower".

On the other hand, the Treasurer, Harry Rivers, in 1848, suggested that the only change in the constitution then in force should be that there should be an elective House of Assembly added to the existing institutions of government. The Collector of Customs, Field, had practically no contribution to make about the position of the Executive in 1848, but in 1851 it appears that he was exponent of the merits of 'Responsible Government'.<sup>(1)</sup> The Auditor-General, Hope, in 1851, was cautious, but declared himself in favour of the eligibility of "any member of the Government", "except Judges and paid Magistrates", for election to seats in the Lower House. The collective Report of the Commissioners instructed to draft the Constitution <sup>(2)</sup> actually determined what should be done about the constitutional position of the Cape Executive after 1853. "We are humbly of opinion", the Commissioners stated, "that it will be advisable, at least in the first instance, to abstain from all legislation regarding the right of any officers of Government to take part in the discussions of either House of Parliament." They could see "little difference between speaking and voting as Members, and speaking without voting as officers, except that officers who attend ex officio are, perhaps, more likely to become politically and personally obnoxious..." They desired, therefore, that Parliament should be left in the position, whenever it should be found "that the public interests suffer from the want of some officers of Government to explain and support Government measures in both Houses," to itself "devise and apply the safest remedy." In the Attorney-General's draft Constitution of 21st January 1851, which

(1) Ibid., p. 169.

(2) Ibid., pp. 151-6, especially para. XI.

accompanied this Report, the position of the Executive was not, in consequence, directly defined, and it would be left to each House, firstly in drawing up its standing rules and orders, and secondly in agreeing on an enactment about the Executive, to decide what rôles it should play in each House. (1)

The Imperial Government, then, regardless of the contemporary constitutional practice being introduced by Lord Elgin in Canada, proved immovable with regard to the position of the Executive Council at the Cape. Yet Montagu clearly saw room for hope in the terms of Lord John Russell's despatch to Poulett Thomson, on 14th October 1839, which, in Montagu's own words, "fully and finally disposed" of the question about "the nature and degree of responsibility which attach to the Executive Government of a dependency, in its relations to the representatives of the people." For while it was true that "every public functionary receives his appointment directly from the Crown, and holds office during its pleasure, irrespective of any expression on the part of the House of Assembly as to its confidence in the officers or otherwise", he fully believed that "the Assembly constitutionally will become the great inquest of the Colony, and as such no measure affecting the public interests can be placed beyond the reach of its inquiry. It will, therefore", he wrote, "be entitled to call every officer to account for the discharge of his public duties, and to address the Crown for his removal should it decide that there

- (1) Earl Grey would not be persuaded about the evils of an official Executive and in the draft constitution which he returned to the Cape for the consideration of, and completion by the Cape Legislative Council, he stipulated an 'irresponsible' Executive with seats in, but without the right of voting in, the Cape Parliament. But the House would have the right to fix the precise rôles of the Executive officers in each House by their standing rules. P.F. 3/2/52 (1427) pp. 76-92. In the event, the two Houses decided differently upon the question in formulating their standing rules and orders, with the result that the Upper House largely stultified itself by denying the Executive officers free participation in the debates of the House, or membership in any committees set up by it. It was not until 1872 that legislation changed the nature of the Executive Council, by making it a 'responsible Ministry'. Vide. Act No. 1 of 1872. Nybers, op. cit., p.63ff.

are just grounds for such a course. Here, I think", he concluded, "its duty stops, and no adviser of the Crown can safely disregard such a petition from the representatives of the people where good cause has been shown." (1) Yet an interesting passage in the debates of the House of Assembly in Cape Town in 1856 indicated how far practice had departed from this ideal - or how little the Assembly had made use of it. This occurred when John Fairbairn asked the Colonial Secretary (Mr. Rawson) about the manner in which the Governor used the Executive Council. So as to achieve a distinct reply, he asked whether the Governor had consulted his Council on a number of specific occasions in connection with grants of lands, expropriation of lands, appointments or removal of certain officials, and if the Councillors took any part in framing the Speeches made by the Governor at the opening of Parliament. Mr. Rawson then stated that if the Councillors were not pledged to secrecy on these matters by their oath then "by recognised practice, they are bound not to divulge such information without the consent of the Governor". Nevertheless he proceeded, with the Governor's permission, to satisfy the House by stating that "whatever advice was given, the Governor is alone responsible for the acts of the Government in every one of these cases," and that "in all these matters it is for the Governor to judge whether questions are of such importance as to require to be brought before the Executive Council or not;" he added that "the practice is, constantly, for the Governor, without consulting his Executive Council as a body, to consult those individual members who are more particularly responsible for the subject in hand or of particular competency to give advice on it." "The Governor alone could be removed if affairs went wrong. The Imperial Government looks to the Governor here, and to the Governor alone for the

(1) P.P. 5/2/50 (1137) p. 20 para. 44 of his Memorandum written for Sir Harry Smith, on 10th April 1848, on constitutional reform for the Cape.

proper, wise and safe conduct of the affairs of the Colony." He reminded the House of Governors who had been recalled for failure and that the Secretary of State had "never thought of calling in question the advice which had been given (them)", nor could he recall "in this or any other colony" an instance where the Executive officers had "been called in question for the advice they gave the Governor." "They may have been called in question for the particular management of their offices, for administrative acts in which they failed, or acted contrary to duty, but as regards their advice to the Governor, I have no recollection", he affirmed, "of ever hearing of their responsibility either to the Home Government or to any legislative body existing within the colony." He alluded then to the circumstance of the Governor of the Cape also being High Commissioner for the territories beyond its borders in relation to which he had a peculiar responsibility to the Imperial Government, and stated that this responsibility was indisseverable from that which he had for the Cape Colony. This, he averred, "has been a peculiar reason in this colony, even more than in others, that the Home Government should hold the Governor responsible for the government of the dependency for which he is charged..." (1) Fairbairn, in his reply, argued "that the Queen has committed the government not alone to the Governor, but to the Governor with a Council", and he referred to the Governor's Instructions (identical with D'Urban's). (2) One suspects with smug satisfaction, for he was in favour of Responsible Government, he concluded, "that it is not the uniform practice of the Governor to consult his Executive Council as instructed by the Queen, but he consults individuals in matters connected with their several departments", to which Rawson's sole retort was "that in all cases, it is for the Governor to judge of the importance of the matter

(1) This particular matter is treated in Chap. VII infra.

(2) Supra. p. 64.

upon which he requires the advice of the Executive Council." (1) Fairbairn ought not to have been surprised, for already in 1854, when the President of the Legislative Council charged that the Executive Councillors were present in Parliament only as "the mouth-piece of the Executive Council" and had no right to express an independent opinion, Rawson had replied that the Council "only meets at the call of the Governor, on extraordinary occasions, when he requires their advice; and then it is not the majority of the members which decided any question. The Governor", he declared, "only takes their opinion, and then decides himself on the course he will pursue..\*" It was, he said, "a body which has no collective opinion on one out of a hundred of the subjects which are brought before Parliament."(2)

The 'Russell reform' then, did not technically make the members of the Executive Council more responsible either in their individual capacities or collectively for the acts or the policies of the administration, nor did it cause 'cabinet' government to be spontaneously introduced. The responsible official was still the Governor, who might use his Executive Council as little as he thought necessary, or set aside its advice as much as he thought politic. It had been laid down that if the administration became an object of popular attack, whether because of the mismanagement of a department, when a single chief Executive official might come under fire, or because of the behaviour of the Governor because of advice apparently given by his Council, then the Government might be differently constituted in order to allay public rancour. Yet not all the public expressions of no confidence in the Executive

- (1) Advertiser and Mail, Debates, 10/4/56, p.115ff. None of the Governors before Wodehouse (1861-71) were very regular in the use of the Council. Vide E.C. Minute Books 1, 2 and 3, Cape Archives.
- (2) Debates of Parliament, publ. by S. Solomon, 1855, p. 169, 9/8/54. Similar statements were made by Montagu and his colleagues in the Legislative Council in 1852, vide, P.P. 23/12/52 (1581) pp. 108, 115, 130, 131, and also in 1850, vide for example P.P. 19/5/51 (1362) pp. 45-6.

at the Cape, particularly between 1849 and 1853, caused the unseating of a single Executive Councillor; even Montagu, whose removal was appealed for in a flood of petitions containing evidence of the profoundest antipathy against him, was confirmed in his position by the Secretary of State. (1) Appointments to the Council were, therefore, still virtually for life. Of the seven men who had seats in the Cape Executive between 1850-54, Montagu, Rivers, Hope and Field died in office. Porter resigned in 1866, and Southey (a permanent member only from 1861) retired in 1872. Rawson W. Rawson was the only man to be transferred, on promotion, to another colony. (2)

In these circumstances, it was improbable if not impossible, that a true corporate spirit would govern the life of the Executive Council. The compulsion of having to articulate the departmental functions of government, occasional meetings in order to offer advice to the Governor, and at intervals the particular disfavour which the Council experienced amongst perhaps the majority of colonists might make an occasion for it to behave with corporate unity, not merely on Government measures in the Legislature, but in taking a particular line of political action. But a true 'cabinet' could not exist at the Cape in the mid-nineteenth century. (3) The accurate judgements of James Stephen in 1830 (4) and of Lord Stanley in 1842 (5) arguing that the Cape

(1) P.P. 16/2/53 (130) p. 6ff.

(2) Vide Annexures in Kilpin, Romance.

(3) As late as 1878 Richard Southey, one of the most experienced parliamentarians at the Cape wrote that not only had the Opposition "no leader for general purposes", but that "'Party' Government" had "not yet taken deep root in this Colony", so that "anyone forming a Ministry will be compelled... to do as Mr. Molteno did, viz., to endeavour to strengthen his position by calling to his aid men holding opinions very different from his own." Wilmot, op. cit., p. 298. R. Southey to Sir Barth Frere, 12/2/78. Molteno was Prime Minister from 1872-8.

(4) Vide Harlow and Madden, op. cit., p. 105.

(5) P.P. 17/6/46 (400) p. 4ff.

was not ready for an elective Parliament, might easily have been repeated in 1848. The sanguine memoranda on this question, written by the Executive Councillors in that year, were regretted by their authors by 1852. None of them ever denied that the Cape 'constitution' was defective, but some of them became doubtful about the timing of the proposed parliamentary reform, while all the others urged the fulfilment of a promised reform only because the dangers arising out of non-fulfilment would be greater than the dangers which would follow upon the election of a popular Parliament. The nervousness of the Executive Councillors about their remaining in office as the mouth-pieces of the Governor without the opportunity of being elected as members of Parliament was, therefore, perfectly natural. By 1852, also, they had experienced the inconvenience which profound political disagreement between members of the Executive Council could cause. (1) One of the most striking features in connection with such disagreement was the degree of popular acclaim or opposition which was apportioned to individuals as well as points of view, as a result of the public nature of the debates in the Legislative Council. In 1849 the Executive Councillors were almost unanimously opposed by all Cape Colonists, and stood close together; by 1850 Western merchants and English landowners, and also the men of Albany and Port Elizabeth had drawn closer to the Executive. By 1852, the Anti-Convict agitation had passed into history; but the deliberations about the constitution, in a time of war, had gathered an Eastern party to support Montagu and a Western and Midland party to support Porter. But it was clear that these 'parties' were inchoate. If they did not lack popular leaders among the colonists, or in the Executive, they would not develop distinctive programmes of political action or of principles, which would gain for them steady supporters from various areas, and representing various interests. The fact that the profoundly stirring events of 1849-53 had not caused a clear partisanship to develop

(1) Vide infra, Chap. IV.

reveals how far the colonists had to go before they could support a true cabinet system, for without a mature party system true 'cabinet' government cannot exist. Lieutenant-Governor Darling probably commented correctly in November 1852, in referring to the leading newspapers of the Colony which so often presented directly the views of colonial political leaders, when he stated that "none of the Journals have, I conceive, a well-grounded claim to be regarded as the expositor of the opinions of the more reasonable and reflecting portion of any class of the Community." Darling described too among the leaders of the colonists certain sections and individuals who disguised mere self-interest by advocating "Political measures professedly founded upon public patriotism alone". (1) Under a system where the Governor alone remained legally responsible for all the political acts of the Executive, or where his Councillors could find no firm (party' backing, a conventional unity of the Executive Council could on occasion develop. But such unity could only be the result of the accidental preëminence of the Colonial Secretary in particular, together with the favourable co-operation of his junior colleagues, an amiable Governor (or an absent one), and favourable political circumstances in the Colony.

One need not pause to consider how much this was asking of Fortune, but it does seem that for a period of seven or eight years, until 1851, John Montagu provided the leadership in the Council, while circumstances provided the Governors and political conditions which enabled him to use the Council in a way which seemed to point to the development of a kind of 'cabinet' spirit in the Executive. "When a question has been discussed in a Cabinet or Executive Council", Montagu stated in 1850, "the minority is bound to yield to the majority... and if any official man's conscience will not allow him to adopt this course, he has only one other alternative -

(1) G.H. 23/23, Darling to Fakington, No. 95 of 20/11/52.



to resign his office." (1) Decisions of the Executive officers in Council, therefore, when brought before the Legislative Council for discussion, had to be supported by all the members of the Executive. (2) In a letter published in September 1850 in the Government Gazette, the other members of the Executive Council showed themselves in substantial agreement with the Colonial Secretary. (3) Then again, "To me it appears clear", said Porter in 1852, "that no Government could be carried on unless the members of it are prepared to vote for the measures which the head of the Government requires them to vote for, or to resign their offices. I know of no middle course between support and resignation. But no measure is to be deemed a Government measure unless so declared." (4)

The last sentence in the quotation from Porter's speech is very important. An intelligent Governor, or in his absence, Colonial Secretary, could use his Council in such a way that conflict within it would be as little likely as possible. Given that the Councillors' first consideration was the public good, so that personal views were absent, he would rely greatly upon the collective wisdom of men whose senses of responsibility and experience would be his surest guide to wise and suitable measures. With regard to the Cape Colony,

- (1) Cf. Rawson's statements in 1854 and 1856, supra. pp. 95, 97.
- (2) P.P. 19/5/51 (1362) p. 68. Montagu, in the Legislative Council.
- (3) Ibid., p. 93.
- (4) P.P. 23/12/51 (1581) speech in the Legislative Council 10/2/52. British Cabinet Ministers obeyed a similar custom: They might bring forward any question, and speak and vote as they personally desired on any subject other than one which was declared by the Cabinet to be a matter of Government policy. The only rule was that a Minister exercising his free option had to declare that he was doing so in his individual capacity. On Government issues the Ministers were bound to show solidarity, or resign. (Vide Memo by Canning, 23 April 1827 in W.C. Costin and S.P. Watson, op. cit. Vol. II, p. 371f.)

patronage in the making of appointments to the colonial service rarely led to the installation of mediocrity.(1) Much depended, therefore, upon the head of the Government,(2) and in this respect the Executive Council was, to a degree, fortunate between 1843 and 1852.

The Minutes and correspondence of the Executive Council are alike an indication of its dignity and sense of responsibility, and proof that it was extraordinarily active. Until, perhaps, the arrival of the soldierly Sir Harry Smith, the heavy reliance placed upon it by the Governors is perfectly clear. Maitland relied almost implicitly upon Montagu, (3) and Montagu worked the Council hard. But it is above all interesting to observe the way in which Sir Henry Pottinger used it. Despite the fact that Pottinger was usually resident at Fort Peddie or Grahamstown, he referred almost every matter of importance and many matters of detail to Montagu, to lay before the Executive Council.(4) Grants of land, sale of Crown lands, decisions about and legislation in connection with Municipal Ordinances,(5) policy regarding the treatment of Fingoes and other natives in the Colony, and their settlement and control at locations, the appointment of Magistrates and other officials, erection of public buildings, the principle involved in giving grants of aid to a Church, everything to do with the budget, the important political question of Separation, and matters connected with the Central Road Board, road votes and the use of convicts, -

(1) Vide infra, Chapters V and VI.

(2) Chapters III and IV infra will deal more particularly with Montagu and Southey as Colonial Secretaries, and Lieutenant-Governor Darling.

(3) Infra, pp. 117f., 123.

(4) Pottinger was Governor and High Commissioner of the Cape Colony from 27th January 1847 to 1st December 1847. He left for the frontier within a few days of arrival, and was on the frontier still when Sir Harry Smith arrived in South Africa as his successor.

(5) Vide supra p. 67f.

*What else would you expect with the circumstances?*

all these and many other matters were referred to the Council. It is clear, too, from the gratitude Pottinger expressed to members of the Council on at least one occasion, as well as from the confidence he had in their advice, that he regarded the Council as a clearing-house of government business, in which sat men who were hard-working, principled, politically judicious, and administratively competent. And Pottinger, despite his personal failings, was an efficient and experienced civil officer, renowned for reducing disorder to order.(1)

Sir Harry Smith was a man of simpler gifts and he was unfitted by training and temperament to head a relatively complex civil administration, or to command a political situation. He appears to have been singularly laggard, as Sir George Grey was after 1854, in summoning his Council. Having assumed office on the 1st December 1847, he apparently did not consult it on any political matters until the 19th September 1849, when the convict vessel 'Neptune' having arrived that day, "He now, for the first time since his accession to office, assembled the Executive Council, which approved of all the measures he had taken..." (2) The Governor had been absent for a great part of these two years, however, and Montagu regularly summoned and presided over the Council as in Pottinger's time, in the manner stipulated for the Governor in his Instructions. It may be that Smith, until the disruption of the Legislative Council in 1849, considered the latter body a better advisory council

(1) The Correspondence between Pottinger and Young, op. cit., on numerous pages, indicated in the Schedule, contains copies of papers on the matters referred to. D.B. Sole, op. cit., Vol. I, p.103, states that "Pottinger ... stood firm behind the decisions of the Executive Council, and throughout the period of his administration, refused to go beyond their recommendations." He added, however, that the Governor "allowed himself to be influenced unduly by the eloquence of Messrs Porter and Montagu." But this 'eloquence' is not self-evident in the short, formal memoranda sent from Cape Town to Pottinger in the Eastern Province, and usually signed by all four of the Executive Councillors.

(2) Newman, op. cit., p. 332.

than the Executive Council by itself. Certainly he laid Earl Grey's important despatch of August 1848, on the subject of ticket-of-leave men being taken to the Cape, before the Legislative Council in November 1848, and then deliberated what views to adopt with regard to it. (1) But the Legislature met only once a year, for a short period, and all its members could not easily be consulted at any time. Then, in July 1849 he reported the adoption of a curious procedure with regard to Earl Grey's proposals about a representative Assembly for the Cape; for he declared that having "formed my opinion" he advised William Porter what it was and asked him to write a memorandum on the subject, which the Governor subsequently circularised among the other members of the Executive Council and the Judges of the Supreme Court for their individual reports on the matter. It does not appear that a formal meeting of the Executive Council was ever held upon the subject. (2) Then in connection with a Proclamation about the Convict matter, issued on 17th August 1849, Smith stated that he consulted the Attorney-General and the Judges about the propriety of proclaiming the Anti-Convict Association to be illegal. On another occasion, he wrote that he obtained the advice of Porter as his "legal adviser" about the publication of despatches on military prisoners who were to be sent to the Cape; and it is clear from the Minutes of the Executive Council that it had not had an opportunity to deliberate formally on, for example, the Proclamation of 17th August: only on 22nd September could it "take occasion to concur on it and to offer advice on how the Governor should proceed further. (3) Cathcart, too, his separation from his Council scarcely exonerating him in view of Pottinger's record, made little use

(1) Ibid., p. 526f.

(2) -.-. Smith to Grey 29/7/1848, P.P. 5/2/50 (1137). E.C. Minute Books, Vol. II. Further clues as to the way in which Sir Harry Smith used his Council may be found on pp. 45, 66, 69 of P.P. 19/5/51 (1362) and pp. 32, 39 supra in Chap. I.

(3) P.P. 31/1/50 (1138) pp. 45, 64, 104ff.

of the knowledge and experience which his Council could have offered him, with the result that he infringed important regulations and was prone to making political blunders. Thus it happened, for instance, that he tripped over a plea for the introduction of immigrant convicts as labour in British Kaffraria, causing sharp comment in the Cape Parliamentary session of 1855. (1)

Yet it is inconceivable that such a closely related body of officials, all resident in the tiny metropolis of Cape Town, and evidently harmonious socially as well as officially, at least until 1851, did not consult informally. More, a passage in a modern book may provide a clue to a much earlier procedure. "In an old-established and highly developed Colony," Sir Anton Bertram wrote, "it is impossible for the Governor to consult his Councillors on 'all matters of importance' at a discussion round a table. Like the Governor himself they are all busily occupied men, and could not spare the time that such a discussion would involve... There is nothing for it but circulation of papers. The consequence is that leather bags, stuffed with voluminous papers, pursue the Executive Councillor at all hours of the day and evening..."

"Under these circumstances, on most of the questions circulated, the task of the Governor is a simple one. The last member to advise is the Colonial Secretary. If there is any discordance in the advice so far minuted his experienced mind will know how to suggest the harmonising solution. Generally there is none. Some experienced Civil Servant will have given a brief and sage opinion, and all the others will have followed suit. The Governor writes in red ink, 'As advised by the C.S.', or 'As advised by Mr. B.', or simply 'As advised'. The paper goes back to the Secretariat for the necessary action and the consultation of the Executive Council is over." (2)

(1) Advertiser and Mail, Debates, 1855, p.204 and see p. 232 infra regarding civil service regulations.

(2) Sir Anton Bertram, op. cit., pp.16ff., 22ff; Bertram was sometime Attorney-General in the Bahamas and in Ceylon, between 1902 and 1918, and Chief Justice of Ceylon 1918-25.

Whether this is true of the Cape in the 1840's or not, and it might have been since Sir Harry Smith adopted a procedure like it in response to Earl Grey's despatch inviting his opinion about the introduction of a representative assembly at the Cape,(1) and Pottinger employed a similar method,(2) it is apparent that the organic nature of the Executive Council as a political committee of officials addressing themselves regularly and with an amiable concordance to the various tasks of the Council, during the Secretaryship of Montagu, was disrupted by the controversies of the early 'fifties', frustrated by Sir George Grey's fundamental<sup>in-</sup>ability to use his Council regularly, and more fundamentally, prevented by the very nature of the Executive Council as a body. The haphazardness of Smith, merged with virtual breakdown under Darling and Cathcart; (3) Grey with his jealousy for the limelight and informal manner of obtaining advice from individuals, did nothing to resuscitate the sense of corporate responsibility with which Montagu had imbued the Council during the best years of his Secretaryship. (4) Not until Sir Philip Wodehouse brought his superior organising abilities to bear did the Executive Council really form a regular corporate body once more, (5) though the effect was spoilt even then by the unfortunate tipping habit of the Auditor E.M. Cole, and by the constant gross rudeness of W.P. Griffith, the Attorney-General who succeeded the popular William Porter in 1866, and its constitutional weakness was not removed until

(1) Vide supra p. 26

(2) Correspondence between Pottinger and Young, op. cit., passim.

(3) Vide pp. 62-73 infra.

(4) E.C. Minute Books, Vols. III & IV, Cape Archives, reveal in part how Grey used the Council.

(5) M.J. Zeeman: The Working of Representative Government at the Cape under Sir P. Wodehouse, 1862-70. Unpublished M.A. thesis, University of Cape Town, 1940, p. 12f. Cape Archives, Minute Books, Vols. 6 to 8.

1872. (1)

In conclusion. Most studies of the constitutional and institutional development in the British Empire in the 19th Century have been based on the acceptance of Canada and Australia as prototypes. It is possible that the approach to the study of colonial policy in general, no less than of the history of the Cape Colony in particular, may be enriched by a detailed study of the Executive Council at the Cape. The Cape Executive Council stems back to the Council of Advice: its functions developed in a country where especially during the crucial period 1834-1854, frontier wars and developments beyond the Cape, led to repeated absences of the Governor from Cape Town, either as Commander-in-Chief, or as High Commissioner. Thus the colonial secretaryship, especially in the hands of Montagu, became a key office, not merely as the centre of the administration, but in a quasi-political sense. The whole structure of the Cape, embracing local government, public administration, and economic development, changed during these twenty years, and the change was fostered and guided by the Executive Council. Relative immunity from an indifferent overseas patronage, a succession of able officials in Cape Town, who enjoyed in general continuity of tenure of office, all these things fostered an esprit de corps and a sense of the importance of good public relations. It is not surprising then, that the word Cabinet was sometimes

- (1) Porter resigned in 1866, partly because of political principles which were opposed to those of Sir Philip Wodehouse, and his colleagues on the Council. It is interesting to note too, that the 'conservative' followers of John Montagu in the struggles of 1851-3, Southey and Davidson, eliminated from the key posts in Cape Town in 1853-4, during which time the 'liberal' Porter was clearly in the ascendancy politically, both found their way onto the Executive Council between 1860 and 1864. At the same time, their 'liberal' opponents, Field, Hope and Porter had one after the other been eliminated: Field lost his Executive seat in 1857 when he was appointed Chief Immigration Commissioner in England, Hope died in 1858 and was replaced by a political nonentity, Cole, leaving Porter without a faithful following until 1866, when he resigned. Field in any case lost his seat in the Legislature in 1854. His place in the Council was filled by his son in 1857. Cole was arbitrarily imposed upon the Cape Governor by direct exercise of patronage by Bulwer Lytton in 1859. Vide infra, Ch. V.

applied to the Council, and it is arguable that the Cape was fortunate in the development of a sound tradition of public service of a quality difficult to parallel elsewhere. But though the Executive Council had the attributes of a consciously responsible public body, functioning within the conventions of its own political context, it was, in contrast to Canada after 1846 and the Australian colonies after 1852, irresponsible. The constitutional theories, and the clarification of constitutional conventions which followed the Durham Report, certainly influenced the making of Cape politics even before the grant of a parliament in 1854. The Executive Councillors themselves carefully balanced theory and practice in their deliberations on the constitution in 1848 and especially during 1851-2, and much public criticism of the administration was grounded not on fact but on theory. Thus even the most acrimonious of disputes in the Cape, on the official side as well as among the more thoughtful colonists, acquired a certain dignity from the language with which this or that cause was advanced. But above all, especially in view of the fact that administratively the Prime Minister of the Cape was lineally descended from the colonial secretaryship, it seems that in order to understand the organic and political development of the Cape, the office of the colonial secretary should be studied. It is proposed then, in Chapters III and IV, to look more carefully at the rôle of the Colonial Secretary as the principal Executive Councillor, and to consider his relative importance in the Council during the years 1843-53.



CHAPTER 111.THE COLONIAL SECRETARY AT THE CAPE OF GOOD HOPE1825 - 1853,

The Colonial Secretary was the most important permanent official at the Cape. His duties were extraordinarily wide, for as Wilberforce Bird pointed out in 1822, he was 'secretary to government, not of the governor.'<sup>1</sup> Apart from the Governor, he was the senior executive officer in the Government, and for practical administrative reasons he was as often the principal governing official in the Colony as he was the Governor's most influential adviser. Already in 1822 the comprehensive nature of his duties drew attention to his special importance, and to the nature of the department which was under his immediate control: The Colonial Secretary attended his office daily; it was his duty "to refer to the Governor, the multifarious memorials and occurrences of each day, with a précis of every one, and to receive his decisions thereon, causing them to be put into force ..... the entire business of the colony (goes) through (his) office, which acts as the mainspring of the machine, forcing all into motion. For punctuality and regularity, and for the dispatch of a very great weight of affairs, this office cannot be surpassed."<sup>2</sup> He and his assistant secretary were not advisers of the Governor "in virtue of their situation, but only so according to the confidence the governor may repose in their judgment and capacity,<sup>3</sup> whenever he may think it expedient to call for their opinions."<sup>3</sup> But that he did act as an adviser seems clear for the assistant secretary, "acting in affairs of routine," relieved the secretary<sup>4</sup> "from much of the practical parts of business." Furthermore,

1. W. Wilberforce Bird, 'State of the Cape of Good Hope in 1822.' London, 1823. p. 8.
2. *ibid.*
3. *ibid.*
4. *ibid.*

W. M. Macmillan states<sup>1</sup> that Colonel Christopher Bird, the Colonial Secretary from 1819 - 1824, was evidently "a considerable power, according to Philip even 'the real Governor' " and "a sobering influence" at least, on Lord Charles Somerset.<sup>2</sup> The Colonial office itself was regarded as "the nursery, or, as the French would term it, 'la pépinière', for future landdrosts, and for the heads of many of the departments," for its clerks were "initiated into all colonial transactions in this office."<sup>3</sup>

In 1825 the Commissioners of Inquiry had reported of the Secretary, that "from the want of any acknowledged advisors of the Governor, there has been frequently attributed to the Colonial secretaries a degree of influence, unaccompanied by responsibility, that seems to have divided the minds of the Dutch inhabitants, and even some of the English in their choice of the most promising sources of colonial patronage ..... " and they ascribed his position to "the comprehensive nature of the business that he conducts and his perpetual and confidential communications with the Governor" which had "tended to give him an influence in the Colony equal and sometimes superior to that of the Governor himself."<sup>4</sup> Nor did the establishment of the Advisory Council, or, later, of the Executive Council greatly alter the case, for, until 1852, the Colonial Secretary "had the custody of all documents addressed to or issued by the Governor."<sup>5</sup> Several of the duties stipulated for the Governor in his Instructions were in fact performed by the Colonial Secretary, the Governor often merely reviewing his actions.<sup>6</sup> More, the Colonial Secretary was responsible for the correspondence between the Governor and all administrative officers, which generally meant

1. C.H.B.E. VIII, p. 256.

2. C. Bird was Acting Colonial Secretary in 1808, and by 1812 was Deputy Colonial Secretary, in which post he remained until promoted in 1819 - (vide African Court Calendars, 1807, 1808, & Civil Service Lists

3. W. W. Bird, *op. cit.*, p. 8 f. W. W. Bird was Comptroller of Customs at the Cape in 1822. His book was edited by H. T. Colebrooke, a famous Indian scholar and civil servant, not to be confused with W. M. G. Colebrooke who also served in India and was one of the Commissioners of Inquiry at the Cape in 1823.

4. Theal, R.C.C., Vol. XXVII, p. 353.

5. Inventory of the Government House Records in the Cape Archives, typescript, by P. J. Venter, Archivist.

6. Vide e.g. p.p. 27/6/51, (457), Instructions to Sir Harry Smith, especially clauses 32, 33, 38, 39 and 45.

that all such correspondence was conducted by himself, or by his clerks; it always went out signed by him. The Treasury, the Customs, Auditing and Legal (Attorney-General's) offices, - all the principal departments of the government, - were subordinate to the Government Secretary's office. The bare statement does not explain enough: Crown lands, Public Works, forests, roads, bridges, harbours for shipping, jetties, all public buildings, light-houses, government stores, Immigration, Native Affairs, correspondence with the Crown Agents, were all subject to the Secretary's supervision or control. Besides the Attorney General's Office, the Solicitor-General, the Supreme, and Circuit Courts and the High Sheriff's Office, were constantly the subjects, and the receivers, of his correspondence. He was responsible for the Government Gazette, and for Government notices for publication in newspapers or through other media. Botanical and other public parks and gardens, museums and libraries, agricultural affairs, including agricultural societies, the Meteorological Commission, the Sailors' Home and Shipping Master, were within his care, and when troops had to be shipped or landed, he was responsible for that too. When officers of the government were transferred, he had to see to their conveyance and to their expenses. He had to arrange for the expenses of the Legislature. The firing of the daily gun on Signal Hill and the work of the Veterinary Surgeon fell under his department.<sup>1</sup> Local Government bodies, the Medical Board, hospitals and asylums, were within his corresponding circle.<sup>2</sup> He was the chief statistical officer of the Government, charged with bringing out the annual Blue Book on population, trade, revenue, expenditure, and other matters.<sup>3</sup> Post Office affairs, police, the administration of the Masters and Servants laws, the issuing of licences and tenders and of Government paper money, were within his sphere of duty; while ecclesiastical

1. P. J. Venter: Government Departments of the Cape of Good Hope, 1806 - 1910. p. 18 ff.
2. *ibid.*, p. 22.
3. *ibid.*, pp. 27, 29.

affairs<sup>1</sup> and education were no less his concern. Further, "all matters connected with Protocols and Registers of Notaries Public were transacted in the Colonial Office." The Colonial defences, other than those for which the Imperial Government was responsible, and the recruitment and organisation of colonial forces together with commissariat arrangements for them, also fell under his department. More: the Colonial Secretary conducted the official correspondence with the Governments of other British colonies, and also with foreign authorities - as, for example, the Governor-General of Mozambique - about such matters as the erection of new light-houses on the Colonial coasts, or shipping directions. Even letters to 'foreign' native chiefs, like Faku the Pondo, were sent from the Colonial Office. None of these letters were political, but concerned such matters as the whereabouts of missing persons, circulars about trade, statistics, shipping information, copies of regulations and colonial laws useful to foreigners or to other colonies which might have dealings with the Cape Colony or Natal.<sup>2</sup> Correspondence from abroad, including that from the British Government was frequently dealt with in the Colonial Office, either because the Governor referred despatches directly to the Colonial Secretary, or because the Colonial Secretary himself, especially during the Governor's absence, and when there was no Lieutenant-Governor administering the Government in Cape Town, opened the despatch bag and dealt with the general despatches.<sup>3</sup> Also, correspondence whether addressed to the Governor, or direct to the Colonial Secretary from the heads of foreign governments, consuls or agents, and from other colonial governments, was handled by and lodged in the Colonial Office. Much of this correspondence concerned the despatch or receipt of information of vital interest to government officials, and in due course, to members of the legislature, and private individuals such as

1. Ministers of religion were appointed and paid by the Government, except for Islamic and Jewish organisations, and some lesser Christian denominations.
2. C. O. 5400 and 5401, Letters to Foreign Governments, provide typical examples of such correspondence.
3. M. J. Zeeman, *op. cit.*, p. 24, referring to the Southey Papers, Cape Archives, and G. H. 1/55, for example despatch No. 23 of 30/8/1859.

business<sup>men</sup> and farmers. By this means, under the aegis of the Imperial Government, inter-colonial arrangements were effected which greatly facilitated trade and the transfer of information. The official who would serve the public by making this information available, was the Colonial Secretary. The Acts of the legislative bodies of other colonies were sent to the Cape Colonial Office as a matter of course; information about the rate of exchange for Bills to be paid by the Government of India for naval service and other expenses in China; the latest almanac and statistics of New South Wales for the period 1837 - 1851; the laws and ordinances, almanac and official directory of Mauritius; printed correspondence about a cure for scab in sheep, from Australia, which it was supposed might be efficacious in South Africa, and many other papers arrived in Cape Town during 1853.

On May 9th 1853 a despatch from Van Dieman's Land requested the Cape Colonial Secretary to inform the Governor that the Government of Van Dieman's Land intended to introduce a Postal Bill, the contents of which were based upon reforms initiated in the Imperial Colonial Office, in the local Legislative Council. This Bill provided that letters arriving from overseas, and prepaid, would be delivered free of charge. Van Dieman's Land wanted to know whether the Cape Government intended to introduce similar legislation.<sup>1</sup> Acting Secretary Hope intimated in reply that such legislation would be put before the Cape Parliament as soon as it entered upon its functions.<sup>2</sup> Nor was there a one-way transfer of information. For example, one document relating to the law for carrying passengers by sea from Van Dieman's Land bears a marginal note in Lt. Governor Darling's hand asking, "Where is our proclamation? We ought to notify this and communicate ours to V. D. L. and other neighbouring Govts."<sup>3</sup> A similar proclamation was received from South Australia, with a request that if the Cape Colony had issued a proclamation on

1. This was done, by Act 23 of 1856.
2. C. O. 620, 639, 678, Letters from Foreign Governments.
3. Darling had taken over several of the duties hitherto performed by the Colonial Secretary. See pp. infra. 155f.

the same subject (it had reference to an Imperial Act of Parliament, 15 and 16 Vic. cap. 44) a copy of it should be sent to Australia. The Acting-Colonial Secretary, W. Hope,<sup>1</sup> duly signified in the margin that this should be done.

It is worth noting too, that until 1856 the Government of Natal was subordinate to the Cape Government, and, as the papers published by the Imperial Government about the affairs of Natal indicate, occasioned a voluminous correspondence through the Colonial Office in Cape Town. A great deal of this correspondence was, of course, referred by the Colonial Secretary to subordinate officers; for example, to the Attorney-General, or to the Post-Master General, for report. These reports might then be passed, by the Colonial Secretary, to the Lieutenant Governor or Governor with comments which might guide the latter in issuing instructions.<sup>2</sup> A case in point concerned the postal arrangements between the Cape and Natal in December, 1853.<sup>3</sup> H. L. Hall is right then, in his general assertion that the Colonial Secretary "is the Governor's right-hand man" and that "he it is who sees all the correspondence, and who in nine cases<sup>4</sup> out of ten writes the minute which decides the Governor's action."

It follows from this recital of functions and instances illustrating the work of the Colonial Secretary, that he was much more than a mere Secretary handling correspondence upon which all decisions were taken elsewhere. As a kind of administrative head-clerk, he might have pigeon-holed papers of great potential utility to the Colony; as the 'mainspring of the machine, forcing all into motion'<sup>5</sup> he was an official who gave character to the colonial government during the period which he served it. This is not to denigrate the Governor, who could play a positive role overtopping that of the Colonial Secretary, but for nearly three decades from

1. Montagu, the Colonial Secretary, was on leave.

2. Vide p. 105 supra, Bertram.

3. C. O. 620.

4. op. cit. p. 115.

5. p. 109 supra.

1843 the Colonial Secretaries of the Cape Colony were as notable for the initiative which they applied to all aspects of government as they were for the performance of mere administrative duties. Montagu, Rawson, and Southey each imparted some quality to the government which is not explained either by the personalities of the Governors whom they served, or by the general circumstances of the Colony during the periods in which they served. But where Rawson served two Governors - Grey and then Woodhouse - and Southey served only the latter and Sir Henry Barkly, Montagu served several. Herein lies a clue to the pre-eminence of the Colonial Secretaries. Governor's appointments were seldom for long periods, while the Secretary's appointment was virtually permanent. Only two Governors between 1806 and 1854 served the Cape for periods longer than five years.<sup>1</sup> During these 48 years there were ten Governors appointed to the Cape, and six Acting Governors who served between the arrivals and departures of<sup>2</sup> Governors.

During the same period there were six Colonial Secretaries, two of these, Andrew Barnard and Sir Richard Plasket, served for short periods, but if Alexander and Bird were in for only six or seven years each, Bell lasted 13 years and Montagu for 9.<sup>3</sup> Nor was this all, for if only one Governor, before 1872, had previous experience of government in the Cape Colony (Sir Harry Smith, briefly, during D'Urban's rule), several of the Colonial Secretaries had considerable experience. Bird was deputy colonial secretary for eleven years (1808 - 1819); Bell was in the Advisory Council for two years before appointment in 1827; and Southey had a particularly rich experience in Colonial Government at the Cape for more than two decades before appointment to the Secretaryship in 1864. Further, of the six Governors who ruled between 1834 and 1854, five were concerned with Kafir Wars; two

1. Lord Charles Somerset, April, 1814 - Jan., 1820, and Dec. 1821 to March, 1826; Sir G. T. Napier, Jan., 1838 - March, 1844.
2. Acting-Governors Sir R. S. Donkin, 13/1/20 - 11/3/21, and R. Bourke, 5/3/26 - 9/9/28, served longer than any of the others.
3. Only two men, Rawson and Southey, occupied the office between 1854 and 1872. Vide Civil Service Lists.

of these, Governors Pottinger and Cathcart, scarcely became acquainted with the Western Province; while one, Smith, was absent from Cape Town for more than half his period of rule of four years and four months. Even Napier, the Governor who experienced peace with the Xosa, spent altogether several months on the frontier. Thus the Colonial Secretary was not only longer in office and generally more familiar with the Colony and its administration, but his constant employment in Cape Town placed him in a far stronger position, as the real governor of the Colony, than the peripatetic nature of the Governor's existence frequently allowed. It should be clear too, that the Cape in this respect was quite unlike the other British colonies with similar kinds of government, where the Governors resided permanently in their capitals and could continuously supervise the work of the administration. The Colonial Secretary of the Cape Colony is therefore particularly worthwhile, not merely in his executive capacity but in his legislative functions. These were related aspects of his work which in 1872 would ensure that the Prime Minister of the Cape Colony should have the Colonial Secretary's portfolio.

As far as the work of the Legislative Council was concerned, the rôle of the Colonial Secretary is easily discernible, for while the Clerk of the Council conducted much of its business, such as forwarding transcriptions of the Minutes, or sending them to be transcribed, with any necessary appendices, to the Secretary of State, he was no less the servant of the Colonial Secretary than of the Legislature. As recorder of the Minutes he had formally to communicate the decisions and requests of the Council to the Colonial Secretary and to comply with his requests and instructions with regard to them. Quite frequently at the Cape, of course, with the Governor away on the frontier, the Colonial Secretary presided over the meetings of the Legislative Council and exercised not only a formal control over its business but a personal one over its deliberations.



