A STUDY OF THE RELATIONSHIP BETWEEN THE LAW, THE STATE AND THE COMMUNITY IN COLONIAL QUEENSLAND.

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PREFACE

There was a number of problems associated with research into this topic, the major one being the availability, or more exactly the non-availability of research material. This applied particularly to records on Queensland lawyers - very few family or business papers were available, and consequently it was difficult to build up very complete biographical details on such people. The overall effect was that much reliance had to be placed on official sources, with the consequent danger that one might take too narrow a view of the situation. I have tried to make allowances for such traps.

I am very much indebted to a number of people who have helped me in my toil, and in particular I would like to mention the following: R.B. Joyce, Esq., of the History Department, my supervisor; R.C. Sharman, Queensland State Archivist, and the Staff of Queensland State Archives; the Staff of the Oxley Memorial Library; the Staff of the Queensland Parliamentary Library; the trustees of the Mitchell Library and of the Dixson Library; the library staff of Queensland Newspapers Ltd.; officers of the Queensland Supreme Court, and various members of the legal profession in Queensland.

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Abbreviations

Q.G.G.	Queensland Government Gazette
Q.P.D.	Queensland Parliamentary Debates
Q.S.A.	Queensland State Archives.
V.&P.	Votes and Proceedings.

INTRODUCTION

This is a meagre study, in many ways a pilot study, into the growth of legal institutions, and with that a system of law and order, and into the development of the legal profession, in colonial Queensland, 1859-1901. The background until separation has also been sketched. In such a study, four factors presented themselves as focal study points - the system of law provided, the State which provided the system, the community which had certain justice needs, and the lawyers, in some senses, a coalesing agent between the other three factors.

It has not been my concern to examine the intricacies of the jurisprudential arguments about the theoretical relationship between the law and the State - arguments which normally begin with the question of which came first, the law or the State. Then the further jurisprudential question arises - where do community needs fit into the State - Law relationship? These discussions can be quite theoretical and general - whereas my intention has been to relate legal growth to a concrete, practical situation, that of an emergent British colony in the latter half of the nineteenth century. The academic arguments about the exact relationship of these forces are still continuing. They started at least in the time of the ancient Greeks. Aristotle conceived justice as the bond of men in States - 'the administration of justice, which is the determination of what is just, is the principle of order in

political society'.[1] The complexity of the relationship was taken up in medieval times by people like Aquinas and St. Germain. A new approach to the problem was given by English jurists in the seventeenth and eighteenth centuries - Coke, Blackstone, Hobbes. Germans like Savigny, and the American realists - Holmes, Pound, Cohen - added new twists to the discussion. However I have avoided that general jurisprudential and sociological controversy seeking to determine precise practical relationships between the Law, the State and the community during a particular time period. My approach basically has been realistic - what were the community needs, what was the response of the State and of the lawyers, what was the system of law provided - as it occurred in Queensland last century.

A definition of 'law' poses many problems. A number of approaches could be taken - an idealistic one, which in turn could be blended with ethical terms. Law could be regarded as what is right, or again as being synomymous with justice. Cicero saw law as the distinction between things just and unjust. Laws were in agreement with nature; they punished the wicked and protected the good. The ancients thought basically in such idealistic terms. The German Savigny conceived of law as springing from the people - the common consciousness of the people was the source of law which slowly developed by custom

1. R. McKeon, ed., Basic Works of Aristotle, (Oxford: The Clarendon Press, 1941), p.1130.

and tradition. Such an approach led to the conclusion that the law was designed for and was a product of the common good.

A more realistic approach was adopted by Austin who saw the law as a body of rules, whether arising by custom or by judicial decision, established by the State, and imperative. Law therefore was an aggregate of rules established by political superiors - it proceeded from the State rather than being a reflection of the moral and ethical desires of the people. The American jurist, Oliver Wendell Holmes, put the matter more bluntly - the law is the means whereby one may prophesy what the courts will do in fact.[2] On these realist approaches, the law is a body of rules, laid down by the State, or its agents (judges and courts, perhaps administrators) for its own purposes.

In this study, I have more closely followed the realist approach - I am concerned with the law as rules and regulations governing the life of the community and prescribed by the State. At the same time, one does, especially in a democratic society, hope that there is a link between the State and the good of the people. And so in nineteenth century Queensland, which had most, if not all, of the distinguishing features of a democratic State, I have looked for links between the law as prescribed by the State and the needs of the community in matters of justice. The sociological approach of considering community needs and the response of the State to those needs does not go amiss - but the idealistic approach of

2. O.W. Holmes, "The Path of the Law", Harvard Law Review, X (1897), 457-462.

linking law with justice and good, although that in fact may be what the people think are their justice needs, does not bear up to examination in the practical situation of a State actually governing a community.

The system of law adopted was of course British - Queensland at separation took over all the rules and regulations governing British life and society. That, however, merely provided a basis for life to continue in the colony. It was for the State to ensure that the system worked, and that it grew and changed with the ever-different face of the community. One of the main problems of the State was to provide sufficient courts and law officers (including judges) to cope with the growing population and the ever-spreading settlement. It also had to ensure that the facilities for law which it provided were reasonably efficient, at least to the satisfaction of the demands of the community. Apart from courts, the State was called upon to provide adequate remedies for its citizens, to give at least the semblance of justice being done.

There was some overlay of idealism in the provision by the State of rules and regulations, courts and remedies to form a system of law; for, that system of law was aligned to the principle that the common good must be both satisfied and advanced. There was a spirit of an urging for progress, in the colony. Such progress could be better obtained by the State providing a full and efficient system of law - by

ensuring that peace and order reigned, and that the community, whether in a working or a domestic role, could exist and operate smoothly. The State was to provide a system of law to allow progress.

In this work, I have used the term 'law' with the above considerations in mind. I have used the terms 'a system of law', 'law and order' and 'a system of justice' interchangeably, mainly to refer to the system of rules and regulations, laid down by the State and those in authority functioning for the State (and including the courts), and designed to exercise control over the structure and behaviour of the community and over the relations and activities of its members. On those occasions when I have used the word 'justice' to refer to the ideal of allowing good to be done, such sense is apparent.

It should be pointed out that the system of law is not wholly subservient to the State. Admittedly the State's legislative power is so wide that it can pass rules and regulations of the widest nature to control the community, and it had a real control over the courts. At the same time, a certain independence can be exercised by the judges - and this did happen in colonial Queensland. The judge has often found himself in the role of a protector of the liberties of the individual, in opposition to too great a State power. For that reason, the judges of colonial Queensland have been considered separately, although together with the courts they made up the main factors involved in the notion of law in Queensland.

The judges, by the traditions of English justice, embody the spirit of the law. Certainly judges make law by their decisions and judgments in court. American jurists have studied the judicial process, how the judge makes laws, and noting in particular the influence of his personality on the laws so made. I have not done a study of this idea so far as Queensland judges were concerned, mainly because the study as such is outside the scope of the thesis. In particular, so far as related to the judges, the main consideration has been the relationship they had with the State. I have not been interested in the question of how Queensland's judges came to make court decisions. The common belief at present held in Australian legal circles is that in Australia the personality of the judge does not very much influence decision-making. It should be pointed out that this belief has not been thoroughly investigated.

The term 'State' has been treated in a straightforward manner, as referring to the governing body, the Legislature and associated instrumentalities which help in controlling and directing the community. I have not included any discussion on the role of the police force. Certainly it is an agent of the State, helping to carry out and enforce the system of law provided by the State. But overall such a study could probably be unrewarding, since the police department acted very much in a purely executive capacity, carrying out State directions without independent initiative. Their overall function was rubber-stamp, and as such could provide little of

interest to explain further the relationship between law, State and community. There is also the research problem that police department files are not for public access - so only a limited impression could be gained.[3] The State, for the purposes of this thesis, has meant primarily the Legislature, and also to some extent the Department of Justice with its many offices. There is also a confusion in relationships - in some aspects, the courts in particular and the judges are organs of the State. At the same time, they are representations of the system of law provided by the State. The confusion in those relationships has been investigated within. For reasons similar to those given above in respect of the police force, I have not fully examined the Department of Justice and its officers - the study would be mainly one of its efficiency. So my prime concern has been to look at the system of justice - in particular the courts and legal remedies - which the State provided for the community, and that has been revealed under the topics courts, judges and community.

The 'community' refers to the people of Queensland during the colonial period - those for whom the system of law was provided, those for whom the State existed. For most of them, the needs of the law were remote - very few took any interest in the system provided, or sought changes and improvements. As such a negative quantity, they must almost of

3. I have been informed by the Police Department that one of its officers is working on a history of the police force in Queensland.

necessity be excluded from consideration here. Concern is given to those of the community who had some relationship with the law and the State. This could have been in the form of jurors or offenders against the system of law. There were also certain active interest groups urging legal reform, more remedies and such - these were also of historical interest. As well, consideration has been given to whether the State provided sufficient conditions of law and order to allow the community to exist and function happily.

Again, just as between Law and State so there was a confused relationship between the community and the State. The State supposedly represented the interests of the community - yet there was not a full coincidence between the two. Then there was the ambiguous position of the lawyers, including the judges. They were of the community, yet in some sense removed from it. This especially applied to the judges, who by virtue of their position, had to stand a little aloof of the general turmoil of community living. But also the lawyers were in some ways a special group, to some extent apart from the community. The lawyer's traditional role has been to preserve the individual and his rights from arbitrary power. As it happened in Queensland last century, no issue of great constitutional importance and no real threat to individual liberties arose - so the lawyers were not called upon to prove their worth. Still they were a somewhat special group. They were leaders in the community and as such played a very instrumental part in shaping the nature of development in

Queensland. That they took a very keen interest in politics and entrenched themselves in key positions in the State was possibly one reason why there was so little conflict between the power of the State and the rights of the individual. The lawyer took a position in the State which allowed him to go quite some distance in ordering his own world and promulgating his own laws - in any case, as a politician he was in a good position to check excessive State power.

The lawyer was a group apart from the community also from the aspect that he was of the law. He was concerned to help administer the system of law, although not necessarily in the interests of the State. He acted as an intermediary, reconciling and protecting the interests of both the individual and the State.

The term 'lawyer' has been used to refer to both branches of the legal profession - barristers and solicitors. Admission to practice in either branch has been taken as the determining feature. At the time, barristers and advocates were treated as the same type of practitioner - similarly solicitors, attorneys and proctors. For most purposes, judges have been treated as belonging to the group 'lawyers', although obviously they do have a separate existence as well, and thus the separate chapter on judges. Conveyancers have also been included in the category, for sake of completeness, although their small number and insignificance have scarcely warranted

it. The word 'profession' has been used generally to cover the whole of the body of lawyers - when used to refer to one branch of the profession, that sense is apparent.

There was a fundamental problem in studying the significance of the lawyer in the State-community relationship. This was a restatement of the problem that arose in regard to what were the community needs - the bulk of the group were unresponsive, and so therefore historically uninteresting. As with the community as a whole, so with the lawyers as a group, evidence was available on only a small number of the whole body of lawyers. That evidence related to the most prominent lawyers, the most newsworthy citizens. The tendency has been to make generalisations from the important few to the whole group. There is a certain error in this, although it is to some extent excusable - at the most the unknown majority followed and agreed with their more significant brethren; at the least they did nothing - if anything else, they themselves would have been newsworthy. So one can talk about group behaviour, having regard to these qualifications. At the same time, the individual lawyer was the more relevant unit than the lawyers acting as a group. Consequently, the study of the role of the lawyers in Queensland development has been presented mainly as a series of important individual lawyers, who, because of their prominence in the community, set a standard or a model which the majority of the more

disinterested lawyers followed. Through the activity of the leading lawyers, and through their mediation, a happy working relationship was established between the State, the Law and the Community.

CHAPTER I

THE COURTS

There devolves upon the State a duty to provide for law and order - both to offer an organisation wherein laws can be formulated, and to allow for the enforcement of these laws. Man's complicated social system needs regulation and control if it is to run efficiently and smoothly - and so man has delegated authority to a few so that they can arrange the order and framework of control within which society is to function. So evolve the law-makers and law-enforcers.

Within the framework of British colonial history, the law-makers have displayed themselves firstly as the legislative arm of Parliament, but also as the judges and like judicial authorities. The law-enforcers have been in one form, part of a branch of Parliament - the executive arm, and in particular its department the Police Force - but have also included the professional group, the lawyers. For the regulation of human society is not merely a matter of providing and enforcing criminal laws but of regulating the whole experience of life, including its many important (and more widespread, even if more mundane) aspects of civil law, e.g. the transferring of property, the natural passing of life, the settlement of disputes between individuals.

So the State, in its legislative, executive and judicial forms, plays an important role in providing law and order for human society. But the State is not the only unit concerned. Within the mass of society itself exists a group whose aim is to help provide this control and regulation - the lawyers, and included in this group is the juridical arm of the State. So there is a division of interests in the juridical arm, as it tries to place itself between on the one hand the State and on the other the people, asserting its independence of both, acting as a third force or mediator. The lawyers not attached to that arm have tended to fall within the ambit of society, or to act as agents of society, often against the authority of the State.

This thesis concerns itself with showing the role of the State (i.e. Parliament) in providing the means of obtaining justice and order for the growing needs of a colonial community, and the part played by the lawyers in dispensing this justice. The underlying contention is, that the spread of law and order, and the facility to obtain justice were necessary to help the growth and development of the new northern colony of Australia.

I am not going to concern myself much with the provision of justice in the convict period of Queensland's development. This aspect has been covered in Coote's "History" and Knight's 'In the Early Days', although it should be borne

in mind that their treatments of the matter are not definitive, nor wholly accurate.[1] Both writers gave illustrations of the type of justice meted out to the 'poor, unfortunate convicts of the settlement'. In particular one might note how Knight drew attention to the severity and the inhumanity of the cruel punishment ordered for convict malefactors by the harsh and tyrannical Captain Logan.[2] This approach has been held in disfavour for some thirty years, after the criticism by Professor F.W.S. Cumbrae-Stewart of the University of Queensland Law School, later supported by H.S.S. Sparkes of the Oxley Memorial Library.[3] This criticism pointed to the fact that the evidence of savage whippings administered under the orders of Captain Logan came from ex-convicts and associates, and so was liable to error. At the same time it was pointed out that by virtue of an 1824 Imperial Act, control of convicts was entrusted to a superintendant - a kind of sheriff or gaoler with powers of punishment in the case of misdemeanors and minor offences committed by a convict. These powers were somewhat limited - the superintendent in fact exercised the powers of a justice of the peace. It was required at English Law that more serious offences be heard by a bench of justices of the peace, but, as

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1. W. Coote, History of the Colony of Queensland, Vol. 1, (Brisbane: William Thorne, 1882); J.J. Knight, In the Early Days, (Brisbane: 1895).
2. J.J. Knight, ibid, p.27.
3. F.W.S. Cumbrae-Stewart, "The Law Courts and Judges of Moreton Bay and Queensland", (handwritten); H.J.J. Sparkes, "Early Legal History of Queensland", (handwritten and typewritten).

this proved a difficult condition to fulfil in the early colony an amendment was made by the New South Wales Parliament extending the powers of punishment which the superintendent might employ. He could order the treadmill; up to fifty lashes; solitary confinement no longer than seven days; or hard labour not to exceed three months. Very serious offences involving capital punishment were to be referred to a jury in Sydney. The control over convicts and the imposition of punishment for the infraction by convicts of the law, was vested in a superintendent - P.B. Spicer, and no jurisdiction over convicts was entrusted to the Commandant of the Moreton Bay Settlement. So Captain Logan, who was Commandant between 1825 and 1830, functioned in the settlement solely in a military capacity - he was commissioned to control the discipline and behaviour of army personnel. His powers were exercised through the provisions of military law, in particular the Mutiny Act.

In view of these circumstances, it was improbable in theory at least that Captain Logan would have found himself in a position to punish convicts, and so the allegations of cruelty against him can be discounted. At the same time, it should be borne in mind that as a practical matter the law may have operated somewhat differently: for example, Captain Logan, on his numerous expeditions of exploration took convicts with him and possibly either was entrusted with powers of punishment (whether legally or not) or else on his own initiative exercised powers of punishment over misbehaving convicts.

An act of the New South Wales Legislative Council in 1832 repealed many of the previous provisions relating to the management and punishment of its felons but instituted in its place a system not very different to the former one. It provided for the management of convicts by commandants or superintendents - offenders ordered to be kept to labour in irons on the roads or other public works were under the custody and management of Superintendents.[4] Again the maximum amount of punishment which could be meted out to an offender was limited - it varied depending upon the manner of trial and the nature of the crime committed - for example, for pilfering from one's master: up to fifty lashes, or labour in irons on the roads or public works for between six and twelve months, if the case was heard before two Justices of Petty Sessions. Again of course it should be remembered that the law as actually executed in the penal settlement at Moreton Bay may have differed from the execution of the law as prescribed by statute. The Cumbrae-Stewart argument is based very much on the theoretical state of the law - so there may have been some truth in the convict stories of harsh treatment, although, at the same time, having regard to the limits on punishment provided by statute and to the character of the convicts, these stories were probably exaggerated.

However the development of a system of justice in the northern districts of New South Wales progressed little until

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4. Act re felons, 3 Wm. IV, No. 3, 1832.

the 1840's when justices of the peace were appointed for the area and Captain Wickham of the Royal Navy was commissioned as Brisbane's first Police Magistrate in 1842. With the arrival of free settlers and the closing of the convict establishment, there began to take place changes with which a State system of justice centered on Sydney could not keep pace. The period 1840-1859 told a story of a growing demand for more adequate and appropriate Government administration in the North. The local inhabitants were dissatisfied with the impoverished and dilatory help which the Sydney government gave in the development of this region. This complaint arose with regard to a number of government departments, including the administration of justice. At first there was little for the State to do while the settlement was military, but with the advent of the free settler, the State was morally obliged to provide proper facilities for justice and to ensure peace and order for development and in these regards the State proved slow to move. So community dissatisfaction arose, culminating in the demand for control of their own affairs including the administration of justice. They were displeased with the system provided and with the law officers of the State in their administration of the system.

As the first settlers moved into the area later to be called Queensland they had to look to themselves for their own protection. The arm of the law was not long enough to reach 600 miles from Sydney into the Darling Downs region, and

into areas further north as settlement dispersed. There were of course the central facilities of justice, courts and registries in Sydney - but the factors of distance and time meant that these facilities were virtually useless for the Northerners. Yet civilized white people of good British stock had a natural born right to have offered to them the opportunities to obtain justice long treasured and hallowed by the English since Magna Carta, and it was the duty of the State to provide these opportunities. It seemed to the locals that progress, the settlement, and civilization of this last continent was dependent upon the establishment of British institutions such as civil courts otherwise free settlers would not come.

The Governor-in-Council did pay some heed to the cries of the North people for a better deal. An act of Parliament in 1828 allowed for the appointment of Circuit Courts of the Supreme Court, and in time Maitland was made the centre for the Northern Circuit - a circuit of vast dimensions including the Darling Downs and such further northern areas as were opened up. However at this stage of development, it was important that courts smaller than the Supreme Court to function, even if the former were to provide only a rough and rudimentary form of justice. The smaller courts could be more widely dispersed throughout the countryside - and so bring the people into closer contact with justice. The State chose to answer that need for some form of law and order

through the agency of the police and the creation of police magistrates to dispense justice, but it was not until 1842 that any real attempt was made to care for the judicial needs of the Darling Downs or Moreton Bay area.

By that stage the penal settlement at Moreton Bay begun in 1824, upon the suggestion of Commissioner J.T. Bigge, purely as a penal base under military control, was being supplanted. For the settlers that first moved north, mainly into the Darling Downs region, nothing was provided, because of the paucity of population and the problem of distance. Then with the closure of the Moreton Bay penal settlement, and the abolition of transportation there arose the expectation of much greater settlement in the North - so the State began to provide more by way of judicial comforts for the community. By 1842, Moreton Bay had been proclaimed a Police Border district.[5] For more important court matters, the people had to look to Maitland, and for registries in matters of death, land, chattels, Sydney was available.

However there was no coherent plan of settlement for the North - people kept arriving, the Sydney Parliament moved slowly, while the British Parliament made new plans. The matter of convict disposal was still alive - and the vast unoccupied areas of Northern Australia offered themselves as attractive hospices. There were plans for the Gladstone

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5. N.S.W., V.&P., 1842, Papers p.179.

Colony of 1847 - but the attempt at settlement was shortlived - and most of the convicts were sent to Moreton Bay. Moreton Bay was not removed from the list of places of refuge for these reprobates from society until 1852 - and on occasions e.g. 1850 convicts were unloaded at the Bay after having been refused permission to land at Sydney. During the 40's, the local inhabitants had not interfered in the matter of transportation - some in fact had petitioned for convicts to help as a labour force.[6] But by 1850, with the arrival of an ever increasing number of free settlers, many of the small-time, urban, respectable middle class, Brisbane people were beginning to protest against the sporadic arrival of felons in their fair city and the consequential perpetuation of this blot on the progress of their region.[7] Because of the continued presence of these undesirables some burghers feared for their safety, and called for an increase in the size of the police force so as to provide for more adequate protection in Brisbane, Ipswich and on the roads. So long as convicts were still being landed, the community complained of the threat to the safety and well-being of each individual and called upon the State to provide more adequate protection but State control resting far away in Sydney tended to let the matter slide. As it happened, the convicts arriving were not dangerous offenders,

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6. Moreton Bay Courier, 15/8/1846, 22/8/1846, 24/10/1846.

7. Moreton Bay Courier, 16/2/1850.

and no incident jeopardising the interests of the free settlers arose. However the final cessation of transportation in 1852 ended that reason for complaint by the community. In the long run, the penal period had no long term effect upon the development of these northern areas - the convict issue from the 40's onwards was only a side issue, while the speed of free settlement absorbed most attention.

The Moreton Bay and Darling Downs regions developed rapidly during the 40's, and this necessitated the State to provide more local facilities so that free respectable British citizens could readily and expeditiously enter into and transact the normal legal operations associated with the functioning of urban and rural life. The local inhabitants looked to the development of these regions as free, prosperous areas perhaps one day destined to become a colony. So a Court of Requests with jurisdiction up to £30 was created at Brisbane to hear small debts claims, along with the Police Court to hear minor criminal matters. Brisbane people in their criminal and lawless moments seemed most given to drunkenness, brawling (any form of assault) and breaches of the Hired Servants Act.[8] Captain John Clements Wickham, as police magistrate, found he had to attend to much official work, and from 1853 acted as Government Resident - he also attended to surveys and land transfers. So the administration of law was very closely associated with official functions of the State,

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8. Moreton Bay Courier, 8/8/1846 lists ~~of~~ the work of both these minor courts.

through this confusion of offices. The separation of judicial administration from other matters of the State could not be achieved while the population was so small.

But progress was being made. The 1846 census numbered 2,258 people in the Moreton Bay and Darling Downs areas. This was taken as a sign for the need to establish a Court of Quarter Sessions in Brisbane, and in 1847 Courts of Petty Sessions were gazetted for the districts of Moreton Bay, Ipswich, Cressbrook and Darling Downs.[9] Conditions were still somewhat makeshift and temporary Court facilities had to suffice - for example in the Darling Downs district, courts were held at Cambooya, the then headquarters of the Commissioner of Crown Lands, and at 'Canning Downs', the station owned by Messrs. Leslie, and in the Cressbrook district, Messrs. Mc Connel made their station available as local headquarters.[10] As people continued to spread further afield, so new courts followed - in the Darling Downs area, Drayton and Warwick early became important, but settlement also proceeded into the Burnett region and courts were held at Taabinga and Wooroolin. Soon after, police benches were proclaimed for Gayndah, Maryborough and Surat. Brisbane work increased, and so three magistrates were stationed in Brisbane to handle the work.[11] Sydney began to recognise the changed circumstances in the

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9. Moreton Bay Courier, 24/10/1846. Notable Events, published by The Queenslander, 8/12/1909.
10. Moreton Bay Courier, 9/1/1847.
11. Report, N.S.W., V.&P., 1849, I, page unnumbered (refer index).

northern areas - and so alterations were made to the Brisbane court house so that assize sessions could be held there. Then to handle the increased criminal activity, the first gaol in Brisbane was completed in 1849, being converted from the former female factory.

The opening of the first circuit court in Brisbane on 13th May, 1850 was hailed as a great step forward for the people of the North.[12] The court conducted civil and criminal business, and had jurisdiction ranging over the county of Stanley, and the Crown Commissioners' Districts of Maranoa, Darling Downs, Burnett, Wide Bay, and Moreton. Most of the business of a criminal nature, and of the crimes, stealing was the most prevalent one for trial.[13] Brisbane people, until 1850, had reason to feel unprotected in that there was no Supreme Court with a wide jurisdiction to deal with matters of grave criminal nature, or matters involving serious civil grievances or breaches of the law. Thus the establishment of a Circuit Court was regarded as a constructive move to provide order and some degree of civilized life for the North, as well as to offer cheaper justice, in fact to make it more possible to obtain justice which, so long as Maitland or Sydney were the usual places of recourse for justice, was prohibitively expensive. As it was, civil cases were not particularly numerous; however the community could take comfort in the fact that the Court provided a more effective method of allowing

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12. Moreton Bay Courier, 18/5/1850.
13. Ibid, 24/11/1855.

criminals to be brought to justice.[14] At the same time, officials in Sydney found that they had overestimated the quantity of work for the region and consequently cut down on the expenditure voted for the Circuit.[15]

However such a reversal was merely temporary and as the population flowed in, so the need for further changes arose. By 1856, the population was estimated at 18,544[16], and some began to raise the cry of separation. The State had been informed of the changing circumstances in the North by reports of its judges.[17] As early as 1852 Chief Justice Stephen considered the Supreme Court Circuit needed assistance - in the form of a Recorders' Court to deal with civil claims up to £100, perhaps £200 and with fairly wide criminal powers, but the State had ignored his plea. By 1855 the position had deteriorated and the time lost by the one judge on the Northern Circuit imposed a great burden on the two other judges handling the rest of New South Wales court business. Apart from the inconvenience of the circuit, it was a harassing one. If a judge were stationed in the North, he would surely stagnate

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14. Between May, 1850 - August, 1855, only 16 civil cases were heard, as against 197 criminal cases: NSW, V.&P., 1855, I, pp.815 ff. Further details of criminal business are given in NSW, V.&P., 1856, p.981, p.1104, and NSW V.&P., 1859-60, I, page unnumbered.

15. NSW, V.&P., 1851, I, 2nd session, page unnumbered.

16. 2nd Census, 31/12/1856.

17. NSW, V.&P., Observations on the present and probable future wants of the Colony in connection with the Administration of Justice, 1855, I, p.687.

from lack of legal contact and would probably become biassed through the narrowness of local social contacts. Yet Stephen and his learned brother Dickinson felt a separate judge and a separate Court was necessary, if a Recorders' Court were not established to lighten the load on the Supreme Court. Under the existing circumstances, the North had grounds for complaint that it was being ignored in the provision of justice. Judge Stephen went so far as to say that the North was almost 'without the pale of Municipal Law'.[18] Judge Therry, who had taken the Northern Circuit work, differed from the views of his learned brothers and considered that the situation should be left as it was, since the Constitution Act of 1855 should make arrangements in this regard. His view did not deny that there was need for re-organisation and that the State was not keeping abreast with the judicial needs of the rapidly expanding Northern population.

These reports were followed by a legislative move by Northern supporters to have created for the Moreton Bay region a District Court (the equivalent of a Recorders' Court) but there was over-whelming opposition to the move.[19] It was not until 1858 that the State created District Courts for New South Wales, but because of the impending separation of Queensland no attempt was made to apply the legislation to the North.[20]

The Constitution Act of 1855 provided for the separation of the northern-most region of New South Wales and

18. Ibid, Observations p.5.
19. Moreton Bay District Court Bill, 1855, Moreton Bay Courier, 21/7/1855.
20. District Courts Act of 1858, 22 Vic. 18.

contemplated the appointment of a judge for Moreton Bay. Because of the sympathy of the Imperial Government for the claims of the Northerners, the Sydney-based Parliament considered moves should be made to follow up this approach - by the appointment of a fourth judge, such judge not to reside permanently in Brisbane but to hold courts there three times per year and otherwise to assist at Sydney. There were complaints in the North that such a move was too begrudging and still ignoring the real need for justice of the inhabitants.[21] A full-time resident judge was needed for the area, so that he could take justice to the country regions as well as to Brisbane. There was also criticism of the proposed judge-appointee - Samuel Milford. A vigorous, healthy barrister was needed and there were doubts that Milford would be able to stand up to it. So, to the list of separation grievances, the Northerners could add the claim that the State controlled from Sydney was giving them a raw deal in matters of justice and holding up northern development.

A more satisfactory attempt to fulfill these needs was made in 1856 when proposals for the establishment of the Moreton Bay Supreme Court were made. These included plans for a Resident Judge, having substantial jurisdiction including insolvency and intestacy matters, and the right of appeal to the Supreme Court in banco sitting at Sydney.[22] The Moreton Bay Courier approved this legislation, as a move by Sydney to

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21. Moreton Bay Courier, 24/11/1855.
22. Ibid, 6/12/1856 - Bill re Administration of Justice in the Moreton Bay District.

provide the natural right of the nation to a pure and merciful administration of justice.[23] The new system also provided for the registration of Deeds by the Brisbane judge and this was of great advantage, in the saving of both time and expense, and in providing greater certainty to the purchaser in his transactions. Judge Milford formally opened the Moreton Bay Supreme Court on April, 1857 amidst general approval. However the hopes of the Northerners were dashed by the very actions of their Resident Judge and they were to discover that their region was not yet provided with a full, ample and complete administration of justice.

Judge Milford did not like the North and preferred to stay in Sydney. Some jocularly referred to him as being resident in Sydney, but making three pilgrimages annually into the sticks, whereas it had been assumed that the legislation intended him to reside in Brisbane, holding three sessions there per year, and if he had spare time, then to visit Sydney and help out. In 1857 and 1858 he avoided his full commitments in the Brisbane Court by residing in Sydney.[24]

In fact the legislative move had not really achieved anything - the old Circuit Court system was being maintained by the nature of the Judge's behaviour and the Parliament in Sydney chose not to interfere. There was disappointment in the North that such a high dignitary as a judge took so little interest in the development of the proposed colony.[25] Such was

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23. Ibid, 23/8/1856.
24. NSW, V.&P., 1857, I, p.439.
25. Moreton Bay Courier, 20/10/1858.

the extent of the judge's dislike of the North - he asserted there was no intellectual or social company for him, only stagnation - that an attempt was made to circumvent the earlier Parliamentary intention that Moreton Bay have its own court by providing that offences committed in that district might be tried elsewhere than at Brisbane.[26] This meant that Brisbane work could be heard and tried in Sydney, to the convenience of Judge Milford. Consequently there was an outcry in the foetal colony against that insult. There was, however, some justification for the proposed move, in that the scarcity of gaol provision in the North, in particular at Rockhampton, meant that Sydney was or could be used as a holding ground for criminals - and if so, it was sensible that the trials be held there. At the same time, the lack of adequate gaol provision in the North was another valid ground of complaint by the North that the Sydney-centred State was ignoring the community needs of that important area. However this legislative attempt to reduce northern judicial administration met strong parliamentary opposition, and doubts raised by the other New South Wales judges of the effectiveness of Milford's jurisdiction in Sydney brought the judge scuttling back to Brisbane.[27] So strained were relations between the Brisbane community and the official representative of the law that the 'Moreton Bay Courier' wrote that the people of Brisbane would

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26. Moreton Bay Administration of Justice Amendment Bill - Moreton Bay Courier, 3/11/1858.

27. Ibid, 10/11/1858.

not be sorry to see the last of Judge Milford. The people of the North felt that in the matter of higher justice, the State had not attended to their needs - nor had they been encouraged by the senior division of the legal profession, the Bench, to think highly of the lawyers and the administrators of the law. At that stage, they felt the system to be inefficient and unsatisfactory - all they could hope was that a State organised by themselves would provide a better system and ensure more effective administration by its law officers.

There was also dissatisfaction with the administration of the law by the lesser officers - the magistrates. There were suggestions that the court system beneath the Supreme Court be re-organised.[28] There was some talk of the establishment of District Courts but that was still-born during the pre-colonial period. Another suggestion was the creation of Local Courts - this was to be a composite court presided over by a person performing the duties of police magistrate and Chief Commissioner of the Court of Requests (with jurisdiction over claims up to £50). The important feature of this court was that the person in charge should be legally qualified, namely a barrister. Dissatisfaction with the training of the clerk of petty sessions at Ipswich, and the police magistrates at Drayton and Warwick was expressed and a strong recommendation made that these people be solicitors.