With regard to the Executive Council, practically all its business originated in or came through the Colonial Secretary's office, whence all documents to be laid before the Executive were sent to the Clerk of that Council. The Clerk to the Executive Council would in due course return such papers to the Colonial Secretary with a covering letter noting what papers were returned and what decisions had been arrived at in relation to each of them. The Colonial Secretary was there<sup>fore</sup> the best informed, and in the absence or indifference of the Governor, the principal controller of the business of both Councils.<sup>1</sup> It was natural, then, in the Governor's absence, that the Colonial Secretary should act as provisional head of the Government, as Colonel Bell was instructed to do by Sir Benjamin D'Urban in 1835.<sup>2</sup>

Between 1843 and 1853 at the Cape, the Colonial Secretary played possibly a more significant rôle than any other of parallel rank, whether in the Cape or elsewhere, in the era of pre-parliamentary government in the Colonies. During the Secretaryship of John Montagu, successive Governors became dependent upon the man and his office to such an extent that the Secretary of State allowed a special and personal grant of £500 a year to Mr. Montagu in addition to his salary,<sup>3</sup> and at length a Lieutenant-Governor was sent to relieve him of his extraordinary functions.<sup>4</sup> The Hon. A. Wilmot believed him to have been "one of the most distinguished men ever connected with British civil administration in Southern Africa."<sup>5</sup> In contemporary editorials Montagu is referred to as one who "had rendered himself by his abilities absolutely indispensable to every Government which he had served," and it was said of him that he had been "in his own person, the Government."<sup>6</sup> A year before, the same column

1. E. C. 275, Letters Despatched, 1834 - 1863.

2. *supra* p. 66

3. W. A. Newman, *op. cit.*, p. 87 f.

4. See p. 155 f below.

5. A. Wilmot, *Life and Times of Sir Richard Southey*, p. 76. Wilmot was M. L. C. 1889 - 1910.

6. C. T. M. 23/4/1853.

voiced the opinion that Montagu had been "so thorough an impersonation of the Government, almost ever since his arrival during Sir George Napier's régime, that his abdication of his functions here is a matter of far more importance than such an event as a change of ministry in England." Again, it was stated that, "Whatever the other titles under which the Governments of the Cape have been known during the successive reigns of Governors Napier, Maitland, Pottinger and Smith, since 1843, the Governor de facto was invariably Mr. Montagu."<sup>1</sup> The Eastern Province Herald called him "the imperious Montagu" and acknowledged his power just as much as did the Cape Town Mail, and was, with its Eastern susceptibilities, just as opposed to his régime.<sup>2</sup> The Editor of the Mail called him a "despot", though he mitigated the charge by blaming the style of government which had been imposed upon the Colony. Admittedly newspaper evidence should be handled with care, but the concensus of opinion together with the vocabulary of the editorials themselves is significant. Professor Hattersley summed him up not inaptly when he wrote that "Montagu .... had all the inborn caution of the bureaucrat. No friend of popular representative government .... he was inclined to interpret the British constitution in a grudging and autocratic spirit, 'as if .... he read the Bill of Rights with the Mutiny Act as a commentary.'"<sup>3</sup> Nor is it difficult to justify unofficial opinion. Looking "at the responsibility and labour which devolve upon him," and comparing "his office, such as he has made it, with the other offices under my Government," Maitland declared, he was "less remunerated in proportion than the other public servants."<sup>4</sup> Pottinger agreed, and pointing to the healthy state of the colony's finances, he recorded that, "This progressive improvement I believe to be a good deal influenced by

1. Quoted in M. A. S. Grundlingh: *The Legislative Council of the Cape of Good Hope, 1834 - 1853*. Unpubl. thesis, M.A., Stellenbosch, 1937, p. 69 f.
2. E. P. H. 17/3/49.
3. A. F. Hattersley: *A Victorian Lady at the Cape, 1849 - 1850* p. 26 f. Cf. *supra* p. 90 ff. The author used a quotation from a contemporary editorial.
4. Newman, *op. cit.*, p. 80 f. Maitland to Gladstone 20/7/46.

Mr. Montagu's judicious and careful supervision of every department .... <sup>1</sup> Sir Harry Smith, with his usual warmth, wrote: "Every day increases my opinion of the value of Mr. Montagu's services. I have hourly proof of his energetic zeal - his ability and rapidity in performing the extraordinary amount of his responsible duties .... Since he undertook the office he has doubled and trebled its duties in amount, importance and responsibility. The beneficial results of his labours are apparent in every department and in every part of the Colony." Indeed, the Governor stated, Montagu had very creditably assumed responsibilities "foreign to his legitimate position."<sup>2</sup> After he had relinquished his Governorship to Sir Harry Smith, and while waiting for a passage to India, Pottinger addressed to Lord Grey a last panegyric letter about Montagu: "I have never," he wrote, "in any part of the world met with a public servant, who struck me as being so eminently qualified for his duties, and with all my habits of business .... I do not hesitate to declare, that without Mr. Montagu's able and zealous aid, I could never have got through the labour I had to perform .... every one must see," he added, "that none of the other functionaries of the Colony, have a hundredth part of the labour and responsibility which attach to Mr. Montagu, and I feel convinced that the gradual development of the resources is solely owing to his constant and careful scrutiny into every department. I can unqualifiedly assert," he went on, "that I never made a reference to him connected with any branch of the administration to which I did not receive a full and satisfactory reply as quickly as the post would admit." He considered him fit for transfer to a position carrying greater remuneration, but was of the opinion that "this Colony would suffer very seriously by his removal."<sup>3</sup>

1. *ibid.*, p. 83 f. Pottinger to Grey 15/4/47.

2. *ibid.*, p. 84 f. Smith to Grey, 11/3/48.

3. *ibid.*, p. 101 - 102. Pottinger to Grey, 5/2/48.

The degree of satisfaction he had given to a succession of Governors, therefore, is as plain to see as it is possible from these comments to appreciate his central position in the government. The degree of reliance placed upon him is further indicated by Sir Harry Smith, in a letter expressing his astonishment at Montagu's achievements in developing the roads of the Colony; Smith stated that Montagu's great road-building scheme had been left "entirely in the hands of Mr. Montagu," "by me, as by my predecessors, Sir. G. Napier, Sir P. Maitland, and Sir Henry Pottinger."<sup>1</sup> Lastly, to quote higher authorities, Lord Stanley, in March 1846, found occasion in the House of Lords, to state that Mr. Montagu was "one of the ablest and most efficient servants any Colonial Government ever had,"<sup>2</sup> and the Duke of Newcastle, priming Montagu's successor at the Cape for his arduous duties by referring to his predecessor's exemplary career, stated that Montagu had been "one of the ablest of the colonial servants of the Crown."<sup>3</sup> Such praise would have gratified many a Governor, and was hardly ever lavished upon any of them.

It is not difficult to discover why he should have been the subject of such particular attention. Because of him the public debt had been paid off, (the Colony had been virtually bankrupt in 1843) and "the utmost soundness and clearness introduced into the system of currency and revenue" within a short period. Public works had been "finished with despatch, or begun and carried forward with unprecedented energy."<sup>4</sup>

1. *ibid.*, p. 151.

2. *ibid.*, p. 155.

3. Cape Monthly Magazine. Ed. A. W. Cole and R. Noble, Vol. V. 1859, despatch to Rawson.

4. The success of Sir Peregrine Maitland's government is attributed largely to "his union with Mr. Montagu." One of Maitland's chief merits was evidently his discernment of the merit of the Colonial Secretary, which, consequently, "so far from cancelling or detracting from the merits of his chief, reflect upon them with all their lustre." (W. A. Newman, *op. cit.*, p. 60 f., S. A. Commercial Advertiser, 20/1/47.)

There was a "vastly improved system of convict discipline and labour, and great improvements in the road and financial departments," as well as the "recovery of an old and almost forgotten debt of more than a quarter of a million paid into the Imperial Treasury by the Colony," which was mainly, if not wholly, attributable to Montagu.<sup>1</sup>

With regard to the convict establishment, Montagu converted it from being an unremunerative department of Government into an asset both to the Treasury and to the colonists, for the convicts became the road-builders for a colony destitute of good highways; while the convicts themselves were provided with religious instruction and were fitted by education to make a better success of their lives after serving their sentences. The scheme made him famous in the Colonial Office in Britain and won him the plaudits of Lord Stanley in the House of Peers, as well as an abiding fame at the Cape.<sup>2</sup> Nor was only administrative change or moral reform involved, for by the 'Montagu Plan',<sup>3</sup> a Central Road Board was

1. *ibid.*, p. 61, Maitland to Newcastle, n.d., (1853); p. 81 f. Maitland to Gladstone, 21/9/46; p. 83 f. Pottinger to Lord Grey, 15/4/47; p. 84 f. Smith to Grey, 11/3/48. G. M. Theal's comment on Newman's book is interesting: "an admirable description of the best side of Mr. Montagu's character, and an accurate account of the various transactions with which he was connected; but he is shown in too favourable a light, and the book cannot be regarded as perfectly impartial. The hardness of the man's character, his pitiless collection of the arrear taxes in cases which involved great misery, and his dislike - amounting almost to disdain - of the old South African colonists are never once alluded to." It might be argued that 'hardness of character' were as necessary in him as revenues to the Colony, that the 'disdain' was that of a well-bred Victorian gentleman for the populace, and that his humanity is nowhere else questioned by serious students as distinct from contemporary propagandists. *Vide* Theal, *History of S. A. since 1795*, Vol. III, p. 412 (Notes on printed books); *Cf.* Bond, J. 'They were South Africans', pp. 105 - 116.
2. Newman, *op. cit.*, Ch. VI, *passim*. Bond, *op. cit.*, pp. 105 - 116. 'The Lantern', Oct., 1957, Vol. 7, No. 1. *Re* convict discipline, Montagu, supported by Porter and Colonel Mitchell, wrote that "the regulations should . . . be based upon the principle of inducement to good conduct and reform, through the instrumentality of religious and moral instruction, and through a consistent and uniform course of moral discipline - instead of control by physical force." P.P. 1847 (742), p. 16 ff.
3. Framed with the assistance of William Porter and Charles Mitchell, the Surveyor-General. Porter was an early campaigner for better roads, especially for the 'hard road' across the Cape Flats. *Vide* 'The Porter Speeches', Cape Town, 1886.

established to construct trunk roads, and Divisional Road Boards were created to build branch roads, which by creating a system of strategic communications brought districts near at hand and ultimately parts far afield, formerly virtually "inaccessible",<sup>1</sup> into ready communication with the coast and with Cape Town. The transformation brought about within a few years was an undoubted cause of the prosperity and optimism of the 1850's. Thousands of square miles of land increased in value and their inhabitants resumed, in many cases, an almost forgotten intercourse with towns-people, commerce and government agencies. The consequences in the political field as well as in the economic, though the former were less self-evident, would be difficult to overrate.<sup>2</sup> Not the least noteworthy aspect about the 'Montagu Plan' is that it issued from an already overburdened executive office. Such a bold conception would possibly never have been passed by a Parliament had one existed in the debt-ridden Colony of 1843, but the objects and character of the Plan were such that they would equally grace a Parliament, or a vigorous benevolent despotism. No wonder, then, that Sir Harry Smith could write: "I can most conscientiously assure your Lordship (the Secretary of State) that the salary he (Montagu) has received is not sufficient for the office as he has worked it;" and that, "the three Governors under whom he has served .. .. concur with me in this opinion." Making it clear that Montagu deserved greater remuneration not only for the improvements he had brought "in every department and in every part of the colony," Sir Harry emphasised the almost continual absence of the Governor from his capital during the past two years, which,

1. supra, p. 11

2. Newman, op. cit., Ch. VII, passim. Walker, op. cit., p. 248 (1947 Ed.) Economic histories of South Africa are generally uncritical and inadequate about road-building and its consequences. Vide de Kock's, Goodfellow's and Knowles' works. Van der Walt, Wild en Geyer, Gesk. van S.-Afrika, does not mention Montagu in this context, Book III, Ekonomiese Ontwikkeling, though he is pilloried as a 'nougesette filantroop' in Bk. IV, p. 405. Cf. Bond, op. cit., Ch. 12, passim. Vide also supra p. 7. J. Breitenbach of Rhodes University is currently writing a thesis on J. Montagu, 1843 - 1852.

as has been recorded,<sup>1</sup> had involved the Colonial Secretary in responsibilities "foreign to his legitimate position." "Without his co-operation and aid," he added, "I could not have undertaken the bold line of policy I have just completed towards the Kafirs, the emigrant Boers between the Colony and Natal, and at Natal itself." He pointed out that the breaking up of the Lieutenant-Governors establishment for the Eastern Province had meant the transfer of its duties to the Colonial Office.<sup>2</sup> By drawing attention to the vital services of the Colonial Secretary with regard not merely to the internal affairs of the Cape Colony but to territories beyond the Colony, Smith emphasised the peculiar importance of the Colonial Secretary in a novel way. The steps taken by Smith appear only to have been possible because Montagu had freed the Colony from debt and had placed "a large surplus revenue in the Treasury."<sup>3</sup> But it was not only the administrative ability of the Colonial Secretary which enabled the Governor to indulge in bold strokes of policy; for his advice was sought in what might be called the diplomatic sphere. Already in 1844, then, Montagu had participated "in preparing and advising upon the new<sup>4</sup> treaties entered into with the Kafir tribes by Sir G. Maitland." Further, the dependence of the Governors and High Commissioners upon the Colonial Secretary during time of war became patent in 1846 - 7 and again in 1850 - 1. He raised levees and burgher forces, organised assistance for the Commissariat, found transport, equipment and money for the prosecution of the war. More: from his knowledge of native 'politics' he was able on his own initiative to despatch opportune assistance to the most critical places

1. supra p. 119

2. Newman, op. cit., p. 84 ff. Despatch Smith to Earl Grey, 11/3/48. See also Pottinger to Secretary of State, 15/4/47, ibid., p. 83 f. and 101 f. Lt. Gov. Sir H. E. F. Young left in Nov., 1847, vide supra p. 13. Walker, History of Southern Africa (1957) p. xix, listing Lieut.-Governors of the Cape Colony, without explanation, inserts "Secretary of Government, Cape Town, Sept. 1846 - 9 April, 1847," as if Montagu succeeded Hare and preceded Young in an Acting capacity. This is technically wrong. There is no mention of the Secretary after 1847. This list is also curiously incomplete.

3. Newman, op. cit., p. 85.

4. ibid., p. 92.

on the frontier.<sup>1</sup> The performance, therefore, of a statutory duty was made an opportunity, by Montagu, to make himself indispensable to the Governor, General, and High Commissioner. Without him, as Smith pointed out, the Imperial Treasury would have been the poorer in war time as in peace time.<sup>2</sup>

There are other reasons why Montagu should have been so prominent among the colonial officials. It has been shown that during several administrations, most notably perhaps during Pottinger's, the Executive Council not only relieved the Governor of many of his civil cares, but was faced from 1847 onwards with the requirement of making political decisions of the most delicate kind; first, with regard to the future government of the Eastern Province;<sup>3</sup> secondly, with regard to the Anti-Convict movement,<sup>4</sup> and thirdly with regard to the drafting of a parliamentary constitution for the Cape Colony, during a time of popular upheaval within the Colony and of a war on its Eastern frontier.<sup>5</sup> On the first of these issues, - the government of the Eastern Province, - the Executive officials, and none more so than Montagu, took a line which was particularly unpopular in the East. For this they were heavily attacked, for their political opinions were publically expressed in the Legislative Council, and the technical concealment of the Executive Councillors, on the point of responsibility, behind the Governor, saved them not a whit from the obloquy which it was believed was their due. In the same way, with regard to the convict immigration and the constitutional ordinances, Governor and Executive Council were subjected to the scorn of the Westerners.<sup>6</sup> But of all the officials Montagu was the more obvious butt of colonial opinion. From 1846 to 1848, throughout 1851, and for some months of 1852, as well as for short periods at other times he was the acting head of the civil government. During 1851 and

1. *ibid.*, pp. 93 ff., 409 to 417, quoting despatches.

2. *ibid.*, p. 85. Smith to Grey, 11/3/48. And see *infra.*, Ch. VI.

3. *SUPRA.*, pp. 121-2.

4. *SUPRA.*, pp. 33-41.

5. *SUPRA.*, pp. 41 ff., 137 ff.

6. *SUPRA.*, pp. 44 ff. and *infra.*, pp. 117 ff.



until the arrival of Lieutenant-Governor Darling in March 1852, Montagu not only conducted the internal correspondence of the Colony but fulfilled the extraordinary function of conducting a great deal of the correspondence with the Imperial Government, which was normally the responsibility of the Governor.<sup>1</sup> Much of this correspondence reached the colonial public through the medium of a newspaper which was almost entirely against the Government and unbridled, if not frequently irresponsible, in its condemnation of it. Very few colonists saw the Government despatches in their proper context in the Parliamentary Papers, much less in the context of broader Imperial affairs. Yet this framework was constantly before the eyes of the Executive officials, and particularly before those of the Governor and the Colonial Secretary, who were made sensitively aware of the demands and expectations of a Secretary of State answerable to an Imperial Parliament, critical alike of the expenses of Empire and the so-called 'colonial attitude.'<sup>2</sup> Montagu was thus assailed from below, and subjected to critical appraisal from above: he had to meet and answer an often irresponsible press campaign in the Colony and at the same time, reassure the British Colonial Office. His task was not made easier by the untoward state of affairs in Transorangia and on the Eastern frontier of the Cape Colony, which brought the Governor into extreme disfavour with the Dutch as well as the English Settlers.

As an explanation of Montagu's prominence as the conductor rail on which public wrath would discharge itself, and as a prelude to a consideration of how Montagu acquitted himself, and with what effect, the nature of the colonial opposition is worthy of some analysis. The threat to the position of the Government of the Colony was more profound than a bare study of the Anti-Convict movement and constitution-making would indicate. Dutch political

1. Vide Parliamentary Papers re Representative Government, 1851-3, and re Kafir War 1851-3, despatches listed in the Schedules.
2. Muller, op. cit., pp. 81 - 131.

opinion, not merely on those issues, but on the subjects of Smith's policy as High Commissioner, the Dreyer 'murder' after Boomplaats, and the use of burghers in frontier wars, and the special favours being conceded to the Anglican Church, was gravely offended. Responsibility for the war of 1850 was fixed squarely upon the shoulders of the Governor by many of the colonists.<sup>1</sup> Montagu was an earnest Anglican who assisted the growth and organisation of his Church,<sup>2</sup> which in 1848 organised the first diocese of South Africa.<sup>3</sup> So alarmed did Montagu become at the rise of Dutch antagonism against the colonial Government that, whereas in 1848 he held the opinion that Dutch and English were mingling and had no such profound differences that they would come into conflict after the establishment of a representative assembly, by 1851 he was firmly of the opinion that in any parliamentary institution special checks would have to be created to safeguard the interests of the British Crown and of the British colonists.<sup>4</sup>

Evidence is not wanting of the actual animus of a section of the Dutch against the British. A. C. J. Otto of 'Graaffrynit' writing to A. W. Pretorius in mid-1850 assures him 'dat de Kaap zal overgaan tot ons Zuyt Africkeneders voordat de jaar vyftig om is. Hier is al een byeenkomste geweest om drie mannen te kies, een voor de Kaapstat en een voor Graaffrynit en een voor Uyttenhaag. De heer Ser Andries Stokkenstroom wort daar de gehele Afrika gekosen als bestierder van ons land. Myn neef, ek ben verwondert dat de menschen van over de Vaalrevier myn niet wou gloven dat wy ons

1. Vide Dr. A. E. du Toit, *The Cape Frontier ... 1847 - 66*, pp. 54, 60, 66; A. H. Duminy's, *The role of Sir Andries Stockenstrom in Cape Politics, 1848 - 56*, (Unpub. M.A. thesis, R. Univ.) contains a good deal of evidence of Dutch political sentiments at this time. See also Imperial P. P.'s re Repr. Govt. for the Cape Colony, 1850 - 53, op. cit.
2. Hattersley, op. cit., p. 26; Newman, op. cit., Chap. X, passim.
3. C. Gray: *Life of Robert Gray, Bishop of Cape Town*. Two vols. 1876. Ecclesiastical grants and the 'Episcopal Church' were an early subject of enquiry in the first session of the Cape Parliament. Non-conformist English churches being almost as critical of this as the Dutch Reformed Church. Vide *The Advertiser and Mail's Parliamentary Debates, Cape Town, 1854*, pp. 25, 31, 125, 276, 278, 281, 304, 305, 323.
4. P. P. 19 May, 1851 (No. 1362) p. 163 ff; Minute by Montagu, dated 14 Jan. 1851; Newman, op. cit., p. 365.

leven en de pand gezit heef om de Kaap trug te keyggen, maar nu kan him sien waarvoor wy gewerkt heef. Ik denk hit zal goit afloop met ons sonder verder moeite te maak .... " <sup>1</sup> Nor was this an isolated statement of sentiments, however deluded as to the facts this correspondent revealed himself to be. Several despatches from Lieutenant-Governor Darling to Lord Pakington, the Secretary of State for Colonies, enclosed petitions which were excessively frank, and as provocative as they were injudicious. So forceful and personal was the language of the Dutch memorialists that Darling had to take steps to ensure that petitioners would use language sufficiently moderate to enable him to accept their petitions. <sup>2</sup> And since field-cornets and ex-Heemraden and churchwardens were very prominent in moving and seconding the resolutions which were incorporated in the petitions it was clear that no mere faction or rabble was responsible. <sup>3</sup> Nor were signs wanting among even more prominent men, of extreme anti-British sentiments. There was for instance Johan Hendrick Wicht, the 'popular' candidate of 1850 whom Sir H. Smith stood down in favour of Godlonton, and who helped Stockenström, Fairbairn and Brand draft the famous and futile '16 Articles'. <sup>4</sup> Wicht sat in the Legislative Council from 1854 to 1866, and was well known as a staunch Dutchman who was as vigorously anti-episcopalian as he was anti-pathetic to Britons. <sup>5</sup> Dr. Changuion, headmaster of a Cape Town school and sometime influential editor of the 'Zuid-Afrikaan' was another with warmly anti-British sentiments. <sup>6</sup> Nor were these isolated examples of the most literate and prominent Dutchmen, not one whit less sophisticated than English colonists of the same

1. Transvaalse Argiefstukke, p. 29.
2. P. B. 31/5/53, (1636) pp. 15, 17 f. Letters by Darling and Hope.
3. G. H. 23/23 and Annexures in G. H. 28/66; Despatches Darling to Pakington, Nos. 1 to 5, 1852.
4. SHDRA, pp. 45 f.
5. Advertiser and Mail's Parliamentary Debates, Vol. 1, 1854, op. cit., p. 161 f. (7 Aug.); and, e.g. Cape Argus Parliamentary Reports for April 25, under title, 'The Week', re Wicht and the Cox case. Wicht was a director of banks, assurance companies and of a fishing and whaling company, vide Cape Almanacs.
6. J. H. Hofmeyr: Life of J. H. Hofmeyr (Onze Jan), pp. 15, 69.

class, who kept up a steady and sometimes vigorous front against what they were too ready to see as British impositions, corruption, or tyranny.

The opposition of the Dutch colonists was not, however, confined to radicals. Moderate constitutionalists like C. J. Brand<sup>1</sup> and his son J. H. Brand;<sup>2</sup> the Kotze family which reared (Sir) John Kotze, the Hofmeyrs who produced so sagacious a statesman as 'Onze Jan' Hofmeyr, were representative of a broad section of the colonists who objected as much to certain aspects of Montagu's administration as did the subjects of the Austrian Joseph II who<sup>3</sup> objected to his 'rational' reforms, and for the same reason. No better example may be quoted than Montagu's attempt to force a Stamp Bill through the Legislative Council in 1845. It was un-<sup>4</sup>doubtedly a most comprehensive measure calculated to effect a considerable change in the internal revenue structure, and it is probably indisputable that it would have been beneficial to the Colony, but it brought about an almost unanimous colonial opposition. The Cape Frontier Times, joining in the common disapproval and expressing a common fear, wrote: "Even though the 'evil' of the Stamp Act may be averted, who can say that in the very near future another measure may not be proposed, equally objectionable, upon which his Excellency and his advisers may have stumbled in their ignorance of the commonest principles of political economy and thorough unacquaintance with colonial customs, society and character."<sup>5</sup> It was C. J. Brand who, at a public meeting in Cape Town, on 6th January, 1845, set the tone and gave dignity to the opposition, when he moved, *inter alia*, that, "This meeting is .... warranted in justice to the inhabitants at large, in steadfastly opposing, by legal and constitutional means, the passing of the proposed ordinance in all its stages."<sup>6</sup> Subsequently petitions

1. 'Popular' member in 1850, Speaker of the House of Assembly, 1854-74, and a Cape patriot.
2. M. L. A. 1854-63, President of the O. F. S. 1864-88.
3. *cf.* C. F. T., 9/1/45.
4. C. T. M., 21/12/44.
5. C. F. T., 16/1/45.
6. C. F. T., 23/1/45.

flowed in from municipal commissioners and townsmen, farmers and merchants, editors and newspaper proprietors, and from people in every walk of life. Legislative Councillors, like Advocate Cloete for the Albany petitioners, undertook to present the petitions in the Council. So strong did the tide of opposition become that Governor Sir Peregrine Maitland, so often held almost to have been dominated by Montagu, intervened. A deputation having been received in audience by him, the Governor declared that the Government would not force this, or any tax law on the people against their united opposition.<sup>1</sup> He only required proof of overwhelming opposition. During a few days this was clearly provided, and Maitland required Montagu to announce in the Legislative Council that the Stamp Bill had been withdrawn.<sup>2</sup>

The victory of the colonists on this occasion was not only a significant pointer to the political future of the Colony but clear indication that strong moderate leaders could weld Dutch and English colonists into an effective political front on at least particular matters. It shows too that Eastern antipathy for Western rule was not completely synonymous with antipathy for 'Dutchmen'<sup>3</sup> and it proved that, especially in Cape Town, the political principles of leading English colonists like J. Fairbairn and J. B. Ebdon were scarcely distinguishable from those of the moderate 'Dutchmen'.

The moderate section of the population which proved so firm against Montagu in 1845 in respect of the Stamp Bill showed its provincial, divisional and sectional differences on other matters during that same year<sup>4</sup> and on these matters there were always more or less pronounced supporters of the policy of the Executive. Consequently it was never quite certain how profoundly or for how long the Executive would be faced with a concerted opposition or be

1. C. F. T., 30/1/45.

2. C. F. T., 13/2/45. I am indebted to J. Breitenbach of Rhodes University for information on the Stamp Bill.

3. supra, Ch. 1, passim.

4. supra, Ch. 1, passim.

strengthened by approval. Certainly in the crisis years of 1850 to 1852 Montagu was not unjustified in taking a cautious view in desiring to wait for more settled times to show just how broad and effective would be the reasonable party, which stood halfway<sup>1</sup> between the radical and provocative 'Britishism' of Albany and the extremist 'Dutchmen'.

The situation in the Cape Colony during 1850 to 1852 had, in Montagu's view, to be met by more than merely cautious political manoeuvring: it had to be met with remedial propaganda. Montagu's despatches, therefore, supplied the Imperial authorities and the public at large with information and arguments opposing those which might otherwise have become more generally believed. The period during which the Constitution Ordinances were being discussed was particularly critical. The principle issues were the franchise, the composition of the upper House, and whether the consideration, or grant, of Parliamentary institutions should not wait until after the war. On all these issues Montagu opposed popular opinion. Empowered to nominate the required number of unofficial Legislative Councillors in order to restore a normal Legislative Council to the Colony, it was found that men were appointed who generally voted on Montagu's side.<sup>2</sup> Not only his political opinions but his exercise of patronage was then assailed and many petitions demanded his recall from the Cape.<sup>3</sup> Should he have failed as counter-informant, the principal colonial administrators, except Porter, who<sup>after 1850</sup> consistently favoured a low franchise, an elective Upper House, and an early introduction of parliamentary government, would have been almost totally discredited in the eyes of the public and perhaps also in the Imperial Colonial Office.<sup>4</sup>

Already in 1849, Sir Harry Smith, finding himself almost without press support, bought a printing press (reputedly as

1. Vide B. A. le Cordeur, Robert Godlonton as Architect of Frontier Opinion, with special reference to the Politics of Separation, 1850-7. Unpubl. M.A. thesis, Rhodes Univ., and supra, Ch. 1.
2. Vide supra, pp. 45.
3. P. P. 19/5/51 (1362); 3/2/52 (1427); 23/12/52 (1581); 16/2/53 (130); passim.
4. Vide Minutes of the Executive Councillors, P. P. 19 May, 1851 (No. 1362) p. 162 ff., and their earlier Memoranda in P. P. 5 Feb., 1850 (No. 1137).

rickety as his policies) and "became the patron of Sam Sly's Journal, which became recognised as the government mouth-piece." The Governor's old friend and lieutenant, Richard Southey, seems to have been connected with it.<sup>1</sup> But this organ was not sufficient. Once the extremism of the Anti-Convict Association had become part of an apparently general assault upon not merely the Government but upon a British Governor and his advisors in the Executive Council, nominated as they were by a distant and allegedly corrupt, ignorant, selfish and deceitful Imperial Government, Robert Godlonton put his very able pen and his widely read newspaper, the Graham's Town Journal, at the disposal of the Government. It forthwith drew a great deal of information not only directly from the Governor, but from Richard Southey (who was Secretary to the High Commissioner), and others who sometimes forwarded copies of important papers by which Godlonton might attack his rivals and "the enemies of the Government".<sup>2</sup> By 1850 a second major newspaper took the Government's part. The origins of this paper are not very clear. It first appeared in mid-October, 1850. Sir John Kotze in his Memoirs refers to a Mr. Charles Cowen who arrived at the Cape from England in the early fifties, and started a newspaper called 'The Monitor'.<sup>3</sup> A letter in the Eastern Province Herald of 5th April 1853 intimated that Godlonton and William Cock had suggested the founding of the 'Monitor' and that Godlonton had both contributed articles to it and had an interest in it.<sup>4</sup> During 1851 it was even rumoured that Godlonton would move to Cape Town and take over the editorship of this newspaper.<sup>5</sup> R. W. Murray, a famous press-man of those days, recalled that "The Monitor was started by a syndicate chiefly composed of Cape Merchants, who, during the anti-convict movement, had in

1. A. H. Duminy, op. cit., p. 123, reference to the Godlonton Papers.
2. Le Cordeur, op. cit., p. 147. Evidence mainly from the Southey Papers, ACC/611/2 and 3. Godlonton's sub-editor, Irving, was himself 'in government service' - Duminy, op. cit., p. 195.
3. Sir J. Kotze, Biographical Memoirs and Reminiscences of Sir John Kotze, Vol. 1, p. 65. The recollections of R. W. Murray, referred to below, conflict with Sir John's.
4. Le Cordeur, op. cit., p. 179.
5. ibid., p. 188.

consequence of the stand they took on the side of the Government, met with little mercy at the hands of Mr. Fairbairn and had withdrawn their advertisements, and a great many of them and others of the English party had withdrawn their subscriptions from 'The Commercial Advertiser and Mail', and so in order to get the English party represented and to give support to the existing Government, they started a paper of their own, The Cape Monitor, with a Mr. William Ghislin as the nominal editor." Murray also recalled that, "For some time the leading articles were masterly, generally the contributions (free) of able writers, many of them officials. The popular notion was that it was a Government organ, started and kept going by the Government, but that was not the fact."<sup>1</sup> The Monitor itself declared its purpose to be to publish the views of the merchants on the matter of the constitution,<sup>2</sup> and to voice the opinions of those who had had to suffer in silence because of the policy of the 'popular party'. For this party, led by Fairbairn of the 'Commercial Advertiser' and the 'Cape Town Mail', maintained a vicious press control which excluded all political views, even in the form of advertisements, which were opposed to their opinions.<sup>3</sup> The merchants 'party', which supported the Monitor consistently, supported John Montagu, and could be depended upon particularly to 'window-dress' the Government for the benefit of the Imperial Government<sup>(4)</sup>.

The Monitor, then, was anti-'Popular party', kept up a constant and weighty attack on the Cape Town Municipality (the colonial 'Hotel de Ville') and particularly against its Chairman, Hercules Jarvis (Montagu's bête noire) for meddling in the affairs of the central government, for ranging outside its sphere as a local government body, and claiming to represent colonial opinion.

1. Murray took over the paper from 1854 until 1866. He and B. H. Darnell brought out the Argus in 1867, when, he states, Charles Bartholomew and Charles Cowan took over the Monitor. Vide R. W. Murray: South African Reminiscences, pp. 131, 133.
2. The Monitor, 18/10/50.
3. The Monitor, 1/11/50.
4. Vide, for example P. P. 19/5/51 (1362) p. 13, petition from 'the merchants of Cape Town'; also p. 137. P.P. 16/2/53 (130) p. 26 f. letters to and from Montagu and the 'Clergy and Merchants' of Cape Town.



It supported the opinions which Montagu adopted after 1850, that the Cape was not ready for representative government and should wait for more settled conditions to prevail before moving forward in the matter once more. Indeed, there are hints that the Monitor not merely championed Montagu but was in some way directly connected with him. Sir Andries Stockenström, on 2nd February, 1851, in a letter from Stellenbosch, alluded to "disgraceful productions" which were "supported by high officials" at the expense "of the colonial chest". Richard Southey, who had been nominated by Montagu to act as Colonial Secretary while the latter was on leave, was suspended by Lieutenant-Governor Darling, who had a sharp eye for those who passed on official information to those beyond the walls of government offices.<sup>1</sup> He also dismissed a certain J. C. Davidson from his post in the Colonial Office. Davidson was also an appointee of Montagu's.<sup>2</sup> He ranked as an 'Extra Corresponding Clerk' whose duty, Montagu said, was mainly to introduce improvements into judicial establishments. At the same time he was Registrar of the Diocese under Bishop Gray, with whom he had come to the Cape in 1848, and resided at Bishops Court. He appears not merely to have been the press officer of the Colonial Office, but to have had the time to do some of his work as Diocesan Registrar within its walls. Directly taxed by Darling on his connection with the press, Davidson refused to commit himself in any way, and tried to by-pass the Lieutenant-Governor by corresponding directly with the Secretary of State on the issue.<sup>3</sup> Davidson clearly had a call on the Government for preferment in the Colonial service though he had not come to the Cape to enter into it, for though Sir George Cathcart sanctioned his dismissal on the grounds that he was quite unfit for public employment, the

1. *infra*. p. 172.

2. ACC/611/4 Southey Papers. Copy of a letter, Montagu to Merivale dated 28/2/53. Davidson subsequently became a member of the Executive Council under Wodehouse in the same year that Southey became Colonial Secretary, 1864.

3. Hattersley, *op. cit.*, p. 23; and G. H. 23/23 Despatch No. 108 of 17/12/52, and No. 15. of 24/1/53, Darling to Pakington.

Duke of Newcastle suggested to Darling that when Davidson should be re-appointed to the civil service he should be required to assure the Government that he would adhere to the rules of the Public Service with regard to connection with the press, and he requested him "not to compell (sic) him to make any declaration as to his having formerly contributed to it."<sup>1</sup> Davidson himself felt his position to be so strong that he practically demanded re-employment, and even chose his office - as Clerk of the Peace at George<sup>2</sup> - and to George he was in due course posted, notwithstanding that Darling intimated that not only was the 'Monitor' "to a large extent, edited within its (the Colonial Office) walls" but that Davidson also wrote political articles about the Cape Colony for the press in the United Kingdom.<sup>3</sup>

Finally, the Collector of Customs, W. Field, falling out with his superior because of his own adoption of 'popular' political views, accused the editor of the Monitor of the "surprising faculty" of being able to "not only report what took place, but what is to take place", and he implied that the editor could only do this by having access to the Colonial Secretary, since he had foretold how Mr. Montagu would use his vote in the Legislative Council and had used 'almost the precise' words in an editorial that the Colonial Secretary later used against the Collector of Customs in 'indicting' him before the Council. He drew the inference, from the whole conduct of the paper that it was Montagu's organ. He went further, he accused the Colonial Secretary of using it in an attempt to defeat the will of the Governor, and of the Secretary of State, who desired an early and successful conclusion to the work of drafting the constitution. Sir Harry Smith's own view of Montagu's policy of delay evidently coincided with Mr. Field's, for on 18th February, 1852, he wrote, from Kingwilliamstown, some pointed criticism about the slowness of proceedings, and enclosed a Minute

1. G. H. 1/47, p. 213. Despatch No. 18, 12/2/53, Newcastle to Cathcart.
2. G. H. 28/65, Enclosures to Despatches - to despatch 108 of 17/12/52, Darling to Pakington.
3. ibid., Despatch No. 86, Darling to Secty. of State. See also infra p. 160

which Montagu was to lay before the Legislative Council, in which he openly avowed his difference of opinion with the Colonial Secretary. Smith had little choice in the matter; he might have known that he had lost the confidence of Earl Grey, who already on 14th January had written his despatch censuring and recalling the Governor, though the letter was not to receive it until March, 1852.<sup>1</sup>

These transactions were doubly significant. The high-water mark of Montagu's influence had been reached, and the Colonial Office of the Cape was about to be reduced to performing only the functions which by its constitution belonged more properly to it. Montagu himself must have appreciated that the correspondence just alluded to spelt an end to his unrivalled authority as the de facto head of civil affairs. It was already clear that once the Anti-Convict movement had lost its raison d'être and its leaders their grip upon the public, the Executive officers, though they did not lose their antipathy to Fairbairn, Stockenström, and their confederates<sup>2</sup> began to lose the solidarity which that crisis no less than the resignation of the 'popular' members in 1850 had helped to forge.

1. Du Toit, op. cit., p. 66. P.F. 23/12/52 (No. 1581) p. 258 ff., Minutes of the Leg. C. for 15/3/52: Sir Harry Smith himself decided on 2/9/51 that the Leg. C. should not consider the Constitution Ordinances until after the achievement of peace (ibid. p. 166), thus agreeing with the views of Earl Grey, expressed in a despatch dated 13/5/51, which also transmitted the famous 'Additional Instructions' to the Governor, constituting the 'rump' of the Leg. C. a formal legislative body for the Colony. P.F. 19/5/51, (No. 1362) p. 203 ff. But by a despatch dated 30/6/51 Earl Grey ordered Smith to complete the Leg. C. by appointing new members and to proceed with the draft Constitution Ordinances which he was sending out, with a view to bringing about the change of Constitution "at the earliest possible period" P.F. 3/2/52, (No. 1427) p. 63 f. These Ordinances, accompanied a despatch of 15/9/51, arrived in Cape Town on 31/10/51. The Leg. C. duly received them, but postponed the second reading until 28/1/52 (ibid. p. 29 ff.), a proceeding of which the Governor informed Earl Grey in a despatch dated 16/1/51. On 11/1/52 Sir Harry addressed a letter to the Colonial Secretary in which he requested that "no obstacle" should prevent the Ordinances going before the Leg. C.; but he found it necessary on 18 February, from his headquarters at Kingwilliamstown, to send "my positive orders and injunctions" for the Leg. C., as ordered by the Imperial Government, to proceed with the Constitution Ordinances (P.F. 23/12/52, (1581), p. 132).
2. P.F. 23/12/52 (1581) p. 113 ff., Porter's speech in the Leg. C. 10/12/52.

That differences of opinion should arise in such a peculiarly difficult circumstances was inevitable. Suspicion between British and Dutch colonists, actual racial strife, and a disastrous frontier war, were contemporaneous with an impending constitutional change which caused stronger cross-currents than ever among the various sections, races, parties, in the community. Nor did a 'packed' 'constituent assembly' help as a device to soothe colonial opinion. That the Colonial Secretary should at such a time become the principal hope, if not the head, of a 'party' in which only one of the Executive Councillors, Harry Rivers, joined him, was exceedingly unfortunate. It was even more unfortunate that the position he had assumed attracted the ire of the Governor, the likely disfavour of the Secretary of State, and the opposition of a clear majority of the colonists and especially of the Dutch. Montagu's influence quite as much as his casting vote in the Legislative Council, and his practiced fabian tactics, made him not merely the chief executive officer for the time being, but the principal political figure in the Colony.

CHAPTER IV.THE EXECUTIVE COUNCIL AND THE POLITICAL CRISIS  
OVER THE CONSTITUTION ORDINANCE; THE COLONIAL  
SECRETARYSHIP BECOMES POLITICALLY AND ADMINISTRATIVELY  
A BONE OF CONTENTION.

Theoretically in all the colonies, the office of colonial secretary was a non-political office; yet the paradox of John Montagu lies in the fact that local circumstances and, it must be admitted, his own calibre, thrust him into a quasi-political role. His eminence as an administrator made him the scapegoat exposed to all who criticised either the minutiae of official controls or the broad trends of policy whether in the Cape or in Britain. Two things, rising prosperity on the one hand, political frustration on the other, made controversy at the Cape at least as acrimonious as in any other colony at the time, and led from the first hints in 1844-5 (the controversy over the Stamp Bill)<sup>1</sup> to a position where private individuals, corporations, and press groups, claimed in turn to give 'virtual representation' to so-called 'colonial interests'. A vocal public opinion gave an apparent coherence and unanimity, which, it has been shown, did not exist, to colonial opinion. There was, though, a pseudo-constitutional opposition to what was a constituted rather than constitutional government, as the 19th century understood the term. Thus Montagu as Colonial Secretary faced the necessity not merely of executing, but of defending, and even of contriving the formulation of policy both in the Executive and Legislative Councils. On more than one occasion, then, he acted not merely administratively as the servant of the Crown, but politically as the exponent of policy. More: he was caught between an upper and nether millstone. On the one hand, he sought to interpret and explain away, the partisan turmoils of the colony, to re-assure and educate both the Governor and the Secretary of State for War and Colonies. On the other

1. supra p. 128f.

hand, he resorted to political tactics of dubious propriety to secure support for what became often a Montagu gloss superimposed on the official instructions from Britain. Thus, notwithstanding the fact that there was neither a representative parliament nor bona fide parties at the Cape, the tactics of party politics were often present. Furthermore, while the Anti-Convict agitation had forced the executive Councillors to stand shoulder to shoulder in their official capacity, after 1849, this cohesion disappeared. Over the Constitution question, the Councillors were patently divided and sought to reconcile the square of official obligation with the circle of a general responsibility to the needs of the Cape as each saw them, by drawing an effective if dubious line between ministerial and open questions. They used the quasi-conventional terminology of parliamentary politics in a constitutional milieu in which they were scarcely applicable. Thus it was not only Montagu, but his supporters and critics in the Executive Council, who found political necessity at variance with the letter of legal obligation. What before had been implicit, became explicit over the question of the Constitution Ordinances.

This question presented itself in two forms: firstly, as to whether the Legislative Council should proceed with the Ordinances at all, and secondly, as to the details of the Ordinances which should give political control of the Colony to the more wealthy and 'intelligent' of the inhabitants or distribute it more generally among the populace. Montagu believed in postponement of the legislation, or, if that could not be done, then in franchise laws which would restrict the electorate rather than broaden it, and he wanted constitutional checks which would safeguard the position of British colonists, and of the Crown. The stand he took made him the principal political figure in the Colony. As the leader of a minority section, Montagu became the subject of an attack, which was as weighty as it was violent, from a majority among whom fair judgment of the man and true discernment of the issues at stake were sometimes lacking.

In these circumstances, Montagu held his course while trying on the one hand to convince his superiors of the soundness of his views, and on the other to frustrate the opposition. Nothing shows his tactics or his position better than the tenor of the constant stream of letters criticising the veracity and motives of petitions and petitioners, which Montagu sent to the Imperial Colonial Office in his attempt to show that the 'popular' views were not so popular after all. The shrewdness with which he found and the forcefulness with which he struck at the weakest places in the armour of his opponents, could often only be parried by invective. A weak point which he seized upon with great effect was, for instance, the gullibility of ignorant people especially in outlying districts who could be easily swayed by the specious political arguments of men whom they were persuaded to believe were their betters. The career of the notorious Dr. Tancred who had a facility for ever-persuading the rustic inhabitants of Clanwilliam is the readiest example because it was as irritating to Montagu before 1853 as it was to Parliament after that date, though Montagu found it easiest to hold him up to scorn.<sup>1</sup> Second only to this method of defeating the opposition,<sup>2</sup> was Montagu's use of the newspapers which supported his views. To make use of them at all was a transgression of the known rules of the colonial civil service. Condonation in this matter of course there was - the Governor himself had used these tactics, - and for a time no supporter of the Government against the extravagance of John Fairbairn and his friends would have condemned their use. But 'autre temps, autre chose', and the constitutional issue shows that 'the imperious Montagu' was indeed too powerful. He had assumed a position for which the Colonial Secretaryship, in the existing

1. Vide P. P. 16/2/53 (130) p. 42; F. J. du Toit Spies, Die Dagboek van H. A. L. Hamelberg, V.R.S. Vol. 33, passim; Kilpin, Romance, p. 102 f; Debates and Votes and Proceedings of the Cape Parliament, 1854 et seq.. A. J. Tancred was M.L.A. 1854-58, 1862-63, for Clanwilliam, and 1866 for Piquetberg.
2. Supra pp. 131-4

constitutional form of the Government, had never been designed. Nemesis struck in two ways. Firstly, he lost control of the Executive Council; secondly, a Lieutenant-Governor was sent to reduce the importance of the Colonial Secretary's office.

Before the Anti-Convict agitation there had naturally been differences of opinion about matters brought before the Executive and Legislative Councils. Perhaps one could already distinguish particularly the sympathy of Rivers for Montagu whenever it came to a vote. But Field, if Stockenstrom was right, "was for a time one of those who believed it blasphemy to doubt the infallibility of Smith and Montagu,"<sup>1</sup> and Porter showed no signs of personal or political opposition on general principles to a man whom he obviously respected and generally supported.<sup>2</sup> Nevertheless, the hardy independence of the famous Porter was clearly the danger to Montagu and his followers, whose temperaments were more restrained and whose views were more those of 'men skilled to govern' than of men with regard for public opinion.

Few men in the Colony were as highly esteemed as William Porter was.<sup>3</sup> He had shown his masterful nature on many occasions, not least when he made a bold and public stand against the notoriously wilful Governor, Sir George Napier.<sup>4</sup> Already in 1840, Porter, at a great public dinner given in his honour in Grahamstown, avowed that he had "inflexible independence of mind which nothing could subdue",<sup>5</sup> and that he had an "unspeakable hatred of oppression of every kind and a most anxious desire to discharge (his) duties so as to advance substantially the public interests"<sup>6</sup> He ventured to remark on the same occasion upon political questions of special interest to the Eastern districts, and to suggest some necessary reforms,<sup>7</sup> despite the fact that he could have had little or no opportunity to share his thoughts with his fellow

1. Autobiography, op. cit., p. 331.

2. 'The Porter Speeches', op. cit., passim; Parliamentary Papers re Cape Colony, passim.

3. Vide also infra pp. 197ff.

4. Supra p. 17.

5. The Porter Speeches, op. cit., p. lviii ff.

6. ibid.

7. ibid.



Executive Councillors, much less to obtain their specific opinions. Had he been thought presumptuous by his superiors it would scarcely have been amiss. Again, in 1842, with regard to Lord Stanley's scheme to send juvenile criminals to the Cape where they might readily find good employment and moral improvement, Porter informed the Legislative Council that, "In the Executive Council it will be my duty to give whatever assistance I am able to afford in the framing of such regulations as may appear best fitted to accomplish the ends which his Lordship has in view; but still," he went on, "I feel that I am here in double trust, and I do not think that any official considerations will prevent me from expressing the views which I am led to form," and plainly he was opposed to Lord Stanley's plans. Porter went even further, implying that he would take an even bolder course; he added, "Nor, indeed, on a question of this kind, could I well permit myself to be withheld by official considerations even if they did exist" - words which remind one of the incident concerning Governor Napier already referred to, when he was prepared to resign his office immediately rather than surrender the independence of his vote. But in this case he went even further, for he took a lead in challenging the colonists to show that they were neither apathetic nor unintelligent, that they would, in fact, object heartily against an announcement put in the Government Gazette by the Governor.<sup>1</sup> Some weeks later he renewed the attack, at far greater length, in a public meeting in Cape Town, where he chose to speak "as a citizen" meeting "the rest of my fellow-citizens" and not as an official, a statement not less ambiguous than it was significant.<sup>2</sup>

The arrival of Montagu in 1843 was, perhaps, like the arrival of another luminary in the heavens which dimmed Porter's brilliance; certainly it does not seem that Porter moved into opposition to Montagu on any of the major issues of the day until the end of 1845. While friendship and agreement lasted between these two men, the opponents of Government measures and of

1. *ibid.* p. 105 f.

2. *ibid.* p. 107 ff.

official opinions must have experienced the utmost discomfort, for where Porter could marshal facts and use scorn, sarcasm or laughter with devastating effect, Montagu was unrivalled for lucidity, and precision, as well as for dispassionate and logical argument, which left even Porter, on occasion, looking for something else to say.<sup>1</sup> The first great difference of opinion between these two titans on the Colonial stage occurred, as might have been expected, when Montagu carried his reforming zeal into the sphere of the administration of justice. A Committee of the Legislative Council considered this matter, and delivered up majority and minority reports. Foremost champion of the former was Montagu, and of the other, Porter. In an address lasting some two hours Montagu urged the acceptance of his report, whereupon Porter spent some four hours in attacking both the majority report and Montagu's speech. The matter attracted a great deal of public notice, and the outcome shows something of the stature that Montagu had assumed in the public eye, as well as the hold he had won over the Legislative and Executive Councils. The *Graham's Town Journal*, forgetting the highly unpopular expressions of opinion indulged in by both Montagu and Porter on the question of Frontier policy two months before<sup>2</sup> praised both for their handling of the debate, but used words about Porter such as one might use out of sympathy for the defeated, while Montagu was garlanded with "victory", -

1. Vide The Porter Speeches, pp. 185, 195, 200, 321, 323, 333, 347, 349-51, 379, 422. The last reference is to words which merit quotation; having stated that Montagu's words did not require supplement, Porter went on: "I am anxious ... to state for myself the conclusions at which I have arrived, and the reasons which have led me to them. But this, Sir, is not all. I cannot but feel that the able, and beyond all parallel and precedent, dispassionate speech of the Secretary to Government, will not, when reported, give satisfaction on the Frontier. When men's minds are heated beyond a healthy state, the utterance of impartial truth never gives satisfaction. My hon. friend, speaking with great care and caution, and the most sincere desire to avoid giving offence, will yet, I am certain, give offence. He has, I believe, delivered an unpopular speech, and believing that he has done so, I deem it right to follow him in the course that he has taken, and to claim my share of whatever unpopularity may attend the announcement of principles and sentiments in which we are cordially agreed ....".
2. referred to in the last footnote.

a victory which had the greater éclat because he had had to "combat the united strength of the Bench and of the Bar - the whole legal profession of the Colony ... " <sup>1</sup> If personal relations were not as cordial from that time onwards, profound partisanship between the two men seems also to have been absent.

The first signs of a fundamental division among the Executive officials in the Legislative Council appears to have occurred in the session commencing on the 10th of September 1850, in which the four 'popular' members had seats. This was when W. Field and W. Porter took the side of the 'popular' four against Montagu, Rivers, and the 'nominees', Godlonton and Cock, on the question of the electoral franchise for the Upper House. The conduct of the 'people's representatives', however, ensured that the division would not assume vital proportions, more especially as the Executive officers do not seem to have differed on other points raised. <sup>2</sup> Nor does it appear in Minutes drawn up by the individual Executive Councillors on the 14th and 15th May 1851 <sup>3</sup> that serious differences need have developed. Montagu and Rivers, it is true, had decided that the Legislative Council ought to be a nominated house, and Porter favoured an elective one. But Porter only took this view because an elected Upper House had been virtually promised, and to go back upon that decision would involve possibly greater dangers than the establishment of an elected House might bring in its train. Field and Hope both took a stand half way between Montagu's and Porter's and were clearly afraid of the situation which would in any event arise: they advocated a part nominee and part elective Upper House. The issue became clearer in November of 1851, when Montagu brought up the Ordinance to prevent squatting upon Crown lands, for a second reading in the Legislative Council. <sup>4</sup> This

1. GTJ. 3/1/46, 10/1/46.

2. P. P. 19 May 1851, (1362), p. 156 ff. Several divisions for the purpose of voting are recorded here, in only one of which - that mentioned supra - the Executive officers took different sides.

3. ibid., p. 162 ff.

4. P. P. 3/2/52, No. 1427, p. 24 f. Debate in the Leg. C.

was a Government measure<sup>1</sup> which had been brought in upon the "unanimous advice" of the Executive Council, yet Porter stated that he would not vote for the second reading, - on grounds which clearly reflected his liberal outlook in matters where Coloured were concerned - unless it were thereafter referred "to a committee of the whole Council, for the purpose of obtaining evidence upon it." At the same time he implied a marked diffidence to voting for any such measure in the circumstances prevailing at that time. The Council accepted Porter's suggestions, but evidently without much sympathy for his views, though he might have had silent supporters. Later, the Executive Council, unanimously once more, decided to withdraw the measure from the Legislature.<sup>2</sup> In the light of subsequent debates in the Legislative Council, it is likely that the submission of the Executive Councillors to Porter's suggestion was not because they had been won to his views on the treatment of the Coloureds, but because it was not expedient, in view of the state of race relations within the Colony and the war on its border in which Coloureds were active as friends and as foes of the Colony, to pass a measure which might challenge the hitherto loyal Coloureds. Porter's action in this instance may be justified on the point of wisdom, but it broke a rule which had been repeatedly enunciated in Council: namely, that an Executive Officer was bound to concur in the passage through the Legislative Council of a Government measure. That this particular subject led Porter to adopt such a course, had great significance at a time when the deliberations on the Constitution Ordinances were at hand. When, with wisdom and generosity towards the Colony, the Imperial Government left the colonial legislature to fill in the details of the constitution, including the franchise provisions, and asked its servants on the Executive Council

1. *ibid.*, p. 39, Montagu to H. Merivale.

2. *ibid.*, and P. P. 23/12/52, No. 1581, p. 6, Smith to the Secty. of State.

to take a lead in considering fundamental political principles, it imposed an extraordinarily difficult task upon the latter. In a society which was not merely complex in character racially, but which was in a state of upheaval, it would have taken a committee of Archangels not to have arrived at profound differences of opinion. The Squatter's Bill debate, for all its brevity, already presented a challenge to personal loyalties by attracting attention to matters on which there could be little compromise in the more important debates to follow.

The real break began, perhaps, when the Legislative Council, having delayed the consideration of the Constitution Ordinances from October to November 1851, and from November until 28th January 1852, and finally until the 10th February, on the plea that Godlonton and Cock should be given time to attend, was faced with an amendment moved by Godlonton, that the Ordinances should not be considered until after the war. All the unofficial members, directly contrary to the expressed will of the Secretary of State and of the Governor<sup>1</sup>, agreed to the amendment. The Auditor-General (Hope), the Attorney-General (Porter), and the Collector of Customs (Field), opposed the amendment. Hope did so only because failure to proceed with the Ordinances would involve breaking faith with the colonists and would possibly cause tumult. But tumult, he believed, might in any event arise from the premature granting of a parliamentary constitution, which he believed the Imperial Government was injudiciously determined to provide for the Colony. Porter, for his part, characteristically expressed his opposition to the amendment as an individual as well as an official, and Field agreed with his argument. Rivers did not speak at all, but there was evidently no doubt that he would faithfully side with the Colonial Secretary. At this juncture, the latter revealed a subtlety which for the time being was decisive. Before the introduction of the Constitution Ordinances into the Legislative Council for the second reading, Montagu had obtained the decision of the

1. supra, p. 135.

Executive Council that they would not be introduced as Government measures. Thus, not only the various provisions of the ordinances, but the question of whether the ordinances should be proceeded with at all, could be freely debated and voted upon by the official members, except for three provisions which had already been made law by the Imperial Government.<sup>1</sup> The procedure which the Executive Council had adopted, under the guidance of Montagu, was no doubt the best that it could have pursued. But now it was found that the unofficial members were pitted against the official members, so that Montagu could use his his casting vote. He agreed with the amendment, and would, he argued, on a precedent instruction by the Secretary of State, made in 1842, be correct in voting on the side of the unofficial members, on the principle that a matter vitally affecting the interests of the colonists should not be forced upon them by the officials in the legislature by the casting vote of one of the officials. But, he decided, since the manner in which the casting vote would be used might mean acute disturbances in the Colony, which might endanger progress against the enemy on the frontiers, he would leave the decision to the Governor, who was, of course, on the frontier.<sup>2</sup>

Montagu then provided a digest of the debate for Smith, in a letter dated 12th February, 1852, in which he practically informed his superior where his duty lay in making a decision. He was, of course, aware of Smith's private opinion. He was aware too of the latitude so often given to Governors to ply the Secretary of State with reasons why an instruction from the latter should not at once be carried out. It is possible that he expected Smith to accept the advice implicit in a vote of 8 to 2 in the Legislative Council in favour of adjournment, and of 6 to an uncertain maximum of 5 in favour of postponement, as sufficient support to enable him to address the Secretary of

1. *infra*, p. 150

2. P. P. 23/12/52 (1581), pp. 96 - 132 has a full record of the debate, and of some of the papers which were passed in connection with it.

State afresh on the question of leaving the completion of the Ordinances at least until peace had been made on the frontier. Only Porter and Hope had voted against Montagu's motion for the adjournment of the debate, despite the fact that the motion was clearly made an open as distinct from a Government measure, thus showing that even Field was a doubter. But the Governor no longer had any option. In Earl Grey's despatch of 30th June 1851<sup>1</sup> no room for doubt on that score had been left. Montagu was ordered, therefore, in a short note which clearly conveyed Smith's exasperation at the tergiversations in Cape Town, to proceed with the constitution ordinances. More: in a "Minute to be laid before the Legislative Council, assembled for the purpose, with the least possible delay"<sup>2</sup>, the Governor declared his public disapproval of Montagu's actions; and in order to make doubly sure that no further delay should occur, Smith ordered the Executive officials to proceed to the discussion of the Ordinances "as a Government measure, leaving each separate clause an open question."<sup>3</sup> Montagu had, therefore, been trounced by the Governor and within days the whole Colony knew of it. Furthermore, Porter had come into direct collision with the Colonial Secretary. Two of the Executive Councillors had joined Porter in opposition, albeit with regrets. Only Rivers remained staunchly with his chief. Every article in the Ordinances would be open to debate, and every debate would be open to the public, which now anticipated with as much interest as scorn a stiff struggle within the Legislative Council. It was clear that though Montagu might carry the nominee members with him, he would have to overcome more than Porter's brilliance

1. *supra*, p. 135.

2. P. P. 23/12/52 (1581) p. 132.

3. *Ibid.*, dated at King William's Town, 18/2/52. Cf. Montagu's defence against Smith's censure, Montagu to Peel at the Colonial Office, London, and enclosure, dated 3/3/52, in which he rightly shows that the adjournment had not infringed any instructions, and argues that no infringement was intended.

in debate within the Council, for he would have to ensure that a large enough section of the colonists would support him so that law and order might not be threatened in the Colony, and so that his superiors would sanction his successes in the Council. The effectiveness of his former as well as his current endeavours to inform public opinion and the Imperial authorities in a way satisfactory to himself and to his party, was to be tested to the full.

Thus it was that while the Governor had avoided the wrath of the colonists which would have ensued had he made Government measures of even the details of the Ordinances, and had saved some vestiges of respect for the Legislative Council, he had actually put the numerically superior 'conservative' group in the Legislative Council in the difficult position of having to conduct an attack on the popularly accepted draft constitution while under the dark cloud of public disapprobation and official censure. Porter, on the other hand, with nearly all the former adherents of the Anti-Convict Association tacitly behind him, and supported by the popular newspaper, had the perhaps easier task of restraining 'liberal' and Dutch opinion, and of making every speech, delivered in his inimitable style, an appeal to the Imperial Government to abide by its promises, whether the latter were explicit or only implicit. The struggle that ensued was interesting. For though Montagu and his group - the Treasurer-General (Rivers) and the unofficial members - generally carried their views into legislation, Porter, followed deferentially but firmly by Hope and Field, emerged as a leader of no mean significance. With the 'popular' leaders hamstrung, except as agitators, firstly by their own actions in resigning from the Legislative Council, secondly by their attempts to by-pass the legitimate organ of government with the backing of the Cape Town Municipality, and, thirdly, discredited by their<sup>1</sup> foolishly offensive correspondence with the Secretary of State

1. Lord John Russell, vide supra p. 46



it was natural that Porter's liberal views and the wide publicity given to his brilliant oratory, should make him something more than an Executive official opposing his official superior and his nominated followers. Porter became, in fact, the effective leader, and last hope, of all those who had in the past five years maintained the attack on the character of the Government in both the constitutional and personal senses. There is no doubt that he remained essentially a moderate, that he did not even agree with a great number of his supporters, that he remained in the dual position of an Executive Councillor doing his duty to the Imperial authority by supporting what he thought would bring greater stability in Colonial political affairs, and of a "citizen" among his "fellow-citizens" supporting their fundamental rights, but he could not play his part in isolation, and the way he played it sounded, for the majority of the colonists, the knell of Montagu's prestige. Sir Harry Smith's terse rejoinder to Montagu's delaying tactics in February 1852 was, then, only a step towards a greater set-back in the career of the Colony's foremost servant.

During the crucial debates on the Constitution Ordinances, between March 1st and April 3rd, 1852, then, Montagu was uniformly successful in having amendments to the draft Ordinances passed which the 'conservative' party desired. The elective franchise for the election of members to the House of Assembly and to the Legislative Council was raised appreciably; the qualification for members of the Legislative Council was also set much higher than before; persons "holding offices of profit under the Crown" were not to be excluded from voting at elections; and the quorums for the Legislative Council and the House of Assembly, were increased from three to five out of fifteen for the former body, and from seven to twelve out of forty-six for the latter.<sup>1</sup> The real test of Montagu's influence followed upon this victory. Porter had shown during the deliberations that not merely the

1. Ibid., p. 171 f. Cathcart to Grey, 31/3/52. Cf. draft Ordinances P. P. 3/2/52 (1427) p. 78 ff.

three matters relative to the elective nature of the two Houses of Parliament and about who should preside over the Upper House (the Chief Justice) had been permanently written into the Constitution<sup>1</sup> but that other decisions had been made, and accepted in principle, which, to say the least, it would be extremely ungenerous to set aside.<sup>2</sup> More, he and his constant lieutenants, Hope and Field, inscribed upon the Minutes of the Council on the last day of the debate, their reasons for dissent. They were eminently popular ones.<sup>3</sup> But even more conclusive, Porter had won the ear of the Lieutenant-Governor, Darling, who arrived opportunely while the debates were still in progress in March 1852. Darling abstained from taking his rightful place at the head of the Legislative Council, to the proceedings of which he objected, and where the policy of Montagu's group could not have been altered either by his expressions of opinion or by his vote. Thus the whole of the amended draft Ordinances were associated with the presidency of Montagu over the Legislative Council. On these Ordinances Darling then reported to the Secretary of State, drawing particular attention to the reasons for dissent signed by the 'liberal' trio. And, to crown it all, Porter, though at the express request of Darling, made use of his duty as Attorney-General to explain all legislation forwarded to the Secretary of State for approval, to write a resounding Memorandum on the Ordinances in which the amendments were challenged.<sup>4</sup> Darling used this Memorandum in his accompanying despatch as the basis for his own conclusions. These two documents were the trump cards which severely modified the principal part of Montagu's work. The increased quorum for the Houses was to stay; and the amendment in favour of employees of the Crown having the right to vote was accepted, as was the

1. supra p. 146

2. P. P. 23/12/52, (1581), p. 211 ff. Report of the Debates.

3. ibid., p. 281 ff.

4. ibid., pp. 287 - 292.

increased property qualification for members of the Upper House. But, "The substitution of an occupancy with ownership of a house separately, or jointly with land, of the annual value of £50, or rental of a house at £10 per annum, for an occupancy of buildings of the value of £25" was rejected as the qualification for the franchise. The original proposal stood: thus, the populace was to have the vote, and Montagu's followers would not have a chance of victory in the Assembly, though they might prove powerful in the Council.<sup>1</sup> The essential victory lay, therefore, with Porter, and events in Parliament in 1854, when the Assembly gave a vital role to the Executive officers in their House, while the Upper House ~~which~~ stultified itself by almost shutting them out of its deliberations, confirmed it. Porter secured, in large part, that victory too, though he would have liked to achieve a larger rôle for the Executive in the 'House of Conservatism' also. A disproportionate vigour was given to the Assembly,<sup>2</sup> while the Council became both suspect and ailing. The effectiveness, then, of Montagu's influence in Britain had ended in a half measure of victory which ultimately was worse than no victory at all. He had awakened an insufficient desire for caution in the Colonial Office; while in the Colony he was eclipsed as an effective political leader. He would be eulogised in the future as a great administrator, and his political perspicacity would scarcely be noticed. Yet it is worth remembering that even Porter never doubted the rightness of his observations, but objected to the political action which Montagu conceived it his duty logically to pursue in consequence of those observations. Montagu feared the mob of Cape Town and the illiterate or easily persuaded farmers whom radical hot-heads like Fairbairn, and Stockenstrom might use in a perpetual attack on duly constituted authority, and on the prerogatives of the Crown. Montagu feared too that the Coloureds would be the tools of these men. An

1. P. P. 31/5/53,<sup>(636)</sup> Newcastle to Cathcart, 14/3/53; cf. Orders-in-Council ratifying the parliamentary constitution of the Cape Colony, p. 24 ff.
2. Vide, Debates, 1854-5, op. cit., passim.

aristocracy of wealth, of responsible men with a real 'stake in the country', and a broader interest in maintaining law and order, was the standard he opposed to democracy. A benevolent oligarchy with its responsible cabinet was his ideal, for parliamentary institutions granted during time of peace. Porter would have liked a more popular parliament, which he would have preferred to see brought into being during a time of peace and of more settled race relations, but he did not believe it to be expedient, or even possible, to wait for peace on the frontier. A supple politician, he believed, perhaps, that steadiness and a sense of responsibility would be born in the colonists, even in the radicals, once they were given political responsibilities, and perhaps he flattered himself - not unwarrantably - that he would still be there to guide the colonial politicians into reasonable ways of conduct.

There was a further circumstance which spelt the end of an era during which the Colonial Secretary had dominated the colonial scene to so great an extent. The crushing censure<sup>1</sup> passed upon Sir Harry Smith in January 1852 and his recall, for mismanagement on the frontier, was followed up not merely by the substitution of Sir George Cathcart as Governor and High-Commissioner, but by the despatch of Charles Henry Darling as Lieutenant-Governor for the whole Colony. Darling was to be at the head of the administration in the capital while Cathcart brought peace to the frontier. The Lieutenant-Governor, for the time being, was to have the chairmanship of the Executive Council, and the Presidency of the Legislative Council. It would be his special duty to inaugurate the colonial parliament when the Constitution Ordinances were at last sanctioned by the Imperial Government. At one stroke, the Colonial Secretary was deprived of his ascendancy in the Councils,<sup>and</sup> removed from his intermediate

1. P. P. 3/2/52, (1428), p. 253 ff.

position between the departments and the Councils on the one hand, and the Governor on the other. He should no longer correspond with the Colonial Office in London during the Governor's absence on active service as Commander-in-Chief.<sup>1</sup> For Montagu this promised régime must have been a startling, and perhaps a welcome prospect. It did not become effective the moment Darling stepped ashore in March, 1852, for the Lieutenant-Governor,<sup>2</sup> as we have seen, chose not to interrupt the course of the debates on the Constitution Ordinances by displacing the acting President of the Council. But Porter's early ascendancy as the principal adviser of Darling<sup>3</sup> must have been as disheartening to Montagu's 'party' as was the access which Hercules C. Jarvis, the Chairman of the Cape Town Municipality<sup>4</sup> seems to have got to the Lieutenant-Governor's inner chamber. Montagu's departure, on fifteen months leave in Britain, on 1st May 1852, was, then, personally and politically opportune. He departed quite worn out after nine years of such toil as very few men could have endured, indeed he had overtaxed himself, failed to recover his health in England, and died there on 4th November, 1853, at the age of 56 years. To the last the Secretary of State had refused to recall him permanently from the Cape, but it is doubtful, had he lived, whether he would have returned to the Cape, for before he died he informed the Acting-Colonial Secretary, Richard Southey, that he was trying to get him appointed as his permanent successor, while he himself was seeking an appointment elsewhere. It is true that this latter appointment was never made, but the Colonial Office was not ignorant of his failing health.<sup>5</sup>

Darling, before Montagu's departure, could not do other than<sup>6</sup> express his admiration of the services of Montagu to the Colony.

1. *ibid.*, p. 256 ff. Grey to Cathcart, 2/2/52 and accompanying Commissions, Letters Patent and Instructions; *cf.* P. P. 16/2/53 (130), pp. 1 - 5, *do.*
2. *supra* p. 150.
3. *supra* p. 150. *cf.* P. P. 23/12/52, (1581) p. 174 ff. Darling to Pakington, and enclosures.
4. The 'Monitor' frequently complained bitterly of the influence of the 'Town House' or 'Hotel de Ville' party on Darling, and attributed it largely to Jarvis.
5. A. Wilmot, *op. cit.*, p. 100.
6. P. P. 16/2/53, (130), p. 6, Darling to Pakington, 30/4/52.

At the same time he drew attention to the laudatory addresses which the newspapers published on the eve of Montagu's departure,<sup>1</sup> and in fairness he drew attention to the respectability of the signatories of the Cape Town address. More: when the Cape Town Municipality received an unfavourable reply to its petition to the Secretary of State to cause Montagu's removal from his office at the Cape, and proceeded to resolve that not only was the reply "highly unsatisfactory", but "at variance with the principles of the British Constitution" and to request that their petition be returned to the Secretary of State,<sup>2</sup> Darling showed a nettlesomeness which belies his passive dependence upon the 'Town House party', though indeed he could not have acted otherwise without perhaps losing the sympathy of the Secretary of State. Darling wrote at once to Southey, the Acting Colonial Secretary, stating that, "I should be glad to know .... if it could be ascertained how many Municipal Commissioners were present when the resolution respecting Mr. Montagu was passed, and who they were. Has the Government a right by law to call for the records of the proceedings of the Municipality?"<sup>3</sup> By this Darling showed how he himself was to become suspected of having an "autocratic disposition." But even though the Lieutenant-Governor found it a "disagreeable duty" to forward the memorials against Montagu, he could not have regretted the departure of the redoubtable Colonial Secretary, or have hoped that he would ever return.

A new phase in the history of the Cape Executive began in April 1852 which showed that whether present or absent Montagu or his spirit could not be ignored. The heights of power to which he had climbed were claimed by his office; his successor would seek to maintain them as a customary right. The break-down of personal amity among the members of ~~the members of~~ the

1. *ibid.*, p. 7 and enclosures, pp. 28-30; the following papers have a bearing upon the matter too.
2. P. P. 16/2/53m, (130), pp. 7 f., 39-40.
3. A. Wilmot, *op. cit.*, p. 99. Confidential letter, dated 7/10/52. In the same letter he desired to know whether steps were being taken by the Magistrate or Police "to ascertain by what number of persons" a public meeting of that day "may be attended, and by what classes, and who are the best known and principal citizens and inhabitants who may take a part in it."

Executive Council, and the intrusion of a Lieutenant-Governor virtually as a competitor to the Colonial Secretary even in the administrative sphere made the consequences of Montagu's period of rule particularly noteworthy. Dr. P. J. Venter has said that since the Colonial Secretary was "an official of the greatest importance and at the head of the whole administration", "he could very well have resented the intrusion of the newcomer who was not a real Governor and yet had to carry on the administration. A good understanding between these two officers could only have been maintained by ~~the~~ great tact on the part of both", for "In the past the Colonial Secretary was the organ of the supreme head of the Government for making his commands known, and carried on the administration in the Governor's name. Under these circumstances there could be no friction. In cases where the Governor did not directly interest himself he seemed to have been satisfied with a general and in many cases a nominal control of the Secretary." But, he alleged, "We now find that Darling, being neither the one thing nor the other, attempted a very direct interference in the internal administration of that colossus known as the Colonial Office. He attempted to unseat the Colonial Secretary from his legitimate position of authority." <sup>1</sup>

The arrival of Lieutenant-Governor Darling, and the part he played during 1852-4 was evidently, therefore, significant. It seems to have marked a new departure in the administrative and political history of the Colony, and it must be determined to what degree it affected the Colonial Secretaryship and the Executive Council.

The Lieutenant-Governor was appointed by Earl Grey on the 20th January, 1852, and some days later the latter explained to Sir George Cathcart why he was to have a Lieutenant-Governor:

"The recent correspondence from the Cape," Earl Grey wrote, "has shown me that there is a necessity for the residence of an officer at Cape Town with authority to carry on the civil

1. Dr. P. J. Venter, Introduction to Government House Records in the Cape Archives, p. 4 f.

government under the general direction of the Governor while the latter is on the frontier. This authority the Colonial Secretary does not possess, since he is only empowered, properly speaking, to make known the orders of the Governor to those whom it may concern, and not to take on himself to act without those orders. Notwithstanding, therefore, the zeal and ability with which Mr. Montagu has acted in the discharge of such functions as belonged to him, an officer with a more substantial position is required to fulfil the important duties which I have in contemplation ...

... Legally speaking," he continued, "the Lieutenant-Governor is your substitute only during such periods as you are absent from the Colony, as specified in this Commission. At other times the sole executive power is in your hands. But," he added, "I wish you to understand, that although in contemplation of law he can only execute your orders, yet while you are on the frontier, and therefore practically absent from the seat of Government, although still within the geographical boundaries of the colony, those orders should be conveyed in the form of instructions as general, and giving him as free scope of action, so far as circumstances will admit, as if you were actually beyond the frontier." Further, until the sitting of the first Parliament, Darling was "to attend to the Legislative business of the Colony."<sup>1</sup>

The meaning of this commentary on his Instructions and Commission was as ambiguous as was the effect of the Lieutenant-Governor's Commission. Sir George Cathcart declared, after his return to England in 1854, that the position was no better than before: the Lieutenant-Governor's powers were not only entirely deputed, but they "could only lawfully be given to a limited extent", since many cases required the decision and signature of the Governor to render them valid and according to law.

1. P. P. 3/2/52, No. 1427 (Kafir War), p. 257, Grey to Cathcart. Note: Dr. P. J. Venter in his Introduction to Government House Records in the Cape Archives, p. 4, attributes this despatch, to which he puts no date, to the Duke of Newcastle, a palpable error.



"So that, in fact," Cathcart declared, "except in designation, Mr. Darling's administrative functions differed very little from those of a Secretary to Government, who might hold the same deputed power under instructions signed by the Governor."<sup>1</sup>

To overcome this difficulty Cathcart did two things: firstly, he instructed the Lieutenant-Governor to forward, by every post - thrice weekly - "a schedule, on half margin, of all business either requiring my signature, or in which my responsibility as Governor was in any way involved;" secondly, he caused "one of the senior clerks of the Cape Town Colonial Secretary's Office to reside at Grahamstown" where, Cathcart makes it clear, he might act not only as keeper of the Government Archives, but as the efficient adviser of the Governor.<sup>2</sup> Foreseeing, perhaps, what might become of a situation in which the Eastern Province secretary would remain the principal manager of the business of a Lieutenant-Governor's office in Grahamstown, Cathcart suggested that the secretary's advisory functions should be broadened by the constitution of a Council in which the Secretary would be assisted by a Solicitor-General and a Surveyor-General for the Eastern Districts, to whom the Lieutenant-Governor might refer matters which did not fall more properly within the sphere of the Governor and Executive Council in Cape Town. In a subsequent despatch, dated 4th September, 1854, the Secretary of State signified general approval of Cathcart's "arrangements for the management of the executive governments of the eastern districts," and sanctioned the establishment of a "permanent Resident Secretary's office in Grahamstown".<sup>3</sup> Nothing seems to have come of

1. G. H. 1/50, Enclosure to Despatch No. 2, Sir George Grey (Secty. of State) to Governor Sir George Grey, dated 4th September, 1854. Cf. Annexures to the Votes and Proceedings of the Cape Parliament for 1855, 'Further Correspondence upon the ... appointment of a Lieutenant-Governor.'
2. *ibid.*
3. *ibid.*, and G. H. 1/48, Newcastle to Cathcart, No. 123, of 12/9/53, approving plans already framed by the latter with regard to government in the Eastern Cape in No. 26 of 14/7/53. Newcastle sanctioned the immediate appointment of a Solicitor-General for the Eastern Districts. In a subsequent despatch, No. 137 of 13/10/53, Newcastle approved the rest of the plans - a Lieutenant-Governor for the Eastern Province, a branch of the Surveyor-General's Office, a branch Registry of Deeds, and several circuit court judges. The whole plan was not, however, executed for several years.

the 'council of advice' for the Lieutenant-Governor, and at the end of the 1850's one finds Richard Southey, as Secretary in the Lieutenant-Governor's Office in Grahamstown, managing practically all the civil affairs of the Eastern Districts, where he was very much at home, while Lieutenant-Governor Wynard, somewhat out of his depth in civil affairs, managed the military side. The functions of both these officials, it should be noted, were subordinate to the Governor and the Executive Council in Cape Town, and were strictly limited.

During Cathcart's government, however, between 1852 and 1854, it is perfectly clear that the real centre of the government was Grahamstown, where his private secretary, and later Rose-Innes, as civil secretary, resided and kept office,<sup>1</sup> where "in fact a very large portion of the business of the whole Colony passed through his hands."<sup>2</sup> Meanwhile, in Cape Town, "Darling and his Staff .... appear not to have been very busy,"<sup>3</sup> and from several debates in the Houses of Parliament in 1855, it would appear that Cathcart made very little use of his Executive Council in such important matters as the consideration of importation of convict labour for British Kaffraria, the affairs of the Kat River Settlement, the Fingoes, and appointments to the civil service.<sup>4</sup>

These developments were clearly important. Not only had Lieutenant-Governor Darling obtained the premier position in both the governing Councils in 1852, but the real control of the government seems to a considerable degree to have escaped the hands of both the Lieutenant-Governor and the Acting Colonial Secretary. What, then, was the position in Cape Town?

1. Annexures to the Votes and Proceedings of the House of Assembly, 1855, 'Further Correspondence upon the subject of the appointment of a Lieutenant-Governor ... (etc.) in the Eastern Districts;' cf. Introduction to G. H. Records, by P. J. Venter, Cape Archives. Dr. Venter is in error here in saying that from 9th April, 1852 to June 1854 Cathcart "stayed" in Kingwilliamstown. He directed the Government from Fort Beaufort for most of 1852, and thereafter from Grahamstown, though, naturally, some of his despatches are dated from Kingwilliamstown, as also from Burghersdorp, Klipplaat, Aliwal North, or the Barea.
2. *ibid.*, Cathcart to Newcastle, 15/4/54.
3. *ibid.*
4. *SUPRA*, p. 104f. *infra* 238f.

Before leaving the Colony, Montagu had been allowed, because of his superior experience and knowledge of personnel, to nominate who should temporarily take his place. It ought not to have been expected that he would elevate any of his political opponents, whose antipathy for him had become so profound during 1852. He overlooked his colleagues in the Executive Council, therefore, and, subject to the approval of Cathcart and Darling, called in Richard Southey, who took office on 26th May, 1852.<sup>1</sup>

Southey, of course, was well known as a friend of Sir Harry Smith's, whose patronage had effectually launched him on a long official career, and he had been, and possibly still was, connected with the pro-Montagu press. The son of an 1820 Settler, his experience was considerable. As civilian, soldier, private secretary to the Governor and special Commissioner for the High Commissioner, and as Civil Commissioner and Magistrate of Swellendam, he had served on the frontier, in the Western Cape and in Transorangia. More: his numerous correspondents afforded him a veritable private intelligence system on every variety of event, opinion and observation, in most parts of South Africa, so that he was one of the best informed and most useful men in government service. As a judicious informer to the government he was probably unrivalled in Cape colonial history, and his way to high honours seemed assured.<sup>2</sup>

It was not, therefore, very surprising that Southey should have been chosen for the post of Acting Secretary to the Government.<sup>3</sup> Nor is it surprising that he rapidly lost favour with

1. Cape Archives, Oath Book. Wilmot, *op. cit.*, p. 98 ff., Montagu had prepared Southey as early as September 1851, to take his place, and on the third of April 1852 intimated that he would shortly take leave. Sir Harry Smith had evidently already sanctioned his choice, *vide* G. H. 23/23, Despatches to Secty. of State, No. 7, 21/4/52, Darling to Pakington.
2. A. Wilmot, *op. cit.*, Chapters I to IV. The considerable collection of Southey Papers in the Cape Archives (ACC/611) testifies to the usefulness and range of his correspondence. Unfortunately few of his own letters, other than official ones of which copies were kept, are available.
3. Montagu was on leave from 1st May 1852. Southey was Acting Secretary from then until January, 1853, and from August 1853 to *May*. 1854.

Darling. We have seen how the Lieutenant-Governor dealt with the question of an officially informed newspaper.<sup>1</sup> He was unable, perhaps, to discover Southey's past activities in this matter, but learnt that the latter was keeping Montagu, in London, informed of government transactions, by sending him copies of confidential official papers, as well as freely informing him of the affairs of the Colonial Office, of the Lieutenant-Governor, and of the colony at large.<sup>2</sup> For this reason Darling, contrary to the advice of the Executive Council, suspended Southey from office.<sup>3</sup> But certain it is that Southey was not suspended simply because of the charge officially made against him. Nor is it difficult to ascertain what lay behind the event. The concurrent dismissal of J. C. Davidson, the 'extra corresponding clerk' in the Colonial Office<sup>4</sup> has already provided one clue. But there was a profounder reason.

In September 1852 Darling addressed two notes to Southey which, firstly, intimated that the Lieutenant-Governor would personally take over 'the box', presumably containing the correspondence with the Secretary of State, which would in future be lodged at Government House. The Colonial Secretary should then only have access to it by applying to the Lieutenant-Governor, should he require information from these papers by which to carry on his correspondence.<sup>5</sup> Secondly, "the correspondence respecting appointments and promotions" Darling declared, would in future "be conducted by the Secretary to the Lieutenant-Governor" - in other words, by his private secretary. Both these steps considerably affected the established practices of the Colonial Secretary, especially those which had accrued to him during the years of war. They also hindered his administrative activities,

1. supra, p. 137f. *in* 172
2. Archives ACC/611/4, Correspondence from Darling and Montagu to Southey, passim.
3. Wilmot, op. cit., p. 100 ff.
4. supra, p. 133f
5. ACC/611/4.

since these files of papers had always been kept in the Colonial Office, from which in fact much of the correspondence in connection with the Secretary of State's despatches and nearly all the correspondence about staffing originated. Moreover, it was common practice in the British Colonies for the Colonial Secretary's Office to be the depository of government papers, including copies of papers passed between the Governor and the Imperial Government. Darling pointed out, in justifying his departure from established practice, that Governors Sir Lowry Cole and Sir Benjamin D'Urban had also had other arrangements than the usual one for the depositing of papers, though he did not say what these were; and he showed that his new regulation did not extend to papers of previous years, which were left in the Colonial Office. He stated further, "that as soon as the current Letter Book to the Secretary of State was filled up, and the necessity for frequent reference to it no longer existed, it would be deposited at the Government Office as a record", while the Despatches from the Secretary of State were only temporarily deposited in the personal office of the Lieutenant-Governor at Government House. Darling added that as soon as the despatches from London, composing the series for the year or half-year were so completely disposed of that they could be bound in one volume, they would in the usual course be placed in the hands of the Bookbinder and afterwards deposited in the Government Secretary's Office."<sup>1</sup>

Southey's annoyance at this development appears not to have been without prior stimulation, for already in November 1852 Montagu was corresponding with both his son and Southey about the 'misunderstanding with Darling'. In this correspondence the elder Montagu frankly called the Lieutenant-Governor a "donkey" and commented upon his desire to be popular. Montagu at this time was trying to get the Secretary of State to appoint Southey as his permanent successor.<sup>2</sup> But Southey was making his own promotion difficult. He commenced a determined opposition to

1. Dr. P. J. Venter, Introduction to Government House Archives in the Cape Archives, p. 8.

2. supra, p. 153.

Darling in the matter of an appointment of a bankrupt, Major Longmore, to a magistracy, and exceeded the bounds of proper conduct in endeavouring to force his opinions upon the government. Consequently, by the beginning of January 1853 Darling had evidently decided to break the Acting-Secretary. On the 29th of December he castigated him in unmeasured terms for transmitting copies of the Minutes of the Executive Council to Montagu. On the 5th<sup>of</sup> January, 1853, he informed Southey that he and three other members of the Executive Council had considered this matter, and that he was suspending him with effect from the moment when he could find a replacement to the Acting Secretaryship. At the same time Darling intimated that the Chief Clerk of the Colonial Office, J. E. Montagu, a son of the absent Colonial Secretary, had been severely reprimanded but not suspended, for having been responsible for forwarding copies of the Minutes of the Executive Council to his father, and was requested to declare in writing that he would not make himself guilty of like misdemeanours in future. It is a moot question whether Darling thought the known influence of Montagu in the British Colonial Office would operate unfavourably to himself if he injured the prospects of the Colonial Secretary's son, while it would not extend so far as to protect a stranger, such as Southey was. On the 13th January, a notice in the Government Gazette declared Auditor-General Hope's temporary preferment and Southey's suspension, which was confirmed by the Governor 5 days later. Hope, whom we have seen as a lieutenant of Porter's in the constitution debates, had acted as Colonial Secretary between the departure of Montagu and the arrival of Southey from Swellendam. It is very probable that Darling was responsible for this earlier preferment as well,<sup>1</sup> and it seems not unlikely that the Colonial Secretary's office had become a political football.