There had been growing criticism throughout the whole of New South Wales with the administration of justice and the

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28. Ibid, 23/8/1856.

conduct of official business in country districts. So Parliament ordered a select committee to investigate the matter its work was never completed but a progress report was made on the work performed by magistrates.[29] The combination of functions - e.g. that of Commissioner of Crown Lands, Police Magistrate and Clerk of Petty Sessions - in the one person was approved of, and there was no general recommendation that the practice cease - at least not in the sparsely populated districts. A greater degree of rationalisation, and more efficient and resourceful administration was suggested, involving the greater use of stipendiary magistrates to do clerical work and avoiding the overlapping of functions and the consequent unnecessary employment that existed at that time by a too strict division of functions. Also a better distribution of manpower was called for, because in spite of the over-employment in some regards, there was an overall scarcity of magistrates in the country with the result that many breaches of the Master's and Servant's Acts, and the Vagrancy Act went unprosecuted. The report did not refer specifically to the Northern areas but reflected general considerations applying to the whole of the colony. However it was not surprising that an area, which had a ninefold increase in population over the decade 1846-1856, should find that there was a lag by the State in providing sufficient officers to administer the area.

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29. Progress Report: Select Committee on The Administration of Justice and the Conduct of Official Business in Country Districts, (NSW, V.&P., 1856, I, p.929).

Nevertheless the year of separation came with an optimism for the future and hopes of unparalleled development. This would include the more adequate provision of facilities for justice. As it was, the new colony was endowed with a Supreme Court, and beneath that eleven courts of petty sessions scattered throughout the countryside - Brisbane, Ipswich, Drayton, Warwick, Dalby, Gladstone, Maryborough, Rockhampton, Gayndah, Taroom and Nanango.[30] The Government Resident at Gladstone was responsible for the northern most courts and had encouraged the development of his area - for example with the building of adequate court houses at Gladstone, Maryborough and Rockhampton.[31] However the spread of the colony, with the consequent increase in distances to be travelled, was beginning to pose problems of administration. With only the one Supreme Court - at Brisbane - there was great inconvenience and expense in sending the more serious type of criminal and civil case to Brisbane. There was relevancy in the suggestion that Circuit Courts and perhaps District Courts be established. Gladstone was felt to be the ideal, centrally situated locality for such Courts in the North.

So the colonial era opened, with the call upon the State to attend to matters of justice and thereby allow the community to share in that age-old British tradition. Separation came, with celebrations and jubilation and drunken

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30. Pugh's Almenac, 1859, p.44.

31. Report on present condition of Port Curtis, by Government Resident to Private Under-Secretary, 11/7/1859. (NSW, V.&P., 1859, IV, p.978).

revelry - for in the hard roistering days of pioneering Queensland, drunkeness was a popular past-time, although regarded by some as a great plague on the colony.[32]

Colonial Queensland was presented with immediate problems in the administration of justice, for the Sydney government had tended to let this matter slide as soon as separation plans took concrete shape.

The most important need was the provision of more courts and with that of more law officers as a realistic attempt to keep abreast of the expanding population and the resultant increase in wealth in the community. The particular obstruction to be countered by the State in providing more services was the factor of distance. Brisbane had established itself as a centre of some importance - but there were expanding centres in the Darling Downs and Burnett regions which were really too removed from Brisbane to make full use of the facilities provided. The answer was the Circuit Court system, which had been used by Sydney to encompass Brisbane within the pale of law in Queensland's pre-colonial days, and circuit courts were proclaimed for Ipswich, Drayton and Maryborough.[33] The first circuit court was held at Ipswich on 7th February, 1860. Rockhampton was added in 1863.[34]

The whole of the forty year colonial period was marked by a considerable expansion in population and development, and with that expansion in courts.

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32. Moreton Bay Courier, 17/11/1858.
33. Proclamation, 12/10/1859, Notable Events, The Queenslander, 8/12/1909.
34. Details of the expansion of courts are available in the Statistical Registers, 1860-1900, under Section Law, Crime, etc. subsection Circuit Courts.

As the population spread out from Brisbane, there were problems during the seventies of procuring execution of Supreme Court process beyond the centres of Bowen, Dalby, Toowoomba and Warwick. To overcome this, Parliament through Attorney-General Griffith, legislated to appoint deputy sheriffs in outlying regions to perform these duties.[35] In this way, the policy of decentralization of justice was helped to become effective.

The main trend of development was northward - and in the seventies, first Rockhampton and then Bowen staked their claims to pre-eminence as centres of northern development, and with the passage of time the North Queenslanders developed a passion for control of their own destiny, free of Southern controls and restraints. They raised the cry for separation. So the south was forced to take stock of the situation, and in fact to make concessions to these demands to indicate their good faith and their interest in the development of the colony as a whole and not only of their own section of the colony. The expansion of population in the North, and in particular the special problems of providing law and order for community living in the gold rush areas such as Charters Towers, Palmer River, Ravenswood, the Etheridge and the Hodgkinson, apart from the normal population growth arising from the spread of pastoral settlement and the establishment of the sugar industry imposed a duty upon the State for more court facilities in the North. The State acted in 1874 - with the establishment of a Supreme

35. Sheriff's Act 1875.

Court in the North, centred on Bowen, presided over by its own judge.[36] The original intention was merely to appoint a third judge to help relieve the great pressure which had almost brought the Supreme Court of two judges to a standstill.[37] However pressure from northern interests effected the appointment of a fourth judge. At that stage it was virtually impossible to obtain justice on the goldfields.[38] Rockhampton put in a claim to be the residency for the northern judge, but Bowen was chosen as a compromise between Rockhampton and the more rapidly expanding region of the far North. The establishment of the Northern Supreme Court was expected to bring a growth in the legal profession in the North - but initially there were problems because of the paucity of members of the profession, so arrangements were made to allow attornies to have right of audience in the Northern Supreme Court, along with barristers.

There were criticisms that the establishment of a court in the North with a resident judge was an unnecessary expense and created an artificial division in the provision of justice. There were suggestions that such decentralisation was not in the best interests of justice and whenever retrenchment and economics in State expenditure were suggested, the common answer was that the number of judges should be only three and all resident in Brisbane.[39] In one way, the provision of a

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36. Supreme Court Act, 1874.
37. QPD, 1874, XVI, p.261.
38. Ibid, 1870, XI, p.134 and ibid, 1873, XV, 191.
39. eg. by Feez, QPD, 1880, XXXIII, 1007.

separate court was an expensive luxury in that the amount of work transacted there was not great, although it did steadily increase.[40] The number of civil actions increased to a peak in 1890-1891 and then slumped to 1897. Only in the 1890's did the Northern Court begin to justify the expenditure involved in putting a judge in the North by transacting a fair proportion of total court business - and in testamentary, probate and matrimonial matters, the Northern Court made virtually no showing until the 1890's when the court was better and more permanently established. However in the criminal field, the Northern Court more than justified its existence, handling overall about one-half the number of cases dealt with in the Southern Courts and on a population basis handling proportionately more than the South.[41] This high incidence of crime in the North was associated with the presence of numbers of nomadic goldminers, Chinese, aborigines and coloureds such as kanakas in the region.[42] These factors also provided a reason for the gravity of the crimes tried in the North; first in importance was murder, and manslaughter and other crimes involving bodily injury, whereas in the South larceny and next manslaughter were the most prevalent apprehended crimes. However there were proportionately more acquittals and no true Bills in the North, so that reduced by these circumstances the Northern figures more closely

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40. Refer to figures contained in Statistical Register 1860-1900, Section Law, Crime, etc. Tables are contained for the various courts on the amount of civil, criminal, testamentary, ecclesiastical, insolvency, appeal, etc. business transacted.
41. Apart from figures contained in Statistical Register, 1860-1900, refer to QPD, 1887, LI, p.597.
42. Infra.

approximated the Southern ones. The difficulty of obtaining a conviction in the North might point to overzealous and rash activity by the police in the arrest of criminals, but was more surely related to the element of difficulty involved in preparing a case, obtaining sufficient witnesses and evidence, and finding impartial juries, in an area where the factors of distance and time, together with a relatively small population were of prime importance. Because of these same factors, the same difficulty arose in pioneering, pre-colonial Queensland of carrying a prosecution to a successful conviction.

The circuit jurisdiction in the North increased as new centres arose - Townsville, Cooktown, Charters Towers, Mackay, Normanton and Cairns were added between 1874 and 1890. During the nineties there were demands by some communities to provide more Western circuits - for example at Hughenden, Croydon and Cloncurry, but the State on the grounds of the high expense and the small population involved declined to take any further step. In fact, Bowen was dropped from the list in 1892 because of its declining importance.

The expense of the Northern circuit became a moot point in Parliament and at one stage developed into a bitter personal battle during the judgeship of Cooper over travelling expenses.[43] Apart from that item, the cost of the administration of justice in the North was considerable, if compared with the cost of this service in the South, calculated

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43. Infra.

on a per capita basis.[44] However the Northern Court was a more difficult one to administer, mainly because the distances involved were so much greater than in the South - by steamer from Mackay to Cooktown and round the Cape down to Normanton, and by train from Townsville to Charters Towers. By contrast the Southern circuit expanded westward and northward but did so in a more compact manner - to the West by rail to Toowoomba, Roma and Dalby and to the North by steamer to Maryborough, Bundaberg and Rockhampton.

It was not until the 1890's that northern communities felt their judicial needs had been satisfactorily attended to. One reason for dissatisfaction was the choice of Bowen as the seat of the Northern Court. Bowen was chosen as a compromise town but very few northerners approved the choice - except one of the northern judges, Cooper who approved of Bowen's salubrious climate and so bought a house there. However during the 80's, the importance of Townsville as the centre of the North increased, while Bowen was sinking into oblivion. Court work at Townsville increased significantly. Townsville was centrally situated, was a railhead for the West and was supported by a surrounding population of 25,000. So there was pressure that the Supreme Court should be moved to Townsville.[45] Cooktown also claimed the seat of the North. The State was hesitant in the matter because it had just built a fine Court

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44. Refer to figures contained in Estimates of Expenditure and Supplementary Estimates contained in V.&P., 1860-1900.
45. eg. QPD, 1887, LI, p.597.

house and associated offices at Bowen, and also because Judge Cooper was opposed to the move, asserting that his commission applied to him only as a judge resident at Bowen.[46] However the State was forced to acknowledge the growth of the Townsville area, and when it was decided that a Real Property Office and other associated offices should be established at Townsville, it was only a matter of time before the Court was moved. Premier Griffith made plans for the transfer which were completed by McIlwraith by 1889.

The other grievance of northerners was that one judge could not adequately provide them with and protect their judicial rights and remedies. They demanded a second Supreme Court judge, so that at least one judge could always be present at the seat of the district, while the other judge might be away on circuit. While there was only one judge on the North, there was a serious gap in the provision of justice there, because a judge on occasions was away on circuit for over a third of the legal year and during that absence it meant that any urgent legal action had to be pursued through Brisbane.[47] It was claimed that for this reason the Northern Court was not used as much as it could be. Most insolvencies, for example, were sent to Brisbane, partly for that reason, (but also partly because creditors lived in the South or else because businesses were controlled in the South). Similarly much chamber work

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46. Letter, Cooper, J. to Chief Secretary, 18 July, 1889.
47. Macrossan, Minister for Mines and Works, 1889 claimed the judge was on circuit 130 days - QPD, 1889, LVIII, p.1701.

was referred to Brisbane.[48] Also the incidence of crime in the North, the need to try these cases promptly and the need to provide the appearance of an efficient justice system in that rugged, pioneering area to act as a deterrent to too much criminal and lawless activity pointed to the need for increased judicial representation. During the 80's, crimes in the North increased greatly, to the extent that in 1886, there were almost as many criminals brought to trial in the North as in the South, yet there were three judges in the South to care for the dispensation of justice.[49]

The argument against the appointment of a second northern judge was that on the basis of expense and population this was unnecessary. There were three judges in the South to one in the North - but this was a correct proportion on the basis of population and the volume of civil work was more or less in this proportion (slightly in favour of the South). However, with the prospect of more gold discoveries, increasing development and continued crime, the demands of the North seemed valid.[50] The North could also argue that Queensland in 1863 even though smaller in population than North Queensland in 1887 found it necessary to have two judges to care for the community. Premier Griffith in 1887 sympathised with the needs of the North and acknowledged the duty of the State to make more adequate provision in this regard - but considered the

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48. For comments on this, refer to Smith, MLA, ibid, p.1709.
49. Statistical Register, V.&P., 1887, III, p.195. Also QPD, 1887, LI, p.597.
50. Refer to arguments of Macrossan and Brown, MMLA, ibid, p.677.

move of the court to Townsville would be sufficient. However McIlwraith's Government in 1889, with strong northern supporters like Macrossan, went further and yielded to northern demands and provided for a second northern judge.[51]

There was also southern dissatisfaction with this proposal because it meant the northern court was more soundly established, and would thereby add fuel to the demands for northern separation - and in the 90's, this did happen. However the northern residents did benefit from the move in that cheaper justice was obtainable through the availability of the Northern Court to transact practically all their work at any time. It was also hoped that this move would improve the standard of the legal profession in the North which up to that stage suffered through the lack of a permanent Bar. As it was, visiting barristers from Brisbane, on circuit, and locally resident attornies handled the court work. The standard did improve during the 90's, but only slowly, and some felt that there would be little change until separation was achieved.[52]

Overall the State had been very fair to northern demands in matters of justice. The move to provide a second Northern judge was an expression of faith and confidence in the competency of the Northern Court, which thitherto had been regarded in a somewhat inferior light. This expression was confirmed in 1892 with the provision of a Court of Appeal

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51. Supreme Court Act, 1889.
52. QPD, 1889, LVIII, p.1709.

consisting of three judges and excluding the judge of first instance.[53] This meant the regular attendance of one of the Northern judges at the Full Court four times per year. Lawyer Thynne said that this confirmed that the Northern judges were fully equal to the Southern ones.[54]

As indicated above the State had to make concessions to the Northern communities and grant them a considerable amount of autonomy, more than might be justified having regard to population and expense involved. This separatist feeling was not restricted to the far North. In the early 70's, Rockhampton evinced dissatisfaction with control by Brisbane, and during the 90's, when Northern claims were being strongly pressed, Rockhampton joined the fray with demands for separation for Central Queensland. For the sake of the unity of Queensland, southern politicians, like Griffith, were prepared to yield way to sectional interests and offer provincial autonomy. This was the perennial problem of Queensland - decentralisation, or alternatively separation. The mounting pressure in Central Queensland for concessions culminated in 1895 in a deputation to Attorney-General Byrnes - "Mr. Facing-both-Ways". The result was the creation of a Central Supreme Court and judge. The pressure was directed mainly by Central politicians and Rockhampton mercantile interests who stood to benefit much from a local Supreme Court.

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53. Supreme Court Act, 1892.
54. QPD, 1892, LXVI, p.14.

Already Queensland supported five judges and already there had been cries that Queensland had a surfeit of judges.[55] By comparison, New South Wales and Victoria with populations double that of Queensland had seven and six judges respectively. South Australia with a comparable population appointed only three judges. However New Zealand, with a slightly larger population, retained five judges. New Zealand also practised the idea of decentralised justice. So Queensland and New Zealand, in their desire to cater for local needs were providing an expensive, and in some ways wasteful service.

The proposal for a Central Queensland judge brought the State to re-examine the whole situation. A system redistributing the judicial functions was arranged, avoiding the appointment of a sixth judge and without detracting from the satisfactory systems of justice already provided for Southern and Northern Queensland.[56] One of the Northern judges was taken to Rockhampton, but the circuit work of the North was distributed between all the judges. In this way, North Queensland, with a population of about 70,000 kept a permanently resident judge. The benefits to Central Queensland were limited - although that was not unreasonable since, with no really large centres other than Rockhampton, there was no circuit work, and with a population of about 40,000 it could not really provide enough work to keep one judge resident there

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55. eg. by Perkins and Plunkett, MMLA, QPD, 1895, LXXIII, pp.2114 & 1952 respectively.
56. Supreme Court Act, 1895.

permanently. He was meant to help out in circuit matters as well as in appeals before the Full Court in Brisbane.