John Montagu (jnr.) meanwhile, acting frequently as the recipient of his father's thoughtful pronouncements on Southey's

1. Vide C. O. 619.

struggle with Darling, with instructions to pass them on to Southey,<sup>1</sup> encouraged the latter to appeal to Caesar and forewarned him of criticism where he had overstepped the bounds of caution. Thus, on 20th January the younger Montagu gave his father's personal judgment on the Longmore issue. The Colonial Secretary had said that this matter had been used deliberately to oust Southey from office, but he pointed out that Southey by attacking the Lieutenant-Governor and putting him on the defensive, and by then proceeding, with a presumption ill-befitting his office, to demand a withdrawal of Darling's statements on the case, had laid himself open to censure. As it was, Southey was not content with a mere frontal attack on the Lieutenant-Governor, and evidently kept open his lines of communication with the news-press. By letters dated 3rd and 17th January Robert Godlonton replied to letters from Southey, in which the latter had evidently informed him fully of his contrectatus with Darling. Godlonton declared that he had always seen the difficulty of Southey's position, which would invite the suspicion of a Lieutenant-Governor who had a "manifest leaning ... towards the radicals." Frankly stating that Southey had been wrong to forward official information to Montagu without Darling's permission, he warned him not to go to England "until you know exactly how Montagu stands with the Home Magnates."<sup>2</sup> John Montagu, junior, having no qualms about his father's standing in London, when he heard that Cathcart had confirmed Darling's action,<sup>3</sup> urged Southey to sail at once for England. And in London Montagu duly took up the cudgels on behalf of Southey, as of Davidson, by writing to Herman Merivale. In this correspondence, he implied that Darling was in part to blame for originating the correspondence between himself (Montagu) and the Cape Colonial Office, for the Lieutenant-Governor had actually

1. Unfortunately these letters are not among Southey's papers, except where an extract or summary might occur in letters from Montagu junior to Southey.
2. ACC/611/4.
3. Wilmot, op. cit., p. 102, extract of letter from J.E. Montagu to Southey.

expressed a desire that it should occur.<sup>1</sup>

When Southey arrived in London, therefore, he found the ground was well prepared for him, though on 1st March 1853 he still had to ask the Secretary of State precisely what he had been accused of so that he could prepare his defence.<sup>2</sup> The result in Southey's case, as in Davidson's<sup>3</sup>, was a complete victory against the Lieutenant-Governor, news of which became public at the Cape in June, 1853.<sup>4</sup>

Before Southey returned from London, however, Darling endeavoured by any possible means to obtain additional material with which to discredit Southey. He had the offices of the Supreme Court and of the Chief Sheriff searched for evidence of actions which had been taken against Southey. Quite evidently Darling tried to turn the tables, respecting the Longmore case, upon Southey by proving similar financial embarrassments, which had lead to at least two court actions. Despite the fact that the evidence which had been found was scant and inconclusive, Darling assiduously forwarded it to the Secretary of State. The whole proceeding was contrary to the spirit if not to the letter of the civil service regulations of 1850<sup>5</sup> in which the private pecuniary affairs of colonial officials was dealt with. A mark of greater foolhardiness in the Lieutenant-Governor was that he seems not to have given Southey notice of his actions, and certainly, as in the case of the Executive Council meeting leading to Southey's suspension, gave him no opportunity for defending himself before the Secretary of State had seen the papers. Unable, therefore, to trust the Lieutenant-Governor, Southey took to writing elaborate arguments in self-defence which, with copies of numerous documents in support of his case,

1. ACC/611/4, Montagu to Merivale, 4/3/53.

2. ACC/611/4, Southey to Newcastle.

3. *supra*, p. 134.

4. Darling's action in consulting the Executive Council evidently for the purpose, and certainly with the result, of suspending Southey, who was not called to the meeting, recalls the case of Abraham Cuyler v. Lieutenant-Governor Macarmick of Cape Breton in 1790. Cuyler, who had been dismissed from his office, appealed to the Privy Council, which ordered his reinstatement after delivering a judgment which could have had a bearing upon Darling's case. *Vide C.H.B.E., Vol., 11, p. 147 F.*

5. Cape Blue Book, 1851.



he forwarded to the Secretary of State in duplicate, one copy, as was proper, going to the Lieutenant-Governor for forwarding, and one copy going direct.<sup>1</sup>

It was not surprising in these circumstances that Darling<sup>2</sup> went to extraordinary lengths to see that Newcastle's Despatch ordering Southey's reinstatement, should not become public at the Cape. It was even less surprising because the dispute was already the subject of newspaper partisanship.<sup>3</sup> In his despatch, the Duke considered the various misdemeanours of which Southey stood accused, and in each case, though finding some fault with Southey's conduct and stating that he merited censure, he exonerated him on the grounds of obedience to Montagu's instructions, and of honesty of purpose in the Longmore case. The Duke went further. He reflected upon Darling<sup>4</sup> for not having given Southey an opportunity to defend his actions "whether in writing or orally before the Executive Council", and referred the Lieutenant-Governor to the Colonial Regulations and also to his own Instructions, which he had disobeyed in letter and in spirit.<sup>5</sup> More: the Duke offered him a lesson in judicious conduct, by stating: "there is nothing which adds so much to the proper influence and power of a superior as an habitual observation of what is due to the self-respect of those who fill the inferior grades of the public service. His demeanour towards them should at all times be characterised by a generous sense of the disadvantageous footing on which they stand relatively to himself. Even rebuke and censure are best conveyed in measured language, and it will be found that, be the provocation what it may, to lose sight of this rule of conduct is to part with the most efficient check upon insubordination which a superior possesses." This "salutary rule", the worthy Duke intimated, had "in more than one instance"

1. ACC/611/4. Registry Office to Acting-Secretary Hope, 7/7/53 forwarded to Darling; Southey to Newcastle 19/8/53 via Lieutenant-Governor, another copy by direct mail 20/8/53. Southey resumed duty as Acting Secretary in Cape Town on 15/8/53
2. No. 60 of 10th May 1853, given almost in full in Wilmot, *op. cit.*, pp. 103 - 7.
3. *Infra*, pp. 171-3
4. Wilmot, *op. cit.*, pp. 106 - 7. Newcastle to Cathcart, No. 60, dated 10/5/53.
5. *Vide* Appendix D.

been departed from; and moreover regulations which in 1850<sup>1</sup> had been made "for the purpose of securing a high tone of moral character in the Civil Service of the Colony" had been read so narrowly as to damage "their spirit and general meaning," with the result that, if the views which he expressed in this Despatch generally on the Civil Service, were not harkened to "a laxity in the conduct of Civil Servants will be introduced which will lead to such mischief as no Governor can control, and against which, at this particular juncture in the affairs of the Cape Colony, it is most especially the duty of all concerned in the administration of its Government to guard."

Unhappily Southey's resumption of duty in the Colonial Office did not solve the problems of the joint spheres of duty of the Lieutenant-Governor and the Colonial Secretary, nor did it ensure easier personal relations between the two principals concerned. Newcastle would have done better to have removed one of the two contestants from Cape Town. He would have done even better to end the anomalous position of the Lieutenant-Governor. As it was he rubbed salt into the wounds inflicted upon Darling in the despatch of 10th May 1853, by addressing another despatch to Cathcart four days later, which called into question Darling's removal of papers from their customary depository in the Colonial Office, for lodgment in Government House, and his undertaking to close<sup>2</sup> the despatch 'box' himself. In this despatch<sup>3</sup> Newcastle referred Governor Cathcart to a despatch from Earl Grey to Lieutenant-Governor Pine of Natal which had expressed disapproval of such a course of action. Subsequently, after receiving Darling's defence,<sup>4</sup> the Duke of Newcastle exonerated him from blame, but stated categorically that "as the Governor's subordinate and servant, and, for particular purposes, his agent and deputy" the Colonial Secretary should be in charge of the

1. *infra*, p. 234-55.

2. *supra*, p. 160f.

3. G.H. 1/47, p. 607 ff. No. 63, Newcastle to Cathcart 14/10/53.

4. *supra*, p. 161.

files containing the despatches, not least because it was "of no ordinary importance that the Secretary to Government should be fully acquainted with the current correspondence, not only with a view to his immediate duties, but also because his office is generally permanent, while the Governor is removable."<sup>1</sup> The saying that 'Man proposes, God disposes' holds good here, for the temporary depository of state papers in Government House, combined with a real 'Government House' Archives being developed under the Governor's care in Grahamstown, frustrated the Secretary of State's desire, and effectually from the onset of the Southey-Darling quarrel a whole series of important papers, those between the Secretary of State and the Governor, fell outside the normal care of the Colonial Secretary. Sir George Grey (arriving in December 1854) whether by accident or design,<sup>2</sup> never reverted to the older practice.

Jealousy on this score between Southey and Darling, therefore, received no palliative throughout 1853 and far into 1854, nor was it eased when Darling requested the delivery of the Colonial Secretary's Letter Books at Government House on each Monday, so that he might "examine the nature and extent of the business transacted during the previous week,"<sup>3</sup> or when from 6th April 1853 each Colonial Office clerk had to keep a daily record, for the Lieutenant-Governor's perusal, of the work which he had done during the course of the day.<sup>4</sup> Darling's interference in the work of the Colonial Office in both these matters was not an expression of his distrust of how the clerks, or the Colonial Secretary, spent their time, or how well or badly they did their work, but was part of the investigation enjoined upon the Lieutenant-Governor by Newcastle himself.<sup>5</sup> Darling had been

1. G. H. 1/47, No. 130, 7/10/53, Newcastle to Cathcart.
2. Venter, Introduction of Govt. House Records, Cape Archives, p. 8 f.
3. *ibid.*, p. 5, Darling to Southey, 29/8/53.
4. *ibid.*
5. C. O. 619, Newcastle to Darling, No. 18 of 12/2/53, and No. 130 of 7/10/53.

instructed to find out if government offices were properly staffed, and operating with the optimum of expense. The way Darling went about his investigation, was, as usual, unfortunate, but his anomalous position as "a glorified Secretary to Government"<sup>1</sup> is at least as blameworthy. Southey refused to comply with either of Darling's instructions. This was bad enough, but when Darling referred a Minute of Southey's upon postal matters to a junior executive officer - the Auditor-General Hope! - in order to receive his comments upon it, without informing Southey that he was doing so, the fat was in the fire. Southey's wrath boiled over from the repeated slights which he alleged had been offered to him in his official capacity. Both Darling and Southey carried their feud back to the Secretary of State, writing memoranda of enormous length and accompanied by a great variety of enclosures, with the result that after two mild rejoinders, exonerating Southey while not questioning Darling's motives,<sup>2</sup> a sharp reprimand at last silenced the Lieutenant-Governor: he was peremptorily requested to cease wasting the time of the local government and of the Secretary of State "in consideration of matters of this trifling character", which the Secretary of State had no doubt the new Governor, Sir George Grey, would be able to settle and at the same time restore good personal relations between the officers of his government. The reprimand was justifiable only to a degree, bearing in mind Darling's extraordinary position, and Southey was equally, if not more blameworthy for forwarding masses of papers to the Secretary of State, even over the head of the Lieutenant-Governor.<sup>3</sup> It is not, therefore, surprising that Southey was not confirmed in office upon the death of Montagu, and that Rawson W. Rawson succeeded to the Colonial Secretaryship in May 1854.

1. *ibid.*, p. 4.

2. G. H. 1/48, No. 9, 6/7/54, and No. 20 of 5/8/54, Sir George Grey (Secy. of State) to Darling.

3. C. O. 619.

Apart from the continued dislocation of government business because of the large amount of extra work thrust upon the clerks of the Colonial Office, who had to copy hundreds of pages of documents used in the feud between Darling and Southey, there was the no less serious consequence that the personnel of the Office themselves featured in the quarrel. The personal struggle between Darling and Southey for direct control of the activities of civil servants and for control of the investigation into the quality and quantity of the work of the Office, was an open one. Within the Colonial Office during January to August Darling and Hope mildly terrorized the office staff and Southey after his return made his championship of his clerks against an 'interfering' Lieutenant-Governor as plain to their observation as the anger with which he greeted each new 'transgression' from Government House. In such circumstances discipline could not be properly maintained, there was demoralisation as well as time-wasting in the vital central office of the Government. Nor did the evil end there for this administrative argument could not be freed of a political connotation. It reinvigorated colonial partisanship for and against the Government and 'infected the' Legislative Council. The political character of the person in the Colonial Secretary's office having become a matter of colonial concern, Dutch and English, as well as 'radicals' and 'conservatives' were bound to take sides and even a nominee Council of Englishmen could not but reflect it. During Montagu's time this feature had not been absent in colonial politics, but in those earlier days the dignity of the Colonial Office, heightened as it was by the man who was its chief official, had never been sullied, though it might have caused jealousy. But Darling and Southey brawled about their respective rights, and Hope, Field, and even Porter lent themselves to supporting Darling's devices for securing control. It was no wonder that a decent veil could not be drawn over the contest. This was the more certain because the quarrel was not confined simply to the Colonial Secretaryship, but to the friends of John Montagu in other offices.

In the Legislative Council a full dress attack was made upon the Road Board, resulting in the resignation of several of its officials. Montagu's stalwart friend, Harry Rivers, was then Chairman of the Board vice the absent Colonial Secretary. By April 1853 Porter and Hope had arranged for their own nominee, P. B. Borchards, to take Rivers' place on the Board, and one more of Montagu's group had been removed from a key position.<sup>1</sup> Nor did these proceedings go without the notice of the Duke of Newcastle. For in a despatch to Cathcart, dated 14th July, 1853, and in another of the same date sent to Darling, the Secretary of State weighed Darling's actions in this regard, and found him wanting in tact and in consideration for public servants. Darling had allowed the Legislative Council to become a public battleground on Road Board affairs and the characters of important officials in that department, who could not defend themselves in the Council, had been publicly impugned. The Road Board was a department of Government, Newcastle wrote, and ought to have received the Lieutenant-Governor's protection; and if the Board had acted improperly in the course of its duty, ordinary administrative methods prescribed in the manner in which correction should have been made or disciplinary action taken. Darling was, therefore, instructed to convey to the former officials of the Road Board, who had resigned as a consequence of his action, his regret for the manner in which their connection with it had been terminated, and he was to thank them for their past services. Since Darling had openly put himself into a position of personal opposition to the former members of the Board this was no mean requirement and it is not surprising that this despatch, like the one of 10th May, was carefully concealed by Darling and kept out of the Archives.<sup>2</sup>

For all Darling's concealment of important documents which would have publically humiliated him, the government might have

1. infra, p. 190
2. Vide appendix to this chapter. G.H. 1/47 Newcastle to Cathcart, no. 90, 14/7/53, 'Separate' Newcastle to Darling 14/7/52.

been discredited so far that its authority might have vanished, had he allowed them to fall into the eager hands of his opponents. His conduct on this score was, therefore, politic if technically wrong. As it was the embroilments in the government had gone so far that the press could attack it with considerable force. Thus the 'Cape Town Mail' of 15th January, 1853, commented sharply that: "The Lieutenant-Governor, the late Acting-Secretary to Government, the present acting Secretary, other officials higher and lower, and the Commissioners of the Road Board, seem to be tilting at each other in a manner that might be amusing, if it were not so expensive. Surely," the Editor wrote, "they don't receive many thousands of pounds of public money between them, for the purpose of proving to the public, which is the readiest speechmaker, or the readiest scribe among them all; - or for quarrelling among themselves and trying to lift each other out of their seats ... If these people betray and injure each other with so little compunction, they will of course care no more about betraying or injuring the colony itself." The Road Board, which Montagu had created, and dominated for years, this 'radical' newspaper said, had assailed the Auditor-General (Hope) by public manifesto instead of referring its case to the Governor. The newspaper found it a matter of congratulation that "so ill-built a structure as that of our Government (should be) tumbling to pieces by its own deformity", but that it was very wrong for the "different portions of the Government" to proclaim "their distrust and dislike of each other to the public." On the 18th and 22nd of January the same newspaper praised the Lieutenant-Governor for taking action against men who had been most influential in the bad old times of Sir Harry Smith's Governorship, when Montagu had ruled in Cape Town, and it imputed motives of factionalism to critics of the Lieutenant-Governor.

Another newspaper, the 'Cape Frontier Times' of 1st January 1853 was greatly pleased at the disfavour into which Southey had fallen, for, inter alia, was he not the informant of its rival in Grahamstown, Godlonton's paper?<sup>1</sup> Nonetheless, the 'Cape Town  
1. Le Cordeur, op. cit., p. 198.

'Mail' was uneasy about the isolation of officials from the newspaper world arising out of Darling's "application of the Regulations of the Indian Civil Service",<sup>1</sup> by which officials might not correspond with newspaper editors or subscribe newspaper articles - in point of fact a general Colonial Service rule - and became rapidly more nervous of his autocratic disposition. Thus it attacked his refusal to forward a memorial from Worcester to the Secretary of State which questioned the personal competency of the latter as well as the legality of the 'unpopular' Legislative Council with its 'dummy' members.<sup>2</sup> At other times there was a tinge of sorrowfulness, perhaps, in the 'popular party' press that Darling, as well as Hope and Porter, had to work in conjunction with an old-fashioned and 'low' form of government and with a Legislative Council which was a travesty of representative government. But as the representative of a 'despotic' Imperial Colonial Office, Darling was watched with some care,<sup>3</sup> and clearly his administration of the government made it no more popular than it had been - rather the contrary.

The 'popular' press, then, while not always pleased with Darling, supported him against the party which had favoured Montagu and his policies, and consequently it opposed Southey too. The 'Conservative' newspapers naturally took a contrary view. Thus the Graaff-Reinet Herald declared that "We are glad to hear of the restoration of Mr. Southey, as Secretary to Government, because we consider that act by which he was set aside as arbitrary in the extreme. There were those who were ready to favour that stretch of arbitrary power when it took place, because it wounded an antagonist; but all men who love justice and hate oppression, condemn the act, as also the proceeding of the Lieut. Governor in interfering with that portion of the Colonial Press supposed to be conducted by men in office ... Mr. Southey's

1. C.T.M., 1/1/53; vide p. 137 supra.
2. C. T. M., 5/3/53 and C. T. M., 8/3/53.
3. ibid.



re-appointment will be an unpleasant dose for his enemies."<sup>1</sup>  
 Newspapers of a similar persuasion emphasised Darling's 'despotism' and drew comfort in the fact that an appeal to Britain - 'an appeal a Philippo bene noto ad Philippum sobrium'<sup>2</sup> as one editor put it - had, as a matter of course, caused justice to be done. At the same time they continued to attack Darling for having succumbed to the 'political insincerities' which flowed from the Town House in Cape Town, and the 'Graham's Town Journal' never ceased fulminating about the ineptitude and dangers of Cape Town government, or declaring how much better it would be if the Eastern province had its own government, or if Grahamstown became the capital of the whole Colony.

The spring and summer of 1853 - 4, however, offered some distraction. In the East not only were the ravages of war being repaired, but Queenstown was being colonised, and throughout the Colony attention was increasingly focused upon the first parliamentary elections in the history of the Cape Colony.

Meantime, as from May 1854, the basic cause of the feud between Darling and Southey was removed. Cathcart was summoned away to fight in the Crimea, and Darling took over "all and singular the powers and directions contained in the Commission" of Cathcart, and ruled as Acting-Governor and Commander-in-Chief of the Cape Colony and its dependencies.<sup>3</sup> He, therefore, relaxed his grip upon the Colonial Office; confusion of duties no longer occurred. Nor did Darling ever resume his former position, for when Sir George Grey arrived as Governor in December 1854, Darling was recalled. At the same time, the arrival of Rawson W. Rawson as Colonial Secretary ensured a restoration of calm efficiency in the Colonial Office and a healthier tone in all the Government offices in Cape Town. The parliamentary era at the Cape, therefore, began under the guidance of a Government which had resumed its dignity.

1. G.-R.H. 13/7/53. The Editor was fond of pitting himself against Fairbairn's South African Commercial Advertiser and the Cape Town Mail - the 'Town House' or 'popular party' papers, which
2. G.-R.H. 3/8/53, 13/7/53. (amalgamated in July 1853.)
3. G. G. 1/6/54, with effect from 26/5/54.

RECAPITULATION AND CONCLUSION TO CHAPTER IV.

During the 1840's the Executive Councillors, exercising as they did the routine duties of departmental management, had operated as the principal men administering the Colony; but they had also, as a political committee, directed the legislation of the Legislative Council. Where necessary, in order to hasten the advancement of the Colony, they had infringed the letter of the law, as in the case of the use of the funds at the disposal of the Central Road Board. The charge of despotism made against them is justified up to a point. Further, during the absence of the Governors, and under the compulsive force of Montagu's will, the Executive Council had modified native policy, articulated the use of information and the means of supply of the (civil) Executive branch with the needs of the Military branch. By its general activities in improving the wealth of the Colony and of the Treasury, the Executive Council provided the foundation upon which the expansionist policies and optimism of Sir Harry Smith depended. A natural consequence at once of its de facto power and its constitutional position vis à vis the Legislative Council, and of the continued absence of the Governor, was that it had a predominant voice in the formulation and legislation of a Parliamentary Constitution for the Colony. But in this respect, in part because of the party alignments and Anglo-Dutch and Coloured antipathies which had been aroused by the Anti-Convict movement and the politics of constitution-making, in part because of Sir Harry Smith's blunder in holding elections for 'popular' representatives to sit in the 'constituent assembly' at such a time of crisis, the Executive Councillors had inevitably fallen prey to party opinion. The divisions which would in any event have occurred among 'conservative' and 'liberal' individuals among them consequently achieved notoriety. Divided into groups, they had become distinctly connected with the political divisions in the Colony. Montagu had become the spokesman of the desires, in particular, of the English-speaking colonists, while his cautious views with regard to the coloured vote, palatable to

many Afrikaners as well as to Englishmen, had not saved him from the wrath of the Dutch Reformed Church, or from the staunch Dutch patriots who demanded the most liberal constitutional concessions to the European colonists in a single parliament for the whole Cape Colony. William Porter, a more sympathetic politician than Montagu, who recognised that the Imperial Government and the Cape Executive Council under Sir Harry Smith, in 1849-50, had between them offered so much that it would be dangerous to impose a constitution which offered less, was supported by the moderates, and by radicals who wanted responsible government on principle, or who contemplated the dominant position it would give their section. Porter, though he failed to persuade the Legislative Council not to amend the draft Constitution Ordinances sent to the Cape by Earl Grey, managed to capture the ear of the Lieutenant-Governor, who in 1852 had been sent out in part to relieve the Colonial Secretary of his extraordinary burdens and in part to supply the want of a Governor in the administrative and Legislative capital of the Colony. The result was that the political split in the 'cabinet council' became confused with matters of mere administrative arrangement, for the Lieutenant-Governor was infected with political partisanship at the same time as having to contend with the Colonial Office in relation to which his position was ill-defined. This brought confusion into the Colonial Office, at a very critical time in colonial history, which was made worse by Darling's evident desire to rid that Office and the Executive Council of Montagu's supporters and appointees. Consequently, the Queen's representative in Cape Town came to be looked upon as a partisan in local politics, as well as the representative of a system of Government which was offensive alike to all liberal constitutionalists, and to the Afrikaners in general. The reinstatement of Southey by a Secretary of State who had evidently failed to recognise that not only had personal and administrative etiquette been infringed in the struggle between the Colonial Office and the Lieutenant-Governor, but that it was needful to displace one or the other

individuals and to place the administration on a new footing, involved the government in a further decline in efficiency and in prestige. Not only did the local government suffer from mis-handling of the situation by the Duke of Newcastle, for, at the same time, the attention which had been drawn to the Secretary of State during the Anti-Convict agitation was kept alive. He continued to appear to most of the European colonists as an autocratic and unsympathetic arbitrator in colonial affairs, though a self-conscious minority group of English colonists, and those of the Coloureds who were politically aware, saw consolation in the enduring powers of the Secretary of State.

It would be easy perhaps, to over-emphasise the 'party' alignments in the Executive Council, for its members were practical administrators of departments of Government and on matters of administration felt duty bound to carry on the Queen's Government. This they showed in the years 1849-51, and again in the critical 1860's, with special clarity.<sup>1</sup> Even Darling, Southey, and Hope, apart from jealousy about the degree of autonomy in the Colonial Secretary's department, had a certain amount of sympathy in administrative matters. Thus from a study of Colonial Office papers, it seems that on questions of beneficial reform in the public service even Southey and Darling were in agreement.<sup>2</sup>

Discontent, however, was so acute that the Executive Council was no quiet place. By the Constitution Ordinance of 1853, the liberal group would be weakened in the Legislature by the exclusion of the Collector of Customs (W. Field), and Hope clearly showed an inclination to find a new office, for during 1855 he

1. For the latter period vide M. J. Zeeman, op. cit., passim.
2. No clearer proof of this could be cited than to quote the circumstances of the Minute from Southey on the management of the Post Office Stamp issues, which Darling referred to Auditor-General Hope without consulting Southey. On the propriety of doing this Southey raised a great row (see p. above), but on the details of the Minute, Darling signified, in marginal notes on it, his agreement with each recommendation excepting one. Hope also agreed with the recommendations, C. O. 619.

applied to Lord John Russell for promotion to any other colony.<sup>1</sup>  
 On the other hand, Southey himself revealed his impatience at the delay before Rawson W. Rawson should relieve him of his duties in a Colonial Office dominated by Darling.<sup>2</sup>

By 1854, then, the old order was restored. A peripatetic Governor with head-quarters in Cape Town, assisted by a Colonial Secretary permanently resident in that place was once more the order of the day. Grahamstown became the permanent seat of Lieutenant-Governors, a succession of military officers, with hardly any real powers, who leaned heavily upon their civil secretary. This secretary was controlled by the Colonial Secretary in Cape Town. From 1854 until 1860 he was none other than Richard Southey.

The Parliamentary period in Cape history, then, opened not only with new men at the helm, but with a more or less familiar state of affairs in the ordering of the Executive Government. In both respects this can only have been fortunate.<sup>3</sup> But the transactions of 1849-53 had ensured that there should be no 'cabinet spirit' in the Executive Council which welcomed Parliament to Cape Town.

In conclusion to this chapter, it will have appeared that much of the apparatus of active political life existed in the Cape Colony before the advent of Parliament in 1854. There was a free and extraordinarily active newspress; public meetings, which until December, 1848 had required the licence and sanction of the local Magistrate had been frequent notwithstanding that restriction, and after the promulgation of the Ordinance repealing the restrictive law<sup>4</sup> were resorted to on the slightest provocation; quite as significant, the modus operandi of making appeals from

1. G.H. 1/51. Molesworth to Sir George Grey, No. 22, 2/10/55, acknowledging Hope's letter to Russell, and Grey's own recommendations that he might be promoted to another Colony as Lieut.-Governor or Governor. Hope was honest, but no genius. He was never promoted and died while still Auditor-General of the Cape, in 1859. vide Ch. IV infra.
2. C.O. 619. Southey to the Duke of Newcastle, 20/4/54.
3. The first Parliament met on 22/6/54; Cathcart departed on 26/5/54; Rawson took over from Southey on 30/5/54. Vide G.N. No. 99, 30/5/54.
4. No. 15 of 12/12/48.

the Legislative Council to the country had been introduced into Colonial politics in ways both subtle and forthright. Montagu's letters to the Colonial Office in London, reaching the public via Imperial Parliamentary Papers, and his use of the press are good examples of a tactical approach to political circumstances; while Montagu's group, as well as Porter's, and the Eastern Separatists represented by Godlonton and Cock, utilised to the full the opportunities which were presented in the Legislative Council for adumbration of their policies as much to convince the public and the Imperial authorities as to secure votes in the Council.

Montagu's contribution to colonial history throughout his period as Colonial Secretary to the Cape Colony, was particularly great in the administrative field. By administrative means he had transformed much of the structure of the government of the Colony just as he had contributed to financial stability and general prosperity. But during the same period the anomalous position of the Colonial Secretary as principal civil servant and as leader in the Legislative Council, in the absence of the Governor, but only to a lesser degree when the Governor was present, had fully revealed the necessity, on the eve of the adoption of a parliamentary constitution for the Colony, for a re-definition of the Colonial Secretary's duties and functions. The attempt of the Duke of Newcastle to reduce the sphere of responsibility which had devolved upon the Colonial Secretary showed, however, that in the existing executive framework it was less the Secretaryship that was at fault than the absence of the Governor, and that administratively the best way out was the creation of an Under-Secretaryship. This step was only taken in 1859,<sup>1</sup> but in the meantime a resort was once more had to appointing a Lieutenant-Governor, and to establishing a branch of the Colonial Office in Grahamstown in the Eastern Cape. Politically, no change was made in principle. Darling's short period of office was a mere interlude which temporarily put a new

1. Annual Blue Book.

appearance upon the expression of the old principle, which under Rawson revealed itself to be untouched.

Further, the activity of the Cape Executive officers as the actual as well as the legal administrators, and as the real legislators of the Colony<sup>1</sup> revealed to the colonists the importance of having Executive officers skilled to administer, and experienced enough in the circumstances of the Colony to know for what and in what manner to make laws for the country. Some years later John Stewart Mill was to point out<sup>2</sup> that "There is a radical distinction between controlling the business of government and actually doing it," and to show that "representative bodies do not administer" - that, in brief, administration is for experts. Furthermore, he wrote of how important it was for executive offices to be strongly represented in the Council: "Parliament ... is not expected, nor even permitted, to originate directly either taxation or expenditure. All it is asked for is its consent ...."<sup>3</sup> The drafting of such legislation was for the experts; therefore it was a sound practice that Parliament should not declare who should be the Ministers in the Executive Council: "It is enough that it virtually decides who shall be prime minister ...."<sup>4</sup> ".... it is true," Mill wrote, "though only of late and slowly beginning to be acknowledged, that a numerous assembly is as little fitted for the direct business of legislation as for that of administration. There is hardly any kind of intellectual work which so much needs to be done, not only by experienced minds, but by minds trained to the task through long and laborious study, as the business of making laws .... every provision of a law requires to be framed with the most accurate and long-sighted perception of its effect on all the other provisions; and the law when made should be capable of fitting into a consistent whole with the previously existing laws..<sup>5</sup>"

1. Cf. Sydenham's strictures on the Canadian Executive, *supra* p.
2. *Vide* J.S. Mill, *Representative Government*, 1861, Everyman's Edition, p. 229 ff.
3. *Ibid.*, p. 230.
4. *Ibid.*, p. 234.
5. *Ibid.*, p. 235.

Thus, "Instead of the function of governing, for which it is radically unfit, the proper office of a representative assembly is to watch and control the government: to throw the light of publicity on its acts: to compel a full exposition and justification of all of them which any one considers questionable; to censure them if found condemnable, and, if the men who compose the government abuse their trust or fulfil it in a manner which conflicts with the deliberate sense of the nation, to expel them from office ...."<sup>1</sup> Mill wrote further, of the Executive, that, "As a general rule, every executive function, whether superior or subordinate, should be the appointed duty of some given individual. It should be apparent to all the world who did everything, and through whose default anything was left undone ..... To maintain (responsibility) at its highest," he argued, "there must be some one person who receives the whole praise of what is well done, the whole blame of what is ill."<sup>2</sup> But it is best that this individual should be one of a council in which he would consult, thus, responsibility remaining primarily his own, the recording of other advice given in Council would provide him with better information upon which to act, or offer a moral or a more direct restraint upon his will.<sup>3</sup> In this respect, referring to India, Mill lamented the outcry being raised for the abolition of the Councils and for the "abrogation of the professional civil service which breeds the men that compose the Councils, and the existence of which is the sole guarantee for their being of any value," for it threatened to place government "at the mercy of public ignorance, and the presumptuous vanity of political men."<sup>4</sup>

In all these aspects the Cape Executive fulfilled Mill's precepts, or could have been the subject of his fears. The major responsibility of the Colonial Secretary was distinctive and well known, as was the departmental responsibility of his

1. *ibid.*, p. 239.
2. *ibid.*, p. 332.
3. *ibid.*, p. 334. *¶*.
4. *ibid.*, p. 335.



subordinates. The anonymity of "a Board, deliberating with closed doors" which, Mill scornfully wrote, rendered responsibility "a mere name",<sup>1</sup> did not fully apply to the Cape Executive Council. Cabinet sessions too are secret, and the members of the Cape Council would have<sup>had</sup> to walk an oratorical tight-rope or have kept altogether silent to prevent their views ultimately reaching the public through the Legislative Council. Moreover, both Montagu and the colonial public, for all that the 'rule' was not applied, showed that they were aware of the 'Russell rule'.<sup>2</sup> Thus, unconsciously, in the economic advances made by the Colony during the 1840's, aided by the Executive; in the constitutional debates carried on in the press, in public meetings, and finally in the Legislative Council; and finally, in the behaviour of the Executive Councillors on political issues, the Cape colonists were prepared for representative government. More, the Councillors themselves, Montagu among them, had argued the danger of public servants entering the political lists without there being a recognised parliamentary machinery for securing their withdrawal when they moved, in terms of instructions may be, but contrary to the general consensus of opinion in the colony. Thus the colonists were most clearly guided on the way to ultimately attaining responsible government, by men whose honesty in tendering constitutional advice was as great as their integrity in administering their departments.

Finally, it is well to remember, that in a country progressing from having no central representative institutions to having a Parliament, there must be a transitional stage. Mill is right when he says that "A free country which attempts to govern a distant dependency, inhabited by a dissimilar people, by means of a branch of its own executive, will almost inevitably fail."<sup>3</sup> But he is quite as correct, for a colony in such a transition stage as the Cape Colony (was in), in writing, "The only mode which has any chance of tolerable success is to govern through a delegated body of a comparatively permanent character; allowing

1. *ibid.* p. 333.

2. *supra.* p. 85, 94, 95

3. *ibid.*, p. 388.

only a right of inspection, and a negative voice ..." to the Imperial Government.<sup>1</sup> Conscientiously appointed colonial Executives, not subject to political patronage and the removal of officers because of changes of administrations in the parent State might "have all the requisites of good government;" might have "that complete and ever-operative identity of interest with the governed which it is so difficult to obtain even where the people to be ruled are in some degree qualified to look after their own affairs."<sup>2</sup> 'A delegated administration has no duty to perform except to the governed, and no interest to consider except theirs' could sum up the facts of the case, though the legal position of the responsible officials might read differently. Bearing in mind the behaviour of the Cape Executive Council during the time of the Anti-Convict agitation, and during the constitutional crises of 1850 to 1852 Mill might have been interpreting its role when he wrote:

"When the home government and Parliament are swayed by those partial influences in the exercise of the power reserved to them in the last resort, the intermediate body (the colonial executive) is the certain advocate and champion of the dependency before the imperial tribunal. The intermediate body, moreover, is chiefly composed of persons who have acquired professional knowledge of this part of their country's concerns; who have been trained to it in the place itself, and have made its administration the main occupation of their lives. Furnished with these qualifications, and not being liable to lose their office from the accidents of home politics, they identify their character and consideration with their special trust, and have a much more permanent interest in the success of their administration, and in the prosperity of the country which they administer, than a member of a Cabinet under a representative constitution can possibly have in the good government of any country except the one which he serves."<sup>3</sup>

1. *ibid.*

2. *ibid.*

3. *ibid.*, p. 389.

APPENDIX TO CHAPTER IV.MISSING DESPATCHES.

It has been intimated<sup>1</sup> that Darling kept the contents of Newcastle's despatches no. 60 and 90 of 10th and 14th May, 1853, secret. It seems possible that he showed the former, reinstating Southey, only to Hope. Years later, in 1861, it was discovered<sup>2</sup> that there was no record of this despatch in the Cape Archives and the Duke of Newcastle peremptorily ordered a thorough search to be made for it; he even wrote to Sir Henry Darling, Governor, then, of Newfoundland, for information about it, as well as to Southey, who was instructed<sup>3</sup> to discover, if he could, who had removed it. Since Darling by his own orders had had charge of the preservation of the Despatches it was probable that it had been mislaid in his office. Yet all the papers relating to the Southey-Darling difficulties had been kept in one collection by the latter, and he had handed them over in that state to Rawson when he left the Cape in 1855. Newcastle's despatch, no. 60 of 10th May 1853 and no. 90 of 14th May on Road Board matters, were not among them. Governor Darling's reply to the Secretary of State, in which he pleaded innocence, was sent on to Southey, who triumphantly if diplomatically implied its falsehood and at the same time reported that the errant despatches had been discovered among the Blue Books in Government House. "I mentioned before," he declared, "how carefully Lieutenant Governor Darling guarded the Despatch No. 60 and that it was not until many months after its receipt that any of the Executive officers (except perhaps the late Major Hope) were allowed to see it - He never allowed me to see it, and he was not aware that I had been permitted to see so much of it as related to myself, in Downing Street ..."<sup>4</sup> It is not recorded in this country whether Newcastle subsequently communicated with Darling. The incident shows something of the care the Secretary of State liked to see exercised in Colonial offices, and how he himself was often concerned about administrative matters as distinct from the politics of empire.

1. Supra pp. 165, 170
2. Southey had been appointed Secretary during Rawson W. Rawson's absence on leave during 1860 - 2.
3. Sir George Barrow to Southey, 10/3/62, in ACC/611/11.
4. ACC/611/11, passim.

CHAPTER V.

THE LESSER EXECUTIVE COUNCILLORS.

By virtue of his official position the Colonial Secretary tended to dominate the Executive Council. When the office was in the hands of a man as gifted and as determined as John Montagu the stature of the man added to the dignity and weight of the office. But his rôle was not that of a Cardinal Richelieu through whom technically all administrative and political advice and instructions was directed, to and from the head of his 'state'. He was rather a primus inter pares among the Executive Councillors. The functions of his office were closely articulated with theirs; moreover, because the Executive Council was not only a committee of heads of departments consulting on administrative matters, but was also a Council which provided the Governor with political advice whenever he required it, and which during the absence of the Governor met regularly<sup>1</sup> to deal with every kind of question with which the Government was faced, its individual members were especially important. The Cape would have been more unfortunate than possibly any other British Colony if its Executive Councillors had been inexperienced as administrators, uninterested in the welfare of the colonists, and ignorant of their affairs. It was a common criticism made by the Colonial reformers that Executive Councillors were appointed by a selfish patronage, without consideration for the real interests of the Empire or of the individual colonies to which they were sent, usually for life. The questions arise, then, of what were<sup>the</sup> duties of the Colonial Secretary's colleagues in the Executive Council, and, during the years immediately antecedent to the establishment of a Parliament at the Cape, how well they were fitted for their offices.