These arrangements did rankle the Northern and Central residents; the former because it involved a loss of prestige and status and the latter because there would not always be a judge in Rockhampton to handle matters as they arose, in particular insolvencies, although it would be valuable in providing cheaper justice in intestacy and land matters, as well of course in court matters. The municipal councils of Townsville and Charters Towers, politicians and lawyers from the North protested against the move.[57] However the State was wedded to the principle of furthering decentralisation, wherever possible.

The Central Queensland Court made a very slow beginning, for example in 1897 sitting in court (excluding chamber matters) only 28 days out of 12 months. However the judge did go on the Northern Circuit and sat in the Full Court at Brisbane.[58]

There were opponents to decentralisation, especially in the case of justice which they claimed would decline in standard and the only real result would be a proliferation of the number of lawyers, often of a low standing.[59] The State ignored this argument because a decentralisation compromise

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57. QPD, 1895, LXXIII, pp.1960, 1950.
58. QPD, 1898, LXXX, p.1024.
59. The Hon. B.D. Morehead spoke against decentralisation, QPD, 1895, LXXIII, p.1955.

seemed an answer sufficient to stifle action for separation. Furthermore Queensland was beset with the problems of distance and scattered settlements, problems which did not plague the other colonies, not even Western Australia where settlement was more compact. So Queensland had a peculiar problem, and adopted an answer suitable for the circumstances, even if at some expense to the State. It was hoped that these decentralisation measures would encourage greater development in the urban and rural fields. It was expected that with the establishment of these courts town life would improve, through the establishment of a Bar at Townsville and Rockhampton and that rural areas, emerging from a pioneering to a more civilised stage, would benefit by the greater measure of justice.

An adequate system of appeal was slow to arise. Initially there were many causes for complaint; in fact, appeal could be quite useless (as well as being expensive), being from one judge in the first instance to himself and another on appeal. It was scarcely likely that the same judge would change his mind on appeal, and if he was the Chief Justice, he had the casting vote if his learned brother disagreed with him. There was the alternative of the Privy Council but the factors of expense and delay were almost prohibitive. A similar situation arose when the Northern division of the Supreme Court was created - so long as there was only one judge there, an appeal was had to that very same judge alone, or else to the Southern division at extra cost.

During the seventies, attempts to improve the appeal situation were mooted.[60] The matter although pressed especially by the lawyers, desiring to secure a greater measure of justice through an independent, unbiassed appeal court and with possibly increased remunerative benefits, was not proceeded with until 1892 when, upon the appointment of five Supreme Court judges, it was possible to constitute a court of appeal of three judges excluding the judge of first instance.[61] This brought Queensland into line with England, New South Wales, Victoria and New Zealand. Appeals from a District Court to the Supreme Court continued as before.

This move towards a higher form of justice had an almost immediate consequence. In the very important appeal case of Queensland Mortgage and Investment Co. V. Grimley and Ors. there were only two Queensland judges available other than the judge of the first instance. To constitute the third member of the Appeal Court, it was thought desirable, for such an especially important case, to call upon Southern wisdom rather than commission a judge temporarily for the purpose from the Queensland ranks. Legislation was enacted to allow a judge of any of the Australian colonies to sit as an acting judge of the Supreme Court of Queensland in its appellate jurisdiction.[62] It had been arranged that Mr. Justice Windeyer of the New South Wales Bench should sit with the Queensland Court for this

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60. - in 1874 when three Supreme Court judges were created, in 1876 at the time of the Judicature Act and in 1880 when discussion arose on the need of a fourth judge.
61. Supreme Court Act, 1892.
62. Supreme Court Act, No. 2, 1892.

particular case, and his presence was greatly welcomed.[63] Griffith, who was responsible for the legislation, hailed his own work as a unique step in the federal movement, and encouraged the other colonies to follow this Queensland example of a national concept of justice.[64]

Within a year, however, this high form of justice was modified.[65] The expense of having to bring three judges together for appeal business, the inconvenience to the Northern court because of this, the hard times of the depression necessitated some relaxation, so that, although a Bench of three judges was retained in the case of an appeal from a single judge, it was provided that all other Full Court business could be conducted before two judges.

Queensland was given the lead for the creation of a system of District Courts by the move in New South Wales in 1858 to create such courts (along the line of Recorder's Courts). There was a gap, in procedure and legal costs, between the Supreme Court and the Magistrate Court and this gap could be filled by the District Court. However the State was reluctant to move immediately, mainly on the ground of expense involved - salaries for new judges and new court officials, travelling expenses, witness's expenses new court buildings. The Attorney-General in 1861 estimated the cost at £7,800 and said that quite simply the colony couldn't afford it.[66] Against

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63. Brisbane Courier, 10 September, 1892.
64. QPD, 1892, LXVIII, p.1206.
65. Supreme Court Act, 1893.
66. Moreton Bay Courier, 9/5/1861.

this was the community argument that, with the establishment of such courts, Queensland would be given more and better justice, and also a better system of appeals could be devised. As it was, most of the cases heard in the Supreme Court were sufficiently small to allow them to be handled by a District Court, at a cheaper cost to the litigant. Cases involving claims under £200 proved somewhat expensive in the Supreme Court and could be better handled in a District Court.

A Select Committee investigated the position of District Courts in 1860 but most of the evidence, given mainly by lawyers, was against the establishment of those courts.[67] Only solicitor Lilley approved of the idea of District Courts - the other lawyers Blakeney, Macalister, Little favoured working through the Supreme Court at that stage of Queensland's development and sought three Supreme Court judges, saying this would be a less expensive system. In fact they did not show how much cheaper it would be to have three Supreme Court judges than to distribute the work between the Supreme Court and a District Court. This Report was ignored and the Attorney-General flouted the evidence of the majority of the legal profession by announcing that he intended to legislate for the introduction of Courts of Quarter Sessions.[68] The State provided in 1863 for the better administration of justice by the establishment of District Courts when necessary.[69] This

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67. Report of Select Committee to report upon the present state of the Judicial Establishment of Queensland, V.&P., 1860, p.480.
68. The Courier, 2/8/1861.
69. Supreme Court Act, 1863.

was followed up with relevant legislation in 1865.[70] By this time, the rate of Queensland expansion was catching up with the provision of justice for the public in the higher courts - the criminal session of 1865 reached an all-time peak in the number of persons tried;[71] civil work was rising sharply. Furthermore the opening up of new areas made necessary the provision of more courts. The State did not want to extend the Circuit Supreme Court system at that time because of expense, but higher courts than magistrates courts were required. So the State looked at the New South Wales model and introduced a similar system, the courts having a maximum civil jurisdiction of £200 and a fairly general criminal jurisdiction. This court cut into the work of the Supreme Court to the benefit of the community if not so much the benefit of the lawyer, since it could provide cheaper justice. Even the lawyer did not really lose, because the overall amount of legal business increased since the new Court system made available rights and remedies which some people could thereby pursue and which hitherto they neglected because of the cost of Supreme Court action. Whereas in 1860 there had been opposition by the legal profession to the idea of an intermediate court, in 1865 there was approval.[72] The only real criticism of the scheme was that it might leave the two Supreme Court judges with insufficient work to keep them busy.

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70. District Courts Act, 1865.
71. 136 persons, in Brisbane and the Circuit Courts.
72. Look, for example, at the approval of the lawyers in Parliament in 1865 - Pring, Herbert, Lilley, Bramston - and compare with legal attitudes in 1861.

The depression of 1866 caused a rethinking of the situation and questions were asked whether the three-tier court structure in Queensland was justified, especially on the grounds of expense. The fact of the approval by lawyers of the 1865 move raised suspicions in the minds of some that it was merely a way for them to feather their own nests. The alternative was to appoint a third Supreme Court judge and thereby cut out all the trappings of an intermediate court structure.[73] The State went some way in this direction by duplicating as much as possible on court functions and officials, providing for example that Clerks of Petty Sessions could act as Registrars of District Courts.[74] Overall, however, there was approval of the system in that it did allow for a more adequate provision of justice through-out Queensland, and in particular in the interior. The residents of Condamine, Roma, Charleville praised the creation of these courts for providing a cheap and simple process of deciding actions.[75] In particular, the District Courts helped cut down on the amount of horse-stealing in the West.[76] So although there were some moves to abolish these courts, the State chose not to do so because the inland communities were very dependant upon them to obtain a shred of more sophisticated justice and living, and progress would be hampered by such a move.

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73. Groom, MLA, QPD, 1866, III, p.735.
74. Registrars of District Courts Act, 1866.
75. Petitions were received from these centres, V.&P., 1866, p.711, V.&P., 1867, I, p.811.
76. QPD, 1866, III, p.731.

Nevertheless until the mid-80's, the question often arose whether the District Court justified its existence. There were some who felt the Court did not really have a place in the community. In the first few years there was evidence that it was not attracting a great share of work - until 1871/2 there was a fall - so that although the communities of the outlying regions were deriving great benefit and comfort from this amenity, from an overall and official point of view the scheme looked not particularly successful.[77] There followed a rise in business until 1878 then another slump. It was in the mid-80's that the Court began to draw a full share of the load of work, reaching a criminal peak in 1886 and a civil peak in 1894. The use of its civil jurisdiction was enhanced in the early 90s by the attention drawn to it through the moves for legal reform which intended to make greater use of the District Courts. However, although there was an uncertain overall growth in the beginning from the point of view of particular localities there was a definite significance in the presence of these courts.

Areas on the border of 'civilisation' were calling out for justice of a higher form than that provided by untrained police magistrates, e.g. Charters Towers and Ravenswood in 1872.[78] Border areas like Roma, Cooktown, Millchester maintained a considerable volume of work in the late 70s, and similarly the Blackall court in the 80s. These

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77. These details of court business are compiled from Statistical Registers, 1866-1900, Section Law, Crime, etc., subsection District Courts, Civil and Criminal. For criticism, refer QPD, 1870, XI, p.134.
78. QPD, 1873, XV, p.191.

fringe courts served as gateways to wide country areas in the course of being opened up and consequently were drawn upon much to help bring justice to a potentially lawless and uncivilised areas. Similarly the Charters Towers court was important in helping development - it handled the greatest amount of criminal and civil work among the northern courts in the 80s and 90s, and in 1895-97 dealt with more civil cases than the Brisbane Court. So in the frontier society - pastoral or mining - the District Court had a valuable function to perform, since it had a fairly wide criminal jurisdiction and a civil jurisdiction large enough to cover a typical damages claim. The larger coastal centres, of course, also transacted much business - Brisbane, Rockhampton, but not so much Townsville. However it was as local courts for the more outlying areas that the District Court had special significance.

During the 80s, there was an increasing demand by outlying communities that the protection and benefit of the District Courts be extended to them - Mitchell, the mining centres of the North, Cloncurry, Thargomindah, Normanton, Hughenden.

The State accepted this duty and also sought to streamline the system. The original setup consisted of three divisions - the Metropolitan covering Brisbane and the near Darling Downs, the West embracing the rest of the Downs and the North covering Central Queensland and the Wide Bay Burnett.[79]

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79. In 1866, Courts were established at: Metropolitan - Brisbane, Ipswich, Toowoomba, Warwick; Western - Condamine, Dalby, Roma; Northern - Bowen, Clermont, Gayndah, Gladstone, Maryborough, Rockhampton.

In 1874, in line with the expansion of settlement, the District Courts were considerably expanded into more easily administered divisions of South Centre and North Queensland. By 1900, thirty eight District Courts had been established, including one at Thursday Island established 1894.

The State also sought to increase the effectiveness and use of the courts by various measures - cheapening costs 1872;[80] providing appeals from the Magistrates Courts 1872;[81] and in 1897 jurisdiction in land appeals.[82] Special powers were also bestowed on the Court under the Mining Act 1882 and the Employers' Liability Act 1886 (involving claims up to £500). Also in the criminal field, certain types of arson (in particular the burning of natural grasses) were added, a measure sought by pastoral interests of the interior. So the State, especially during the 80's built up the importance of these Courts. At the same time there were two limiting factors to their greater expansion - the factors of time - distance and cost. The latter proved to be very telling so far as the State was concerned. Nevertheless the significance of these courts increased so much during the 80's that by the end of that decade, moves were made to reorganise the whole basis of judicial administration and to emphasize the importance of these courts.

There were also moves to have appointed a fourth District Court judge to help perform the very important services offered by the Court to the community.

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80. District Courts Act of 1867 Amendment Act, 1872.
81. District Courts Act Amendment Act, 1872.
82. District Courts Act, 1897.

Local discontent with the effectiveness of the system arose over the matter of residency of the judge. It was argued in favour of establishing the District Court system that, through such Courts spread over the country-side, there would arise in the local residents a greater consciousness of justice, mainly through having District Court judges in contact with local areas. The argument went on that this effect could only be satisfactorily achieved if the judges were resident in their districts. Judges of the Supreme Court lived in their own court district. However District Court judges were not very receptive of this idea, mainly because of the fear of stagnation if centred in the country. However, by their residing in Brisbane, the State was involved in paying extra travelling costs - and this brought criticism of the judges as being neglectful of their duties and of the courts as being too costly and inefficient.[83] Country interests sought to have this defect remedied in 1878 but were met with a barrage of opposition by lawyers, who prevailed, arguing that such a requirement would lessen greatly the chances of attracting the best man to the office.[84] Such a person would be a barrister, and the fear was that such a residence clause would let him stagnate, cut off his legal connections and so virtually preclude his ever going back into practice. The fact that the Northern Supreme Court judge resided in his district was not

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83. QPD, 1877, XXIV, p.850.
84. Ibid, 1878, XXV, p.494 ff.

an argument that could be wholly applied to District Court judges because the former was not likely to want to return to private practice.

Nevertheless there were the examples of the early District Court judges, Innes and Hurst who lived in their district at Gladstone. So discontent continued during the 80's and 90's with judges seeking to avoid local associations.[85]

Criticism of the courts also arose in connection with the quality and calibre of the judges. Their salary, at £1000 per annum was less than that of a Supreme Court judge; there was less prestige associated with the court, the standard of legal knowledge was not as high. Consequently the cream of the profession was not accepting that office. The tinge of mediocrity was reflected in the behaviour of some of the judges. In the notorious case of the perverse jury at Roma 1873, allegations were made against Judge Blakeney, an Irishman of ageing years, that he was rude to juries, that he had bullied and abused, and brow-beaten jurymen, that he tried cases in coffee-houses and public-houses.[86] The underlying question was whether there were available in Queensland lawyers of sufficient calibre and integrity to fill the offices of justice at the salary offered by the State.

Criticism arose of the Northern District Court Judge - Blake, an elderly Irish barrister. He was charged with doing a bad job, for example, rushing through cases to get away from

85. Ibid, 1880, XXXII, p.739; ibid, 1886, I, p.1425; ibid, 1891, LXV, p.1551.
86. Ibid, 1873, XV, p.363. Re perverse Roma Jury, see infra.

the town - he was also charged with corruption.[87] Some alleged that by such behaviour justice in the North was becoming a perfect farce.

By the 1880's criticism of the standard of the District Court judges had become common, to the detriment of the standing of the District Court system. The State however was reluctant to interfere over much with the tenure of a judge's office, the State in the first place having made the appointment. Judge Blake, when he was on the Central District Court, became an object of derision - a doddering, old man, asleep on the bench, deaf, in his dotage, eccentric, physically unfit. He could not stand the strain of the travelling or the hot climate when sitting for example at Aramac or Blackall.[88] Clermont people were dissatisfied with his decisions - there was a fear that horse-stealing would increase unless he imposed more adequate punishments. It was acknowledged that in his day he had been a good man - for three years, he had been District Court Judge of all of New South Wales;[89] in Queensland he had built up a very good criminal law practice, so remunerative that he had rejected an earlier offer of a seat on the Bench. However age had caught up with him, and even the Government, although defending him as much as possible - there was only one appeal from his decisions and this the Supreme Court dismissed - was forced to acknowledge his eccentric and irregular behaviour, for example, holding court aboard a

87. Ibid, 1878, XXV, p.497/8, p.971.
88. Ibid, 1881, XXXV, p.633, p.678/9.
89. Ibid, 1869, I, p.628.

steamer at night (it was a chamber matter); or his error of sending two telegrams to Blackall, one requesting the police magistrate to secure a good bed and plenty of butter for him, the other to the publican that he should adjourn the court. Not only was the competency of the judge and therefore the honour of the profession called into doubt, but the State could be indicted for not providing good justice and supervising its administration. The State was saved from interfering by his timely death the next year.