Proceeding in order of formal precedence, the first Councillor with whom we are concerned is the Treasurer-General. His duties

1. supra, p. 67.

were defined in a notice drawn up by the Acting Colonial Secretary in April 1806: he was to issue monthly balances of accounts, based upon information provided by the Auditor-General and passed on to him by the Colonial Office. He might only make payments from the Treasury after receipt of warrants bearing the signature of both the Governor and the Colonial Secretary, for each item of expenditure. He had to supply detailed reports about spoiled currency, so that new issues might be ordered by the Colonial Secretary. His books had to be open for inspection at all times. His department, like the Attorney-General's, was made a subject of Montagu's reforming zeal soon after the latter's arrival, for in 1845 the Treasurer-General was made responsible for the actual collection of taxes in Cape Town, while in all the other divisions of the Colony, Collectors of Taxes were appointed who were ordered to present monthly balances to the Auditor-General.<sup>1</sup> Not only was the whole management of colonial finance tightened up, but in keeping with the general organic growth of government in the Colony, the Treasurer received added duties from time to time. He became, for example, a member of the Central Road Board, a member of the Board of Land Registry, and also of the General Prison Board, and was, of course, a member of the Executive and Legislative Councils. From 1851 Montagu arranged that the Treasurer would co-ordinate the work of the local Imperial military Chest (commisariat), and the Colonial one in order to curb wastage, and corruption among suppliers. Thus the Treasurer, while being responsible to the local administration for colonial civil and military expenditures, was made responsible to the Secretary-at-War in respect of Imperial military expenses in South Africa. After 1853 the Treasurer had a seat in either House of Parliament.<sup>2</sup> The Treasurer-General during the period immediately antecedent to the establishment of Parliamentary institutions was Harry Rivers,

1. P. J. Venter, *op. cit.*, p. 225 ff.

2. Cape of Good Hope Almanacs; P. P. 20/3/51, (1334), pp. 86, 88.

whose long career in South Africa if devoid of brilliance was neither useless nor insignificant. Granted that his first appointments in Britain and at the Cape were made by the exercise of patronage, then the sole means of acquiring office, he still had a long apprenticeship before being admitted to the Executive Council and was schooled in the details of government as well as in the problems of the Colony before he assumed high office.<sup>1</sup>

Born at Bradmore, in Middlesex, in 1785, Rivers joined the 'home' civil service of the East India Company in 1808 and was evidently entrusted at an early date with some responsibility. In 1813 he was "actively and confidentially employed in conjunction with Sir Stamford Raffles, Peter Auber, Esq., and Sir James Melville, K.C.B.," in connection with the renewal of the Company's Charter. That he was well-connected in other directions is beyond dispute. His brother-in-law, Henry Alexander, was in the entourage of Du Pré Alexander, 2nd Earl of Caledon, when the latter was appointed Governor of the Cape Colony from May 22nd, 1807 until 14th July, 1811. Henry Alexander was Colonial Secretary and Registrar of the Government Records at the Cape during part of this period,<sup>2</sup> and he evidently induced Harry Rivers to join him there. Rivers arrived in 1816 and two years later married the daughter of P. L. Cloete,<sup>3</sup> the widow of Lt. Colonel Ronald Campbell. In that same year, however, Henry Alexander died, and Rivers found his prospects sufficiently reduced to feel himself obliged to accept the offer of an inferior appointment in the Colonial Civil Service, made by Lord Charles Somerset. He became

1. Cape Monthly Magazine, Ed. by Cole and Noble, Vol. V., 1859, pp. 240 ff., biographical notice.
2. The African Court Calendars for 1807 and 1808 have Captain J. C. Smyth and Christopher Bird successively as Acting Colonial Secretaries. The Civil Service Lists of 1886 onwards record no Colonial Secretaries before 1812, when the office was filled by Alexander with C. Bird as his Deputy; but P. B. Borchers recalls on p. 298 of his Memoirs that he obtained appointment to office on 18th December, 1809 with "the recommendation of the Colonial Secretary, Mr. Alexander."
3. P. L. Cloete was a member of the Legislative Council, 1834-5; his one son, Henry, was M.L.C., 1836-45, and another son entered the Council during 1849. Henry Cloete was British Commissioner in Natal, 1843-4, and Recorder of Natal 1845-53, when he was suspended from office by the Executive Council. Kilpin, Romance, pp. 64-66, 125; A. F. Hattersley, The British Settlement of Natal, Cambridge, 1950, passim.

wharf-master at Table Bay. But immediately after his return from leave in Britain in 1821, Somerset relieved Sir Rufane Donkin's pro tem. landdrost of Albany, Major James Jones, of his office and granted Rivers the permanent incumbency. This was an exercise of patronage which Rivers probably regarded as a very mixed blessing, for not only was the responsibility of assisting and controlling the settlers of Albany extraordinarily difficult, but the natives, and the inclement seasons which made human tempers short and the condition of <sup>many</sup> people desperate, made demands upon the understanding, patience, and ability of a man who was not only new to the terrain but to the office. Worse, Somerset's arbitrary proceedings in moving the drostdy to Grahamstown from Bathurst, and his imposition of regulations which the Settlers found even more repugnant since protest by public meeting was declared by proclamation to be illegal unless the meeting was sanctioned by a magistrate,<sup>1</sup> tested Rivers beyond his patience and his capacity. One suspects that he was too much of a Tory gentleman for the job, that he was incapable of placating or of leading the settlers; he seems to have been short-sighted to say the least with regard to the natives across the frontier<sup>2</sup> and was no less severely criticised for some disastrous consequences in this respect than he was for mismanagement of relief for settlers reduced to indigence or helplessness in the disastrous early years of the settlement. But it would have been an extraordinary official who could have escaped both errors of policy and the criticisms of a community which knew the reasonableness of most of its grievances and expected the Landdrost to effect or to further the solution of them all. And when all is said and done, Harry Rivers obtained valuable experience in the Eastern Province and was a seasoned official in the Cape service when he was transferred to become Landdrost of Swellendam in 1825. When that office was abolished in 1828, he became Civil Commissioner in the same place until 1842, and combined that office with that of

1. Procl. 24/5/22.

2. Transcripts of T. Stubbs' Journal in the Cory Library, MSS. 6090, p. 18 ff.

Resident Magistrate from 1834 to 1842. The district was a very large one, stretching from the Hottentots Holland Mountains to the Gouritz River (by 1859 it had been divided among no less than five magistracies), and a magistrate gained by his office a prestige which it is not always easy to assess in our own time; he stood at the head of the social register in his district and could exercise an enormous influence upon its inhabitants in other ways than by mere performance of administrative duties; his responsibilities were great, politically and socially, as a host, adviser and sometimes as a confidant; and as a civil officer as well as in his judicial capacity he came into touch with nearly all the propertied persons in his district, as well as many others. Moreover, in time of war Rivers found that in Swellendam, no less than in Albany in 1822, he had, as in 1835, to raise burgher and native levees, which he conducted to the frontier during the 6th Kaffir War in a manner which drew attention and some praise from Sir Benjamin D'Urban.

Rivers' career in Swellendam seems to have been successful on several counts. He gained a name for himself by the support which he gave to the improvement of agriculture (he was President of the Branch Agricultural Society which was a pioneer institution in the colony), and communications, and education (he sat in the local school commission), and he gained an enviable reputation as a host at the famous and beautiful old Drostdy. "Although a Tory or Conservative in principle, and rather aristocratic in his manner, he was .... very highly esteemed by the inhabitants of Swellendam," wrote his biographer in 1859, for he had "quite the appearance and manners of an English squire of the olden times" and he and his wife gave "a different tone", and an improved one, to local society.<sup>1</sup> Moreover, the district's rise to prosperity coincided with his years of service there, and not entirely fortuitously since it was evidently because of his representations in England, that Port Beaufort and Mossel Bay were declared free ports, the former becoming the shipping centre of 'the Barry Empire', of which the astonishing rise and fall is portrayed in

1. Cape Monthly Magazine, *op. cit.*, *passim*.



Burrows' 'Overberg Outspan'. It was not altogether inappropriate, therefore, that the town of Riversdale should have been named after him by a grateful community, or that the Dutch Reformed Church consistory should have held a public dinner in his honour on his departure, at which a very laudatory address was presented to him.

The Treasurer-Generalship, after the death of J. W. Stoll in 1834,<sup>1</sup> had suffered from repeated changes of personnel before 1842. Only one officer, W. H. Harvey, who served from 1836 to 1838, was appointed in a permanent capacity, so that it was high time for a more settled state of things to be established when in 1842 it was announced "that Her Majesty has been pleased, by warrant, under the Royal Sign Manual, dated 21st June last, to appoint Harry Rivers, Esq.;"<sup>2</sup> to that office.

Rivers had by then resided in the Colony for 26 years, and he would remain in office in Cape Town for a further 19 years, until his death, at the age of 76 years, in 1861.<sup>3</sup> During this time, according to the biographical notice of 1859, he discharged his duties "unostentatiously, but efficiently."<sup>4</sup> Unlike most of his fellows on the Executive Council, though not to the same degree as John Montagu, he had few commitments outside his official round. Until 1852 he was listed as Vice-President of the Savings Bank in Cape Town - he had been President of the Branch Savings Bank in Swellendam - and might have retired because his colleagues included such radicals as H. C. Jarvis; at that juncture even the President, William Porter, might have proved an uncomfortable associate in private affairs as he was in public. For Rivers was a 'Montagu man', and Porter was then in

1. Stoll was one of the original civil servants of the Cape Colony who had been kept in office by the British in 1806, and who attained high rank both in his department and as a nominee, as opposed to an ex officio, member of the Council of Advice between 1825 and 1834.
2. G. G., 28/10/42.
3. Harvey left the Cape in Dec. 1841 "suffering from aberration of mind", - Theal, op. cit., Vol. 11, p. 214. Kilpin, 'Romance', Appendix C., states that Harvey served until 1838. G.T.J. of 4/4/39 notifies the appointment of J.G.Brink as Acting-Treasurer. Theal implies that Rivers took over in December, 1841.
4. Cape Monthly Magazine, op. cit., passim.

opposition to his chief in the Executive Council. For some years Rivers was also Chairman of the Municipal Board of Greenpoint, where he resided, but he left this Board in 1852 and never sat in it again.<sup>x</sup> Rivers' retirement from these activities may have been caused in part by advancing age (he was 66 years old in 1851), and a resort to spiritual thoughts, at any rate, he figures, perhaps for the first time, in an ecclesiastical connection in the mid-fifties - as a Trustee of the Church of England Provident Society! But his official duties were also increasing, and with the imminent establishment of a Parliament would become much more arduous. He was one of the originators, with Montagu and Porter, of the road construction scheme of 1843, and sat in the Central Road Board from 1843 until 1853; for a short time before April 1853 he acted as Chairman of the Board, until P. B. Borchards accepted the Chair at the bequest of Acting Colonial Secretary W. Hope and with the backing of William Porter<sup>1</sup> - another indication perhaps, of the unhappy times through which the supporters of Montagu went subsequent to his departure. But Rivers stayed on the Board of Land Registry for many years until he died in 1861, and also was a member of the General Prison Board for a decade before his death, as well as a member of the Committee which had to examine all tenders for Government contracts, set up after the establishment of Parliament. If Rivers was not brilliant, therefore, and if at times he was inadequate (during the Parliamentary period it would have been better to have had a younger and more energetic Treasurer) he nevertheless lived a life of service, and his participation in the work of the Central Road Board during its most glorious years entitles him to some share of the fame which so largely belongs to Montagu, who had no more consistent and deliberate a follower in and out of the Councils than Harry Rivers. As a 'Montagu man' it should be no surprise to discover him being referred to in a letter from Robert Godlonton to Richard Southey as "My old friend - I may say teacher - Rivers" when the famous editor arrived in Cape Town

1. P. B. Borchards, *op. cit.*, p. 371; cf. *supra* pp.  
 x. "...the commissioner elected with most votes acted as chairman of the board." L.F. Green, *History of Local Government in South Africa*. Cape Town, 1957, p. 26, *re* Green Point.

in 1850 as the representative of Albany in the Legislative Council, and was entertained by him at his home in Greenpoint.<sup>1</sup> Nor should one feel surprise when Rivers is found to have expressed his "delight" and "satisfaction" in a private letter to Southey in 1858 "that we are again to have you amongst us", as Auditor-General on the Executive Council.<sup>2</sup> Indeed, a month before Rivers died, it was rumoured<sup>3</sup> that he was to be succeeded by Southey, who was then Acting Colonial Secretary during Rawson's absence on leave, and when Rivers died on 6th December 1861 Southey was promptly appointed as his permanent successor.

Closely associated with the Treasurer, the Auditor-General stood next in order of precedence. His duties were laid down by Instructions dated 13th April, 1809: he had to audit the expenditure and balances of accounts which were reported to him by the Treasurer each month, and to certify that the returns were in accordance with all the returns of revenue forwarded monthly by the Collectors. He had, further, to receive from the Governor an abstract of all Government domains and properties, and of all places occupied on loan or quitrent, and of freehold property 'liable to a contingent charge', in order to compare the returns of the Receiver-General of Land Revenue with these accounts; and he had to certify the accuracy of all the returns before submitting a report to the Governor. He had, moreover, to read all contracts and vouchers, and to ascertain the correctness of all claims made against the public chest, and to report on all these matters to the Colonial Secretary. All public accounts, and the calculations<sup>4</sup> of the Civil Paymaster, were subject to his scrutiny.

For so responsible an official, working so closely with the officials of the Executive Council, the Auditor's position was a

1. A. Wilmot, *op. cit.*, p. 91; and see Godlonton's M.S. Journal, Cory Library, 8/9/50, 12/9/50, 13/9/50; and Le Cordeur, *op. cit.*, p. 287.
2. ACC 611/5. Rivers to Southey, 20/12/58; the official despatch offering Southey the Auditor-Generalship was only sent on 6/1/59.
3. G.T.J., 11/9/61.
4. P. J. Venter, *op. cit.*, p. 237 ff.

peculiar one. He was not a member of the Executive Council until 1854, though he had a seat in the Legislative Council, and Earl Grey had decided as early as September 1851 that he should have a seat in the Cape Parliament.<sup>1</sup> Sir George Cathcart pointed out, however, that "The position of the Auditor as an official member of the Legislative Council, has, in fact, for some time past, induced the practice of consulting with him in common with the members of the Executive Council upon occasions when the Governor found it necessary to request the advice of Members of that Body in respect of measures about to be submitted to the Legislative Council." Elaborating the matter more distinctly, Cathcart added: "The circumstances in which this practice originated are explained in a letter from Mr. Montagu, to Mr. Hope himself, the present Auditor-General,"<sup>2</sup> and the anomalous nature of Mr. Hope's position was fully recognised by Sir. J. Pakington. "The Secretary of State," Cathcart pointed out, referring to Pakington, "not only observed in the case under reference he 'must consider Mr. Hope though not officially Member of the Executive Council as having been placed virtually in that position,' but had stated 'the circumstances under which he considered that an official Member situated as Mr. Hope was ... would be justified in abstaining from recording his vote ... either by withdrawal from the discussion, or by totally absenting himself from the meeting of the Legislature.'" Therefore, Cathcart stated, those members of the Executive who had seats in Parliament, ought to be "in the position of confidential and authorised advisors of the Government", or an officer with a seat in Parliament would find that greater weight would attach to the words of his colleagues in Parliament, and, at the same time, he might exercise less

1. G. H. 23/23, Referred to in Cathcart's despatch No. 3 of 15/1/54 to Newcastle, citing Grey's despatch No. 684 of 15th Sept. '51. In the Report of the Lords of the Privy Council on Parliamentary institutions for the Cape it had been recommended that the Colonial Secretary, Attorney-General, and Treasurer might sit in the Houses of Parliament. P.P. 19/1/50, (1137), p. 106 f. para. 37.
2. Enclosure No. 6 to Sir Harry Smith's Despatch to Lord Grey, No. 6 of 3rd December, 1851, and Sir J. Pakington's reply No. 41 of 14th May, 1852.

responsibility in expressing his opinions in the Parliament; or he might exercise an influence deleterious to official policy, since he would not be under "the obligation to act in accordance with the advice previously recorded by him, or (be) liable to explain the course he may have pursued." Considering that Mr. Hope's 'personal qualifications strengthened the expediency' of his being promoted to the Executive Council, Cathcart recommended that he be placed upon a proper footing within it.<sup>1</sup> Consequently, in a despatch of 12th April, 1854, the Duke of Newcastle approved of the change and sent Instructions under the Royal<sup>Sign</sup> Manual altering the composition of the Executive Council in this respect.<sup>2</sup>

The conversion of the Auditor-Generalship into a political office was, however, not in all respects wise or satisfactory, and in 1872 the incumbent ceased to have a seat either in the Executive Council or in Parliament. Three years later the office of Auditor-General was given a special status, when it was extricated from ministerial control. Henceforward the Auditor-General would hold his office during good behaviour, and could be dismissed only after successful impeachment in both Houses of Parliament.

Two men held the office of Auditor-General during the period under review. The first of these was Petrus Gerhardus Brink. He was born in the Cape Colony and seems to have entered the Cape civil service in 1809, becoming Auditor twenty years later. In 1831 he was admitted, ex officio, into the Council of Advice, and three years later he obtained a seat in the Legislative Council, though, as has been shown, he did not have a seat in the Executive Council which was created at the same time. Thus, despite the fact that for a few months during 1824 he actually filled the important functions of an Acting-Colonial Secretary, he never became a leading member of the Government. He appears to have made very

1. ibid.
2. G.N., 1/49, No. 205, 12th April, 1854, Newcastle to Cathcart. Hope was sworn in as an Executive Councillor on 11th July, 1854, vide G.G., 13/7/54, G.N., No. 122, dated 12/7/54.

little mark on the Legislative Council, and, in fact, not to have shown outstanding qualities as the Government's Auditor. He retired from office with a pension of £545 a year, in August 1849 when only 58 years of age, and died three years later. His resignation may have been due to ill-health, but it is a tantalising thought that as the only colonial-born and Dutch member of the select group of high officials in the Legislative Council, his resignation may have been an act of protest similar to that of the nominee members of the Council, or, like that of many men holding honorary appointments, who resigned because of the decision of Earl Grey to turn the Cape Colony into a settlement to which ticket-of-leave men might be sent. But just as no reference was made to him or to his long years of service as an important civil servant, so the newspapers make no mention of his activities after his retirement. Certainly he was given some votes in Stellenbosch, Cape Town and in the Cape division in favour of his becoming a member of the 'popular' Legislative Council in 1850, but they were quite insignificant in numbers,<sup>1</sup> and his name does not appear at all in the list of 23 men elected as a panel from which Sir Harry Smith might choose five Councillors.<sup>2</sup> Nor does he appear to have taken any part in the Anti-Convict Association's activities. His death in 1852 received scant notice in two of the principal newspapers in the Colony and no reference was made to his qualities whether as a man, a Councillor, or as an administrative official. Even the most ordinary details about which one would expect some certainty from his contemporaries are given so wrongly or vaguely that one must conclude that he was a colourless if not mediocre official. His obituary notice states that he retired in "May" 1849: in the obituary notice of William Hope, it is mentioned<sup>3</sup> that the latter became Auditor "upon the death of Mr. Brink."<sup>3</sup> But a Government Notice of 1st September 1849,<sup>4</sup> announced Hope's

1. E. P. H., 25/5/50, 8/6/50.

2. P. P., 19/5/51, (1362), pp. 5 and 89.

3. G. T. J., 9/10/58.

4. G. G., 6/9/49.

entry into his new office and stated that Brink "retires" upon a pension. The Cape Town Mail of 8th September simply mentioned that Hope "has entered upon the duties of his office." Moreover a scanning of the verbatim reports of the debates of the Legislative Council in the same paper reveal that the "Auditor-General" spoke after May - it is true he spoke only once and that his speech was only about 20 words long - but at least he spoke, and not the "Acting Auditor-General." It is perhaps significant that this speech was simply to signify his support of the argument of the Attorney-General that the Council, or the Colony, could not resist the Order-in-Council which made the Cape a penal settlement.<sup>1</sup>

Brink's successor, William Hope, was much better known and more generously treated. Hope was new to the Colony in 1846,<sup>2</sup> when the Secretary of State appointed him as Clerk of the Councils in place of Ker Baillie Hamilton, who had been promoted to the Governorship of Newfoundland.<sup>3</sup> His abilities do not appear to have been equal to those of his predecessor as Clerk of the Councils, though as Auditor-General his integrity more than once gained the notice of the press, and the 'Argus' in an obituary notice of April 1858 commented that he was a most conscientious public servant, and a man of the highest principles, so much so, that he had deservedly obtained the sobriquet of 'the honest man.'<sup>4</sup> Two months later when the Editor of the Graaff-Reinet Herald launched a pungent attack on the Executive Council, Major Hope was the only Councillor who shared with Governor Sir George Grey the distinction of not being singled out for criticism. More: Hope is there characterised as being second only to the Governor as a worthy object of colonial esteem. "He was a man, who, if not of the keenest intellect, was honest, sincere and decided, and one

1. G.T.J., 22/5/52; C.T.M., 18/5/52; obituary notices; the E.P.H. does not report his death at all. There is no mention of him in the Almanac of 1849 as having any share in local institutions of a public or private nature, other than the Auditorship. He lived in Gardens.
2. In 1851 Hope stated in a Minute addressed to the Governor that he had had 25 years of service in eight of Her Majesty's colonies, Vide P.P., 19/5/51 (1362) p. 171. Cf. Sole, op. cit., Vol. I, p. 152 in which it is stated that Hope "had been born and bred in the Western (province) tradition."
3. R. Kilpin, The Parliament of the Cape, p. 61.
4. Quoted without comment in the G.-R.H. of 16/10/58.

who was perhaps of more real assistance to Sir George Grey than any other member."<sup>1</sup> The Graham's Town Journal was no less clear in stating that he had discharged his duties "with the utmost fidelity,"<sup>2</sup> which was perhaps no idle statement since Hope had come under the particular notice of the frontiersmen as Special Commissioner to enquire into the management of the Cathcart land settlement scheme in the Queenstown and Victoria divisions, in 1855.<sup>3</sup> His activity as a member of the Legislative Council was quite pronounced, and though he was never brilliant he was never negligible either and had the strength of a man who reasoned from sound principles of public conduct. It was not altogether strange, therefore, that he should be admitted to the Executive Council as Acting Colonial Secretary by Darling, not only because he was politically a member of the Attorney-General's group, but because of his qualities generally as an advisor and an administrator.<sup>4</sup> Cathcart's support for him is further proof of this. There is the further consideration too, that Hope also knit his interests more closely to the colony than was possible simply through official channels. He joined the Committee of the South African Public Library, became Chairman of the Board of Directors of the Colonial Life Assurance Company, Chairman too of the Harbour Improvement Board of Commissioners, while as an official he was also a member of the General Prison Board.<sup>5</sup>

The Attorney-General, according to the Civil Service List, was "vested with the right, and entrusted with the duty of prosecuting in the name and on behalf of Her Majesty all crimes and offences committed in the Colony". His office, until 1878, falling within the department of the Colonial Secretary, was the smallest to be managed by an Executive officer at the Cape, and despite the fact that his responsibilities were large in both judicial and administrative spheres, he seems of all the Executive officials, to have had

1. G.-R.H., 11/12/58.
2. G.T.J., 9/10/58.
3. G.N., No. 324 of 17/12/55, G.G. 18/12/55, date of appointment.
4. supra, pp. 193.
5. Cape Almanacs, 1853 and 1856. For further details of Hope's career, see above, pp. 145ff., 162ff.



the greatest opportunity to be active in many affairs, while his rôle as principal legal adviser to the Crown in the Colony gave him an influence and a prestige, which made him one of the most prominent men in the Colony - something which was made portentously clear when it came to constitution-making between 1848 and 1852. The Attorney-General was in a special position with regard to legislation and formal government action in the Colony. The Governors referred anything which might conflict with existing law to him. He would decide whether something might be accomplished by simple Government Notice, or Proclamation, or whether legislation was necessary, or whether the prior consent of the Imperial authorities was necessary. He would draft Government bills and proclamations, and sometimes even Notices. Other government departments and even local bodies would rely on his advice,<sup>1</sup> and finally, it was his duty to report on and explain legislation forwarded by the Governor to the Secretary of State for approval in London. His office, then, was peculiarly significant and its occupant attentively watched by colonial officials and the public, and by the Colonial Office in London.

The incumbent from 1839 until March 1866 was William Porter, Doctor of Laws, - the only man to rival, let alone to surpass Harry Rivers for length of service in the Cape Executive Council. Porter hailed from Artikelly, Newtonlimavady, County Derry, Ireland, where he was born in 1805. Brought up by a middle-class and somewhat talented family (his father was a Presbyterian minister, one brother became a noted Biblical scholar and unitarian divine, and yet another became Master of the Rolls in Ireland) he served in the Dublin business of a step-uncle, who was an iron-founder and timber merchant, before deciding to study law, first at Dublin, then in London. He was called to the Irish bar in 1831. It is not evident by what means he obtained an appointment to the Cape, but it is beyond dispute that he was an acquisition of the first order.<sup>2</sup>

1. Municipal commissions, for instance, approached him direct.
2. Biographical details from the Dictionary of National Biography; R. Kilpin, Pioneers of Parliament, IV, in the Cape Argus, 16/4/21; a surprisingly poor sketch in the Cape Monthly Magazine Vol.V.1859.R.Kilpin's 'Romance of a Colonial Parliament'.

He did not marry, as Rivers did, a Cape lady, in fact, he never did marry, but there is no doubting, despite the fact that he returned to Ireland in 1873 and died there in 1880, that he made the Cape his home. His extramural activities serve as an index of his interests and of the manner in which he made the community his own: not only did he share his wealth by such gifts as the Porter Collection to the South African Public Library, and the £20,000 bequeathed to the juvenile reformatory which bears his name, but he expended his energy as President for many years of the Cape Savings Bank, as a director of the Cape Commercial Bank, as Chairman of the Board of Directors of the Cape of Good Hope Gas Light Company. He is said too, to have sunk, and lost, thousands<sup>1</sup> of pounds in the Namaqualand copper boom in the early fifties, and he was always to the fore in supporting and in assisting in work which would benefit the Colony. He was on the Committee of the Cape of Good Hope Agricultural Society, and propounded the elements of a scheme to improve colonial roads in 1841, before the<sup>2</sup> arrival of Montagu. He assisted Montagu as much as possible in setting up the Central Road Board in 1843 and was ever afterwards a staunch defender of the plans and efforts of that Board. If one were to assume that all these activities centred upon economic self-interest, one would be greatly mistaken; granted he had an eye for the main chance, and evidently was wealthy, his record in unremunerative affairs, and the enormous number of his recorded speeches, indicate broader interests. The development of education was one of the greatest of them and presented a field in which he was as great a success as in any other. For many years he was a member of the Council of Directors of the South African College, as well as of the South African Infant Schools Committee and of the South African Literary and Scientific Institution, and of the South African Public Library Committee, and also of the Committee in Cape Town for the Exhibition of Fine Arts. A founder of the University of South Africa (Cape Town), he was the donor of the

1. R. W. Murray, op. cit., p. 17.

2. Porter Speeches, op. cit., p. 34, and pp. 137 - 176.

famous Porter Scholarship, and became the first Chancellor of the University in Cape Town in 1873. Finally, like Rivers, he was a Trustee, from an early date, of the English Church Provident Fund.

In his legal capacity, when he sailed from Ireland he knew practically nothing of the Roman-Dutch law of the Cape, with the unclassified Cape enactments (placaaten and other forms of legislation), dating from 1652 until the very year of his arrival, grafted onto it; yet he staggered the Cape with the rapidity of his progress in mastering this mass of law, by the speed with which he introduced intelligent reforms into it, and by becoming even a champion of it, so that in 1845 he blithely introduced it into the newly annexed district of Natal both on account of the fact that Natal was to fall within the administrative structure of the Cape, and because he believed it to be an eminently suitable system of law. That he owed a great deal to fellow jurists at the Cape does not detract from his services, since he showed a power of grasping essentials and an ability to organise without which the clear-sighted representations made to him by such men as Christoffel Brand, a legal giant himself, would have been of relatively small effect. An example of the manner in which progress was achieved out of their co-operation comes easily to hand. The municipal constitution of Cape Town very quickly showed itself to be inadequate from the point of view of local administration and awkward from the political point of view as well. Brand pointed out the case to Porter, who directly drafted an amended Ordinance, in 1840, which completely resolved the discontents arising out of the first one, though as a democratic body in an authoritarian Colony the Municipality was yet to prove a formidable thorn in the side of the Executive Council. In civil cases, in his private capacity as a barrister and as the leader of the Cape bar, as well as in criminal cases as Attorney-General, Porter achieved what would have been impossible in a man with average qualities: he provoked neither the jealousy of his fellow-lawyers nor criticism from the judges and the public, for his immediate display of superb competency and sensitive modesty proved as disarming to

would-be critics as his charm of manner and eloquence made him the cynosure of all eyes. And though his modesty became less as his place in Cape society became more eminent, his sagacity was proof against his ever becoming unbearable, or dispensable. Any mediocre, or even average, Colonial Secretary must have suffered by having such a publicly brilliant and generally popular colleague, but it was the Colony's great fortune until 1852 to have in Montagu a man who would at once prevent such a disequilibrium in the Government hierarchy and adroitly harness the energies, and even the loyalty until a late date, of his extraordinary Attorney-General; and during the period 1854 to 1861, at any rate, the pro-consular Grey and the ubiquitous and fascinatingly energetic Rawson W. Rawson prevented Porter from appearing as the only sun in the colonial heaven. Out of sympathy with Wodehouse and overborne by his colleagues in the Executive Council, Porter resigned in 1866, shortly after to appear as an elected member of the House of Assembly. He declined the Premiership which might have been the crowning success of his career of service to the Cape, in 1872, considering, perhaps, that having been the principle drafter of the constitutions of 1853 and 1872 was honour enough.

There is scarcely a reference to him that does not show his influence upon people and events with which he was associated, for his personality appears to have been as imposing as his figure: "over six feet tall in his polished hessians" and "broad of shoulder and straight of limb," someone declared that he "had the face of a Greek god", while another called him "a prince among gentlemen ... the lion of society."<sup>1</sup> His effect at a Council meeting was illustrated shortly after his arrival in a famous episode where the autocratic Governor, Sir George Napier, was given the retort direct for telling him how he should vote in the Legislative Council on a private measure.<sup>2</sup> His eloquence and superb ability in debate became a byword by 1845, and the published record of his speeches between 1839 and 1845 stands as a monument to the man's intellect

1. R. Kilpin, *Argus*, *op. cit.*  
 2. R. Kilpin, *op. cit.*, p. 59.

and as a text-book of examples of how a gentleman might shape a speech for every occasion. It is also worthy of study by those who would know how best a government should be conducted. There was no other person at the Cape who could rival him in learned as well as polished exposition, except his opposite in stature, the dwarfish Saul Solomon, who only rose to prominence after 1854 and was one of his dearest friends. In 1861 Rawson W. Rawson was to write to Richard Southey "you may well say - what shall we do when Porter leaves? who can replace him? Alas! I repeat this daily to myself ..."<sup>1</sup>

One of his chief uses to the Government was undoubtedly his keen participation in the life of the colony. In committee after committee, before and after Parliament was established, Porter sat in debate with most of the chief participants in the political and commercial affairs of the day, and he must have known his friends and foes, and those of the Government, inside out. Nor does this mean that he would be associated with Britons only, for liberally represented, perhaps even in the majority, on the directorial boards of banks and assurance companies and in cultural, educational, scientific and agricultural societies, and at the bar as well as in the side bar,<sup>2</sup> were the leading Dutchmen of the Cape.

As to his political principles, which explain at once his early loyalty to Montagu and his later opposition to him, they may be summarised, firstly by quoting from his own words: "I am disposed to think that, generally speaking, there are but two classes of colonial governments which can work with any reasonable prospect of peace and quiet; namely, colonial governments which wholly exclude the popular element, and colonial governments which solely rest upon the popular element ..."<sup>3</sup>, from which it may be seen that peace and quiet, or in other words, security, is the object of government. Secondly it may be added from a reading of the man's career, that Porter believed the Government should assist progress in the arts, sciences, and amenities of civilisation. Thirdly,

1. ACC/611, Rawson to Southey, 4/10/61 from ?Killencly, Ireland.
2. Lists of directors and committee members in the principal commercial and other undertakings are in the Almanacs of the Cape of Good Hope.
3. P.P. 31 May 1851. (1362). p. 75.

he followed the principle that a promise once given was irrefragable, and this explains his persistence in supporting the early grant of a Parliamentary constitution without amendments to the draft ordinance which would give less than what had been proclaimed by the Government and by the leading newspapers to be the intention of the Government to give.<sup>1</sup> While there was no promise of Parliamentary Government, Porter was as strong a Montagu-man as Rivers, but the promise having been given, and the principles of the impending constitution having become as popular as another 'irreducible minimum' of a later day and another country,<sup>2</sup> Porter believed in the expediency and the necessity of carrying the projected reforms through, even though he could not wholeheartedly endorse them as sound in the context of events between 1849 and 1853. It would be a bold man who would say that Porter was wrong, and perhaps a bolder man to regret his success in achieving that object.<sup>3</sup>

It is surprising, therefore, that William Porter received no greater honours than he did. In 1872 he was made a Companion of the Order of St. Michael and St. George; he had already declined a knighthood, and might have been a judge several times over, but he even declined, when offered, to accept the Chief-Justiceship of the Cape Colony, just as he refused the Premiership. Clearly the highest honours might have been his, and contemporaries at the Cape were not wrong in believing that had he chosen a larger stage for his talents, even London itself, he could not have failed to become even more famous.

1. Vide pp. 143, 150 above, and Porter's speeches, in P.P. 19/5/51, (1362); 3/2/52, (1427); 16/2/53, (130).
2. Reference to the franchise proposals made public in the Transvaal in 1899.
3. For the consistency and quality of the support given by Porter to Montagu, for whom his admiration is evident, until 1852, vide Porter Speeches, *op. cit.*, pp. 185, 195, 200 - 1, 321, 323, 333, 347, 351, 379 f.; 422 perhaps especially; 437 on the reform of the judicial system was the first rift in the lute (see above p. 142f).

The Collector of Customs, unlike the other senior officials of the Government, was not appointed by Royal Warrant, but by the 'Lords of the Treasury and Commissioners of Customs' in Britain, as indeed were very nearly all the officials in his department, only a few of whom were appointed by the Collector himself with the sanction of the Governor, or simply by the Governor.<sup>1</sup> The Customs Department, then, in respect of Customs laws and appointments was controlled directly by the Customs Commissioners in Britain, whereas all the other departments of government at the Cape fell within the sphere of control of the Secretary of State for War and Colonies. But while the Collector was in a separate class in this respect, he was made an integral part of the Cape administrative structure by being subject to the authority of the Governor in other respects. In the first place, he was a member, from 1840, of the Executive and Legislative Councils. He retained a seat in the former Council until 1872, but ceased to have a seat in the Colonial Legislature in 1853, in which year his department was wholly transferred to the control of the Cape Parliamentary Government, subject, of course, to the normal over-riding powers of the Imperial Government which could be exercised through the Secretary of State. In the second place, the Customs Department before 1853, as well as after, was directly linked with the Colonial Government through the local Treasury, - it was the receiver of by far the greater part of the revenues of the Colony - and the Audit Office. Its annual Returns were reported in the same way as those of other departments, namely, in the annual Cape Blue Book issued by the local Colonial Office on forms forwarded by the Secretary of State for War and Colonies. This department, in the form in which it existed before 1853, was a marked survival of the days when different departments of Government took instructions as well as staff direct from departmental head-offices other than the Colonial Office in Britain. Statutorily it remained under the control of the Commissioners of Customs, but in effect the Imperial Colonial Office had become the normal channel of correspondence

1. Cape Blue Book, annual statistics.

from colonial Customs authorities, to the Imperial Government.

The duties of the Collector of Customs were the least complex, and the most strictly departmental of all the Executive Councillors. The work of his department was not only narrowly defined in scope and scale, but geographically as well, so that the head of the department remained, from the public point of view, a somewhat shadowy figure in the government hierarchy. This was the more so because William Field, the Collector of Customs from 1834 to 1861, was not imbued with the public qualities of his colleagues, though he was not as silent in Council nor as withdrawn from expending his energy in other spheres of government as P. G. Brink. Still, he was no luminary and it was only because of the absence of the military officer next in rank to the Governor, the Lieutenant-Governor, that he was given a seat in the Executive Council in 1840, and also in the Legislative Council in order to keep the number of official votes up to the needful six.<sup>1</sup> It was possibly an oversight that he was not removed from the Executive Council as well as from the Legislature in 1853. This is suggested by the following consideration: during the time that the constitutional proposals were being considered, Sir Harry Smith had opposed the opinion of the Lords of the Committee of the Privy Council for Trade and Plantations, that the Colonial Secretary, Attorney-General, and Treasurer, might have seats in the Colonial Parliament, on the grounds that none of the Executive Councillors ought to be excluded from the Houses of Parliament. Earl Grey agreed to the principle of including the Administrative officers in the Legislature<sup>2</sup> but took a course different to that proposed by either Sir Harry Smith or the Lords of the Privy Council Committee, by adding only the Auditor-General to the three to which the Committee had agreed.<sup>3</sup> Field was, therefore, left in a position as anomalous as that of the Auditor's had formerly been, and Cathcart's

1. Additional Instructions from the Secretary of State to Sir George Napier. vide Annual Cape Blue Book.
2. G.H. Records, Despatch No. 684, of 15/9/51, Grey to Smith.
3. See p. 144 f. above.



complaint that the responsible conduct of the Auditor in the Legislature should be guaranteed by binding him with the rules accompanying membership of the Executive Council, in the case of the Collector of Customs, held good in an inverse manner: he might give advice for which he would not have to answer in person in the Legislature.<sup>1</sup> Be that as it may, William Field escaped his duties both as Councillor and as 'Collector of Customs and Comptroller of Her Majesty's Customs and Navigation Laws and Registrar of Shipping' (to give him his full title)<sup>2</sup>, in 1857 when he was temporarily appointed Chief Emigration Commissioner for the Cape Colony, and became resident in England. There he remained until his death four years later, retaining for the time being all his emoluments and titles which shone somewhat dully through the glare of censure from the colonial newspapers and Parliament, for the mismanagement of the Emigration scheme. His death, on 17th January, 1861, won no single obituary notice in any of the principal Eastern Province newspapers - it was entirely ignored by the Graham's Town Journal - despite the fact that his son, William Swan Field,<sup>3</sup> the Sub-Collector of Customs in charge of the Port Elizabeth office succeeded him in all his official capacities except as Emigration Commissioner,<sup>4</sup> which last appointment was not renewed at all. Yet Field was another of the Executive officers who identified himself, if slenderly, with the economic and cultural progress of the Colony in his private as well as in his official capacities. Thus, he

1. cf. G.H. 23/24, No. 3, of 15/1/54, Cathcart to Newcastle.
2. A composite title which grew in length between 1853 and 1861, vide Cape Almanacs and the Cape Blue Books of the period. Dr. P. J. Venter, *op. cit.*, oddly enough devotes no section of it to the duties and development of the Customs Department.
3. That W. S. Field was his son appears in the *Het Kaapsche-grensblad* of 30/3/61. W. S. Field had served, to the great satisfaction of Lt. Gov. Pine, who put his abilities very high, in Natal until 1853. C.O. 620, Letter from B.C.C. Pine to C.H.D. (Arling), dated 5/6/53.
4. W. S. Field acted as Collector of Customs in Cape Town from 1857 to 1861.

was, for instance, a sponsor of the South African Public Library, and a Director of the South African Fire and Life Assurance Company. Finally, he did earn some popularity in 1851-3 for his liberal political attitude and his support of the Attorney-General.<sup>1</sup>

It has been noticed elsewhere in this thesis how the Executive Councillors (with the Auditor-General) worked together. Few things better illustrate the dangers of political polemics than a comparison between the Executive Council as in fact it was, and the sweeping distribe<sup>s</sup> directed at the Colonial service by Wakefield and Buller.<sup>2</sup> Whatever the case elsewhere, the Cape was fortunate in having an Executive that was conscientious, as efficient as circumstances would allow in such a sprawling, poor, thinly populated and disunited a colony, and that so far from being the aloof and 'alien' officials which popular opinion sometimes held them to be, they struck roots in the colonial soil. They were socially active; they played an incalculably large part in the economic development of the Colony; they fostered church, educational and cultural bodies, indeed, they fathered some of them.

In conclusion,<sup>3</sup> it is fitting to quote, firstly, an Eastern Province historian who, in recounting the 19th century struggle for Separation, took the part of his Province and might easily have made the Executive Council his principal target: apart from Field, he wrote, the members of the Executive Council "possessed too high a conception of their duty to the Colony to land themselves to .... a flagrant partnership with the West." Going further, he went on to recount in detail their approach to the question of whether Separation should occur in a manner which proved their honesty and more than implies that they put what they considered was politic before what they considered was privately

1. see pp. 145ff. above.

2. supra, Ch. 2.

3. Sole, 66. cit., Vol. 1. pp. 150 - 3.

convenient to themselves. Secondly, an Afrikaner historian, Gobre<sup>1</sup>ets in his able thesis on the Anti-Convict Agitation, found that the Executive Councillors during a time of crisis and danger, behaved with a sagacity and firmness which probably saved the Colony from disastrous civil tumult during a time when the Kafir tribes were still relatively powerful and dangerous. Lastly, and probably most fitting, a quotation from the memoirs of an Easterner who had suffered much at the hands of Western governments, and who was the most implacable foe of the Executive Council. Sir Andries Stockenstrom opposed the Council not only because it was distant and ignorant or misguided about the Eastern districts but because he opposed the very existence of the Council in the form in which it occurred at the Cape. Understandably perhaps he ignored direct reference to Montagu and Rivers, but of the rest he wrote:

"We of course had the Governor and his Ministry dead against us. The Attorney-General, in spite of his natural benevolence was, as in duty bound, very severe; but though there is no beating him in language, the Town House was quite equal with the official in acrimonious retort. The Auditor-General, whom, like the former, I not only honoured as a man, but also as a friend, never went beyond a strict course of duty, and never withdrew his cordiality from me. The Collector of Customs, equal to either of the two former in high principle and integrity, was for a time one of those who believed it blasphemy to doubt the infallibility of Smith and Montagu, and an official coldness having sprung up, it crept into our private intercourse, and was, I am sorry to say, never got over. He died, overworked, and, like poor Hare, overwhelmed by scribblers, whom they ought not to have deemed worthy the dust of their shoes.

1. op. cit., passim; cf. chap.1, supra.

He was one of the ablest and most useful public functionaries the Colony ever had." <sup>1</sup> - A fitting note, perhaps, on which to end a chapter on the Lesser Executive Councillors.

1. Stockenstrom, op. cit., Vol. 11, pp. 331.

Note: It has been noticed above that nearly all the Executive Officials were connected with commercial or financial houses at the Cape, no one more than W. Porter who played a very important part in several companies. That this might be a dangerous practice and affect the morality of the government does not seem to have drawn attention until 1863. Dr. H. L. Hall in his 'The Colonial Office; a History', declares that "Strict rules had to be drawn up to preserve the integrity of the Colonial Civil Service .. .. (refers to Ceylon) ... Various scandals caused the Office in 1863 to order officials in South Africa to abstain from being concerned in the management of any bank, railway, or commercial undertaking, and in the following year this rule was extended to all colonies, with the saving clause that the Governor might, with the approval of the Secretary of State, grant leave." (p. 124).

CHAPTER VI.

THE IMPERIAL GOVERNMENT AND COLONIAL ADMINISTRATION,  
PATRONAGE AND THE CIVIL SERVICE.

A study of the structure of a government is not complete unless one examines the spirit of the government, and also the manner in which public servants were appointed. If the Executive officers of the Cape were, to borrow a phrase, a 'dedicated oligarchy' <sup>(1)</sup>, who did well by the colony <sup>(2)</sup>, the question arises whether they belonged to a wider Imperial 'oligarchy', of the same kind, and if to any extent they belonged to such an 'oligarchy', what effect it had on the Colony? In order to answer this question something must be known of the organisation and character of the government, from the colonial point of view, in Britain.

The monarch was at the head of the structure of government. He was central between the Privy Council, on the one hand, and the Cabinet on the other. The part of the Privy Council of particular importance with respect to the colonies, was the Committee for Trade and Foreign Plantations - the Board of Trade. The membership of the Board of Trade and Cabinet overlapped <sup>(3)</sup>. The Secretary of State for War and Colonies was a member of both these bodies. As a body, the Board of Trade communicated formally and directly with the Sovereign, who would be present at a meeting of the Committee in order to receive its reports, as for instance, when it met to consider the report of the Committee on the Cape Constitution <sup>(4)</sup>. The monarch did not attend the Cabinet, but the Prime Minister, sometimes orally, sometimes in writing, reported its conclusions and occasionally commented on opinions. All legal instruments of government requiring the approval of the Sovereign, dealt with by Committee or Cabinet, would have to be personally sanctioned by the Sovereign.

1. R. Prouty: *The Transformation of the Board of Trade, 1830-55*, London, 1957.

2. Supra; Chapters 3-5.

3. Vide: Prouty, *op. cit.*, passim.

4. P.P. 5/2/50, (1137), p. 101. The last occasion when a meeting of the Board as a collective entity was recorded was 23/12/1850. Technically, the Board of Trade still meets; vide, Prouty, *op. cit.*, p. 107.