The bone of contention involved in the matter of competency of District Court Judges was salary and the provision of pensions. Although pensions were provided for Supreme Court Judges, the State ignored the case of the District Court Judge - he was meant to put away a retiring allowance out of his £1000 per year salary. This was hard to do - so that, in fact District Court Judges were not retiring but staying on in office in their dotage until they dropped. Lawyer Rutledge took up their cause during the 80's, pointing out how this circumstance was lowering the standard of the Bench and the Court.[90] There were hardships in the set-up, in that it was difficult for judges to save much out of their salary. The situation could even lead a judge to succumb to corruption. In the particular case of Judge Paul, who served faithfully as a District Court Judge for over fifteen years, it seemed iniquitous that he was granted no pension. But the State was implacable, because of the cost involved, in its intention

90. Ibid, 1880, XXXII, p.739; ibid, 1885, XLVII, p.1488.

to keep the pension system limited to a very few senior retired officials. Solicitor Powers, an ambitious and zealous do-gooder, with a batch of law reform ideas, tried to remedy the situation.[91] However his plans for a retiring allowance after fifteen years' service were vigourously opposed by the non-lawyers members of Parliament, who took the move as just another example of the exclusiveness of lawyers - a closed trade union. There was a general disapproval of the idea of pensions, a manifestation of the individualistic nature of the age, together with an envy of the privileges of lawyers. Some felt that judges should fit into the normal public service pattern, and use the Civil Service Superannuation Scheme rather than have a special pension scheme created for them.[92] Lawyers such as Griffith helped the cause none by their earnest support of the scheme with arguments that justice was best secured through a pension scheme - this was taken merely as a manifestation of self-interest. So the pension scheme fell through - and the difficulty remained of getting the best lawyer to accept the office whenever a vacancy occurred. However, Griffith, in 1891 was able to secure pension benefits for the judges, when the State began to acknowledge the widespread significance of the Court and the need to have good judges.[93]

Apart from the lack of retiring benefits, there was a feeling that the salary itself was inadequate. The salary of £1000 per annum was inadequate if it was hoped to attract

91. District Courts Act Amendment Bill, 1889.
92. QPD, 1889, LVIII, pp.1950 ff.
93. District Court Act, 1891.

the best lawyer available to the Bench because he could earn much more in private practice.[94] As the role of the District Court was increasing in the 80's and 90's there were moves to raise the judges's salaries.[95] Similarly there were suggestions that travelling expenses should be increased. Whereas the Supreme Court judge was virtually unbridled in such expenses, the District Court judge was allowed travelling expenses at the rate of 30/- per day (and 35/- per day for the North). This was considered to be insufficient.

Northern expenses were very high, and Macrossan, one of the North's ablest proponents, estimated that it would cost a judge two guineas per day.[96] It seemed that the proprietors of hotels in the North regarded judges as fair game. The State ignored most of these complaints and so avoided committing itself to further expense, but it did appear that the District Courts were being penalised, in spite of increasing jurisdiction, in favour of the higher Supreme Court system.

Apart from criticisms of the judges on the grounds of residency and competency, there were some expressions of doubt about the quality of justice provided by the Court. There were complaints that justice in the District Court was crooked, expensive and tedious.[97] Instances were given of a judge rushing from the Ravenswood courthouse to catch a departing steamer. The North seemed to harbour most examples of injustice

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94. For figures on Lawyers' incomes, refer infra.
95. eg. Rutledge suggested £1500 p.a., QPD, 1882, XXXVIII, p.1114.
96. Ibid, 1884, XLIV, p.1572.
97. Perkins, MLA, QPD, 1878, XXV, p.351.

especially at Burketown and Cooktown (due mainly to juries).[98] These examples exacerbated the criticism that justice in the North was too costly to the State. Charges of corruption also arose in the Roma District Court in 1873 when a perverse jury discharged a cattle-stealing charge. This was a blatant miscarriage of justice and the State proclaimed the withdrawal for two years of criminal jurisdiction from the Western District Court.[99] However, it was not unexpected that, in outlying sparsely settled regions such as Roma in the 70's or Burketown in the 80's, the District Courts as local institutions should have trouble in picking men for impartial juries and that therefore cases of corruption should arise.

In spite of some local dissatisfaction with the Courts, and in spite of some corruption and incompetency, the District Courts by 1888 had established their role in the community. Charles Powers, set about a programme of legal reform, the end of which was designed to greatly boost the role of the District Court system. There was a growing dissatisfaction with the overall cost of justice, the unnecessary complications in proceedings, the unsatisfactory system of appeals. Lawyer Powers was filled with reforming zeal, looking for a more equitable distribution of social welfare. Justice, in particular as obtained in the Supreme Court, was becoming a preserve of the rich - and even if the poor timorously tempted their fate in the Supreme Court at

98. QPD, 1885, XLVII, p.1048.
99. Letter to Editor, Brisbane Courier, 22/3/1873; V.&P., 1873, p.303. Re juries at Roma, Burketown, Georgetown, etc., see infra.

first instance, there was then the frightening possibility of appeal with mounting costs. As Powers put it, in the Supreme Court, "the litigant enters on the basis of unlimited liability".[100] There was a growing demand for revision of that set-up. There was the possibility of the establishment of an alternative court structure, for example courts of conciliation. However Powers suggested greater use of the existing District Court system, extending its jurisdiction. The advantage of the District Court over the Supreme Court was that its costs were fixed according to a scale, whereas in the Supreme Court costs went almost unbridled and consequently justice there favoured the rich. A move to boost the District Courts would also be of great advantage to country people in their quest for justice.

Popular feeling seemed to regard the legal profession as the greatest obstacle to legal reform.[101] Reform might affect over much their economic welfare. The colony overall seemed to follow England closely in the matter of reform and this aspect of legal reform had not been attempted in England.[102] Even some of the lawyers commented on the conservative approach of the colony to reform. One of them, Drake, a democratic idealist, criticised the failure of the attempt to combine both arms of the legal profession - barristers and solicitors - as a carry-over of the conservative English approach. So there was apprehension as to whether the profession would agree to a reformed, cheaper and more streamlined system of justice. But,

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100. QPD, 1888, LV, p.1098.
101. Ibid, p.1103.
102. Note for example the warning of Brisbane Courier, 14/6/1889 against haste in legal reform.

those lawyers who came most into contact with the suggested reforms, namely the lawyers in Parliament, voiced their approval of the idea of reform, behaving as good representatives of the people were expected to do. However, when it came to filling in the practical details, they could not agree. Nevertheless some lawyers, other than Powers, did show a genuine interest in the problem of law reform - Griffith offered as much help as possible. Powers' proposals for law reform proceeded along a very torturous and twisted path over the ensuing four years, and petered out finally because of the lack of agreement on the details and manner of reform.

The favourable attitude of the Premier, and of leading lawyers in the colony (Griffith, Rutledge, Tozer, Drake) inspired Powers to direct legislative action in 1889.[103] This legislation was a variegated, multipurpose creation - a coat of many colours - with the overall hope of providing cheap law in the lower courts and bypassing the more expensive procedures in the Supreme Court. People were dazzled by the legalised plunder going on in that court - a claim of £141 ran up costs of £586.[104] Of course people did not fully appreciate that a small claim might be expensive because it involved great difficulties in principles of law. Nevertheless such examples brought the Supreme Court under popular criticism. Why could not the South Australian system be tried, where the Supreme Court was largely bypassed and a great amount of the work done by the inferior but cheaper Local Courts? It appeared that, if

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103. Legal Reform Bill, 1889.
104. Example given by Powers, QPD, 1889, LVII, p.235.

reform were to be achieved, it would be best done by separate attacks on the courts concerned. So Powers pushed ahead with new legislation.[105] Overall, the situation looked ripe for reform - the lawyers, appeared interested and there was Press backing for the idea.[106] People were becoming disillusioned with the increasing cost of justice, a trend which it was once hoped the Judicature Act would arrest. It was iniquitous that poverty was a bar to justice, that for example counsel were not provided for poor litigants.

The main scheme of the reforms was to prevent small claims going to the Supreme Court. So there were proposals to exclude Supreme Court consideration of claims under £30, and to extend District Court jurisdiction to £500. Also to increase the stature of the District Courts it was suggested that adequate retiring allowances be paid to its judges so that men of quality and learning could be retained on its Bench. However, although the intention was overall met with acceptance there was no agreement on the proposals suggested. The question of pensions for judges was greeted with vigorous protests by the non-lawyers, and the lawyers themselves could not agree on how the jurisdictions of the Supreme and District courts should be limited.[107] Furthermore the whole scheme was not comprehensively worked out but rather was somewhat obscure.[108]

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105. Supreme Court Amendment Bill, 1889; District Courts Act Amendment Bill, 1889.
106. eg. Brisbane Courier, 14/6/1889, 21/6/1889.
107. QPD, 1889, LVIII, pp.1578 ff., 1772-1780, 1950-1961.
108. Editorial, Brisbane Courier, 25/9/1889.

Powers persisted in the cause for reform, and introduced similar legislation in 1890.[109] His moves did arouse a greater awareness of the District Courts. There were suggestions that the number of judges be increased, to four perhaps five, that there should be permanent judges in Brisbane and Townsville, and two peripatetic judges.[110] It was acknowledged that the Northern District Court judge had too much to do. Solicitor Tozer said that Gympie, with a population of 12,000 was more than happy with receiving justice through the District Court and endorsed plans to increase its jurisdiction. Powers also proposed the regulation of Supreme Court costs.

However his ambitions as law reformer were frustrated by the petty divergent aspirations of the interested politicians both lawyer and non-lawyer (the latter with the desire to cut the legal profession down to size). Nevertheless, his campaigning had succeeded in demonstrating the importance of the District Court and the need to review its position.

Griffith in 1891 was able to mobilize legal support behind the Government's move to consolidate the position of the District Court.[111] The legislation did not go as far as Powers wanted, in that it did not sufficiently restrict the operation of the Supreme Court, nor did it lift general District Court civil jurisdiction to £500. Also it did not overcome the

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109. District Courts Bill, 1890; Supreme Court Amendment Bill, 1890.
110. QPD, 1890, LXI, pp.259, 265, 266, 271, 273.
111. District Courts Act, 1891.

inadequacy that the District Court, unlike the Supreme Court, did not have power to arrest an absconding debtor, attack debts or seize shares. However it did offer greater flexibility in court structure and functions, and more mobility in the use of the three judges. A procedure to obtain speedy judgment was provided, and criminal jurisdiction (in particular relating to grievous bodily injury) was extended. These improvements were of great advantage to country litigants but really did not go far enough. The defect that, at the most, the judge visited a country court four times per year, and for most places only twice per year, was not really overcome. Overall people still had to wait too long to get cheap justice; and they were not necessarily assured of cheap justice, since the Supreme Court was still an almost equal alternative. The legislation was typically Griffith's work in its compromise between opposing demands and in its manner of leaving open the question of which court should have jurisdiction.

On the whole, the lawyers smiled sweetly on the legislation, with the likelihood of greater business. At the same time interested lawyers were inspired by an overlay of a general but vague humanitarian, charitable character. They had come to accept the need to help in some way the lower and less privileged classes and did espouse a vague liberal - social philosophy, part of which included providing justice for the people (it was fortunate that this incidentally brought them financial advantage). Some of them were filled with a genuine desire to reduce costs if possible.[112]

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112. For example, P. Macpherson, QPD, 1891, LXV, p.293.

Griffith followed up the matter of cheaper Supreme Court costs in 1890 and 1891.[113] Originally, in the 60's, costs for small claims were strictly limited. Then the Judicature Act of 1876 allowed judges to make rules and exercise their discretion in these matters. In obtaining a speedy judgement, the parties to an action might find costs varying between five and eight guineas (in a procedure where some degree of uniformity could be expected). Under the mounting pressure caused by Powers' moves for legal reform, Griffith sought to limit Supreme Court costs in small claims to the District Court level.[114] Some limitation of exorbitant Supreme Court costs in small claims was achieved, but criticism continued namely along the lines that claims up to £200 should strictly be a District Court matter, and so costs be fixed at that level, whereas the system had loopholes and allowed too much flexibility.[115] In 1893 and 1894, further attempts were made to prompt a State inquiry into examining how to cheapen law costs but nothing resulted.[116]

So the question of law reform, through the redistribution of court duties and the limitation of court costs was not finally resolved. The move was initiated by a lawyer, and he was supported by fellow professionals. Nevertheless the State could not achieve any far-reaching results in this effort to provide cheap and efficient justice

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113. Supreme Court (Costs) Bill, 1890; District Courts Act, 1891.
114. QPD, 1890, LXII, p.1125.
115. Ibid, 1891, LXV, p.1503.
116. Ibid, 1894, LXXI, p.44; LXXII, p.841.

for the people. Limited results were achieved - the District Court became better established and more important, and some assault was made upon excessive costs. In 1892 there was a significant fall in the volume of civil work in the Supreme Court, and a marked rise in District Court civil work (although the latter continued only until 1894).[117] However the representatives of the people could not reach unanimity on the manner or details of reform - and reform was not a thing that the people could directly embark upon themselves. So criticism continued, in particular that the State was allowing the Supreme Court, and the lawyers, to range almost untrammelled and arbitrarily in assessing legal costs, to the deprivation of the people and to the disadvantage of the cause of justice. The opposition was not sufficiently organised or concerted in its attacks upon lawyer privileges and so the general apathy of the public was not stirred and the reforms were not implemented.

On separation, Queensland carried on with the Magistrates Court systems established by the New South Wales Government. There were eleven courts scattered over South and Central Queensland and the Darling Downs.[118] These courts brought fundamental justice to the community and were particularly valuable as agents helping to enforce law and order - for these courts, non-skilled and simple in constitution, could follow closely on the footsteps of

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117. See Statistical Registers, 1890-1900.
118. Courts were held at Brisbane, Ipswich, Warwick, Toowoomba, Drayton, Dalby, Condamine, Gayndah, Maryborough, Rockhampton, Bowen.

settlement. Staffed by laymen and proceeding by principles of common sense rather than of law, there was no great problem in constituting a Magistrate's Court as soon as a community was established. These courts, although unsophisticated and almost childlike in their understanding of the technicalities and problems of the law, played a considerable role in helping to provide the veneer of civilization for the pioneering communities.

For the outlying communities, these courts would be most advantageous, if they had a wide jurisdiction. Country areas early prevailed upon the State to extend the court's jurisdiction.[119] The maximum claim in the Small Debts Court was lifted from £10 to £30. However, with the introduction of the District Court system, it was felt that the State had been overbounteous in its provision of justice, so the legislation increasing the jurisdiction of the Small Debts Court was repeated. But it was soon found that the District Court system did not provide a sufficient cover of the countryside, and if the expanding community was to receive the measure of justice it deserved, it would be necessary to extend the range of the District Courts. These courts involved some expense - to establish buildings as well as pay for trained lawyers. So the State turned to a cheaper expedient, extending the jurisdiction of the magistrates. In fact, the previous

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119. Small Debts Recovery Act, 1864.

legislation was copied, and the jurisdiction of the Small Debts Court again was raised to £30.[120] Coronial jurisdiction was also added to the justices' lot.[121]

The volume of civil work fluctuated greatly - generally following at a few year's pace economic trends in the colony.[122] Claims slumped in 1869 to the mid seventies when there was a brief rise consonant with better conditions; then another slump to 1882. The eighties on the whole were marked by buoyancy and much petty debts litigation, reaching a peak in 1889. The depression years of the early nineties were marked by a noticeable fall in court work, followed by a gradual steadying. People could afford to pursue such legal rights in good times - at other times, it did not matter. Also in the nineties some of the claims were being transferred to the District Court, as that court became more important. The bulk of the claims were for goods sold. Negligence actions of course did not have the prominence in the colonial period that they have now acquired. Other claims were mainly for work and labour done, and arrears of rent.[123]

The value of these courts, to handle small claims and settle minor disputes, could be gauged from the use made of these courts in the rowdy, bumptious areas of new settlement,

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120. Small Debts Recovery Act, 1866.
121. Inquests of Death Act, 1866.
122. Details of business of Petty Debts Courts are obtainable in Statistical Registers, 1867-1900, Section Law and Crime.
123. For details of type of civil business transacted in the inferior courts, refer to Qld. State Archives, Acc. No. 42/ 263-268, (Minute Books, 1865 onwards, not complete).

in particular gold mining areas where the money was free and the people litigation prone. Charters Towers, Gympie and Croydon were among the leaders of Petty Debts litigation in the nineties, on a level with Rockhampton and surpassed only by Brisbane and Townsville.

The volume of criminal work of course provided a more stable pattern - generally of increase. Drinking, encouraged by the hot climate, had a tendency to intoxicating excess, and for the first two decades provided most of the criminal work. Thereafter the hand of the law became lighter in that regard, and paid more attention to protecting the property of the citizens of Queensland. Drunkeness was still quite a significant activity and by the end of the century was catching up on the offences against property.

The morality of the age drew much attention to the misdemeanor of drinking, and likewise to the use of obscene language. The magistrates of the colonial era were brought to face men charged with using vile and loathsome language to a much greater degree than pertains to the business of magistrates today.[124] Similarly, at coastal resorts, morality dictated that it was an offence for a person to bathe within view of a public street. For this crime the magistrate at Sandgate felt obliged to fine offenders 1/-. Again, in such a leisured age,

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124. Interesting details as to the cases heard in the Police and Magistrates Courts are found in Qld. State Archives, Acc. No. 42/5-168, Deposition Books, Brisbane, 1858-1905. Examples of obscenity may be found 42/5, 26 June, 1860; 42/69, 10 May, 1886; 42/124, 8 December, 1899.

it was not very lawabiding for a citizen to enter a railway carriage while the train was in motion, as the hapless Reuben Percival found out on 14 October, 1886 when a 20/- fine was imposed upon him for committing that misdemeanor.[125] In this way the inferior courts ensured the preservation of a well-ordered and controlled society.

The greatest period of expansion in the number of courts and the amount of work was in the 80's - an expansion consonant with the growth of the colony. In 1883, the number of courts increased by one third. However a peak was reached by 1890. The Great Depression of the 90's greatly reduced the amount of business, as did the expansion of the District Court system.

During the nineties in fact there was considerable rationalisation in the inferior courts establishment. The cost of the courts was a problem, especially as the depression came on, and retrenchment was called for (as happened generally in the Government departments). There was overstaffing and duplication of offices - for example in small areas the work of the Clerk of Petty Sessions and Police Magistrate could be combined.[126] In 1893 a number of such arrangements were put into effect.[127] Especially in Central Queensland was there a a surplus of police magistrates, and so an area like Isisford

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125. The bathing and railway charges are found in Qld. State Archives, Acc. No. 42/171, 12 February, 1885 and 14 October, 1886 respectively.
126. Colonial Secretary Tozer, responsible for the inferior courts, QPD, 1890, LXII, p.1274; QPD, 1897, LXXVII, p.926.
127. QPD, 1893, LXX, p.812.

lost its independence and was placed under the control of the police magistrate at Blackall. In other cases, magisterial work was entrusted even to extra departmental officials such as telegraph officers. South Australia had used this practice with reasonable satisfaction in outlying areas. Certainly, a degree of consolidation in the whole system was not unreasonable because during the preceding thirty years the spread of the courts had been allowed erratically and impulsively. The State had sought to provide for future development; the financial stress of the nineties made it possible for the State to curb and reorganize the judicial establishment without great inconvenience to the disposition of justice. There were fears expressed that the removal of magistrates would allow crime to increase, for example horse stealing at Cloncurry.[128] It was doubted that squatters or storekeepers would undertake to increase their judicial duties; the latter, for example, would not like to issue warrants and summonses because it might interfere with business. Station hands also favoured a bench composed of an independent paid magistrate, to a bench of property owning justices. Nevertheless, the rationalisation plans were proceeded with, and without any noticeable increase in crime or cases of injustice. The intention of the inferior courts to be lay courts, close to the public spirit, was maintained.

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128. QPD, 1890, LXII, p.1276.

By 1900 the courts had spread far and wide across the Colony - there were 155 such courts. The State could feel satisfied that it had made adequate provision in the way of cheap and simple justice for the needs of the people.

It was easy enough to create the courts; it was another matter to ensure that competent and efficient law officials were appointed to dispense justice in and to administer those courts. On this score, the State came under much criticism. Again, the chief problem for the State was expense, and it naturally sought to provide these services as cheaply as possible, sometimes to the detriment of justice in the community.

The matter of appointment of magistrates and justices of the peace was completely under the control of the Government. In fact, the Attorney-General, on advice, was mainly responsible. In the early years, the whole arrangement of court officers was somewhat haphazard. This was so for a number of reasons - the scattered settlements, the small communities, and the cost, so that it was impracticable to employ full-time officials, except in the very largest centres. Therefore justices not infrequently presided over the courts. Yet many of these people were quite unsuitable. There were complaints that very young people, under thirty years of age, were being appointed, and also superintendents of stations.[129] Could these people, perhaps uneducated, and certainly unskilled in the law, be entrusted with such functions? Three of the

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129. Moreton Bay Courier, 9 May, 1861.

colonies leading lawyers - Blakeney, Macalister and Lilley - thought not.[130] The State did acknowledge one inadequacy of the system in 1863 when magistrates' powers of imprisonment were reduced from three years to six months.[131] This move followed a New South Wales' precedent where it was acknowledged that with the increasing establishment of sophisticated society, greater restraints and control needed to be imposed on the rude functioning of the lower courts.

A move towards increasing the sophistication of the Queensland system was made in the mid-seventies to allow appeals from justices to the Supreme Court.[132] The Imperial Government had already moved in this direction, and there was strong lawyer support for this move to improve the standard of the law. However there was an even more considerable resistance of opinion to this idea. This was an infringement of the age-old concept of justice in its lowest reaches being determined by the ordinary, honest citizen untrammelled by the technicalities and complexities of a legal system. So many of the justices volunteered their services for the good of the community. However to expect them to prepare cases for appeal was considered a death knell to the harmonious relationship between the law and the citizen. Most of the magistrates would not know what to do, and before long very few would offer to administer justice. Furthermore some people suspected that

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130. Ibid.
131. Vagrant Act Amendment Act, 1863.
132. Two Appeals from Justices Bills were introduced, 1875 and 1877.

such a move was merely another example of lawyers' intrigue to increase costs and so feather the pockets of the legal gents. So, with general opposition from the non-lawyers of Parliament, that attempt to improve the standard of the inferior courts was defeated. Justice in that lower reach was to stay wedded very closely to the layman. So, through the use of unpaid magistrates, the cost of justice in these courts was kept low - and the cost to the individual to obtain a measure of justice was relatively inexpensive, even if sometimes the measure was not really full.

Allied with the charge of incompetency by untrained, unpaid justices, was the complaint that all appointments were political. Such political influence was long established by precedent in England. The original concept, for example in an act of Edward III in 1361 that the most worthy men in the county be appointed to keep the peace was qualified by the fact that the King reserved the right to make such appointments.[133] The practice developed that such appointments were made upon the recommendations of the Lords Lieutenant, and in that way it became common-place for friends and political influence to be used in the choice of justices to keep the peace. This background was transposed to the Queensland scene. The pastoralist Governments were accused of appointing their friends, often broken-down squatters, to fill magisterial positions so that they could be assured of getting a favourable

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133. Note for example 34 Edw 3 c.1, and act of 1535.

verdict protecting their interests, if ever a litigious situation arose.[134] Likewise, the lawyer Parliament of Griffith was condemned in 1884 for selling magistracies to political supporters.[135] Macrossan said that Griffith avoided appointing Roman catholics, and supporters of McIlwraith. The Government answer was that if any previous appointment made by the McIlwraith government was not renewed, it was because the person was not reputable and was only appointed by the previous government as a political favour.

There was a tendency to appoint as justices big graziers, disproportionate to the number of farmers, miners and businessmen.[136] This was probably due to the greater need of scattered but sparsely populated outback areas for some symbol of law and order and so a number of justices were needed, whereas in the more closely settled areas one such appointee could administer to a greater population. With the success of the Labour Party in the late 1890's, the attack upon the standard of appointments to the magistracy, mainly that the standard was a political one, was strengthened. It was claimed that only big station-owners received favourable consideration from the capitalist Government of Dickson.[137] A joke was circulating through the countryside that the scales of justice were over her eyes; and one politician quipped that 'if necessity knew no law, he supposed that was the necessity of the justice of the peace because he knew no law'.

134. QPD, 1892, LXVII, p.300.
135. QPD, 1883/4, XLI, p.467.
136. QPD, 1893, LXX, p.817, 8/9.
137. QPD, 1899, LXXXIII, pp.1044-6.

It is difficult to prove the truth or falsity of these charges - certainly political favours were bestowed in such a manner, but there is no mass of evidence to establish any particular harmful result. The political colour of a magistrate was not of any great significance in the dispensing of justice - whereas the standard of education and intelligence was of obvious relevance. 'The Brisbane Courier' considered that overall, the system used was the best one possible, even though it was open to political abuse. It would be worse to allow judges to appoint or the people to elect magistrates.[138]

After twenty odd years of expansion in the magisterial setting, the time came for consolidation and rationalisation. The magistrate, untrained in the law, had to rely largely upon his own common sense and intelligence in his judicial functions. There was a handbook 'Wilkinson's Queensland Magistrate' but this, although succinct, did not offer enough instruction for an untrained officer of the law.[139] Wilkinson was a District Court judge of New South Wales, who along with the handbook, had prepared 'The Australian Magistrate' for the use of New South Wales' Magistrates. Although it might have been desirable for the magistrate to dispense justice rather than the law, in fact he found himself striking against the strict rules and technicalities of the law. So the Queensland Magistrate especially the unpaid one often floundered in the law.

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138. Brisbane Courier, 29 July, 1886.
139. W.H. Wilkinson, The Queensland Magistrate, (Brisbane: 1879), (2nd edition, 1891). '1st edition, 1879'.

The lawyer government of Griffith in 1885/1886 reviewed the situation and compiled a consolidation of what the duties of a magistrate were, and what common legal knowledge he should possess.[140] The legislation was a typically lucid example of Griffith's draftsmanship and was acclaimed as a beneficial step in furthering justice in the colony.[141] Chief Justice Cockle had set about the task of consolidating the law for magistrates - a matter of simplifying twenty two Acts - and Griffith with the help of Rutledge had taken over after the judge's departure.

This move did not improve the quality and calibre of the magistrates as such. There were complaints that too much power was left with unqualified justices, for example in the matter of contempt and committal.[142] The problem of appointments was also not wholly resolved. The prevailing rule accepted was that all appointments should rest with the Crown. In fact there was no very suitable alternative. The election of these officials was a possibility, but was not seriously considered, except in the case of the chairman of a municipal district or divisional board, where it was provided that he should automatically be deemed a justice of the peace. This provision brought some protests as involving an infringement of the Crown prerogative of appointment. This exception of an elective justice was based on the English example.

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140. Justices Bill, 1885, stopped by prorogation, Justices Act 1886 was a slight alteration of the 1885 Bill.
141. Brisbane Courier, 27 October, 1886.
142. eg. by lawyer Thynne, QPD, 1885, XLV, p.121, and by lawyer Macdonald Paterson, QPD, 1886, XLVIII, p.83.

The expansion of the colony since 1860 drew attention to the general confusion in the administration not only of the unpaid justices, but also of the full-time government magistrates and court officials, in fact of the whole civil service. Such confusion was reflected for example in the case of police magistrates and clerks of petty sessions. There seemed no reliable correlation between the status of one of these officers and his salary. Furthermore his functions were very inconsistent from area to area; nor was there any sensible correlation between the type of district he administered and his salary. There was no clear policy of promotion from the position of Clerk of Petty Sessions to that of Police Magistrate. A Clerk of Petty Sessions stationed in a country district might find himself issuing carriers' and hawkers' licences, acting as a district registrar of births, as a sub-immigration officer and as an electoral officer, or doing insolvency and intestacy work as well as the normal routine court work, but he was not normally appointed a Justice of the Peace and so could not issue summonses, take bonds, or sign warrants. In certain areas, they acted as land agents, helping to encourage land settlement. The police magistrate along the coast often found themselves as protectors of kanakas.[143]

This haphazard arrangement encouraged dissatisfaction among the court officers, as well as complaints by the public. The court officers complained in particular of the tangled

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143. QPD, 1898, LXXIX, p.646.

and inconsistent basis for determining salaries, which was further complicated by the provision of allowances, for example of forage for the horse (where a horse was needed).

Public criticism was directed mainly against the clerks of petty sessions - that these people were not well trained. There was no system of examinations to determine promotions, except for a short time immediately on separation when examinations in criminal law and evidence were set. The standard of the police magistrate could be improved through the use of examinations - he could be drawn from the ranks of the Clerks of Petty Sessions who had five or six years experience and passed the requisite examinations. In that way, there would be less opportunity for political interference which at that stage was the normal method of appointment and promotion used by the Colonial Secretary since he had virtually no criterion of competence upon which to work. The police magistrate often found himself like the clerk of petty sessions, a man of many functions - in particular he often acted also as mining warden.

The State sought to untangle this ravelled skein in 1889 by appointing a Royal Commission into the working of the Civil Service.[144] Evidence presented by Clerks of Petty Sessions and Police Magistrates revealed their grievances with the existing system, and in particular its lack of a regular system of appointment, promotion and transfer. The Commission

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144. Royal Commission into the general working of the Civil Service, V.&P., 1889, I, p.850 ff.

endorsed a reform of the whole situation, suggesting the adoption of an examination system and a regular salary structure on a three scale hierarchy, avoiding as much as possible duplicity of payment for various functions by providing an overall salary, although at the same time allowing adjustments having regard for example to the cost of living in various districts. The State accepted in part these recommendations and provided a more organised civil service structure, with a system of appointments and promotions, and a formalised scale of salaries.[145]

This attempt at rationalisation of the inferior courts became bound up in the moves for overall legal reform made by solicitor Powers in the early nineties. The depression in that period also led to further attempts at court reorganisation. Powers' concern for cheap justice was reflected in his attempt to extend the jurisdiction of the inferior courts where legal proceedings were relatively inexpensive. He suggested that the Small Debts Courts be empowered to sell land under execution.[146] He also considered that its jurisdiction should be extended to £100.[147] There were precedents for such a move in South Australia and New Zealand, where the inferior courts occupied a more important role than in Queensland. South Australia had used a system of £100 jurisdiction for some twenty five years and was considering an increase to £490. It must be remembered that South Australia did not have a

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145. Civil Service Act, 1889.
146. QPD, 1889, LVII, p.239.
147. Small Debts Court Act of 1867 Amendment Bill, 1892.

District Court system. There was considerable support for this scheme amongst the non-lawyers in Parliament, but fairly general disapproval among the lawyers. The problem with extending the jurisdiction, money-wise or land-wise, was the competency of the magistracy. The usual factors of lack of training, and political appointments were arguments against a scheme of extension. Barrister Byrnes typified legal reaction when he hoped that small debts jurisdiction would be abolished, at least in the Brisbane district, and that a greater use of the District Courts would be made as occurred in Sydney and Melbourne.[148] Lawyers' interests of course would be advanced by a greater use of the District Courts where a greater premium was laid upon legal training. Government policy was also in favour of the District Courts. However these courts were too infrequent and not sufficiently widely dispersed to provide full legal satisfaction for small claims.

Traders in country towns were finding that the limited small debts jurisdiction was inconvenient in that it allowed the cunning debtor to move from the area of the court's jurisdiction before the slow and inadequate remedies of the court were made available to the creditor. The case of the fleeing debtor and the border-hopper was causing concern to businessmen, especially in gold mining areas like Croydon and outback pastoral settlements.[149] So the State moved to correct this grievance, and added to the court's jurisdiction powers

148. QPD, 1892, LXVI, p.144.
149. QPD, 1894, LXXII, p.1062.

of attachment and garnishee.[150] Also the maximum jurisdiction was lifted to £50. The extended powers of execution brought the Small Debts Court more into line with the process of the Supreme and District Courts, and at the same time offered a cheap remedy for small claims. However there were fears that such powers would allow untrained people to act vindictively and as petty tyrants, just as powers of execution over land might be abused by landowning justices, and this latter power was refused. So long as the standard of the officials in these inferior but popular courts remained overall low, there were valid objections against extending the courts' jurisdiction too much. The colony was becoming more civilized and sophisticated and so it was preferable to look to the finer justice administered in the more expert District Courts.