The Treasury, then, exercised a continuous control upon the person of the Monarch was not negligible either in theory or in fact<sup>(1)</sup>, but the Ministers to whom this fact was most important seldom included the Secretary of State for War and Colonies. This was a junior Ministry. Not until Lord Bathurst, (Secretary of State, 1812-1827) and Henry Goulburn, (his Under-Secretary), had entered thoroughly into the organisation of the colonial empire and begun to create a real central office for the control of it, did this Ministry begin to become important.<sup>(2)</sup> But although before 1820 Parliament was convinced that the work of the colonial division of the Secretary of State's office engaged more attention, and required more staff, and more care from the Minister than the War Office<sup>(3)</sup>, it was not until 1854 that the Colonial Office was placed under a separate ministry. The War Office was tied only conventionally to the Colonial Office in 1802 and especially after 1812 had little direct influence upon the affairs of the colonial department<sup>(4)</sup>. It was far otherwise with the Treasury and the Board of Trade. After 1814 the Treasury, by means of the Board of Colonial Audit<sup>(5)</sup> was in an increasingly good position to review all colonial revenues and expenditures. Thereafter there was not only a more or less firm control of Imperial expenditure in the colonies, but of the expenditure of colonial revenues raised in and for the colonies. Thus, the Cape in particular, with its evidently merely strategic value, on the route to India, was regarded with a jealous, and at times an almost miserly eye, and the endeavour to economise showed too often a want of Imperial statesmanship and, until about 1840, of knowledge of local circumstances. Nor did it seem to the British Government in the 1840's, when Montagu had reduced the finances of the Cape to order, had paid off debts to the Imperial Government, and was showing a satisfactory surplus in the revenue, that its antipathy for the expenditure of British money in South Africa should decrease. Rather the contrary.

His recommendation was readily accepted and by 1856.

1. B.E. Carter, *The Office of the Prime Minister*, p. 31ff. Re appointment to Colonial Governorships see *infra* p. 221f
2. H.T. Manning, *op.cit.*, passim.
3. Ibid.
4. It had a separate Under-Secretariate and staff.
5. Supra p. 60

The Treasury, then, exercised a continuous control upon the Secretary of State for War and Colonies and reviewed the work done under the general supervision of his department. Thus Arthur Mills stated that colonial legislation was "most frequently" referred to the Treasury for scrutiny before it could receive formal approval<sup>(1)</sup>.

The Board of Trade had originally been responsible for the administration on the British colonies; by 1802 this duty had been passed to the Secretary of State for War and Colonies. Yet the Board did not altogether abdicate its rôle in colonial affairs, for it retained large powers in respect of trade and merchant shipping, and from being technically a committee of the Privy Council it had become in practice an administrative department of State by 1850<sup>(2)</sup>. Earl Grey tried, with respect to the writing of parliamentary constitutions for the colonies during 1848-52, to use the Board of Trade in a new specialised sense, but this did not become a feature of its work after Grey left office<sup>(3)</sup>. The requirement that it should supervise constitutional matters for the colonies was significant, however, of the abiding association between the Board of Trade and the Colonial Office. All legislation passed on by colonial Governors to the Colonial Office, after being considered on points of law, was sent to the Clerk of the Privy Council, who would submit it to the Monarch. From that point the procedure was fixed by an Order-in-Council of 30th May, 1828, which stipulated that the colonial enactments would be then referred to the Board of Trade<sup>(4)</sup>. The Secretaries of State were members of the Board<sup>(5)</sup>, and the Colonial Secretary would communicate with the President of the Board of Trade about the enactments requiring special treatment, or reference to another department of State. Some Acts, which the Colonial Secretary believed did not fall within the province of the Board of Trade, he would recommend to the Lord President for direct confirmation, disallowance, or for whatever other steps seemed necessary, and evidently his recommendation was usually complied with by 1856.

1. Mills, op.cit., p. 35.
2. Prouty, op.cit., passim.
3. Morrell, Colonial Policy of Peel and Russell, op.cit., passim.
4. Mills, op.cit., p. 34f.
5. Supra p.103.

Matters of special importance might be referred to the Cabinet, and sometimes the Law Officers of the Crown would be consulted<sup>(1)</sup>. Finally the monarch would sanction the approved colonial enactments. But there was a constant stream of correspondence from the Colonial Office to other departments. Governors were required to report fully on all that occurred within their Colony, on measures which they considered necessary, and on the success of those already in force, and to acknowledge and reply to all circulars and despatches from the Colonial Office. All this correspondence would first go to the registry within the Colonial Office, where it would be numbered and entered, and then it would be distributed among the appropriate departments<sup>(2)</sup>. By the 1840's most of this work was arranged geographically<sup>(3)</sup>, but even in the 1850's "there were few if any fixed principles of administration, and few departments of State had become efficient... the position of the Colonial Office was still ill-defined, and much ink was to flow before these matters were settled"<sup>(4)</sup>. Further, not until 1836 did the practice of writing minutes begin in the Colonial Office, and it was not fully established even in the 1840's<sup>(5)</sup>.

It is clear, therefore, that though there were very important links between the Secretary of State for War and Colonies and other departments and bodies, it still would have been impossible to define the precise rôles, powers or procedures of most of the offices in Britain which were connected directly or indirectly with the colonial administrations until the 1840's. On the other hand, by 1837 the Colonial Office "had achieved a fair degree of efficiency with definite assignment of men to its various divisions. Henceforth, the delays in transacting the business it was supposed to handle were due not to the Colonial Office but to the fact that so many other departments and boards had to be consulted on colonial matters, and several of these were often extremely negligent"<sup>(6)</sup>. (paragrah continues.-)

1. Ibid.; Mills published his work in 1856.
2. H.L. Hall, The Colonial Office. London, 1937, p. 19.
3. Ibid.; According to P. Knaplund "the organisation of the Colonial Office was almost wholly the work of Stephen..." C.H.B.E. vol. II, p. 302f.
4. Hall p.1; cf. supra. Chap.1 re Colonial Office at the Cape.
5. Ibid. p.6.
6. C.H.B.E. Vol. II, p. 302 ff.



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This is not the only indication that the Colonial Office was in advance of some other departments in Britain, in modernising its management of affairs.<sup>(1)</sup>

A practical example of the way in which things were managed through the Colonial Office in the middle of the 19th Century is therefore of some interest. During 1853 the Imperial Government informed the Governor of the Cape that it desired to build a light-house on Roman Rock. But the Cape Legislative Council decided not to guarantee maintenance for this building, pending the decision of the Parliament which was to meet the following year<sup>(2)</sup>. The Imperial authorities would, however, not build the light-house without this guarantee<sup>(3)</sup>. In a subsequent despatch, Darling asked the Imperial Treasury to pay for half the cost of construction for a light-house at Cape Point. The Secretary of State for War and Colonies signified approval of this<sup>(4)</sup>. The Lords Commissioners of the Admiralty provided the plans, stipulated the site, and the character of the light. The Treasury approved the project. Tenders were called for in the Colony, and subsequently, on April 19th, 1854, Newcastle informed the Governor of the Cape that a half of the estimated cost, (£6,965.8.9d.), had been placed upon the Estimates of the Imperial Parliament, (actually £3,500), and it was made clear that the Cape would have to provide maintenance for the light-house as well as its share of the cost of construction<sup>(5)</sup>.

In this example of colonial correspondence, one sees several factors at work, and something of the mechanism through which these factors were brought to bear: firstly, the Admiralty wanted a light-house on Roman Rock; it approached the Treasury, which passed the correspondence on to the Secretary of State for War and Colonies, who addressed the Governor of the Cape. The latter consulted with his Acting Colonial Secretary and Treasurer. The Civil Engineer was requested to report upon the matter;

1. Vide, infra, p. 243, of 245
2. Votes and Proceedings of the Cape Parliament, and Annexures, 1854, despatch Newcastle to Cathcart, 14/3/53.
3. Ibid., R. Osborne to Sir C.E. Trevelyan, 4/3/53; Newcastle to Cathcart, 23/4/53.
4. Ibid., Newcastle to Cathcart, 8/9/53.
5. Ibid., p. 8.

which was then laid before the Legislative Council, whose decision was to leave the matter for the Cape Parliament to decide. Meanwhile, the Cape Executive requested the Imperial Government to pay for half the cost of a light-house on Cape Point; the Admiralty provided the plans and specifications, the Colonial Civil Engineer the estimates, and the Imperial Treasury its sanction. The Secretary of State for War and Colonies managed the whole of the correspondence between the Admiralty, Treasury, and Colony. Underlying the entire negotiation was the bargaining about the cost and the proportions to be borne by the Imperial and Colonial Governments, and an attempt by the Treasury to get Lloyds of London to subscribe to the cost.<sup>(1)</sup> Pros and cons were weighed as to who would benefit most by the light-house - colonial shipping, trade and revenue, or Imperial shipping. With good grace the Imperial Government set aside little more than half the estimated cost; thankfully the Colony accepted the arrangement.

Such a clear-cut example would seem to argue that by 1853 departmental responsibilities were more than in the process of definition. How had this been brought about?

Reform had been in the minds of public men at least since the 1780's, and the great Reform Bill of 1832 was the result of the stirring of a younger generation of Tories as well as of Whig elder statesmen and more ardent young Whigs who desired to have greater efficiency and effectiveness, as much in the executive departments of State as in the Houses of Parliament. An old form of government then, in which there were as many vested interests as there were anomalies, was being critically probed by parliamentarians and civil servants, much as a tidal sea probes limestone cliffs ribbed with granite. William Huskisson and Robert Peel were representative of the parliamentarians at work in bringing about greater simplicity and uniformity to government, and the James Stephens', father and son, belonged to the class of civil servants who were of similar outlook. This also, was the Age of Bentham; utility provided the touchstone of reformers, but pains and pleasures were considered too. The greatest happiness of the greatest number was no idle or immoral doctrine, since it was what British philanthropists - who were practically all 'Christians' then - desired to see on earth too.

1. Ibid. Newcastle to Cathcart, 8/9/53.

Idealism, then, coupled with hard-headed fiscal realism, were the twin motives for reform, sometimes complementary, sometimes antagonistic. The abolition of slavery within the British Empire, and the movement towards laissez faire economic policies, were kindred movements in Britain; the endeavour to provide<sup>a</sup> new and rational frameworks of laws for trade, (W.Huskisson and R.Peel.), went parallel with private and public attempts to meet the challenge of the industrial revolution. The same groping towards reform and reconstruction can be seen in the conduct of colonial affairs. Earl Bathurst and Henry Goulburn, the first colonial reformers<sup>(1)</sup>, were the counterparts, and not merely the contemporaries of Huskisson and Peel. E.G. Wakefield, who was for the most part a political skirmisher; James Stephen the younger, a born civil servant; the statesman-like Durham; Secretaries of State like Lord Stanley, (1841-45), but more particularly Earl Grey, (1846-52), inherited their achievements and strove for greater fulfilment of their ideals. In the colonies themselves, Colonial Secretaries like Deas Thomson in Australia<sup>(2)</sup>, and Montagu in the Cape Colony, were representative of the same class. All of these men were organisers or would-be organisers of systems of government, and each of them according to his own character brought the touch of idealism to their work. They all worked in or with an 'unreformed' structure of executive government.

Broadly, then, the wider Imperial 'oligarchy'<sup>(3)</sup>, worked through an executive structure, which though rapidly changing in the second quarter of the 19th Century, presented a patch-work of old and out-moded, and new and dynamically intrusive offices, men and ideas. The 'dedicated' oligarchy' which Prouty found in the Board of Trade<sup>(4)</sup> and which existed in the Cape Colonial Executive Council, were only two localised expressions of a characteristic phase through which the British people were going. H.T. Manning<sup>(5)</sup> might quite easily have referred

1. Supra, p. 60, 61.
2. Supra, p. 78
3. XANNA, X. X.
4. Prouty, op.cit., passim.
5. Op. cit.

to the Colonial Office growing up under Bathurst, Goulburn and James Stephen, in the same terms; and Professor Morrell in his searching study of the Colonial Policy of Peel and Russell<sup>(1)</sup>, would undoubtedly subscribe to this view of the Imperial Government as a whole, as well as simply with relation to the Colonial Office.

What effect had this factor in Colonial affairs?

There is every sign, from the years when Lord Bathurst presided over the Colonial Office, that colonial governments were subjected to increasing supervision. The Board of Commissioners of Audit for the Colonies, established in 1814, though a branch of the Treasury, was actually the creation of Bathurst and Goulburn, and it never escaped from its ties with the Colonial Office, for it actually corresponded directly with that Office, instead of through the Treasury Office. It had extensive powers of criticism and recommendation, and examined salary lists for unauthorised alterations<sup>(2)</sup>. From 1816, a beginning was made to obtain uniformity in the method of presentation of all colonial accounts, to facilitate checking and comparison. In 1820, Governors were instructed to produce estimates of expenditure for each ensuing year after that date, and they were forbidden to authorise any expenditures which had not appeared upon the estimates and had not been sanctioned by the Secretary of State, excepting only in cases of extreme urgency<sup>(3)</sup>. The movement towards administrative uniformity and control was a continuous one thereafter. This was shown by the Colonial Secretary of the Cape, Rawson W. Rawson, in an address to Parliament in 1854. In explaining the form in which he introduced the Estimates to the House of Assembly, he stated that their "form is the result of an extensive enquiry by the Imperial Government into the accounts, not only of the United Kingdom, but of the British Colonies throughout the world. It was some twenty-five years ago," he said, "that this enquiry was made..." when Dr. Bowring<sup>(4)</sup> "was appointed to examine the accounts of France and Belgium, which were supposed to be admirably kept; and the result was, that a system of accounts for the United Kingdom was established, which about six or seven years ago, was extended to the whole of the colonies of the mother country. The advantage

1. *Op. cit.*

2. *Ibid.* pp. 516, 519.

3. *Ibid.*

4. Sir John Bowring.

of this general adoption of the same form," he declared, "is, that by following a uniform system of account, the financial position of any one colony can be compared with that of any other, and the accounts of one year in the same colony, can be compared with those of another year", and, he stated, confusion being obviated, it was also easier now to detect loss of public revenue arising out of "errors or frauds" in the accounting <sup>(1)</sup>.

A further elaboration of the apparatus for criticism and control of the colonial service, took the form of Reports, accounts and other papers laid before Parliament in Britain <sup>(2)</sup>. Ten such papers, between 1814 and 1852, listed by Mills, show that there was an obvious interest taken in the use to which patronage was being put before and after the passing of the Reform Bill in 1832: no less than eight of the ten papers referred to belong to the earlier period <sup>(3)</sup>.

1. Debates, op.cit., 15/8/54, p. 350f.
2. Mills, op.cit., p. 56ff., provides a list of these, up to 1856.
3. Abstract of the Schedule of Reports, Accounts and Papers laid before Parliament, from A. Mills, op.cit., p. 56ff.

Date	Sessional Number	Title
1814-15	353	Names of Governors, Lieutenant-Governors, and officers, superintending colonial governments.
1817	129	Return of offices in the colonies held under the Crown.
1822	377	Names of certain colonial officers, and dates of their appointments.
1823	167	Returns of persons holding office in the Colonies.
1824	116	Returns of persons holding office, who are now in the execution of them in the Colonies,.
1825	363	The same title.
1831-2	164	The same.
1831-2	210	Returns of pensions and retiring allowances of ex-colonial servants since 1815.
1849	3	Return of names of all governors... with salaries, places of residence, and former profession.
1852	391	The same title, and dates of appointment.

The appointment during the same period of Royal Commissions of Inquiry to Australia and to the Cape, and other colonial possessions, to examine and report upon the laws, general conditions and administration of the colonies, is indicative of a far wider interest in the colonies than could be caused by a pursuit of merely philanthropic ideals for aboriginal peoples. (1)

An opinion by James Stephen in 1822, in favour of a British Colony of settlement, as distinct from a colony acquired by conquest or session, namely, that British subjects who colonised open lands were entitled to all the privileges of the British constitution suitable to the peculiar circumstances of the colony, echoed the sentiments of Australians and of British settlers at the Cape, and gradually gained currency in Britain (2). Improvement of administrative methods in Colonies and elaboration of their constitutional forms thereafter went almost hand in hand. Ceylon possibly provided a pattern: placed under the Crown in 1801, it was governed by a Governor and Advisory Council and developed a "civil service, the first and for a long time the only one of its kind in a colony... formed of young Englishmen, trained on the spot". (3) There was a Supreme Court and circuit courts, and appeal allowed to the Privy Council, and though Roman Dutch law was retained, British procedure was largely adopted. New South Wales was granted an Advisory Council like that of Ceylon, and a Supreme Court, Court of Appeal, Circuit courts and a jury system, in 1823. Two years <sup>later</sup> Van Dieman's Land followed suit, and unofficial nominees were added to the New South Wales Council. Not long after both Colonies were granted legislatures comprising Executive and Legislative Councils. The Cape was treated in a similar fashion between 1825 and 1834 (4) Mauritius kept pace with constitutional developments at the Cape, and in 1834, Ceylon possessed a Legislative Council of the same kind as the Cape, New South Wales, and Mauritius. (5)

1. P. Knaplund, *The British Empire, 1815-1939*, pp117, 131f.; Walker, *op.cit.*, 165ff. E.A. Walker, *The British Empire, its Structure and Spirit, 1497-1953*, Cambridge, 1953, p.43.
2. Harlow and Madden, *op.cit.*, 160ff; Walker, *The British Empire, op. cit.*, p. 44f.
3. *Ibid.* 43f.
4. *Supra.* Ch. 1, *passim.*
5. Walker, *the British Empire, op.cit.*, p. 43f.

Thus it appears that the 1820's were crucial years in Imperial organisation. The Imperial Colonial Office took form, grew in authority, and its policies began to take a definable direction at least with regard to administration and colonial constitutions. There was an intelligent adoption of useful local forms of government and law; for example, in Ceylon, the native governments, East India Company administrative practice, and Roman-Dutch law; in Mauritius, "the French courts administering Bourbon law and the civil Code Napoleon were continued with few changes"<sup>(1)</sup>; in British Guiana, much of the Dutch form of government with which its people were familiar, remained<sup>(2)</sup>; the Cape Colony retained Dutch forms of local government until 1828,<sup>and</sup> Roman-Dutch law remained. But at the same time, throughout the Empire there was a cautious and deliberate blending of local forms of government and legal procedure, and of law, where the principles of British law were offended, to a developing Imperial pattern. Economic policy, with regard to currency and trade, roughly kept pace. In the same way<sup>(3)</sup>, though in the early years of the 19th Century, the Treasury, the Post Office and the Customs Board in Britain, as well as the Secretary of State for War and Colonies, made their own appointments to offices within their departments in the colonies, soon after 1812, the Secretary of State began to grasp a more general control of patronage. Not only did other departments<sup>(4)</sup> surrender the practice of making independent appointments, but they surrendered the right to make regulations without consultation with the experts in the Colonial department, and so permitted the practice to develop of all officers in a Colony addressing their parent organisations in Britain through the Governor and the Secretary of State for Colonies<sup>(5)</sup>.

The contrast, then, between the Colonial Office of 1812 and circa 1843 was quite clear. Firstly, where in 1812 the Colonial Office had still to learn almost everything about the variety of government forms, procedures, economic,

1. Ibid.

2. Harlow and Madden, op. cit. p. 100 ff.

3. Supra . p. 66.

4. In the matter of appointments, partially excepting the Customs Department, Vide. Supra. p. 203; & Manning op. cit., p. 419

5. Manning, op. cit., p. 419, 475ff., 511ff.

racial, and geographical conditions in the colonies, by the 1840's it had not only greater knowledge and experience, but it was bringing orderliness and uniformity to the whole Imperial structure. By 1839-41, Herman Merivale could deliver a series of lectures at Oxford on 'Colonization and Colonies'<sup>(1)</sup>, which one could rightly say was largely about the British system of Empire. In 1861 he would write, in a preface to a re-publication of the lectures, of the "leading principles of administrative and commercial policy" advocated in them, the practice of which he would defend against abandonment or modification<sup>(2)</sup>. Meanwhile in 1856, Merivale's friend, Arthur Mills brought out his systematic study of "Colonial Constitutions: an outline study of the Constitutional history and Existing Government of the British Dependencies..."<sup>(3)</sup>, dedicated, by implication, to the "enlightened and progressive system of colonial policy... happily adopted by Great Britain".<sup>(4)</sup>

Secondly, where previously the Colonial Office did not even know what other departments of State in Britain might be doing about staffing and departmental regulations in the colonies, by the 1840's, it controlled all the correspondence about these matters, and exercised wide powers of supervision and patronage in all departments, except, partially, in the Customs department.

The changes involved in all spheres of government during the first half of the 19th Century involved the personnel of administration in a great deal of work that became increasingly specialised. It would have been extraordinary if a professional class of colonial servants had not begun to grow during the same period. Until 1812 the use of patronage in important colonial posts was abused to a very great extent for private or selfish reasons<sup>(5)</sup> and a sudden transformation of the method of appointing civil servants would have been impossible to achieve. What took place first was a transformation in the motives of

1. Op. cit.

2. Ibid. p. 9.

3. Op. cit.

4. Ibid. p. v. H.T. Manning op. cit., for the period up to 1823. Professor Knaplund's study of James Stephen, the predecessor of Merivale as Permanent Under-Secretary for Colonies, 'James Stephen and the British Colonial System'; Harlow and Madden, op. cit.; Bell and Morrell, op. cit.; H.L. Hall, op. cit., C.F.J. Muller, Die Britse Owerheid en die Groot Trek, Cape Town, 1948, for the period until circa 1850, provide modern textbooks and source books illumination this aspect of colonial history.

5. Manning, op.cit., Chapter 3, passim.



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the dispensers of patronage, and secondly, a reform of methods. One can assess the rate of change as well as its nature, by studying a cross-section of appointments, from Governors to clerks. Outside the Colonial Office, the most important official in the colonial administration, with wide powers of his own in the exercise of patronage<sup>(1)</sup> was the Governor, with whom it is therefore most fitting to begin.

In 1844, Wakefield declared that colonial governors were generally selected with(out) any sort of care. "Now and then," he wrote, "when the affairs of a particular Colony may happen to have forced themselves upon public attention, as for Jamaica in 1839, and Canada in 1838, 1839 and 1843, a Governor may be specially chosen for the sake of his qualifications. But otherwise, the selection is a mere affair of patronage; and the influence of a man's friends a much weightier recommendation of his claims than any reputation for ability he can possibly bring to back them... Colonial Governorships..." he added, "(are) especially devoted to the benefit of middle-aged and elderly gentlemen" of the army or navy, who have "a little more interest with the powers than be than their fellows"<sup>(2)</sup>. This view, still popularly accepted, requires modification, especially when considered in relation to the Cape. There has frequently been reference to the long succession of Governors appointed to the Cape from among officers who served Wellington in the Napoleonic wars. Every Governor from 1828 to 1854, Pottinger alone excepted, had served with Wellington. James Stephen himself said it was a period "replete with abuse"<sup>(3)</sup>, and it is true that men who were unfit for high offices in the colonies were sometimes appointed, and paid with preposterous lavishness, as Somerset's £10,000 a year at the Cape should show. But generals were frequently needed at the Cape<sup>(4)</sup>, and payment

1. Supra p.55/Infra p. 228!!

2. Wrong, op. cit.p.209 ff, from a transcript of Wakefield's 'Sir Charles Metcalfe in Canada'.

3. C.H.B.E., p. 304 f.

4. Vide, supra p. 115 f.

of high salaries ceased as soon as better knowledge of the finances of the Colonies revealed how anomalous they were<sup>(1)</sup>. What then is one to make of the criticisms of Wakefield, Stephen, and Sir Cornwallis Lewis' statement<sup>(2)</sup> in 1837 that "the scum of England was poured into the colonies"?

There is evidence to suggest that these critics were at least partly wrong, and that Lewis' words were particularly extravagant. At the Cape, if Caledon was appointed because of his influence in the parliamentary elections in County Tyrone in Ireland<sup>(3)</sup>, and Cradock, Somerset and Cole were not appointed to carry out particular services for which they were professionally equipped by previous training and experience, it was otherwise with their successors.<sup>(4)</sup> Governors Sir Benjamin D'Urban, Sir George Napier, Sir Peregrine Maitland and Sir Henry Pottinger, were appointed mainly for civil reasons, nominally during times of peace within the Colony<sup>(5)</sup>. Smith and Cathcart were appointed primarily for military reasons.<sup>(6)</sup> Sir George Grey, inasmuch as he was the first civil governor since 1811, fell into a different category. All these Governors had their

1. D'Urban received only £5,000 a year, other salaries were reduced in proportion, "offices were in some cases combined to the advantage of the Exchequer and the detriment of the public service". Walker, *History of S. Africa*, p. 175. Walker ascribes the reduction of D'Urban's salary to the fact that "he was the first Governor who had no high family connections", but it is not clear that Cole had had any, and Michael Roberts (*South African Archives Year Book, Vol. II, 1951, 'Lord Charles Somerset'*), proves that Somerset had no particularly important political connections either. The general reduction of salaries argues simply a more realistic assessment of the financial state of the Colony. It is significant that it occurred at the same time when appointments to governorships began to be made according to a new principle. Vide infra. p. 224.
2. C.H.B.E. II, p. 304 f.
3. C.H.B.E. VIII, p. 199.
4. Caledon was Governor of the Cape between 1807 and 1811. Cradock, from 1811 to 1812, Somerset from 1814 to 1826, Cole from 1820 to 1833. It is noteworthy that all of these Governors took their duties seriously, each of them forwarding colonial interests. Vide Manning, op. cit., Ch. 13, passim, and Memoirs of Sir Lowry Cole, Ed. by M.L. Cole, and S. Gwynn, passim. Cole intrigued for transfer from Mauritius to the Cape for pecuniary and health reasons, and would scarcely have remained in the colonial service if alternative employment with equivalent remuneration had been possible. Ibid. p. 230
5. Their respective periods of rule were 1834-8, 1838-44 1844-7, 1847:
6. 1847-52, 1852-4.

especially appointed tasks, or were possessed of aptitudes which the Secretaries of State who appointed them believed fitted them especially for the services required of them. D'Urban, as Governor of British Guiana, had experience of governing institutions in a former Dutch colony, with a Council of Policy and a 'Combined Court', and had had to institute a constitutional change there in 1831, which seemed altogether to make him a suitable choice for employment at the Cape. In 1833, therefore, he was sent to the Cape, to introduce a constitutional reform of a kind not very dissimilar from that made in Guiana<sup>(1)</sup>. Napier was chosen by Lord Glenelg, to carry out his "liberal, humane, and philanthropic policy", after his qualifications had been carefully tested<sup>(2)</sup>. Maitland may have been appointed because he was related by marriage to the Duke of Richmond<sup>(3)</sup> but there is reason to believe that he may not have been appointed had he not conformed to Colonial Office views in the same way as Napier did<sup>(4)</sup>. Pottinger was famed in India, China and in Great Britain as the man to settle difficult crises, especially with unruly native peoples - and the settlement after the War of the Axe, (1846-7), seemed to call for just such a man<sup>(5)</sup>. Sir Harry Smith was the soldier skilled in frontier wars, and famed for defeating barbarous nations in South Africa and India; he had moreover, in 1847, presented a Memorandum, which won the favourable comments of the Duke of Wellington, on the question of how to solve the problems of the Cape frontier, which Pottinger, on his arrival, had still found in a warlike state.<sup>(6)</sup> Cathcart was perhaps not well known to

1. Harlow and Madden, op. cit., pp. 103-4, footnote.
2. Muller, op. cit., p. 213.
3. Bell and Morrell, op. cit., p. 507, footnote.
4. Muller, op. cit., p. 219.
5. D.N.B. op. cit., p. 224ff. Vol. XLVI.
6. The Autobiography of Sir Harry Smith, Ed. by G.C. Moore Smith, p. 570ff, does not mention these transactions, but Smith was in England, jobless, and as the Lion of Society, in a good position to recommend himself - ibid. Cory Library MSS. No. 1189, p.2, - a record of a conversation between Sir George Cory and Mr. J.M. Orpen, in December, 1920, states: "Sir Harry Smith...got his appointment through his 'Notes on the Kafir War'. They were laid before the Duke of Wellington. These notes were sent as confidential to Pottinger and Berkeley - refusing reinforcements, and saying how disappointed the Government was at the protracted hostilities. Sir Harry Smith was to supersede both Governor and General - as he held out prospects of military retrenchment. Cf. F.P. Feb, 1848, (No. 912), pp. 110-1, Grey to Pottinger, and Enclosure.

the public and his appointment to succeed Sir Harry Smith, was received with some surprise, but he was evidently believed to be the man to end the most costly and violent of the Kafir Wars, and was also expressly recommended for the job by the Duke of Wellington<sup>(1)</sup>, who had evidently lost faith in Sir Harry. In the upshot, Cathcart proved his independence of judgement and ability in both civil and military matters, though he fell short in matters requiring a wider statesmanship. Lastly, Sir George Grey's views were not only well known in Britain, they had been circularised among colonial governments with native problems, and his policies had evidently been successful in New Zealand; moreover, his experience there had led to his showing a specific interest in South African native affairs; and it was believed that he was equipped by experience to bring success to the parliamentary experiment commenced at the Cape in 1854.<sup>(2)</sup>

A turning point in the use of patronage for the appointment of Governors seems therefore, to have been reached about 1832, the year in which the Reform Bill was passed. From an extensive study of appointments made throughout the British Empire, H.L. Hall also considers that appointments 'for dubious reasons' 'soon ended' after 1832<sup>(3)</sup>. By the 1850's, a professional class of Governors was distinctly favoured, though not exclusively used<sup>(4)</sup>. Already, by 1841, Hall argues, "Considerable trouble was taken over the selection of these men", and Queen Victoria herself "insisted...that she should be consulted before the final decision was made, and was anxious about the type being chosen."<sup>(5)</sup> It was probably not simply as a consequence of this however, that Peel and Stanley "spared no trouble in selecting Sydenham's successor" in Canada, and chose Sir Charles Bagot (1843), who not only had "gained golden opinions" for what he had

1. D.N.B. op. cit., Vol. IX, p. 286 f.
2. H. Merivale, op. cit., p. 500 ff; Cape Monthly Magazine, Vol. V, 1859; Dr. A.E. du Toit, The Cape Frontier... 1847-66, Archives Year Book, 1954, Vol. I, pp.82-6; G.C. Henderson, Sir George Grey, Pioneer of Empire in Southern Lands, p. 128.
3. Op. cit., Ch. V. passim.
4. Ibid.
5. Ibid., p. 91.

already achieved in America, but was reputed to be "a perfect gentleman in manner and feelings".<sup>(1)</sup> Stanley, also appointed Sir Charles Metcalfe, "the best man available", to succeed Bagot, in 1846. Then, for all that Elgin was Durham's son-in-law, and Earl Grey Durham's brother-in-law, Elgin was a Peelite Tory, a political opponent of Grey's in Britain, and might have been overlooked by the Colonial Secretary;<sup>(2)</sup> but, it is argued, Grey sought out the man who would most likely prove successful in settling the affairs of Canada. Of Earl Grey, it is in fact argued again and again, that he exercised a scrupulous care in the administration of Colonial Office affairs. His appointment of Henry Barkly to British Guiana was another example of his 'finding the best man available': "Although (Barkly) belonged to the Opposition in the House of Commons, 'it was hoped', (said Grey), 'that he would command the confidence of the colonists from having been one of the ablest...of the advocates of their interests in Parliament'."<sup>(3)</sup> The examples quoted from the history of American colonies indicate that the care taken in appointments to the Cape was not unusual, or accidental. Indeed, with regard to the Cape, a further example of the care with which important appointments were sometimes made, should end doubts on that score. It may be found in Earl Grey's selection of Major Hogge and Mr. C. Mostyn Owen as Assistant Commissioners under the High Commissioner in 1851. Both these gentlemen, Earl Grey explained to Sir Harry Smith, "are well known to you from their previous services at the Cape, which have earned for them the very high commendation both from yourself and your predecessor in the government of the colony. The influence which Major Hogge acquired over the coloured inhabitants of the colony"<sup>(4)</sup>, which was evinced by his success in inducing them to follow him into the field during the last war, and his complete knowledge of their character, and the equal knowledge of

1. C.H.B.E. Vol. II p. 359.
2. C.H.B.E. Vol. II, p. 370. The writer also states that Elgin "was personally unknown" to Grey; the latter was the son of the Whig Prime Minister of 1830-34, and Secretary of State in Russell's Ministry, 1846-52.
3. Ibid. p. 91; vide also Bell and Morrell, British Colonial Policy, op. cit., p. 441; and Morrell, The Colonial Policy of Peel and Russell, op. cit., passim.
4. The assistant Commissioners were, inter alia, intended to investigate the causes of their rebellion in 1851.

it possessed by Mr. Owen, to which he adds the advantage of an acquaintance with the Kafir language, are calculated to render them highly useful to you in conducting the inquiries and making the arrangements which will be necessary in order to ensure the future tranquillity of the frontier districts of the colony. I must add", Earl Grey continued, "that the communications I have had with these gentlemen have led me to form a very high opinion of their ability".<sup>(1)</sup> In his memoir on the colonial policy of the Russell administration, Lord Grey went even further, finding in the fact that they had already left the colony "and did not, in consequence of being appointed to the office they accepted, intend to remain there for more than a short time", the favourable consideration that "they were less likely than any of the permanent residents, to have their judgment biased by those party and personal animosities which are unfortunately too prevalent among the latter."<sup>(2)</sup>

That measures and not men determined, in general, the disposal of patronage, is also indicated by such words as those in a private letter from Lord Glenelg to Sir George Napier in April, 1838, with regard to the Councillors: "No Gentleman must be allowed to retain his seat at the Council Board," Glenelg wrote, "who shall avail himself of it to defeat the policy with which this Act has been passed, or who shall refuse faithfully to co-operate with you in carrying that policy into execution"<sup>(3)</sup>. Not even a favoured Governor like Napier could influence the Secretary of State with regard to patronage if the Secretary of State felt that principle was at stake. Lord Stanley, for instance, would not accept Napier's recommendation that the Acting Colonial Secretary, John Moore Craig, should succeed to the

1. PP. 1851, XXXVIII, 1380, June 1851, Kafir Tribes, Earl Grey to Sir Harry Smith, 13/5/1851.
2. Earl Grey, *The Colonial Policy of Lord John Russell's Administration*, London, 1853, Vol. II, p. 243, in an invaluable section on Cape and Natal affairs.
3. Muller, *op. cit.*, p. 218.

permanent post on Lt. Colonel Bell's resignation, on the ground that Craig was a near relation of the Governor's<sup>(1)</sup>. He appointed instead, John Montagu, who had gained a reputation for efficiency and judgment in Van Dieman's Land<sup>(2)</sup>. Montagu, was moreover, a philanthropist<sup>(3)</sup>, and a good Anglican churchman<sup>(4)</sup>. Montagu was to remain as Colonial Secretary of the Cape until 1853, when he was succeeded by Rawson W. Rawson, whose tried ability, and years of experience in the Board of Trade and in colonial administration in Canada and in Mauritius, fitted him for a peculiarly difficult role at the Cape, where Parliament was to begin immediately after his arrival, and where his merits as a statistician and an expert at taking censuses would be useful.<sup>(5)</sup> As it was with the Governors and Colonial Secretaries, so it became with the lesser Executive Councillors<sup>(6)</sup>. Of those who controlled so much of Cape colonial affairs in the 1840's and 1850's, it may be said that nearly all were worthy of office<sup>(7)</sup>, and had been appointed because of training or because of proven qualities of character or of aptitude. Only one appointment smacked distinctly of arbitrary patronage. It occurred in 1859, when the Secretary of State, Bulwer Lytton, appointed the tippler, E.M.Cole, a scion of the house of Derby, to the Auditorship, and maintained his stand flatly against the advice of the Colonial Executive

1. Theal: History of South Africa since 1795, Vol. II, p. 214.
2. W.A. Newman, Biographical Memoir of John Montagu, Ch.II, passim; D.N.B. passim.
3. Muller, op. cit., p, 219.
4. A.F. Hattersley, A Victorian Lady at the Cape, 1849-1850, p. 26 f.
5. Cape Monthly Magazine, Vol. V, 1859. passim.
6. Re: lesser Executive Councillors at the Cape, vide supra Chap. V.
- 7; P.G. Brink was evidently an exception. Vide supra p.193f.

Council and the pleading obstinacy of Sir George Grey, who wished to have Richard Southey confirmed in that office<sup>(1)</sup>.

It is probably a valid conclusion, then, that though patronage itself was not totally abolished, already by the 1830's, a change for the better had occurred as to the way in which patronage was used. It remains to consider what the situation was with regard to less important appointments.

With regard to these, on general principle, "colonial appointments are vested in the Crown and made by the Secretary of State"<sup>(2)</sup>, but it was "understood that appointments under £300 a year are left to Governors, while their recommendations are very generally followed as to others"<sup>(3)</sup>. In 1850, only 23 officers at the Cape, if one excludes the Executive Councillors, received fixed salaries in excess of £300, and five of this number were clergymen.<sup>(4)</sup> Charles Jeffries concluded that "The Colonies were as a rule self-supporting in the matter of staff, only the highest officers such as those of Governor, Chief Justice and Colonial Secretary being filled from outside".<sup>(5)</sup> In this respect, a letter of Lord Stanley's, dated 9th July, 1845, is probably conclusive: requested by the Vice-President of the Board of Trade to nominate his son to a post in Australia, Stanley replied that "Virtually the patronage of all the

1. Cole was a son of Lady Elizabeth Hamilton Stanley, a sister of the Earl of Derby. Vide, The Cape Monthly Magazine, Vol. VII, passim. G.T. J. 11/9/45 reports him to be the "cousin of Lord Stanley"; G.H. 1/55, despatch No.95, dated 9/2/59, and No.33 of 16/10/59, Lytton to Grey. Also G.H. 23/27, and G.H. 23/28, passim, contain despatches on this matter, which was notorious; the Cape Parliament also objected, without effect. Vide, Votes and Proceedings, 1859, passim.
2. Mills, op. cit., p. 25.
3. Ibid.
4. Vide, Cape Annual Blue Book, 1851, Civil Establishment list. Note: Magistrates were generally also Civil Commissioners, and received salaries for both offices - generally £300 and £100; they are not included in the 23 officers referred to.
5. C. Jeffries, The Colonial Empire and its Civil Service. Cambridge 1938, p. 6.



Colonies is vested in the respective Governors; and ... every vacancy which occurs must be provisionally filled up on the spot, and consequently in the case of the Australian colonies, held by the person appointed for at least a year, before the supersession by the Secretary of State can take place. This becomes consequently a most invidious course of proceeding. It dissatisfies the Individual displaced, the Colonists generally and especially the Governor, who feels his authority weakened by having his recommendation disregarded. "Practically therefore, I have little or nothing at my disposal. It sometimes happens that an office is vacant... for which no qualified person can be found in the Colony; but this can hardly be the case in Australia, where consequently, I feel myself bound to take the recommendations of the local authorities."<sup>(1)</sup> Lord Stanley intimated further that he would supply a note of recommendation to a Governor, but was chary of using even this amount of interference <sup>(2)</sup>. As far as the Cape was concerned, a scanning of civil service lists in the Court Registers (1806-12), and Annual Blue Books make it clear that most of the officers appointed were in fact local residents. Dutchmen predominated<sup>(3)</sup>. Unfortunately, men appointed from overseas prevented promotion for all but a handful of these colonists into the highest offices in the Colony, and the colonists were further discriminated against by the imported officials being paid in sterling; colonists were paid in the depreciated rix-dollar currency of the Colony. Not until the Cape's currency had been fully converted by the 1830's, did this anomaly end<sup>(4)</sup>.

1. N. Gash, *Politics in the Age of Peel... 1830-50*, London, 1952, p. 349.
2. Ibid. Cf. infra. p.241.
3. W.W. Bird, *op. cit.* p. 9, stated in 1822, that "these young Cape-born Dutch, (for it would be thought an affront to call them Africanders), are initiated into this office (the Colonial Office), which is the future nursery for future landdrosts, and for the heads of many of the departments!"
4. Manning, *op. cit.*, p. 417 f. This author probably goes too far in arguing that Dutch officials were either frustrated in their efforts to gain promotion, or found no opening at all for their services, or would not offer themselves because "the younger sons or even distant cousins of the British aristocracy", and others who had "neither qualifications nor antecedent service", were appointed in their stead. Even with regard to senior departmental posts, a study of the civil establishment list does not entirely support Manning's conclusion. Vide Cape Almanacs, and Annual Blue Books, and notices of appointments in Theal's Records, *op. cit.*

The Governor's patronage, then, was not entirely unfavourable to colonists, but there was still much that wanted improvement. Sir Richard Plasket, Colonial Secretary at the Cape (1825-7), wrote in 1825 that "The Colony is at its lowest ebb and something must be done to alter the system 'inToto'... almost every single department under this government is in a state of total incompetence to carry on its business. The Court of Justice is perhaps the worst... The Audit Office is a perfect farce, it give semblance to what it never fairly investigates... Some of the Landrosts and Government Residents are so overwhelmed with debt and so involved in all their circumstances, as to render them anything but respectable in the eyes of those under their authority... As to our finances, we are perfectly bankrupt - it is needless to conceal it, as we have not enough to pay our salaries."<sup>(1)</sup> In the matter of salaries, there would not be much improvement for many years. In 1835, in the Eastern Districts, matters reached such a point, despite the most stringent retrenchment in the salaries of the highest officials, who had formerly been lavishly paid, that government almost completely broke down<sup>(2)</sup>. There was some improvement in the 1840's, but the question of salaries was one of the first subjects to which Parliament turned its attention in 1854 - 5<sup>(3)</sup>. In the matter of the character of the appointees sent from Britain, there is evidence of an unfortunate state of affairs too. Labouchere complained in the House of Commons in May 1830, that for a long time the Colonial department had been "sending out men with broken fortunes to occupy situations in the colonies<sup>(4)</sup> by which many serious evils arose to the colonies themselves."<sup>(5)</sup>

1. Theal, Records, XXIII, p. 176.
2. Muller, op. cit., p. 30.
3. Vide, Debates, op. cit., passim.
4. This recalls Sir Lowry Cole to mind, vide supra p. 222.
5. M.A.S. Grundlingh, The Legislative Council of the Cape of Good Hope, 1834-53, unpubl. M.A. thesis, Stellenbosch 1937, p. 31f.