In 1900, the anomalous position still existed that the inferior courts were administered by the Home Secretary's Office and not by the Department of Justice, a reflection of the multifarious tasks in which the magistrates engaged. Nevertheless the State's record in the provision of justice in that system of courts was adequate. It had provided sufficient courts for the size and spread of the population. There was validity in the grievance that the general standard of the magistrates and justices was not high enough. The factor limiting improvement was finance, but working on the initial

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150. Small Debts Act, 1894.

premise used by the State that justice in those courts should be basic and close to the people, there was justification for its system of untrained officials.

In the era of legal reform in the nineties, some people suggested a completely new system of courts. There has been an age old distrust of lawyers and an envy of their privileged position. So suggestions were made for a system of conciliation courts where lawyers were not necessary.[151] The system worked very well in Norway and Germany, and was in operation in France and England. In Norway, 85% of civil cases were disposed of in this manner, at the cost of 2/7 per case.[152] There was the problem that such a system could not be applied to the Queensland scene because the system seemed based on close settlement and a denser population than obtained in Queensland.

Powers proposed such a scheme in 1891 to facilitate the settlement of disputes and avoid litigation - nothing happened. However Griffith succeeded in 1892 but with a very simple system, merely providing the framework of a conciliation system.[153] He resisted pressures by Powers and non-lawyers to provide a compulsory system prior to approaching a court of justice. The legislation was an experiment, to see if the people wanted such a system. It provided for ordinary people - conciliation justices - to mediate between opposing claims without the help of legal representation thereby avoiding

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151. eg. by politicians Isambert, Hyne.
152. Hyne, MLA, QPD, 1891, LXV, p.1508 (from a report in Brisbane Courier).
153. Courts of Conciliation Act, 1892.

expensive proceedings. The scheme was not envisaged as dealing with important industrial disputes between employees and employers although some people did feel or hope that such a system might have been used successfully to settle the Shearers' Strike and Maritime Strike. The legislation was also an attempt to bestow functions on and raise the importance of the local district.

Overall the move was like a political gimmick, to satisfy the clamours of certain ardent legal reformers protesting about the high cost of justice at a time when money was scarce. The move did not seriously assault the interests of the legal profession, and from the beginning there was a feeling that the scheme was a dead letter because it was not compulsory.[154] B.H. Morehead referred to the matter as a namby-pamby, skein-milk attempt at legislation.[155] Powers sought to make the scheme more effective and applicable to industrial situations but the matter lapsed for want of interest.[156] So yet another attempt at legal reform to overcome high legal costs was greatly paralysed by strong legal opposition and general apathy and the legal monopoly, functioning in particular through the lucrative Supreme and District Courts, remained.

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154. Powers, QPD, 1892, LXVIII, p.965.
155. Brisbane Courier, 8 September, 1892.
156. Industrial Conciliation and Arbitration Bill, 1894.

It must be remembered that the inferior courts were not restricted to the fields of civil and criminal work as administered in the courts of petty sessions and the police courts. Very important work was done by the Mining Warden's Courts and the Licensing Courts. Attention has not been paid to these courts - for the reason of time and because a study of them would involve mainly a study of the police magistrates and justices, which it is the intention of this thesis to avoid. Furthermore, a study of those courts would involve mainly administrative and technical details. Similar considerations apply in regard to the Land Courts.

So the State attended to the community needs. In the highest tribunal, the Supreme Court, it excelled itself applying the principle of decentralization even at considerable expense. The judges, being adequately renumerated, fulfilled their duties satisfactorily and were of a high standard. In the lesser courts, however, the State record was not so high. The main problem was expense, which became a very relevant factor considering the wide spread of colonial settlement, each community demanding judicial services. The State readily complied by providing enough courts - District and Magistrates - scattered throughout the whole domain of the colony; but it tried to effect economies in the matter of personnel, being niggardly for example in its treatment of the District Court judges. This made it difficult always to get the right man, and allowed for a degree of inefficiency and incompetency. A

similar situation was allowed to arise in the Magistracy. Nevertheless, overall the community had been adequately provided for in the matter of courts of justice.

CHAPTER II

THE JUDGES

Queensland in 1859 took over the New South Wales, and thus the Imperial, system of justice. The Order-in-Council of 6th June, 1859 provided for the continuance in office of the Judges appointed by the New South Wales Government and secured their salaries (1). The judge at the time was Lutwyche. His position, his rights and powers were further clarified by the Constitution Amendment Act of 1861, an act designed to remove doubts and difficulties as to the validity of certain constitutional arrangements existing in the Colony (2). This provided for the continuing validity of all Acts in Queensland, whether or not taken over from its pre-colonial days, and also of its courts, commissions of judges and such like. The Consolidation Act of 1867 confirmed this position.

However, as such, these formulations were not very precise as to the position of the Courts and in particular of the judges vis-a-vis the State. That relationship on the whole was not explicitly defined but an explanation of the position was contained in the English background of Common

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(1) Order in Council, 6th June, 1859, pars. 15 & 16, V.&P. (NSW), 1859, IV, p.968.

(2) Act to amend Constitution of Supreme Court of Queensland, and to provide for better administration of Justice, (25 Vic. No. 13). Refer in particular to S. 20.

Law. Prominent in that background was the principle of separation of powers, and with it the associated theory of the independence of the judiciary. The concept of the division into three elements of the governmental power, and the non-interference by one element with any other element, was not peculiarly British, and can be traced back in origin at least to Aristotle (3). Montesquieu made the basic interpretation of the principle, so far as it related to the English scene as he believed he saw it in the eighteenth century, when he related the preservation of liberty to the maintenance of the division of the functions of the legislative, executive and judicial powers (4). The tyrannous and oppressive governments of Turkey and certain Italian republics were an indication of the danger of allowing the judge to act as a legislator or with executive powers. The role of the judge should be limited to the punishment of crimes and the determination of disputes between individuals.

By the eighteenth century, the principle of the separation of powers had become a significant feature of the organisation of the State. George III, anxious for the independence and security of his judges, addressed Parliament thus in 1761:-

> "I look upon the independence and uprightness of the Judges of the land as essential to the impartial administration of justice, as one of the

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(3) Aristotle, Politics, translated E. Barker, (Oxford: Clarendon Press, 1952), p.189.

(4) Montesquieu, The Spirit of Laws, trans. T. Nugent (London: George Bell and Sons, 1949), I, p.163.

> best securities to the rights and liberties of my loving subjects, and as most conducive to the honour of the crown; and I come now to recommend this interesting object to the consideration of parliament, in order that such further provision may be made, for securing the judges in the enjoyment of their offices during their good behaviour, notwithstanding any such device, as shall be most expedient.
>
> Gentlemen of the House of Commons; I must desire of you in particular, that I may be enabled to grant and establish upon the Judges such salaries as I shall think proper, so as to be absolutely secured to them during the continuance of their commissions." (5)

Fundamental to the whole principle was the notion that no branch of the triumvirate would interfere with the other branches - furthermore, in the case of the judicial arm at least, it became a matter of importance that the judicial officers be free from restraint or undue influence, compulsion or corruption. So security of tenure of office, and the reward of an adequate salary, were essential if the judicial arm was to function properly and disperse justice impartially.

These notions were the background of English law upon which the young colony of Queensland had to fall back when considering the relationship between the Legislature and the Courts. Unfortunately these notions were theoretical ideals, or broad generalizations of intention, lacking practical and realistic content. There was no real definition of limits to the various powers and functions of the three arms of

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(5) Taken from Cobbett (ed.), Parliamentary History of England, 1813, p.1007, printed in Simpson, S.P. Stone, J., Law and Society, (St. Paul: West Publishing Co., 1948), I, p.650.

government - each clouded into the other. When a practical situation presented itself, it was difficult to establish a dividing line. Maitland has pointed out that in early English history, there were no strict lines of demarcation between the various functions of the State, for example in the case of the witenagemot, or the Norman Curia (6). With the development and sophistication of government came the fashion of differentiation - but, having grown from the one root, none of the branches of government were able to dissociate themselves completely from the other branches. Montesquieu's basic concept of the three separate powers of the State has come under considerable attack, mainly on the ground that it did not really present a true picture of the situation. Jennings asserts that the judicial power is in essence precisely the same as the administrative function, except that the former uses a different procedure which is more expensive (7).

Misconceptions have arisen as to the nature of control, if any, over the Judiciary. In the early seventeenth century Chief Justice Coke, in Dr. Bonham's Case declared for the strength of the courts above the Legislature and he tried to establish the principle that judges could set aside acts of Parliament as contrary to natural rights. This idea was absorbed into American law, but was arrested by the Houses

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(6) Maitland, F.W., Constitutional History of England, (Cambridge: Cambridge University Press, 1908) p.105.

(7) Jennings, I., The Law and the Constitution, (London: University of London Press Ltd., 1933) pp.20-21.

of Parliament in England. Parliament asserted its supremacy, making the Courts subordinate to it. At the same time, the judges were assured of a certain measure of independence - they held their commissions during good behaviour; Parliament could have them removed only by an address of both Houses, their salaries were not voted annually by the Lower House, rather they were a permanent charge upon the Consolidated Fund. Judges also were given certain privileges and immunities by virtue of their judicial capacity. The Courts themselves acknowledged their subordinate position to the Legislature, for example, Mr. Justice Willes in the case Lee-v-Bude & Torrington Junction Railway Co. in 1871 said:

> "We sit here as servants of the Queen and the Legislature. Are we to act as regents over what is done by parliament with the consent of the Queen, Lords and Commons? I deny that any such authority exists. If an Act of Parliament has been obtained improperly, it is for the Legislature to correct it by repealing it: but, as long as it exists as law, the Courts are bound to obey it. The proceedings here are judicial, not autocratic, which they would be if we could make laws instead of administering them." (8)

Regardless of such pronouncements, in colonial Queensland these very same problems arose. An eager, assertive, young Legislature was determined to show its supremacy - while judges, steeped in ancient traditions and jealous of their independence, ardently resisted any attempt by the Legislature to put any form of control upon them. The judges were strong-willed individualists who would not let up without a fight -

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(8) L.R. 6 C.P. (1871) p.576 ff.

in their opinion their role was to offer justice and to protect the liberties of the individual against the tyranny and overbearing power of a steam-rolling State machine. On the other hand, Parliament saw itself as the chosen expression of the will of the people, and therefore should not let itself be hindered or obstructed by a traditionally conservative judiciary, harbouring within its breast abstract principles of justice but possibly out of touch with the people.

A number of important clashes between Parliament and the Courts (or in particular, individual Judges) did arise, the two most significant being with Judges Lutwyche and Cooper. The cause of the disputes was ultimately the extent of State control over the judges. State control could be exercised in a number of ways - by virtue of its power of appointment (wherein the Legislature could increase the number of judges, if need be judges who were politically sympathetic) and its control of the purse. As pointed out above, Parliament did not have power to vote judicial salaries annually - their salaries were fixed at the beginning of their term with a view to permanence. However Parliament did have full control over the payment of expenses, in particular travelling expenses, and in that way, could exert some measure of control over judges by limiting their expenses. Also, just as the salary of a judge was supposedly beyond the control of Parliament, so too was the tenure of office by the judge. However, in the colonial period, Parliament did make attempts to assault both these traditions of judicial independence.

However it must be pointed out that the increase in the size of the Supreme Court Bench showed no unusual trends. Overall it was geared to the increasing growth of the population. In 1859, there was one judge - two judges in 1863.

Parliament summoned a Select Committee in 1869 to consider the needs of justice in the Colony (8a). Judges Cockle and Lutwyche, and many lawyers gave evidence. Lutwyche considered two judges were sufficient; barrister Blake advised that three be appointed, to allow an efficient system of appeals. Nothing was done on the Report of the Committee until 1874 when a total of four judges were appointed (one assigned to the North) - and five in 1889. There were of course fluctuations in the number of judges during this period, due to sickness or leave, and acting judges were often appointed, as well as a New South Wales judge appointed for one particular case.(9)

So there is no evidence of Parliament stacking the courts with political friends as judges to obtain certain political results or to override the decisions of unfriendly judges. This was mainly because cases that arose for decision in court did not generally involve matters of significant political principles, or at least were seldom matters where a judge's political bias could be used effectively to frustrate

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(8a) V.&P., 1869, I, pp.565-634.

(9) Mr. Justice Windeyer - for the Grimley appeal case (involving a number of important Queensland personages).

the government's wishes. Very few constitutional law cases arose where a political party might find it desirable to have a sympathetic Bench - and, even so, with the right of recourse of appeal to the Privy Council, perhaps little advantage could be achieved in stacking the courts with sympathisers. Furthermore, actual differences between the two leading 'parties' (excluding the Labour party) during this period were not really significant - so that, actual political appointment of judges could not have any significant effect, if the end in view was the expression of a particular political line of decisions. Also, in the clashes that did arise between Parliament and judges, the issue was normally a personal one - a single judge against the Parliament, and not a concerted Bench fighting for its existence against Parliament.

This is not to deny that the appointments to the Bench were political. There is not much evidence available in this matter, but certainly there are suggestions that political friendships (and enmities) played a significant role in promotions to the Bench. It must be remembered that the Queensland Bar was not large - so there were not a lot of barristers to choose from. It was desirable to have the most competent person available, but generally this was tempered with the principle of friendship. Lutwyche's appointment was made prior to separation, as a reward for his service to the

Cowper Ministries (10). Chief Justice Cockle's appointment in 1863 reflected a personality issue - Judge Lutwyche and Premier Herbert were at loggerheads. Herbert who had trained for the Bar in England was not convinced as to the excellence of the small local Bar, so looked back to England for a Chief Justice, and accepted the recommendation of Chief Justice Erle that Cockle was an outstanding young barrister, suitable for the office (11). Lilley accepted a judgeship in mid-1874. He first of all refused the position but later accepted upon an assurance by the Macalister Government that, if the Chief Justiceship became vacant during the government's term, he would be offered the position (11a). In most ways, this was a desirable move from the Government's point of view - political relations between Lilley and Macalister, which during the early 60s had been overall friendly and cooperative, had deteriorated steadily in the late 60s and 70s. Both had tried for political leadership and for Macalister this was a good way to remove a powerful figure. However Lilley's practice at the Bar was large, and more than the offer of a mere judgeship was needed to entice Lilley from the political arena. Lilley was somewhat irate about the matter when, upon his accepting the judgeship, the legislature reduced his pension - Lilley considered retiring but it was a little too late to find a seat in Parliament.

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(10) Lutwyche was twice Solicitor-General, and also Attorney-General, and led the Legislative Council for Cowper.

(11) Ada England, in 'Idle Moments', June, 1947, p.15 refers to Erle, C.J.'s recommendation.

(11a) Brisbane Courier, 21 August, 1897; Telegraph, 21 March, 1873.

Shepperd was appointed to the Northern Bench, also in 1874 - there was no evidence of political friendship or expediency in that appointment. The position was similar with regard to Harding's appointment in 1879, although there was some suggestion of his sympathies and friendship with McIlwraith. Griffith in fact had been offered the position, a mark of respect for his ability, but he did not find the offer attractive enough.

Political arrangement is more apparent in the case of Ratcliffe Pring who was Attorney-General in McIlwraith's Ministry before he went to the Bench in 1880. Also, Pope Cooper in 1880 accepted the position of Attorney-General in the McIlwraith-Archer administration and then moved onto the Supreme Court Bench in 1883. Premier Griffith, not to be outdone by his opponent McIlwraith, offered a commission to his very good friend, Charles Mein, in 1885. Griffith and Mein were rival students together at Sydney University, and for a while worked in the same office in Brisbane (12). Mein had accepted positions as Post-Master General, and later as Minister for Public Instruction in Griffith's Ministry, just prior to his going to the Bench, and had also been a fellow minister with Griffith in the Douglas government 1876-9. Mein was the first solicitor in Queensland to be appointed to the Bench.

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(12) Griffith: QPD, LXI, 1890, p.82.

Charles Edward Chubb, an Attorney-General in 1883 for the McIlwraith-Archer administration, was rewarded by the Morehead Government which took over from McIlwraith in 1888 with a judgeship. In the case of Real, there seems to be an exception to the suggestion of political influence. Real was good friends with Griffith, having often been called upon to be his Junior in the 70s (13); however his elevation to the Bench occurred during the Morehead administration. On Real's own evidence, he was selected for his ability; at the time of his appointment he claimed he had the largest income and practice in the Queensland Bar (14).