H.L. Hall<sup>(1)</sup> also concluded that during the 1830's there was a pretty corrupt or careless attitude existing still in the matter of appointments to the colonial civil service. At the same time it is patent that this patronage was not always exercised in other than a public spirit<sup>(2)</sup>, and that it was sometimes the means of introducing very capable men into colonial offices where their activities distinctly benefitted the colonies. Dudley Perceval and Ker Baillie Hamilton, successively clerks of the Council<sup>(3)</sup> at the Cape were two such men<sup>(4)</sup>.

It is evident that during the 1830's in respect of ordinary civil servants also, a turning point was reached with regard to the careless use of rights of patronage. A Select Committee on sinecure offices in the colonies, reported in 1835 that seventy-one offices in the colonies, were either sinecures or their duties were executed by deputies, but that in 1835 only four of these offices were held by men who did not reside in the colonies.<sup>(5)</sup> Two years later, Lord Glenelg issued the first version of a code of Colonial Regulations, on the 30th March, 1837. It was the first attempt to gather together in one code the mass of regulations about colonial civil servants, which lay dispersed in the correspondence of his predecessors with colonial officials<sup>(6)</sup>. At the same time "there was a steadily growing consciousness in responsible quarters that the Patronage system was inadequate to meet the needs of the Colonial Empire, and to supply the personnel required to deal with the new and complex problems of administration, which the expansion of the Empire

1. op. cit., p. 117.
2. Jeffries, op. cit., p. 6.
3. 1825 - 28, 1829-34.
4. Kilpin, Romance, p. 61.
5. C.H.B.E. Vol II, p. 304 f. The Report of this Committee is not in Mills' list, *supra*. p. 217
6. C. Jeffries, op. cit., p. 6.

was continually presenting".<sup>(1)</sup> By 1839 "a very different tone prevailed" in London from that of a few years before, and a circular despatch of 9th September intimated that officials would in future not be left "always in one colony", but would be moved "as the Office might think best for the service"<sup>(2)</sup>. A Colonial service, in the sense of a body of officers employed in the service of the Empire as a whole obviously still did not exist<sup>(3)</sup>, but another circular despatch sent in 1842, at the instigation of Sir Henry Taylor<sup>(4)</sup>, asked Governors "to be careful to furnish full reports on all officers who might be in the line of promotion to colonial secretaryships or colonial governorships,"<sup>(5)</sup> and the way seemed open to the creation of a real Imperial civil service.

A new and important departure in this connection was made in 1848, when a Select Committee on Miscellaneous Expenditure investigated the costs and structure of certain offices in the British Civil Service. Charles Edward Trevelyan and Sir Stafford Northcote were then given the opportunity to voice profound criticisms of the civil service.<sup>(6)</sup> Trevelyan was given another opportunity when in November 1848, he and two others were commissioned to write a report upon the Treasury. Six months later he reported on the Colonial Office, and advocated that clerkships should be classified according to whether the work done was merely copying, or whether it involved intellectual ability and responsibility of a larger kind. As a corollary, he advised that clerks should be recruited through a system of examinations<sup>(7)</sup>.

1. *Ibid.* G.T.J. 23/1/34. Already in January 1834, the Editor of the *Graham's Town Journal* could write, "as to PATRONAGE, we thank our stars that though it may still lurk in some murky corner of the Colonial Office it needs but to be dragged into the blaze of public opinion, and its annihilation is complete".
2. Hall, *op.cit.*, p. 117.
3. Jeffries, *op. cit.* p. 6.
4. Taylor was an influential Colonial Office official 1824-72, D.N.B. Vol. LV, p. 410.
5. Hall, *op. cit.*, p. 117.
6. Cohen; *The Growth of the British Civil Service, 1780-1939*, *passim*.
7. E. Hughes; *Sir Charles Trevelyan and Civil Service Reform, 1853-5*, in the *English Historical Review*, Vol. 64, (1949), p. 53.

The Select Committee failed to present a convincing report, and did not sponsor reform,<sup>(1)</sup> but the Colonial Office was quick to make use of Trevelyan's suggestions. Individual applications for increases in salary from clerks in different offices at the Cape having been submitted to the Secretary of State for his decision, Earl Grey refused to consider such isolated cases unless furnished with "an estimate of the total cost, present and prospective, which the proposed increase might occasion together with a statement of the probable effect of the measure in giving birth to, and in supplying a precedent for, other claims for increase of salaries in other departments of the public service."<sup>(2)</sup> Furthermore, Earl Grey stated that he wanted "some careful foresight of more than the personal interests and claims of the individuals immediately and expressly concerned."<sup>(3)</sup> This implied both the introduction of uniformity of salary scales and an examination of the utility of individual appointments in the public service. Consequently, the Cape Government established a Board of Officers to conduct a "general inquiry into the salaries and duties of clerks" in its service. Its report and the Governor's comments thereon, (probably Montagu's), were sent to the Secretary of State, who submitted these papers to the Treasury. After considering the matter, the Treasury then set out regulations which were calculated to introduce uniformity in the salary scales, according to three grades of service. The regulations also provided for the recruitment of clerks by an examination system, which should control not merely entry into, but promotion out of the various grades of the civil service. So began a new age in the administrative history of the Cape Colony, and of South Africa. *n*

1. W. Griffith, *The British Civil Service, 1854-1954*, H.M. Stationary Office, p. 12; Cohen, op. cit., p. 91.
2. Cape Blue Book, 1851, p. 269 ff. Government Notice of 23/1/50.
3. Ibid.

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(hand p.)

It is not surprising, in reading these regulations, to discover similarities with the Northcote-Trevelyan Report of 1854, or to find that it anticipated the famous Order-in-Council of the 21st May, 1855, which set up a Civil Service Commission in Britain,<sup>(1)</sup> which marks the foundation of the modern British Civil Service system, Trevelyan was Assistant Secretary to the Treasury and Northcote was a legal assistant at the Board of Trade at the time when the Cape civil service regulations were issued<sup>(2)</sup>.

The Cape Civil Service regulations of 1850, declared<sup>(3)</sup> inter alia, that "upon the nomination by the Governor of an individual for a clerkship, the person so nominated is to be examined by a Board, to be constituted for that purpose, composed of two or three heads of department"; "the object", it went on, "of which examination is to ascertain that he possesses the requisite degree of education for the satisfactory execution of the official duties which will be entrusted to him. He is to be examined in the common rules of arithmetic, and in vulgar and decimal fractions, and he is to be required to make an abstract of some official documents, to test his intelligence, and to show that he is able to write and compose correctly. The result of this examination is to be reported to the Governor, and the candidate is to be admitted on probation only, in case it shall be considered satisfactory... The confirmation of his appointment will depend upon the Governor, (after one year), being satisfied of his talents, conduct and assiduity, by a written certificate from the head of the department in which he has served his probation...."<sup>(4)</sup> Success in this examination enabled candidates to enter the 3rd class grade of clerks. Promotions were to be made "on the grounds of superior fitness, seniority being only considered when other claims are equal".<sup>(5)</sup> These Clauses should not

1. Cohen, op. cit., p. 111.
2. Ibid. p. 92; and see appendix to this Chapter.
3. Cape Annual Blue Book, 1851, p. 269 f.
4. Ibid. Clause 6.
5. Ibid. Clause 12.

be read as inaugurating a system of examination for those in whose favour the Governor still exercised a free patronage, for, elaborating the 6th Clause partly quoted above, Montagu notified the public on 29th January, 1850, that the auditor-General, the Master of the Supreme Court, and the Superintendent-General of Education had been constituted a Board of Civil Service Examiners; and he ordered that "Persons who are desirous of entering the service as clerks are therefore requested to send in their names to this office without delay, in order that they may at once undergo the examination, and that a list of qualified candidates may be framed, from which His Excellency will select those individuals of whose qualifications he may have received the most favourable report from the examiners, to fill vacancies as they occur".<sup>(1)</sup> This, then, was a clear and significant modification of the opening sentence of Clause 6 - "Upon the nomination by the Governor of an individual for a clerkship...", for it made it quite clear that entrance to the Public service was not to be simply by a prior exercise of the grace and favour of the Governor, but was open to all applicants who could succeed in the examinations. In the same notice, Montagu stated that "All vacancies occurring in the higher classes and in the civil Commissioner's offices will be filled up by the appointment of clerks from the lower classes, when they are found duly qualified; but as this may not always be the case, candidates for new employment, who may wish to qualify themselves for service in the higher classes, may do so by passing the higher classes of examination." Clerks would be "at liberty" to present themselves for these higher examinations "on application to this office".<sup>(2)</sup> Further, in order to give incentive to clerks and to attract a better class of personnel, Montagu stated that "His Excellency will also strongly recommend to the Secretary of State that all vacancies of Civil Commissioner, Resident Magistrate,

1. Ibid. p. 272 f.

2. Ibid.

and Clerk of the Peace, be filled up in future by the promotion of clerks who may have shown themselves competent to discharge the duties of these several offices." (1) Finally, it was intimated that the age of candidates for 3rd class clerkships or clerks to Resident Magistrates would have to be between 18 and 25 years of age.

In a letter to the members of the Board of Examiners, also dated 29th January, (2) Montagu explained more fully the desires of the Government. It was not the purpose of the examiners simply to sift those who would be competent in mere clerical duties, from those who were unfit, but to find "a body of well-educated young men, prepared to serve in the lowest grade of office, provided a reasonable prospect is held out of advancement, eventually, to places of honour and trust.."; therefore Montague wrote, "His Excellency conceives that the Government is justly entitled to exact higher qualifications, even for clerkships, than the mere discharge of clerical duty would require." The Examiners were therefore instructed to divide all candidates to the Civil Service examinations into three classes: the 3rd class to show competence in arithmetic, English grammar and composition; the 2nd, in addition to the tests for the 3rd class certificate, to pass in geography, history and English literature. First class clerks would have to prove themselves competent in all the tests for 3rd and 2nd class clerks and also satisfy the Examiners of their knowledge of Classics, Mathematics and Physical Science. Additional and more explicit instructions for candidates were issued from the Cape Colonial Office a month later (3). Candidates had to prove their age and produce "testimonials of character and respectability". If they were over 25 years of age they might be examined "for admission into the higher classes" of the Service; records of the marks - whether candidates had passed poorly, with credit or "with high merit" - were to be

1. Ibid.
2. Ibid. p. 273 f.
3. Ibid. p. 275 f.



kept in the Colonial Office. Finally, the rule for promotion was more closely defined: "upon a vacancy occurring in the first or second class, a Clerk in the class immediately below will be appointed to fill it, provided there be no person who has qualified himself for the office by passing the higher classes of examination, and is waiting for a vacancy or serving in the third class, though he has passed the examination for the higher classes".<sup>(1)</sup>

It would appear, then, that a shabby past, where appointments to the Colonial Service were concerned, had been broken within 1850. But that year is best looked upon as having witnessed a profession of faith, or an assumption of principle which had to be lived up to by ordinary mortals accustomed to easier standards of conduct. Montagu himself was still to use his influence to appoint Southey in his place,<sup>(2)</sup> in the same way as he had appointed J.C. Davidson before the Civil Service regulations were passed. Harry Rivers, the Treasurer, could not have been blind to the uses of patronage. His one son, Josias, was appointed, "by the Grace of God and Sir Harry Smith"<sup>(3)</sup>, Assistant Civil Engineer of the Cape in 1848, and there were complaints that the office was a sinecure<sup>(4)</sup>. Another of Rivers' sons was appointed to an important secretarial post in the Government of Bombay<sup>(5)</sup>.

1. Ibid. Specimen examination papers are appended to these notices, p.p. 276-281.
2. Supra. p. 159
3. E.P.H. 3/11/49.
4. Ibid.; Josias Rivers was also appointed a Justice of the peace in Uitenhage and Somerset East on 3/5/48, and became a Visiting Magistrate to the convicts working on the Zuurberg Pass (E.P.H. 13/5/48). He was appointed temporarily to the office of Emigration Agent as well, without extra pay, in 1850. (E.P.H. 1/2/50). In 1861 he became Clerk of the Executive Council. Josias Rivers had stood bail for a party which had assaulted the anti-convict Association leader, John Fairbairn, (supra p. 74), and was consequently subjected to unbridled attacks in the Cape Press, which possibly account for the splenetic remarks of the Editor of the E.P. Herald. Vide, E.P.H. 3/11/49, and 24/11/49.
5. The Graham's Town Journal 23/10/61; Het Kaapsche-grensblad 16/2/61.

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Montagu's own son was made Chief Clerk of the Colonial Office at the Cape, and eventually became Under-Colonial Secretary under Rawson.<sup>(1)</sup> The son of the Collector of Customs, W.S. Field, was appointed a Sub-Collector and eventually succeeded his father.<sup>(2)</sup> Finally, a Committee of the Legislative Council was to report in 1860 that "notwithstanding the existing regulations, no less than 41 gentlemen have been admitted into the Service, since 1850, without passing the required examination"<sup>(3)</sup>. It also remarked upon the fact that some of these gentlemen had been appointed despite properly qualified people being available, who had consequently been disappointed of promotion. Further, the Committee reported that there were still discrepancies in the rates of pay accorded to some individuals<sup>(4)</sup>. Already in 1854 it had been revealed how a Governor<sup>(5)</sup>, had transgressed the regulations. Sir Andries Stockenström requested in the Legislative Council an explanation as to how the Executive Government used its power of nomination, and referred to the instructions contained in despatches from the Secretary of State about the rules governing the appointment of civil servants. His question arose out of the appointment of Mr. Meurant as Magistrate at Kat River, when technically and on principle he ought not to have been appointed to public office. In his reply the Colonial Secretary stated that the appointment had been made directly by Sir George Cathcart, when no member of the Executive Council was near him, and he affirmed that the Secretary of State had not been apprised of Meurant's disabilities<sup>(6)</sup>. It was not

1. G.H. 23/27, No. 32, Grey to Labouchere, 11/7/57.
2. Supra. p. 205
3. Votes and Proceedings of the Legislative Council, 1860, p. 244, Report of a Committee on the Civil Service, dated, 16/7/60.
4. Ibid.
5. Cathcart.
6. Debates of the Cape Parliament, 25/4/55, Vol. II, p. 206 f.

apparent whether the Governor had acted in ignorance of the regulations, and the Secretary of State had not raised any objections.<sup>(1)</sup> In another case, where two clerks had been admitted into the civil service without undergoing any examinations, the Secretary of State had simply written that "I have not received any explanation from you as to your reasons for departing from the rule in this case, but I have confirmed the appointment relying upon your judgement, and supposing this to be an exception"<sup>(2)</sup>, a statement which pleased the Parliament of 1855 very little.

Despite the creation of the Cape Parliament, the Colonial Civil Service remained subject to the Secretary of State, and until British practice caught up with precedent rules at the Cape, or the Imperial Colonial Office surrendered its practical supervision of the Cape administrative system, there was bound to be some confusion. The Secretary of State continued to possess the ultimate authority in making colonial appointments, fixing salaries, and granting leave to public servants. All matters relevant to the civil service were referred to him for approval or advice. Thus in 1855, even a resolution of the Cape Parliament with regard to salary scales was referred to London, for the concurrence of the Colonial Office and the Treasury<sup>(3)</sup>. The position into which the Executive was put in consequence, was occasionally awkward. For instance, when the civil servants in the Orange Free State lost their employment after the territory was declared independent in 1854, the Secretary of State required the Governor of the Cape to appoint them to offices in the Cape Colony, and he complained when the Governor did not act with the desired promptitude<sup>(4)</sup>. When Sir George Grey pointed out the difficulties attendant upon exercising such patronage in the Cape, the Secretary of State suggested he should find offices

1. Ibid.

2. Ibid. Cf. V. and P. of the Legislative Council, 1855, pp. 112, 115.

3. Debates of the Cape Parliament, 1855, p. 140, 28/3/55, question by Paterson, and reply of the Auditor-General.

4. G.H. 1/52, passim.

for those few who had not been placed in the Cape Civil Service, in British Kaffraria.<sup>(5)</sup> Another example of the inconvenience inherent in a sort of dual control lay in the fact that Cape civil servants on leave in Britain, who required extension of their leave used to apply direct to the Secretary of State, who would inform the Cape Government of his decision<sup>(2)</sup>. This procedure was probably a case of choosing between evils, since communication with the Cape was still a matter of many weeks intervening between question and receipt of reply.

Despite these awkwardnesses, which would not have been easy to avoid, the Secretary of State practically ceased to exercise patronage in the Cape Colony. The case of E.M. Cole<sup>(3)</sup>, was almost the last in which the Secretary of State involved himself in conflict with the colonial government on a matter of an appointment, even to the Executive Council; he did not cease making appointments, and had not even made his last unpopular appointment, as the appointment of W.D. Griffith as Attorney-General in 1866 shows,<sup>(4)</sup> but few or no appointments would be made contrary to the known wishes of the local Government. Thus, emigrants from Britain would still, until a late period in the 19th century, be favoured with letters of introduction to the colonial Governor, but the suggestion that the bearer of one of these should receive a public appointment in the Colony was reduced almost to a hint. The letters of introduction were printed forms on which only the date, his colonial destination, the person recommending him, and the

1. G.H. 1/53, No. 259, 8/11/57, Labouchere to Sir George Grey, answering Grey's No. 105 of 31/7/57. These ex-officials were on half-pay from the British Treasury, which wanted to be rid of a useless expense. Vide. G.H. 1/53, No. 195, 26/5/57, S. of S. to Grey, and other despatches in G.H. 1/50, and 1/51.
2. An example of this in G.H. 1/53, No. 163 of 23/2/57, Secretary of State to Sir George Grey, when a Clerk of the Peace of Swellendam, on leave in Britain, requested an extension of leave which would enable him to go to ~~the~~ St. Petersburg to see his sisters.
3. Supra. p. 227.
4. Supra. p. 53.

Secretary of State's signature appeared in writing. The following is a typical specimen, in which the underlined words are in writing in the original. The signature is in the Duke of Newcastle's own hand:

Colonial Office,  
Downing Street.  
December, 1st, 1859..

Sir,

This letter will be presented to you by Mr. Childers who is proceeding to the Cape. He has been recommended to me by Mr. Herman Merivale at whose request I write this letter. - It cannot however be too distinctly understood, that I do not by this introduction, design to fetter in the slightest degree your discretion in the choice of Candidates for employment in the Public Service.

I remain,  
Sir,  
Yours very faithfully.  
Newcastle. (1)

A similar attitude about colonial civil service affairs is revealed in other ways; for example, the Secretary of State sent a circular to his colonial Governors about the payment of fees to persons performing official duties during the absence of the permanent officers. The Secretary of State and the Lords Commissioners of the Treasury, this circular intimated, had agreed upon rules to apply in these cases. It is quite clear that what the Imperial officials had in mind was the use of Colonial as distinct from Imperial revenues, therefore, the Secretary of State stated that they were only for "general guidance": "they cannot be carried into execution in opposition to any usage established by law" or even "by recognised custom", he wrote, and, he added; "I have no wish to enforce or recommend a change, but merely to leave the subject to be dealt with by yourself and your Council, as may appear to you advisable" (2). In this,

1. G.H. 1/53, No. 163, Newcastle to Grey, 1/12/59. From the Civil Service list in the Blue Book for 1861, it does not appear that Childers was appointed to any office.
2. On this, the Colonial Secretary wrote directing his Clerk to enter it in his book of Colonial Regulations and to send a copy to the Auditor. G.H. 1/54, No.1, 1/1/58, Labouchere to Sir George Grey.

there was almost an insistence upon colonial responsibility, yet when the Secretary of State discovered that the Cape Parliament had laid down that an officer absenting himself from duty on the grounds of ill-health, might receive his full salary during his absence, he was taken aback, and demanded that "As I am now for the first time informed of this rule, and as it is directly in contravention, not only of the Colonial Regulations but of common practice in other services, I should wish to be furnished with a copy thereof". He requested further that "you... explain the circumstances under which it was passed, and... how it is that no report has ever been sent home of so important a deviation from the general usage throughout the colonies."<sup>(1)</sup>

It is clear then, that the Civil Service Regulations of 1850 and even intervention of Parliament in respect of the Civil Service after 1853, still left things very much at the discretion of the Governor and of the Secretary of State. By the Constitution Ordinance the Governor, in the first instance, could refuse or amend, or accept, legislation coming from the Houses, and whatever the Governor did was subject to review by the Secretary of State, during a period of two years after the passage of any legislation by the Colonial Parliament<sup>(2)</sup>. The whole of the Civil Service establishment of the Colony was, of course, to be paid for out of colonial revenues, according to an Ordinance which divided the Budget into four Schedules, with fixed amounts of expenditure attached to each<sup>(3)</sup>, which amounts could be altered by an enactment of the Cape Parliament. The effect of the Ordinances, however, was actually to give the Parliament control, since the Secretary of State as a rule, did not interfere in civil service matters in any way other than by offering advice or information.

1. G.H. 1/55 No.3, of 5th July, 1859, Newcastle to Grey, and vide. No. 7, of 17th August 1859, Newcastle to Grey.
2. Articles 81,82,83,84, of the Ordinance Constituting a Parliament for the Cape of Good Hope. PP. 13/6/53. Ordinance No. I.
3. Ordinance No. II, of P.P. 14/6/53. pp. 21.

In conclusion to this chapter, one may observe that want of a system of civil service appointment is not necessarily bad in itself, and that the existence of a system is not necessarily an improvement in every way upon the former case. The administrative structure of Britain, and of the Colonial Empire at the beginning of the 19th Century was riddled with imperfections, but often amelioration of imperfections normal to any human system was brought about by officials who gained their positions by imperfect means. Public conscience is a striving faculty of any society that is not perfectly degenerate, and in this case it directly inspired reform from within the administrative offices of Britain without waiting for the prompting of public or parliamentary condemnation; rather to the contrary: remedial legislation followed upon the public promptings of informed and conscientious officials.

The most vital period during which the persons working for administrative reform began to exert themselves, was identical with that during which parliamentary reform was becoming increasingly sought after. Utilitarianism was a certain factor which gave support to both kinds of reformers, but behind that lay yet other factors. The organisation and numbers of society in Britain were changing at an unprecedented rate, and the ethics of a great State exercising a large degree of paramountcy in the world, were no longer those of an embattled State whose people did not know and feared the outcome of the greatest war yet waged in Europe. For twenty years reform had been considered as possibly dangerous, and certainly of less importance to keeping a voracious France in check. The dislocations caused by war were added to by those of sudden peace, and out of the challenges opposed to administrators and politicians came the answers furnished by individual wit and the nurture of a basically sound system of administrative and political management. By these means between 1812 and 1850, the British Empire entered what might be described as its Augustan Age, and the spirit that made this possible, so evident in the high offices of State in Britain, was no less evident in the Executive Council of the Cape. On the one hand, it may justifiably be argued that the legacy of this Age was in the Imperial sense, the Commonwealth of Nations; on the other hand, it may be asserted that

much of the governmental inheritance of the Union of South Africa derives from the same period. Its heroes are our heroes. They gave validity to a concept of organic civil service unity. Departments ceased to be broadly individual in matters of patronage or interest, the 'preserves' sometimes of an important individual, family, or group; they became sections of a delicately balanced machine designed to achieve maximum efficiency on behalf of the public, with the optimum of expenditure of public money. Moreover, the development of a core of professional, hard-working, and intelligent permanent departmental heads, and a corps of trained civil servants, occurring parallel with Parliamentary reform, made it more than ever possible for Parliament to act as a reforming institution, and gave greater validity and strength to parliamentary government under a Cabinet Executive of the modern type. What was important to Britain, was doubly important to the Cape where not merely a parliamentary constitution but parliamentary customs had to take root and develop. In achieving both these things the rôle of the Executive Council was of paramount importance, and out of its work in the 1840's came both the institution of Parliament itself, and the civil service system which would in part support, in part inspire, its work.



APPENDIX TO CHAPTER VI.

Vide. supra. p. 27.

After 1848 "a series of small committees inquired into the organisation of certain.... officers," including the Colonial Office. Trevelyan and Northcote were prominent on many of these committees.<sup>(1)</sup> In 1848, Trevelyan had reported in favour of "recruitment to the Service at two levels, corresponding to the duties and educational requirements necessary to perform them"<sup>(2)</sup>. In 1854, he and Northcote were appointed to inquire into questions common to the whole Civil Service, "such as the preliminary testimonials of character and bodily health to be required from candidates for public employment, the examination into their intellectual attainments, and the regulation of the promotions, so as to obtain full security for the public that none but qualified persons will be appointed, and that they will afterwards have every practicable inducement to the active discharge of their duties"<sup>(3)</sup>. The Commissioners subsequently advocated that young men from the age of 17 to 21 years should be recruited to the lower ranks of the Service by a competitive examination which should be held at regular intervals, and be conducted by a Board of Examiners<sup>(4)</sup>. Candidates would have to furnish satisfactory references and a medical certificate, and have to pass tests in arithmetic and writing. Men from 19 to 25 years of age would qualify for the examinations for superior offices, and would have to satisfy the examiners in several subjects in the Arts and Sciences, including Philosophy, Political Economy, Modern Languages, History, Law, Mathematics and Physical Science. Once through the examinations, the candidates appointed to office would have to prove their practical ability during a probationary period.

The purpose of the authors of the Report, was to bring efficiency, economy, and vigour, into a

1. Cohen, op. cit., p. 92.
2. Griffith, op. cit., p. 13.
3. Griffith, op. cit., quoting from the authors of the Report of 1854.
4. Cohen, op. cit., p. 100.

machinery of State partly burdened with drones and incompetents, and suffering from the appointment of favourites to inferior positions which carried high salaries while some important officers received such low salaries that incentive was frequently lacking in the service, and frustration occurred which was as often as ruinous to careers which might have shown enterprise, as to the public interests. But reform was no less necessary because many departments of State, and above all the Treasury, were handling such a "greatly expanded volume of official business" that their personnel were often "habitually overwrought" and broken down in health<sup>(1)</sup>. Consequently, 1855 marks the beginning of the work of the British Civil Service Commission, which by 1870, had eliminated patronage as the means of recruitment for the Civil Service in Britain<sup>(2)</sup>.

The poor state of the British Civil Service was at least matched by that of the Cape, where, for instance, a Post-Master was paid £25 a year and had to rent his own office, (£20 a year) and buy his official stationary (£4 a year), <sup>(3)</sup> - or where, in the Police branch constables were so underpaid that "sober men cannot be procured"<sup>(4)</sup> - or where, in the higher offices, a Colonial Secretary like Montagu should be literally killed by over-work<sup>(5)</sup>. There were other evils besides in the Cape civil service, which in 1834, paid so badly that the Secretary of State sanctioned a systematic compulsion of pensioners to resume work in the administration<sup>(6)</sup>. In 1847,

1. Hughes; op. cit., p. 55 ff.
2. Cohen; op. cit., passim. Some individual departments in Britain commenced recruitment by means of examination before 1853; ibid. p. 95.
3. Debates of the House of Assembly, Vol. I, 1854, 31st July, p. 119. Speeches by Stretch and Collett.
4. Ibid. Vol. II, 30/3/55, p. 157, speech by White.
5. Newman, op. cit., Ch. XV, passim.
6. G.H. 1/20, Minutes of the Lords of the Treasury to Lord Stanley, 18/3/34, implemented by the Secretary of State. I am indebted to J. Breitenbach of Rhodes University for this reference.

Earl Grey, discovering this usage, ordered compensation to be paid to those who had suffered by the rule. (1)

1. Vide. E.C. Vol. IV, Cape Archives, Minute No. 21, 28/7/55, in which dispatches from Grey, Nos. 11 and 29, of 11/1/47, and 25/10/47, respectively, are referred to.

CHAPTER VII.

THE HIGH COMMISSIONERSHIP AND THE CAPE COLONIAL GOVERNMENT.

In 1847 when Sir Henry Pottinger superseded Sir Peregrine Maitland at the Cape, he held not one, but two commissions: as Governor, and as High Commissioner. Henceforward until 1901 the Governor of the Cape was also High Commissioner, as well as Vice-Admiral and, until 1854, Commander-in-Chief. But many thought that the High Commissionership was synonymous with the Governorship, and that it was a title bestowed to give added weight and dignity to the ruler of the Cape Colony. Even Sir James Stephen, irritated by an instruction which came from the Prime Minister, Lord John Russell, "ridiculed the documents investing Pottinger with his special Commission"<sup>(1)</sup>, because, he wrote, "such an Instrument would carry no real authority or privilege which would not be just as completely conveyed by Sir Henry Pottinger's Commission as Governor..."<sup>(2)</sup>. According to J.M. Orpen, the Attorney-General at the Cape, William Porter, "thought it merely an ornamental position"<sup>(3)</sup> and Orpen himself declared that it was not until after 1872 that he found what he believed to be the 'inner meaning' of the office<sup>(4)</sup>.

In part the ambiguity and confusion was due to the circumstances in which the office was created. It

1. du Toit; op. cit., p. 25.
2. Ibid. The Prime Minister, having perused the Instructions drawn up for Pottinger as Governor, had minuted that "These instructions are addressed rather to a Commissioner than to a Governor", and was of the opinion that Pottinger should be "invested with that character by a special instrument". Ibid. p. 24. Stephen himself drafted the Commission which he did not think worthy of being issued under more than a Warrant under the Royal Sign Manual.
3. Sir George Cory; MS. Notes, No. 1189, p. 1 f. notes from an interview with J.M. Orpen.
4. "It was on account of the unsatisfactory relations existing between the Colonial Government and the native tribes beyond the border", said Orpen, "which were to be ruled "through resident officers under the High Commissioner as representing the paternal Imperial Government..." Ibid.

was not, of course, a new title,<sup>(1)</sup> but its significance was probably never so great as it was in South Africa, when, perhaps, it proved its efficacy as a method of Imperial management and made the expedient of attaching High Commissionerships to Governorships a natural one to adopt in the age of competitive Imperialism after 1870. For Bertram (2), was right when he stated that "the attachment of a High Commissionership to the Governorship of a Colony" meant that "the Colony becomes the nucleus of a wider and less definite organisation", - an organisation which established British paramountcy over territories which were not claimed in outright possession.

Thus Lord John Russell was right too, and more perceptive than Stephen about Sir Henry Pottinger's Commission. The functions of the Governor were colonial, those of the High Commissioner extra-colonial; the interests of both overlapped, but it was convenient to relegate certain of the functions granted to one man to a separate order of conduct free from consti-

1. The Ionian Islands had been governed by a High Commissioner after the Vienna Settlement in 1815, (C.H.B.E. II, p. 182-7), and Lord Durham had been High Commissioner in Canada as well as Governor-General and Captain-General (A.G. Doughty, op. cit., (Durham Papers) pp. 19, 23.) The Ionian Islands were not British Colonies, but part of a diplomatic settlement, so that the appointment of a Governor to them would have been improper. In the case of Canada, though as High Commissioner Durham was empowered to "inquire into" and "adjust all questions pending in the... Provinces (of Upper and Lower Canada)... respecting the Form and Administration of the Civil Government thereof..." (Ibid.), the contemporary strained relations between Britain and the United States of America on the Oregon and Maine questions, together with a state of incipient revolt in Canada, made it essential to give Durham a status which gave him greater, and at the same time less closely defined powers than those normally attached to a Governor. During the 1870's considerable use was made of High Commissionerships by Britain, in the Straits Settlements, Fiji Islands (Western Pacific), Cyprus, and in South Africa where, after Isandhlwana, there were two. Vide. J.A. Williamson, A Notebook of Empire History, London, 1942, passim; Bertram, op. cit., passim; Sir G. Fiddes, The Dominions and Colonial Offices, London, 1926, passim. Bertram and Fiddes, pp. 217 and 211 respectively wrongly date the High Commissioner's office in South Africa from 1878; Bertram p. 239 re Fiji, is equally wrong in stating that "This (in 1875) was the first instance of an expedient with which experience had made us familiar - the attachment of a High Commissionership to the Governorship of a Colony.

2. Op. cit., p. 239.

-tutional, legal, and, to a certain extent, financial restraints from within the colony. The Governor as High Commissioner with extra-colonial functions was more conveniently placed in a special relationship to the Imperial Government and to peoples beyond colonial boundaries. By his Commission as High Commissioner (1), Pottinger was directed to strive for peace on the frontiers of the Cape of Good Hope, firstly, by checking the enemy beyond the frontier and secondly, by promoting "the good order, civilisation, and moral and religious instruction of the tribes by whom... outrages have been perpetrated" on the Colony. He was moreover, to settle and adjust the "affairs of the territories... adjacent or contiguous to the eastern and northeastern frontier" of the Cape Colony, by taking "all measures... for placing them under some settled form of government." In the despatch which accompanied the Commission and explained his role as High Commissioner (2), the intentions of the British Government are set out more fully. The High Commissioner was to control the inhabitants of territories not directly under the "dominion of the British Crown" but "subject to British authority". He was to govern these people by "a strong hand directed by a resolute will," and to provide "a system of law and government, guided by justice and humanity, and zeal for the well-being of the people at large." (3)

Few instructions could appear in a more paradoxical form. In effect the High Commissioner was to be paramount over peoples who were not legally subject to the Crown: he would be the representative of the sovereign power of Britain in a mere 'sphere of interest'.

1. P.P. February, 1848, (912), p. 5.
2. Ibid., p. 1 ff. Grey to Pottinger, 2nd November, 1846; an adequate extract is given in Bell and Morrell, op. cit., p. 502 ff. Note: Pottinger was paid £2,500 a year as High Commissioner by the Imperial Government and received £2,000 for his "outfit". As Governor, the Cape paid him £5,000 a year and paid £500 a year for the Secretary to the High Commissioner. (du Toit, op. cit., p. 24. footnote.
3. Ibid.

Furthermore, by adopting the principle of indirect rule<sup>(1)</sup>, a form of government as flexible as it was firm would, it was hoped, bring stability as well as civilisation to restless and barbarous tribes. The cost of the protectorate would be shared, in principle, by the Imperial Government, the Cape Colony "for the protection of which the charge is incurred", and by "means of creating a public revenue" in Kafirland itself<sup>(2)</sup>.

The creation of the High Commissionership in South Africa was extraordinarily significant. Far more than in the Cape of Good Hope Punishment Act of 1836<sup>(3)</sup>, it was the real beginning of the shadowy but vital exercise of British paramountcy over South Africa. Inexorably the 'sphere of influence' would come into the possession of the Crown as governments direct and indirect in kind, both deriving their authority from the High Commissionership, developed in the areas 'adjacent' and 'contiguous' to the Cape Colony, which as often as not provided the personnel of the governments.

Both Grey's despatch of 2nd November, 1846 to Pottinger and the Commission creating the High Commissionership made it quite clear, then, that the territory over which the High Commissioner should have authority beyond the eastern and north-eastern frontier, would not be subject to the colonial government, nor to its laws, nor to the ordinary laws of the Imperial country, but fell into an altogether separate and special category. But it is important to notice that the Commission enjoined upon "all our officers, civil and military, and all our faithful subjects inhabiting (the Cape Colony), to be aiding and assisting" the High Commissioner in the execution of the will of the Imperial Government, and financial

1. The Imperial Government would require "the chiefs and their tribes to acknowledge the Queen as the protector of their nation, and to receive a British officer as the Commander-in-chief of all their national forces" and also as their civil superior...  
Ibid.
2. Ibid.
3. Eybers, op. cit., p. 146 ff.

obligation made the work of the High Commissioner the concern of the Colony as well as of Britain. Finally, to ensure that inconvenience should not arise through the powers of the Governor lapsing while he was beyond the frontier in his capacity as High Commissioner, special arrangements were made, creating a precedent in the wording of the Governor's Commissions<sup>(1)</sup>. Thus Smith's Commission as Governor and Commander-in-Chief<sup>(2)</sup> declared that "it is Our will and pleasure, that, whenever and so often as you shall repair to the said territories (beyond the eastern and north-eastern colonial frontiers), this Our Commission, and all and several the powers hereby vested in you shall continue to be exercised by you as fully as if you were residing within Our settlement and its dependencies; and We do hereby require all officers, civil and military, and all other inhabitants of the said settlement and its dependencies, to be obedient, aiding, and assisting unto you or to the officer administering the Government for the time being in the execution of this our Commission, and its powers and authorities herein contained." Both the Governor's Commissions, therefore, secured him an uninterrupted legal authority over British subjects and officials in South Africa, where - ever the Governor and High Commissioner might be in South Africa.

A further indication of the close relationship between the offices of the High Commissioner and the Governor can be seen, when questions arose about the emoluments and expenses of the former office. Sir Harry Smith explained to the Legislative Council in 1850 that "the expenses connected with the office and duties of Her Majesty's High Commissioner should be defrayed by loans to be effected, from time to time, upon the Colonial Treasury, to be thereafter repaid from the revenues to be collected from the territories beyond the colonial boundary taken under Her Majesty's sovereignty."<sup>(3)</sup> The difficulty began when it had to

1. Du Toit, *op. cit.*, p. 25 f., indicating that this was not formally done for Pottinger.
2. P.P. 27/6/51, (475), p. 3, dated 15/12/47.
3. P.P. 19/5/51, (1362), p. 24ff., Proceedings and Debates of the Legislative Council dated 10/9/50.



be decided where the duty of the Governor ended and that of the High Commissioner began, once the penetration of the interior by British officials under the High Commissioner's authority made the overlap of function correspond to the facts. The cost of Smith's journey into the Orange River Sovereignty in August, 1848, to put down rebellion, Smith considered chargeable to the Cape, and not to the Sovereignty, because "the travelling expences of the Governor when employed on public duty are... a colonial charge, whether such duty detains him within or occupies him beyond the boundary; because the colony is interested in a quiet border, and in the maintenance of peace on the frontier, and may with equal reason be called upon to pay the expences incurred for promoting those objects, whether they be incurred within or beyond the boundary."<sup>(1)</sup> Smith might have been moved in this by the knowledge that the Imperial Government had demanded that Smith's annexations should pay for themselves<sup>(2)</sup>, and revenue from the Sovereignty falling short of the expences which it caused, it was necessary to find aids to it from other than Imperial sources; but his argument could not be gainsaid. He could, and did, point out that the "salary and allowances to the Secretary to the High Commissioner... belongs to a class of expences which have been hitherto defrayed from colonial funds... under the express authority of Her Majesty's Government;" and added that "nothing has since occurred to make them more properly chargeable to any other fund." "The office of High Commissioner," he continued, "was created quite as much for the benefit of the country inhabited by the Kafir Tribes as of that occupied by the emigrant boers," and the reason why Earl Grey had made the salary of the secretary to the High Commissioner payable from the Colonial Treasury was, "that it was an expense incurred solely for the interest of the colony, and with the object of guarding it from the recurrence of such a calamity as the late Kafir War"<sup>(3)</sup>.

1. Ibid.

2. Infra. p. 256f.

3. Ibid. A further indication of the administrative relationship of the Colonial government with the High Commissioners sphere of interest is shown in G.H. 1/52, No.139, Labouchere to Grey, 15/12/56, where Grey was informed that "the Agent General for the Cape" in Britain, "has been instructed to pay the value" of military stores supplied by Britain to the Orange Free State government, "to the... War Department, with an intimation that the Colonial Government will recover the same from the Cape State Government."

Sir George Grey was later to complain bitterly that while he received £5,000 a year as Governor, from the Colonial Treasury, as High Commissioner he received "no salary or allowance whatever," though, he argued, "my duties in connection with this latter office are infinitely more arduous and harassing than those connected with the former one."<sup>(1)</sup> He was the more chagrined because the Governors of Mauritius and Ceylon, of Victoria and New South Wales, were much better paid than he and had less responsibility and fewer expenses to meet.<sup>(2)</sup> His travelling expenses as High Commissioner were paid, whilst travelling within the colony, from an annual grant of the Cape Parliament; when travelling beyond the Cape Colony his expenses were paid either from British Kaffrarian funds "or from British funds."<sup>(3)</sup> Cathcart's had been paid from the Military Chest in his capacity as Commander of the Forces - which <sup>again</sup> shows the plasticity of the relationship between the roles of the Governor, High Commissioner and Commander-in-Chief<sup>(4)</sup>. But Grey, being a Civil Governor, could not seek relief from the Military Chest. He was subsequently granted £1,000 a year from Kaffrarian funds, with effect from 1st January, 1858.<sup>(5)</sup> Until 1854 the Civil Establishment of British Kaffraria was paid by the Cape Colony<sup>(6)</sup>. In one way or another then, the High Commissioner was always to be reliant to a degree upon remuneration from colonial authorities and legislatures, more especially from those of the Cape.

The co-ordinate nature of the work of the Governor, High Commissioner and Commander-in-Chief was

1. G.H. 23/26-7, Grey to Labouchere, No. 41, dated 30/5/56, Separate.
2. Ibid.
3. Ibid.
4. G.H. 23/27, Grey to Labouchere, dated at King William's Town, 13/3/57, Separate.
5. G.H. 154, Stanley to Grey, No. 4, dated 5/3/58.
6. Vide. Cape Annual Blue Books.

therefore plain. It was necessary for the efficient functioning of the offices in question that they should in practice be united in the hands of a single 'persona' who was in practice the Chief Executive Office of the Cape and Natal Governments, <sup>(1)</sup> the Officer in command of the military resources of the Colonies and of the Imperial Government in South Africa <sup>(2)</sup>, and the chief civil authority beyond the colonial frontier. But the trinodal functions of the chief Imperial officer in South Africa led to some delicate administrative arrangements between the often fictitiously distinct governments involved. A certain amount of confusion was, perhaps, the price paid for greater coherence of policy and flexibility of tactics, where compact areas of European settlement were divided by independent and quasi-independent native 'states'.

Ten years after the Great Trek, partly because of the activities of the Trekker States, the annexation of Natal, the activities of Mosheh and Kreli, the pattern of South Africa, not merely <sup>of</sup> the Cape, was changing. During the single year of his residence in South Africa, Sir Henry Pottinger was able to do little more than discover for himself the problems which beset a Governor and High Commissioner in South Africa; the powers vested in him, therefore, were largely dormant. But Sir Harry Smith with his prior experience in South Africa, proceeded within three weeks of his arrival in December, 1847, to use the powers vested in him, more extensive than any British Governor before him had been granted, to redraw the boundaries of South Africa. Where Pottinger had virtually closed his eyes to the problems of Natal and Transorangia, Sir Harry Smith grasped the whole problem of law, order and security in South Africa and, while committing the error of closing his eyes to the inadequacy of his resources for imposing a general control over South Africa, he endeavoured to set up related but separate structures of government in all the "adjacent" and "contiguous" territories around the Cape Colony.

1. Re Natal, vide Eybers, op. cit., p. 184 ff.
2. He also had charge of the Military Chest, for which he accounted to the War Office. Imperial expenditure on the High Commission territories would be made through the Military Chest, vide Bell and Morrell, op. cit., p. 506.

He annexed to the Cape Colony the extensive territory to the north and northwest which had formerly separated the Colony from most of the Orange River; (1) In the same way he annexed the smaller portions west of the line of the Kraal River - Klass Smit's River - Gaika's Kop- Keiskama River in the east. (2) Then he "vested in Her Majesty the Queen" the territory between the Keiskama, Klipplaat and Kei Rivers, with the name of 'British Kaffraria', which was to be governed by the High Commissioner, (3) through Colonel Mackinnon as Commandant and Chief Commissioner, and three Commissioners assisted by a small staff. (4) Finally, on 3rd February, 1848, Smith proclaimed "the sovereignty of Her Majesty the Queen" over the territory between the Orange and Vaal Rivers and the Drakensberg Mountains, which possession was to be governed "by the laws, ordinances, and proclamations framed, and to be framed, for... the Cape of Good Hope", though the native chiefs and their people were to be 'upheld in their hereditary rights'. (5) By two further proclamations dated 8th March, 1848 and 14th March 1849, Sir Harry Smith defined the government of the Orange River Sovereignty, which was to be under the supervision of the High Commissioner. (6) A rudimentary structure of executive, legislative and judicial government was set up under the immediate supervision of Major Warden, (7) but the High Commissioner reserved virtually despotic powers for himself in all spheres of government. The new colony was to financially

1. P.P. July 1848, (969) p. 22. Proclamation dated 17/12/47.
2. Ibid.
3. Ibid. p. 27 f. Proclamation dated 23/12/47. In an explanatory despatch of 3/2/48, Smith avowed that 'British Kaffraria' was "under the protection of Her Majesty". Bell and Kerrell, op. cit., p. 509, Cf. Eybers op. cit., p. 59, where it is stated that British Kaffraria became a Crown Colony in 1847.
4. Du Toit; op. cit., p. 29 f. These men were paid by the Cape Government.
5. Eybers; op. cit., p. 270 ff.
6. It was made clear in the latter proclamation that ordinances and enactments of the Cape Colony would not apply in the O.R.S. unless re-enacted for that "district". Ibid. p. 278, ci. 12.
7. Who was Resident Officer from 8/3/48.

self-supporting<sup>(1)</sup>.

With these arrangements, the inter-relationship of the rôles of Governor, Commander-in-Chief, and High Commissioner became significant. The problem of security in each of the colonies and in British Kaffraria, were inter-dependent, and the application of closely related policies in the four territories a sine qua non of successful government in each of them. The most critical zones affecting the whole pattern of Imperial strategy and colonial stability were British Kaffraria and the borders of Basutoland, and it was already clear that the affairs of the Orange-Caledon River triangle were related to that of the Keiskama and Kei River regions<sup>(2)</sup>. The Government of the Cape Colony, then, already administratively meshed with British Kaffraria, was politically concerned with the activities of the High Commissioner beyond the entire frontier of the Cape Colony. There was no change in this state of affairs before 1854. The Letters Patent constituting a separate government for the Orange River Sovereignty under the Governor of the Cape, dated 22nd March 1851<sup>(3)</sup>, was never promulgated in South Africa, and when Cathcart discovered its existence, the Secretary of State ordered him not to promulgate it<sup>(4)</sup>. Even earlier Letters Patent and Royal Instructions constituting a regular Government in British Kaffraria, dated 16th December, 1850, had also been pigeon-holed in the Colonial Office in Cape Town and were discovered by Cathcart only in February 1853<sup>(5)</sup>, by which date they had been so long in abeyance that he withheld proclaiming

1. P.P. July 1848, (969) p. 67 f. Grey to Smith, 21/6/48.
2. Du Toit, *op. cit.*, passim; Muller, *op. cit.*, pp. 197-211.
3. P.P. 31/5/53, (1646), p. 133 f.
4. *Ibid.* p. 106 f. Cathcart to the Secretary of State, 13/1/53; p. 118 f., Duke of Newcastle to Cathcart, 14/3/53; cf. du Toit. *op. cit.* p. 74. Note that two months previous to Cathcart declaring his discovery of the Letters Patent, he referred in a despatch to the Secretary of State to these Letters Patent, and enclosed a memorandum from William Porter, dated 4th August, 1852, advising the Governor about the Sovereignty in which reference is made to the Letters Patent. vide., P.P. 31/5/53, p. 71 f, despatch dated 14/11/52.
5. Du Toit, *op. cit.*, p. 74, cf. ibid. pp. 79, 93.

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then, pending further instructions<sup>(1)</sup>. In both Trans-  
orangia, and British Kaffraria, then, the authority of  
the High Commissioner remained unchanged until the Bloem-  
fontein Convention in 1854 in the one case, and the pro-  
mulgation of Letters Patent in 1860, in the other, changed  
his relationship with those territories. The failure to  
promulgate the Letters Patent for the Orange River  
Sovereignty enabled the Imperial Government to abandon  
possession of it without reference to Parliament, by  
issuing a Proclamation and by cancelling the Letters  
Patent. But the creation of a republic "adjacent or  
contiguous to the eastern or north-eastern frontier" of  
the Cape Colony (to quote the words of the High Commis-  
sioner's Commission) did not cause an alteration in the  
wording of the instrument defining the next High Commis-  
sioner's powers, nor did it alter their interpretation<sup>(2)</sup>.

In the circumstances, it was inevitable that the  
High Commissioner's effectiveness should fail to some  
extent, because of the pressure of business on him. That  
he should <sup>seek</sup>/relief by relying upon subordinates in the  
widely separate capitals of the territories under his  
authority to a much greater degree than was desirable,  
considering the state of affairs in South Africa partly  
arising out of a new approach to South African problems,  
was equally inevitable. The dependence of Pottinger and  
Smith upon the Colonial Secretary in Cape Town has already  
been made clear<sup>(3)</sup>. The breakdown of Government in the  
Sovereignty because of Smith's over-reliance upon an  
ill-supported and unwise Resident, Major Warden, is  
notorious. In the case of British Kaffraria, where the  
High Commissioner was most vigilant, he still left too  
much to Colonel Mackinnon, and was taken completely by  
surprise when a Kafir War, which proved the worst of the  
whole series of frontier wars in South Africa, broke out  
in December 1850. It was natural therefore, that Smith  
should proceed during May 1851, to appoint a Commission  
with extensive powers, composed of the Attorney-General,

1. New Letters Patent were issued in March, 1854, but  
no promulgation of Letters Patent for British  
Kaffraria occurred until 1860.
2. Vide., Votes and Proceedings of the House of Assembly,  
1855, p. 1 f., the Governor's Speech; and proclamation  
of Sir G. Grey's Commission, dated 5/12/54, G.G.  
7/12/54.
3. Supra, pp. 118f.

the Auditor-General, Mr. F.R. Surtees of the Mixed Slave Commission (subject to the approval of the Foreign Secretary, Lord Palmerston), and H.E. Rutherford, to "be Commissioners for enquiring into the causes or objects of the Rebellion of the Kat River Hottentots, and for other purposes".<sup>(1)</sup> It was equally natural that the Secretary of State should determine upon a more elaborate mechanism of control. In a despatch written two weeks before Smith appointed his Commission, Earl Grey analysed the nature of the conflict in South Africa, and the trans-frontier problems arising out of it, and conceiving that the Governor was over-burdened with duties, "judged that the best mode of affording (assistance) will be to join with you in the commission which you already hold as Her Majesty's High Commissioner for settling the relations of the colony with the frontier tribes, two gentlemen who will be appointed either Assistant-Commissioners or Second and Third Commissioners under you..."<sup>(2)</sup> In a subsequent despatch the appointment of Major W. Hogge and Mr. C.M. Owen as Assistant-Commissioners<sup>(3)</sup> under the High Commissioner, and paid by the Imperial Treasury, was confirmed. These gentlemen were "informed that they will be expected to render you any assistance in their power either within or beyond the colonial boundary."<sup>(4)</sup> The co-ordinate authority of the Governor and High Commissioner was therefore reflected in the instructions to the Assistant-Commissioners, and by Government Notice of 30th July, 1851, by the advice of the Attorney-General, their position was fully regularised within the Colony by making them Justices of the Peace in fifteen of the mid-land, northern, and eastern Cape districts.<sup>(5)</sup>

1. P.P. 3/2/52, (1428), pp. 35-43, 235 f.
2. P.P. June, 1851, (1380), p. 58, Grey to Smith, 13/5/51. Earl Grey gives his personal account of the matter in Vol. II, of 'The Colonial Policy of the Administration of Lord John Russell', p. 243 ff.
3. Several writers use these terms loosely, e.g. E.A. Walker, *op. cit.*, p. 252, refers to them simply as 'commissioners'; du Toit, *op. cit.*, p. 112, calls Owen a 'Special Commissioner'; W.W. Collins, in 'Free State', consistently refers to them as 'Special Commissioners'.
4. P.P. June, 1851, (1380), p. 62 ff. Grey to Smith, 11/6/51.
5. P.P. 3/2/52, (1428), p. 236. Smith dissolved the Commission composed of Porter, Hope, Surtees and Rutherford at the same time. *ibid.*, p. 235 f.

The degree of authority which the Assistant-Commissioners would exercise was left by Earl Grey for the High Commissioner to decide, though Smith was urged to give them "a large discretion in carrying into execution the general line of policy you may prescribe for their guidance".<sup>(1)</sup> Sir Harry was also to decide "the degree of authority to be given to them over the officers, civil and military, with whom they will be called upon to act,"<sup>(2)</sup> and though they might not exercise military command, military officers should be instructed by Sir Harry to receive from them "directions as to the political objects to which the military force.. is to be applied."<sup>(3)</sup> The Instructions with which Hogge and Owen were furnished by Earl Grey on 31st May, 1851, enjoined them in terms less formal in tone than the High Commissioner's Instructions, to carry out the intention of the latter, referred them to an appended copy of Smith's Instructions as High Commissioner, and made them directly subject to the orders of the High Commissioner.<sup>(4)</sup> In the event the powers they exercised were very great, and it is not surprising to find them, like Montagu in his capacity as Colonial Secretary, writing direct to the Colonial Office in London, or going one better, writing directly to the Secretary of State in person<sup>(5)</sup>. Major Hogge, in fact, went so far as to adversely criticise Smith's management of the war and was partly to blame therefore for Smith's recall from the Cape.<sup>(6)</sup>

The position of the Assistant-Commissioners was not altered by the appointment of Sir George Cathcart in February, 1852. In a despatch enclosing all his various titles, powers, and Instructions as Governor, Commander-in-Chief, High Commissioner, and Vice-Admiral, Lieutenant-Governor Darling's Commission, the renewed

1. P.P. June, 1851, (1380), p. 62 ff.
2. Ibid.
3. Ibid.
4. Ibid. p. 66.
5. P.P. 3/2/52, (1428), p. 234 f. for examples.
6. Morrell, op. cit., p. 292, referring to a letter from Grey to Russell, dated 14/12/51, Note: Morrell, and du Toit, op. cit., p. 64, both emphasise the duties of the Assistant-Commissioner vis à vis the "native tribes", but their function was more general than this implies. One of the first things Owen did, with the approval of Montague, was to investigate the Coloured mission stations in the Western Cape, (P.P. 3/2/52, (1428), p. 234). They were also concerned with the Kat River Hottentots, and generally with the state of affairs in the Sovereignty.



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Commissions of Hogge, Owen and Lieutenant-Governor Pine of Natal, as subordinate to Cathcart in one capacity or another, were included. Of these subordinate Commissions, Earl Grey stated that "with the exception of those having reference to the appointment of a Lieutenant-Governor... (for the whole Cape Colony, to be resident in Cape Town), these instruments are, with slight and unimportant changes, transcripts of similar documents which had been previously issued, and are only designed to effect the transfer to yourself of the powers previously entrusted to Sir Harry Smith, and to renew under you, the authority previously held under him by Mr. Pine, as Lieutenant-Governor of Natal, and by Messrs. Hogge and Owen as Assistant-Commissioners..."(1).

After Cathcart's arrival, however, there was a modification in the formula of Imperial control in South Africa, after Cathcart had suggested that the settlement of the affairs of the Orange River Sovereignty should be handed over to a 'Chief Commissioner' (2). Subsequently, the Secretary of State altered Cathcart's Commission as High Commissioner and granted his former authority over the Orange River Sovereignty to Sir George Clerk as 'Special Commissioner.' (3) To that extent the office of High Commissioner and Governor lost its co-ordinate nature, but at the same time as being appointed Special Commissioner for the Sovereignty, Clerk was appointed Assistant Commissioner in the place of Hogge, who had died, and was subjected to the same instructions as his predecessor with regard to all territories other than the Sovereignty (4). Before he left for England, Cathcart fully expected that the offices of High Commissioner, Governor and Commander-in-Chief would devolve upon Sir George Clerk (5), thus

1. Ibid. p. 256 f., Grey to Cathcart, 2/2/52.
2. P.P. 31/5/53, (1646), p. 106 f., Cathcart to Pakington, 13/1/53.
3. Ibid.; p; 119, Newcastle to Cathcart, 14/4/53.
4. Ibid. also, G.G. 11/5/54, G.N. 6/5/54.
5. Correspondence of General Sir George Cathcart, publ. by his widow, London, 1856, p. 289, Cathcart to Clerk, 18/5/54.

restoring complete unity of control, and he 'installed' Clerk as Acting High Commissioner pending confirmation of the latter's position by the Secretary of State. Darling became Acting-Governor of the Cape.<sup>(1)</sup> Cathcart, however, had presumed too much in supposing that Clerk could function as <sup>Acting</sup> High-Commissioner. Clerk himself supposed that he had authority as such, but there was nothing in either Cathcart's or Clerk's Commissions to support such an assumption of authority<sup>(2)</sup>. In the meantime, Owen was absent from South Africa, on leave, and evidently did not return; and Advocate J.W.B. Ebdon, appointed Assistant-Commissioner on the Eastern Frontier by Cathcart<sup>(3)</sup>, was not confirmed in this position,<sup>(4)</sup> so that the arrival of Sir George Grey opened up a new prospect. The duties which the Assistant-Commissioners were to have performed in Natal<sup>(5)</sup> and in Kaffraria<sup>(6)</sup> were never performed by them. All authority as Governor and High Commissioner, as in the days before Assistant-Commissioners were appointed in 1851, lapsed into the hands of Sir George Grey, excepting that the chief Imperial Military officer<sup>(7)</sup>, was no longer the Governor, but Lieutenant-Governor Sir James Jackson.<sup>(8)</sup>

The history of the High Commissionership, 1847-54, is not therefore uncomplicated. It was an experimental office in South Africa, about which there was doubt in London, and in South Africa, as to whether or not it

1. Vide, supra. p. 155f.
2. Cf. du Toit, op. cit., p. 80, footnote; cf. infra. p. 268f.
3. P.P. 31/5/53, (1646), p. 69 f., Cathcart, to Packington, 12/10/52.
4. Ibid., p. 118, Newcastle to Cathcart, 14/3/54.
5. Ibid., p. 119, Newcastle to Cathcart, 14/4/53.
6. Correspondence of Sir G. Cathcart, op. cit., pp. 271 and 289 ff.
7. Responsible to the War Office,.
8. Omitted in Walker's History of Southern Africa, op. cit., p. xviii f., List of Executive Officers. Lieut. -Governor, 1854-9, Cf. du Toit, op. cit., pp. 80, 121, 126. Re Grey's Commission vide. G.G. 7/12/54.

was merely 'ornamental', but in the event it proved useful, despite some failure in practice. Especially in Transorangia, because of the flexibility peculiar to the office, it enabled the Imperial Government to extricate itself from an awkward position, while in British Kaffraria, though Cathcart believed that as much might have been done under a Lieutenant-Governorship<sup>(1)</sup> the authority of the High Commissioner was left unchanged until 1860. Further, the sub-delegation of the High Commissioner's powers to Assistant-Commissioners and the creation of a Special Commissionership showed that both the Imperial Government and Cathcart found important virtues in the special commissions. The fact that Sir George Grey was provided with no such assistance is less an indication of a falling off of confidence in the commissionerships than an indication of the hope that with parliamentary government in the Cape Colony and 'friendly' republican governments north of the Orange River, the complexity of the High Commissioner's duties had been solved. Moreover, Grey was not a military officer who would have to neglect his offices as Governor and High Commissioner in time of war, as his three predecessors had been obliged to do.

It would seem then, that during the period 1847-1854, at the very point in the history of the Cape where constitutional aspirations were crystallising, the activity and functions of the High Commissioner at once enlarged and modified freedom of action within the Cape. It was enlarged in that the Cape might well expand its influence into territories beyond its borders, and modified in that the Governor in his capacity as High Commissioner had powers and duties in the exercise of which the Executive Council could not constitutionally give advice which he was bound to follow, though he might find it wise to seek it. Yet the officials and subjects in the Cape were enjoined to obey and assist the High Commissioner. Thus the obligation of officials and citizens towards the High

1. Du Toit; *op. cit.*, p. 74.

Commissioner were the same as to the Governor, though in the former case there was no constitutional link whereas in the latter case, there was. Theoretically the Executive Council advised the Governor, but not the High Commissioner, even though<sup>(1)</sup> Cape finances were liable to be drawn upon to meet the needs of the High Commissioner. The Imperial Colonial Office clearly recognized the Attorney-General as the proper person within the Cape to tender advice to the High Commissioner. Thus Sir Harry Smith consulted with William Porter in 1850 about "the nature of Her Majesty's authority beyond the Orange River"<sup>(2)</sup>. Again, with reference to the powers which the Assistant-Commissioners should be given under the Colonial Government, in order to give them co-ordinate powers within and beyond the colonial frontiers, Smith was directed to apply to the Attorney-General for advice<sup>(3)</sup>. It was equally right and fitting, then, that the Lieutenant-Governor and Attorney-General should have been sought by Cathcart, as High Commissioner, when he wished to appoint an Assistant-Commissioner to assist him on the Eastern frontier<sup>(4)</sup>. Further, when Sir George Cathcart was in a quandary about the future of the Orange River Sovereignty in July, 1852, he wrote to Attorney-General William Porter for his advice<sup>(5)</sup>, because of "his previous knowledge of the transactions which have relation to this subject, as well as his clear-sightedness on all matters within his cognizance"<sup>(6)</sup>. The advice which Porter tendered on this occasion was more significant of his position as an Executive, or

1. Supra. p. 257
2. P.P. 19/5/51, (1360), p. 73, Smith to Grey 8/10/50. Porter advised that the position should be regularised by an Act of the Imperial Parliament, a step which the Imperial Government considered taking.
3. P.P. June, 1851, (1380). p. 62 ff.
4. P.P. 31/5/53, (1636), p. 67 - 70, Cathcart to Pakington, 21/7/52.
5. Ibid. p. 55, Cathcart to Pakington, 21/7/52.
6. Ibid. p. 72, Cathcart to Pakington, 14/11/52.

advisory, Councillor than as simply Attorney-General, for his advice went beyond merely legal questions. The Memorandum which he wrote was, in fact, a first class political document in which he argued the course of policy for the present and the future; taking into consideration the circumstances of the past and of the present, Porter boldly stated what the Imperial Government ought to do, namely, abandon the Sovereignty at once while it might do so with honour and dignity, or retain it for ever<sup>(1)</sup>. But Orpen<sup>(2)</sup>, indicates that the Executive Councillors did not distinguish between advice given to the High Commissioner and to the Governor.<sup>(3)</sup> True, the Executive Council had no legal standing on political questions concerning territories beyond the borders of the Cape Colony. The Council had its existence only in the Instructions and Commission of the Governor, and its functions were intended to be to assist the Governor in the affairs of the Cape Colony. Yet it was in practice consulted on questions of extra-territorial or Imperial policy. This occurred, for instance, in 1849, shortly after Messrs. Gweil, Murray and Livingston had confirmed the existence of the rumoured great lake of Ngami<sup>(4)</sup>.

Two men, M'Cabe and Baines, had published an account of how to reach Lake Ngami, in the 'Grenablad' of Grahamstown. This action aroused the jealousy and suspicion of the Transvaal Boers, who arrested

1. Ibid. p. 75 ff. Memorandum dated 4/8/52.
2. Supra. p. 248.
3. Both Commissions of the Governor and High Commissioner expressly enjoined obedience and assistance from all officials and subjects of the Queen in South Africa (supra p. 254), and in any case the Cape of Good Hope Punishment Act of 1836 (Eybers. *op. cit.*, p. 146 ff.), implied that the Governor's powers held good at least over British subjects south of the 25th Parallel (the laws of the Cape Colony were declared to be effective up to that limit. ibid., p. 146.)
4. P.P. 19/5/51, (1360), p. 28 ff. Smith to Grey, 12/7/50.

M'Cube and Baines, fined the former 530 Rixdollars and ordered his detention in the Transvaal for one year<sup>(1)</sup>, while Baines was put across the Vaal River. This case, involving the maltreatment of two British citizens by other, though 'rebellious' subjects, was brought to the notice of Sir Harry Smith, who laid the case, and the questions which it raised, before the Executive Council<sup>(2)</sup>. It is true that Sir Harry Smith stated his belief that the matter was not amenable to treatment in his capacity as High Commissioner, and it is true that his Commission as High Commissioner referred to the regions to the eastwards and north-eastwards of the Cape Colony, and not north and north-west, but the spirit and intention of the Commission plainly indicated that extra-territorial questions belonged to the sphere of duty of the High Commissioner, whereas the Governor's duties lay within the Colony. Smith argued that the matter did not fall within his duties as High Commissioner because it was an imperial concern<sup>(3)</sup>, but this was an extraordinary statement since the High Commissioner was the principal officer of the Imperial Government in South Africa. Sir George Napier, for one, as a mere Governor had not shrunk from seeking to protect Imperial interests in Natal between 1839 and 1843. Smith's resort to such a plea, therefore, argues either misapprehension of his Commission, or an excuse for seeking advice on a matter which might engage the Imperial Factor ever more deeply in the sub-continent of Africa, - a thing of which the Secretary of State, at the time of the annexation of Transorangia, had plainly shown there was not to be any thought. It may, then, have been Smith's desire, again misapprehending his position, to broaden responsibility for his actions. Certainly, the Executive Council showed not the least unwillingness to come to the High Commissioner's aid.<sup>(4)</sup> It considered

1. The Landdrost who tried M'Cube declared in a letter to the Volksraad that M'Cube was "eener inwoonder der onze maatschappy." B.A. Archival Records, Transvaal, Vol. 1, p. 324. 'Landroos' Lombard spelt his name 'Maceep' but there is no doubt of his identity, cf., P.P. 19/5/51 (1360), p. 31.
2. Ibid., enclosures to Smith's despatch of 12/7/50, including an extract from the Minutes of the Executive Council.
3. Ibid.
4. Ibid.

True

principal

the question that the discovery of so wonderful a region as that of Ngamiland would cause the Boers to move to it, so that they would escape the restraint nominally put upon them by the Cape of Good Hope Punishment Act<sup>(1)</sup>, and the Councillors advised that the British Government ought to extend the effectiveness of the Act up to the Equator. They conceived it to be important that British trade ought not to be prevented from reaching the far interior and that the natives should be given some security against the constant engrossment of the land by the Boers. Sir Harry Smith concurred in this decision. The Council proceeded to advise Sir Harry to address a letter to Mr. Oswell, whom the Councillors knew to be en route for Ngami from Kolobeng. Stating in detail what the letter should convey, they hoped that Oswell would explain to the native chiefs in the vicinity of the Lake that the Government wished for friendly relations with them and freedom for its subjects to trade in their country; and the Councillors hoped that such an approach would stiffen the natives in their resistance to Boer encroachment. Going further, the Councillors considered the question of what Imperial policy should be towards the peoples and territories beyond the frontiers of the Cape Colony and of the Orange River Sovereignty, and advised the High Commissioner what steps he should take through the agency of Major Warden at Bloemfontein. They decided that there ought to be no recognition of "the so-called Republic north of the Vaal River, or any of its landdrosts, magistrates, or other officers...", and ended up by advising that the whole question should be laid before the Secretary of State.<sup>(2)</sup> The letter which was subsequently written to Oswell, expressing the decision and the hopes of the Executive Council, was written by John Montagu<sup>(3)</sup>. A political letter of this nature was not in keeping with the function of the Colonial Secretary<sup>(4)</sup> to

1. 6 and 7 Wm. IV, cap. 57.

2. Ibid.

3. Ibid. p. 36, Montagu to Oswell, 11/7/50.

4. Supra. p. 112.

convey non-political information, such as colonial regulations, statistics, postal information, to foreign authorities or agents and was plainly more suited to the functions of the High Commissioner's Secretary. Whatever else he was, the Colonial Secretary was not supposed to be a colonial 'Foreign Secretary'. Yet this concurrence of events is significant of the interest which the Colonial Executive Council, whether irresponsible' or 'responsible' was bound to take in political and commercial affairs beyond the borders of the Colony. There was after all no true dichotomy possible between the functions of the High Commissioner and the Colonial Executive; the interests of the Cape Colonial Government were paramount. But this did not mean that the High Commissionership was 'swallowed' by the Governor and Executive Council. The following consideration makes this clear. The High Commissioner's correspondence was not kept in the same way or in the same place as the Governor's, for the High Commissioner's affairs lay beyond the official cognisance of the Cape Colonial Office. Thus, when the Colonial Secretary was requested in 1855 to produce correspondence about a meeting at Gwali in 1848, between Henry Calderwood, the Civil Commissioner at Alice, Colonel Mackinnon, the Chief Commissioner of British Kaffraria, and Charles Brownlee, Commissioner to the Gaika's, he replied as follows: "I must observe", he said, "that some of the papers now moved for, are of a peculiar nature, being correspondence of the High Commissioner and certain officers who acted under his authority. Now the office of High Commissioner is of a peculiar nature. It is not like that of the Governor, or of the Queen, which never becomes extinct; but with the recall of every High Commissioner his office ceases entirely, so that his successor has no guide but his own instructions; as with an ambassador, his correspondence is not recorded. I need not say that it is not in my office; it has nothing to do with the Colonial Secretary. Nor is it in any office in this colony. Copies of parts of it may be in the private possession of one or other officer, but not as public documents. One or two of the papers asked for may exist, but if so I am entirely ignorant to whom to apply for them. Therefore", Rawson continued, "the Governor has authorised me to state that with regard



to the proceedings of former High Commissioners he is not in a position to comply with the request for papers; nor has he any discretion in the matter, and it would therefore be necessary to apply to Her Majesty on the subject. With regard to his own correspondence, it would be within his discretion to present or to withhold it..." (1) That this was a true reflection of the position is indicated by the great difficulty Sir George Grey had to get hold of the letter books of Sir George Clerk with reference to his settlement of Transorangia and the treatment of the Griquas. Sir George Grey seems to have applied to the Secretary of State for these for the first time in October, 1856, but only as a result of repeated complaints did he get copies of Sir George Clerk's despatches to the Secretary of State, in August 1858<sup>(2)</sup>. The fault for not knowing what Clerk had arranged in detail may have been Grey's, for Clerk wrote to Herman Merivale that though he retained a letterbook with copies of despatches which he had addressed to London or to Sir George Cathcart, in December 1854, he had placed it in the hands of Sir George Grey, who, after reading it, returned it with a note of thanks<sup>(3)</sup>. The originals of these despatches were all in London. Whether any copies of them had been retained at the Cape is unlikely, but Clerk asserted that a voluminous record of all the work of the Special Commissioner and his assistants had been kept together in proper order and had been left at the Cape<sup>(4)</sup>. An enclosure with Clerk's letter, however, from a clerk who had dealt with these papers at the Cape indicated that copies of despatches to the Secretary of State and to Sir George Cathcart were not to be had at the Cape<sup>(5)</sup>. A subsequent memorandum by Sir George Clerk shows that he used two letterbooks in South Africa - one for despatches to the Secretary

1. Debates of the House of Assembly, 21/3/55.
2. G.H.<sup>1/53</sup> Labouchere to Grey, 7/4/57, in reply to Grey's despatch No. 108 of 24/10/56; G.H. 1/54, Stanley to Grey, No. 13, of 25/3/58; E.B. Lytton to Grey, No. 22 of 16/8/58.
3. G.H. 1/53 Enclosure, Sir G. Clerk to Merivale, with Labouchere's despatch of 7/4/57 to Grey. Clerk was then in retirement in Britain.
4. Ibid.
5. Ibid.

of State, and one for letters to persons in South Africa. The former he had taken back to Britain with the originals, but he claimed these letters had been published in a Government Blue Book. The second letter-book, Clerk wrote, had been given to Grey's private secretary in December 1854<sup>(1)</sup>.

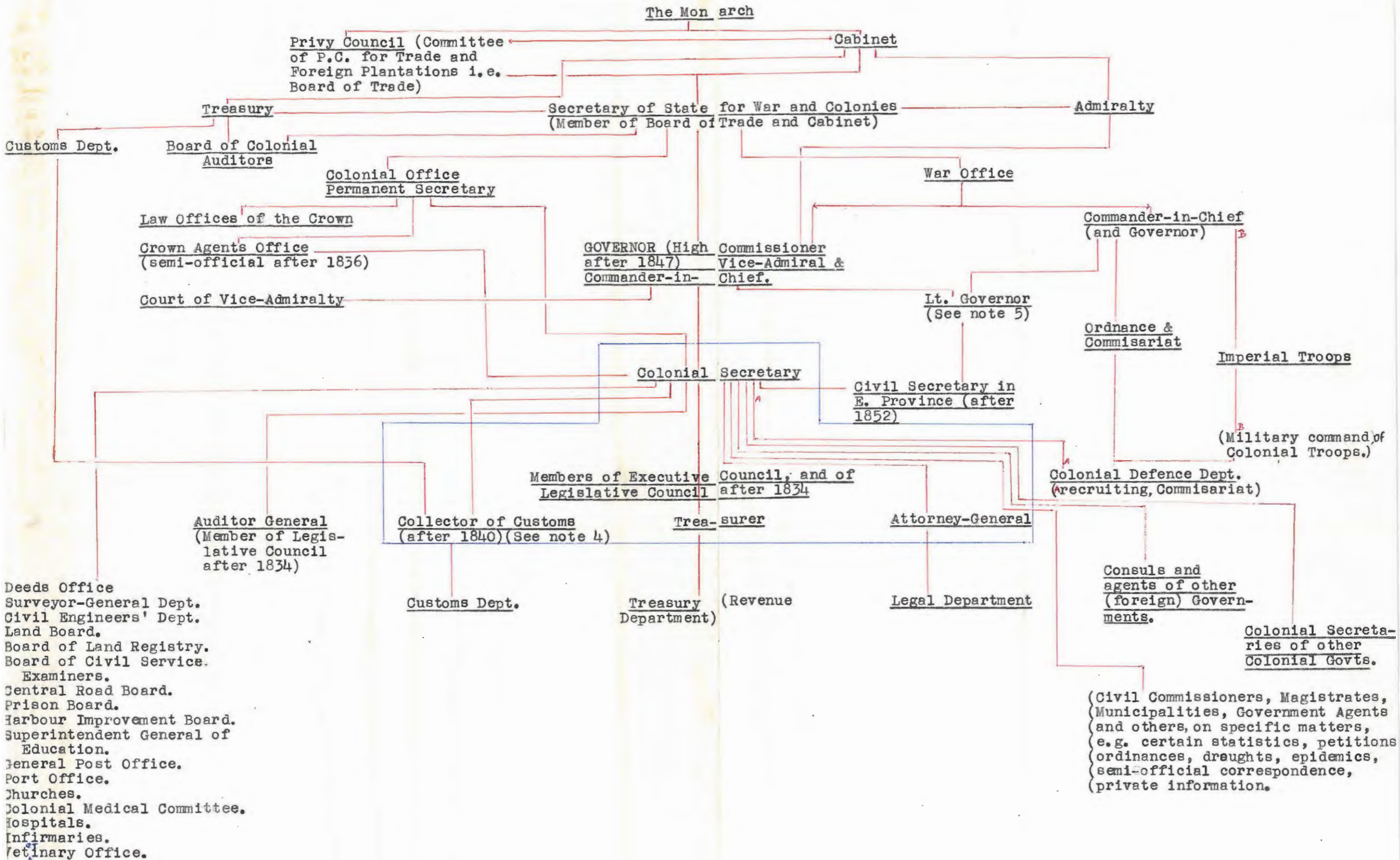
It seems clear, therefore, that while more or less coherent Government House and Colonial Office Archives were being built up, the High Commissioner's Archives had no formal existence at all, collections of documents being made, and kept, at the discretion and principally for the convenience of the High Commissioner for the time being. The Executive Council, or even the Colonial Secretary had nothing to do with it. The relationship between the High Commissioner and the Executive Council was therefore perfectly informal, the High Commissioner would only inform the Councillors when he felt moved to do so, and as much or little as he pleased, about what he was doing or planning, and they had no official means of discovering more for themselves, since, unlike the Governor's official papers, the High Commissioner's were not normally available to them.

In conclusion, the creation of the High Commissionerhip led to a major innovation in the political structure in South Africa, and this subtly modified the position of the Cape Executive Council, in its advisory capacity. It is evident that it tendered advice on a much wider field than hitherto suspected - probably wider than that with which the embryo 'responsible governments' of Victoria, New South Wales and New Zealand were called upon to deal, for in these colonies there were no High Commissioners. Indeed, both the administrative structure, and executive experience were probably more highly developed in the Cape Colony than elsewhere in the Empire at the time. It is true that the Executive Council at the Cape was unrelated to a parliamentary structure and depended for its existence on the Governors' Commission; but already on the eve of the assembly of the first Cape Parliament it was clear that had executive competence been the

1. Ibid.

sole consideration, as an organ of policy, the Executive Council was sufficiently mature to have executed the functions of a responsible ministry. Furthermore, it may be argued that after the grant of 'responsible government' in 1872, when, significantly, the Prime Minister took the portfolio of Colonial Secretary, the effectiveness of the office of High Commissioner depended in no small part on the willingness and at times the concern or even anxiety of successive cabinets to co-operate in the activities of the High Commissioner. Per contra, there remained powers perhaps, rather than functions, in the office of High Commissioner upon the exercise of which the cabinet could advise, but which it could not control, since the Cabinet was responsible to the Cape Parliament and electorate, and the High Commissioner to the Imperial Cabinet. The High Commissioner, then, represented that nebulous reserve of power summed up in the words - 'British paramountcy' which in the last resort turned, legally, on the decision of the British Cabinet; but from the earliest days of the High Commissionership the local experience, administratively and politically, of the Colonial Executive Councillors was a factor which the High Commissioner not only took into account, but upon which he to a degree depended.

ADMINISTRATIVE CHART FOR THE CAPE COLONY, 1825-53.



NOTE:

1. For convenience the Advisory Council (1825-34) is ignored
2. and the Commander-in-Chief is separated from the Governor.
3. The Governor was President of the Legislative Council after
4. Until 1840 the military officer next in rank to the Governor had a seat in the Legislative Council and Executive Council.
5. Civil and military duties in Eastern Province (1852-4 member of Executive

APPENDIX B.

UNOFFICIAL MEMBERS OF LEGISLATIVE COUNCIL 1834-53.

from R. Kilpin, 'Romance of a Colonial Parliament.

1834	1835	1836	1840	1845	1847	1848	1849	1850	1851
P.L. Cloete (sen)		H. Cloete (P.L.'s son)			W. Coek				
Jac. du Toit			H. Cloete (H's son.)				P.L. Cloete (jnr.)	J. Fairbairn <sup>®</sup>	C. Arckoll
J. B. Ebdon							A. de Smidt	A. Godlonton <sup>®</sup>	
C. S. Pillans						W. Harries <sup>4</sup>	J. Letterstedt	F. W. Reitz <sup>®</sup>	E. Christian
H. Ross				(absent)				Sir A. Stockenstrom <sup>®</sup>	W. Hawkins
M van Breda								C. J. Brand <sup>®</sup>	B. Moodie
			J. Stein (for H. Ross)						
			T. B. C. Bayley <sup>x</sup>			(J. Atherstone) <sup>4</sup>			

6

6-4

5

5

5

4-6

5

4-5

6

6

3D, 3E

1/3D, 3E

2D, 3E

3D, 2E

3D, 2E

3/4E,

1D, 4E

4D, 1/2E

3D, 3E

6E

x Appointment not confirmed by Secretary of State.

® Nominated by Sir H. Smith from a list of elected Representatives.

4 Never sat in Council.

D = Dutch. E = English.

APPENDIX C.

Abstract from:

REPORT OF THE PUBLIC ARCHIVES  
FOR THE YEAR 1923.by Arthur G. Doughty. - Ottawa, 1924.  
p. 205f.

Government House, Fredericton, December 21. Circular

Memorandum. In print. Addressed by Lieutenant Governor to Heads of Civil Departments, and Executive Council. Enclosing copy of Despatch from Colonial Secretary, intimating that the tenure of Colonial Offices will be dependent not only upon good behaviour of incumbents, but upon considerations of public policy; also, that a change of Governor will be considered a sufficient reason for any alterations deemed expedient. Commenting on the terms of this Despatch, Harvey observes that, while enlarging powers of Governor, they impose upon him increased responsibility not only towards Queen's Government, but towards inhabitants of province; and ensure for him cordial support of every officer of government in carrying out policy decided upon. He thereupon states that the retention of office by incumbent is to be taken as acceptance by him of such policy. Those desiring to retire through inability to accept these conditions, will have every consideration in way of retiring allowance or pension. p. 398

Enclosure:

Downing Street, October 16. (1839)

Russell to Harvey. In print. Giving the instruction mentioned, but stating that it does not apply to Judicial Offices, nor to places which do not involve duties in which the character and policy of Government are directly concerned. The functionaries chiefly, though not exclusively affected, are the Colonial Secretary, Treasurer or Receiver General, Surveyor General, Attorney and Solicitor Generals, Sheriff or Provost Marshal or those who under different designations perform the same duties. To the list is added, Members of the Council, especially where the Legislative and Executive Councils are distinct bodies. p. 398.

APPENDIX D.

Abstract from:

INSTRUCTIONS TO GOVERNOR

SIR HENRY GEORGE WAKELYN SMITH,

22.12.47. in P.P. 30 June 1851 (457) pg.11.

"13. Whereas We have by Our said Commission authorized you, upon sufficient cause to you appearing, to suspend from the exercise of his office within Our said settlement, any person exercising the same under and by virtue of any commission or warrant granted or to be granted by Us in Our name or under Our authority, and We have by the said Commission strictly required and enjoined you, in proceeding to any such suspension, to observe the directions in that behalf given to you in and by your General Instructions: Now We do charge and require you, that before proceeding to any such suspension you do consult with the said Executive Council, and you do signify by a statement in writing to the person so to be suspended the grounds of such your intended proceeding against him, and that you do call upon any such person to communicate to you in writing a statement of the grounds upon which, and the evidence by which he may be desirous to exculpate himself; and that you transmit both of the said statements to Us, through one of Our Principal Secretaries of State.

14. And We do hereby direct and instruct you, that all commissions and appointments to be granted by you to any person or persons for exercising any office or employment in or concerning the said settlement be granted during pleasure only; and that whenever you shall appoint to any vacant office or employment any person not by Us especially directed to be appointed thereto, you shall at the same time expressly apprise such person that such appointment is to be considered only as temporary and provisional until Our allowance or disallowance thereof be signified."

RE : POWERS OF SUSPENSION  
AND APPOINTMENT TO  
OFFICE.

APPENDIX E.

Abstract from Appendix B, Rules and Regulations for Her Majesty's Colonial Service, in A. Mills' Colonial Constitutions...of the British Dependencies, p. 377f.

II. THE EXECUTIVE COUNCIL.

1. The Executive Council (whether separate or not from the Legislative) has the general duty of assisting the Governor by its advice. In various cases, by local Enactment, he is required to act with this advice; but, generally speaking, although highly desirable, it is not compulsory on him to do so if he thinks the public interest requires an opposite course, in which case very special Rules are laid down for his guidance in his Instructions; which likewise prescribe the course to be taken by Councillors in recording their opinion in opposition to the Governor's.

2. Where separate from the Legislative Council, the Executive Council commonly consists of a specially-limited number of the principal officers of the Local Government, with or without an admixture of Unofficial Members.

3. The Councillors are appointed by the Governor's Instructions or by Warrant from the Crown, the Governor having in some cases the power of making provisional appointments, subject to the Crown's confirmation.

4. The Governor has the power of suspending Executive Councillors, following, as far as the nature of the case will allow, his General Instructions as to the suspension of Public Officers; but the power of dismissal rests with the Crown.

5. The preceding are the general rules relating to the constitution of the Executive Council, but in Colonies possessing what is commonly termed "responsible Government," the Executive Council is a removable body, in analogy to the usage prevailing in the British Constitution. The only formal step by which this is usually established, is the insertion in the Governor's Instructions of an unlimited power to appoint new Councillors, subject formally to the Crown's confirmation; it being understood that Councillors who have lost the confidence of the Local Legislature will tender their Resignations to the Governor.

6. The Colonies in which this form of Government is established, or in course of being established, are:-

Canada,  
Nova Scotia,  
New Brunswick,  
Prince Edward's Island,  
Newfoundland,

Jamaica,  
New South Wales,  
Victoria,  
Van Dieman's Land,  
New Zealand.

7. In the West India Colonies possessing Representative Assemblies, the Councils in some cases possess, concurrently with the Governor, a judicial authority as a Court of Errors, and in some cases they also audit the public Accounts.



8. To the Executive Council, associated with the Chief Judge of the Colony, is also in general entrusted the duty of administering to the Governor, on his arrival, the usual oaths of office; which being done, the Governor administers to the Members of the Executive Council, and others, the oaths of office to be taken by them respectively. Each new Member of Council, on his appointment, is also required to take the oaths applying to his particular case.

(Published in 1856.)

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