Sir Samuel Griffith's removal from politics to the Bench was somewhat clouded in mystery; like Lilley he had served a busy and useful life as a politician and possibly felt the need of the quiet dignity, together with the immense prestige of a judgeship. Certainly, many of Griffith's political opponents were pleased to see him go. Griffith moved directly from his office as Chief Secretary and Attorney-General to that of Chief Justice, Parliament having subsequently arranged £1000 increase in the Chief Justice's salary, so that Griffith would accept it (15). Parliament quite openly arranged that the terms of office be acceptable for Griffith, since it was considered that Griffith was the

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(13) O'Sullivan, T., Sketch of the Career of the Hon. Patrick Real, (typed pamphlet), pp.6&10.

(14) Ibid., p.15 - also refer Gannon, QPD, LXV, 1891, p.1689.

(15) Chief Justice's Salary Act, 1892.

person most suitable for the job (16). In doing so, it was ignoring the claims of seniority of Harding, Cooper, Chubb and Real. Some people, like Glassey, criticised the political nepotism being shown, and suggested that judges like Real and even Paul (of the District Court) were more entitled to the office than was Griffith (17). However there was fairly general approval of this political arrangement. The press approved Griffith's appointment, and his salary.

Virgil Power was a friend of the government in power in 1895 when he accepted the commission of judge of the Central Supreme Court, although it cannot be denied that he was a very talented lawyer (18).

So the element of political friendship and personal animosity had considerable influence in appointments to the Queensland Bench, especially in the first three decades. In the 90s, there is more evidence of greater weight being placed upon ability, seeking out the best man available. By that time, the Bar had expanded considerably, and the government could not find the greatest ability in its closest friends quite so easily as it did when there were very few barristers from which to choose.

At the same time it should be remembered that the link between political attachments and appointments to the Bench was the established practice in England at the time.

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(16) Tozer, QPD, LXVIII, 1892, p.1765.

(17) ibid., p.1779; Brisbane Courier, 9 November, 1892.

(18) For ability, refer to Queensland, 1900, (Brisbane: W.H. Wendt & Co., 1900), Biographies, p.21.

This arose primarily through the custom that judges were appointed by the Crown on the recommendations of the Prime Minister or the Lord Chancellor. The latter post itself was usually filled by a politician supporting the Government of the day who also had a legal background as a barrister. Vacancies on the Bench usually went to politicians on the Government side as a reward for services rendered although sometimes an appointment was made to remove a 'troublesome' politician-lawyer of either the Government or the Opposition side. Professor Laski did a study of appointments to the Bench between 1832 and 1906, and found that out of a total of 139 appointments, eighty were members of Parliament at the time of their appointment; furthermore, sixty-three were appointed while their party was in office and only seventeen were made from the ranks of the political opposition (18i). So the connection between politics and the Bench in Queensland was merely a reflection of the established English pattern. Again in Queensland as in England, a common reward for political service as Attorney-General or Solicitor-General was appointment to the Bench. Cooper and Griffith could be cited as examples of that situation. Such a political connection was not in itself undesirable - Lord Haldane,

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(18i) H.J. Laski, "The Technique of Judicial Appointment", Studies in Law and Politics, cited in R.M. Jackson, The Machinery of Justice in England, (Cambridge: The Cambridge University Press, 1960) pp.235-236.

himself a politician-become-judge considered that political experience helped a judge in checking the danger of abstractness in mental outlook (18ii).

Parliament's control over the appointment of judges impinged more closely on the principle of independence of the judiciary in the situation where it was necessary to appoint an acting judge. Judge Lutwyche had a bout of illness in the early 70s and there was more work to conduct than Cockle alone could handle. With the appointment of an acting judge in particular, it was easy for the government, if it wished, to bestow its favours on a political friend, and furthermore appoint a particular person to achieve a particular result in a case about to come on for hearing. However the delicacy of the situation was appreciated by the various governments concerned, and they did try to be fair and just. Certainly in the choice of suitable lawyers for the office it was virtually impossible to exclude the basis of political friendship, but, upon the appointment being made, provision was made to protect the judge from compulsion or restriction by the Government, and he was given the same powers as a full judge (18a). There was some public concern, however, that such a power to appoint an acting judge while a judge was ill or on leave of absence could allow political judges (18b). It was most probable that the acting judge would be one of the

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(18ii) Viscount R.H. Haldane, An Autobiography, (London: Hodder & Stoughton, 1931, p.69.

(18a) Acting Judge Act, 1873.

(18b) QPD, XV, 1873, p.429; QPD, XVII, 1874, pp.632-635.

lawyers in Parliament, and it was suggested that if this situation arose, that person should not be allowed to resume his seat in Parliament for six months after the termination of his Commission. However although this measure was designed to promote public confidence in the Bench, it received much criticism from lawyers and also was not very practical in that it would have the tendency to limit the number of lawyers who would willingly accept a Commission (namely, the lawyers not in Parliament). Nothing came of the suggestion, although it was relevant as a reflection of disquietude amongst many non-lawyers that lawyers should be in such a privileged position whereby they could make professional advantage out of their political office. Morehead, for instance, feared that the politically-minded lawyers could not be just judges because they would not be able to wean themselves away from prejudices gained in the political arena (18c). Parliament could always point to the unhappy trouble it had with Judge Lutwyche when he meddled in politics (18d).

The possible threat of State interference with judicial independence arose again in 1880, on Lutwyche's death, when the McIlwraith administration appointed Ratcliffe Pring as Acting Judge. The whole question of the validity of acting judgeships was raised - should not a judge's status be clear, and be permanent? (18e) The Supreme Court Act of 1867

(18c) QPD, XVI, 1874, p.255.

(18d) Intra.

(18e) QPD, XXXII, 1880, p.83; Brisbane Courier, 14 July, 1880.

provided for a judge to hold office during 'good behaviour'. There was a possibility that this clashed with earlier constitutional precedents and the Charter of Justice itself which pointed to the principle of the permanence of the Bench and its independence of Parliamentary control, a principle which could be jeopardised by a commission of only temporary nature.

This same question had first arisen in 1873. Judge Lutwyche was absent and Sheppard was appointed Acting Judge. Chief Justice Cockle decided to accept the situation and not to look into the legality of such an appointment. However no real difficulty arose because Sheppard resigned the Commission the day after he took the oath - so the matter was left open. The Acting Justice Act of 1873 was subsequently passed to provide for the temporary appointment of a judge when the regular judge was ill or absent. The situation in 1880 was different, in that Pring as Acting Judge was replacing a deceased judge. The Government's action was allowing an unwarranted interference with the Bench. Griffith said that there was a widespread feeling that the appointment was illegal even though the Court was ignoring the problem, as it had in 1873 (18f). There was no evidence that the government had any particular political intention in making the appointment - its reason was that it was contemplating reducing the total number

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(18f) QPD, XXXII, 1880, p.727.

of judges to three. This was not because of falling Supreme Court work but mainly as part of an economising retrenchment plan.

The government's financial policy was governing its policy of judicial appointments. It considered the cost of justice was excessive, and in particular that the presence of three judges in Brisbane was a luxury (18g). The cost of justice had virtually doubled since 1874. However there were many protests, especially from the lawyers, like Griffith, Rutledge and Swanwick, against this policy of cutting down on justice facilities and on the number of judges while the colony was progressing. Solicitor Feez said that if the Government must implement its financial policy and reduce the number of judges, the most just solution was to keep three judges in Brisbane and wipe the Northern Court. McIlwraith mindful of his northern supporters could not agree to that proposition, and in view of the opposition to the plan to reduce the size of the judiciary, he let the matter drop and Pring took a full commission.

So the appointment of temporary judges was one where the danger of too much State interference in the judiciary could arise. As it happened no such interference did take place. But the situation was always open to

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(18g) Supreme Court Act Amendment Bill, 1880 - refer QPD, XXXIII, 1880, pp.1005-1007.

criticism, and perhaps through the watchful eye of the Parliamentary opposition and the press the dangerous situation was kept in check.

Political control was thus apparent in the matter of appointments, although overall with very little effect politically, since the governments changed rapidly and each government could make its own political appointments if need be. Overall, however, Parliament found little need to interfere with the judges, provided of course that they would acknowledge the supremacy of Parliament and accept their own inferior position. When Parliament struck against strong-willed individuals like Lutwyche and Cooper who refused to bow to Parliament, the whole situation became explosive and both sides proceeded to rash, precipitous actions. In both cases, the matter of money was central, although it involved other matters like security of tenure and the general principle of independence of the judiciary, opposed by the claims of supremacy of parliament.

The Lutwyche case was more serious and of greater consequence. It eventually reached the stage where Parliament sought not only to reduce the judge's salary but also to cancel his commission. Lutwyche claimed that Parliament, in its eager, boisterous attempts to bring everything under its control including the appointment of judges under commission by the Legislature of New South Wales, was infringing the tradition of the independence of the judiciary - so, to enlist

public support for himself and to bring discredit upon the Parliamentary action, he resorted to the Press. Such action was decried by Parliament as bordering on treachery and members denounced Lutwyche's arrogance in attempting to set himself beyond the realm of the Parliament. The matter resolved itself mainly into a conflict of the power of Parliament to control a judge, in spite of the principle of the independence of the judiciary.

Lutwyche was a legacy of the New South Wales days - he was the only judge for the whole of the colony, and that did raise problems. There was an inadequate system of appeal since the Sydney Bench was not available. The business community, especially of Brisbane, had its grievance that while the judge was on circuit, even though at the most this was only for a fortnight at a time, they were deprived of the immediate use of the court. Wily debtors found this a good break to abscond over the border, leaving the merchants with no means of recouping their losses. Lutwyche, himself, at Parliament's request, had prepared a draft Bill to deal with these problems but it was ignored. Instead, a Select Committee was appointed to report upon the state of the Judicial Establishment. The Committee of six, three of whom were lawyers, reported that three judges were necessary, for appeals, if for no other reason.(19) They found that the

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(19) Report of the Committee - V.&P., 1860, p.480 ff. The three lawyers on the committee were Attorney-General Pring, Blakeney and Mcalister.

administration of justice was not efficient and that it failed to secure the confidence of the people. This was a reflection partly upon the competence of Lutwyche, which reflection was heightened by the fact that the Committee recommended that a Chief Justice be appointed from England, thus overlooking Lutwyche's claim by virtue of seniority. The Report also glowingly advised the establishment of District Courts.

From the beginning, the scene was ready for a clash between Parliament and Judge Lutwyche. Personal animosity was shown towards the judge by the lay members of the Committee, and also by lawyer Blakeney. Attorney-General Pring sat on the fence, not condemming Lutwyche but pointing to the inconvenience of the existing system. Macalister also agreed on the necessity of having three judges. However there were supporters for the judge - lawyers Lilley and Rawlins gave evidence before the Committee that three judges were not necessary - there had been only one appeal, and no great inconvenience had arisen through the temporary suspension of Habeas Corpus or of the granting of probates while the judge was on Circuit. The total scheme suggested by the Committee was criticised for the great expense it would involve, and it was largely on that score that the Report was rejected by the Legislative Assembly (20). The "Moreton Bay Courier" denounced the Report as useless (21). The evidence produced was slight,

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(20) 'Moreton Bay Courier, 24 July, 1860, 1 September, 1860.
(21) Ibid., 15 September, 1860.

and furthermore the Report produced did not really correspond with the evidence adduced. Also the Report was not prepared by the members - Macalister was absent, and the 'Moreton Bay Courier' considered that he was an opponent of its recommendations. That newspaper condemmed it as a plot and a conspiracy, planned partly with the connivance of some Sydney politicians such as Arthur Hodgson to discredit Lutwyche (22). The Report was regarded as a 'job' - particular questions were put to obtain certain answers, and Lutwyche had not been called upon to give evidence.

The Report was the first real indication of the existence of ill-feeling between at least some of the politicians and Judge Lutwyche. Overall the Report did not really succeed in discrediting the judge, mainly because Lutwyche had strong support in the 'Moreton Bay Courier' and among certain prominent lawyers such as Lilley and possibly Macalister. Furthermore at that stage, the Parliamentary opposition to Lutwyche was not well arranged - strength was to be added to that side by the interference of Lutwyche in matters political. It appeared that Lutwyche could not wholly dissociate himself from his political past.

Shortly after separation Lutwyche had drawn attention to his doubts on the legality of the Queensland Parliament, a matter concerning the qualification of electors (23). Sir

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(22) Ibid., 30 July, 1860.

(23) Letter, Lutwyche to Governor Bowen, 9 January, 1860, printed in The Courier, 3 August, 1861.

Alfred Stephen and his colleagues on the New South Wales Bench disagreed with Lutwyche over the matter, but there was evidence that English Crown Law officers were of the same opinion as Lutwyche. The Colonial Office however chose not to worry about the matter. However, the constitutional point could be a trump card held by Lutwyche, and some Queensland Parliamentarians could have been distressed by this possible political advantage maintained by Lutwyche.

Parliament was anxious to assume full control over its whole domain. This included control over judge's commissions and salaries. The Civil List issued after separation, noted the salary of future judges at £1,200 per annum (24). Also the Report of the Judicial Establishment Select Committee had recommended salaries of £1,500 per annum for a Chief Justice, and £1,200 per annum for each of the puisne judges (25). Lutwyche, however, under his New South Wales commission, received £2,000 per annum. He claimed that a salary of £1,200 p.a. was far too low - no good man could be obtained at that figure (26). He knew of several barristers in New South Wales, who were far from the top of the profession and had refused District Court judgeships (at £1,000 per annum). £1,500 annually would be a tolerable salary for a future judge. However, as a matter of constitutional law, Lutwyche asserted

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(24) Letter, Lutwyche to Governor Bowen, 23 January, 1860, V.&P., 1860, p.465.

(25) Ibid, p.480.

(26) Letter, Lutwyche to Governor Bowen, 23 January, 1860, V.&P., 1860, p.465.

that his own salary must remain at £2,000 per annum in accordance with his Commission and the New South Wales Government agreed with him (27).

The Legislature, becoming increasing incensed by Lutwyche's vociferous pronouncements, and his numerous letters to the Governor and various Parliamentary officers - which trait has been described as the incurable disease of 'cacoethes scribendi' (28) - determined to bring the judge under closer Parliamentary supervision. It was proposed that the judge's salary be reduced to £1,800 per annum (29). The Colonial Secretary - Herbert, and the Attorney-General - Pring, both lawyers, were aware of the constitutional position, had worked for a compromise position - the temper of the House was such that many wanted Lutwyche's salary reduced to £1,200 annually (30). It was the Government's intention to constitute a Supreme Court of Queensland, with the judges holding commissions under the Great Seal of Queensland, and not of any other Government. Herbert assured Lutwyche that his salary would be maintained at £2,000 until his commission was superceded by a Queensland one, whereupon a new salary would be fixed.

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(27) Correspondence between Lutwyche and New South Wales Government, V.&P., 1860, p.453 ff.

(28) Bernays, C.A., Queensland Politics during 60 Years, 1859-1919, (Brisbane: A.J. Cumming, Govt. Printer, c. 1919), p.27.

(29) Letter, Lutwyche to Colonial Secretary Herbert, 2 July, 1860, V.&P., 1860, p.467.

(30) Letter, Herbert to Lutwyche, 16 July, 1860, V.&P., 1860, p.467.

Lutwyche took this as an unreasonable attack by the Legislature on his rights and privileges as a judge. He refused to surrender his commission - he threatened to petition the Crown and the Privy Council, if attempts were made to reduce his salary or to suspend his commission; and he raised the point of constitutional invalidity (31). Lutwyche also raised the point that the whole issue was based on personal ill-feeling towards him, because, since separation, while the salaries of some officers had risen, his was the only case that had been the subject of reduction. Governor Bowen tried to placate Lutwyche on this point, saying that both the Colonial Secretary and the Attorney-General bore goodwill towards Lutwyche (32).

The Legislature persisted in its policy of knocking down Lutwyche. Legislation was hurriedly passed through both Houses, asserting the power of the Legislature to construct and establish a Supreme Court of Queensland (33). This power went further, applying to the cancellation of the existing commission of Lutwyche and granting power to issue new commissions. An increase in the number of judges was provided for, and an amendment assented to, reducing judicial salaries to £1,200 per annum. The legislation in fact appeared as a

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(31) Letters, Lutwyche to Herbert, 20 July, 1860, ibid, and Lutwyche to Bowen, 20 July, 1860, V.&P., 1861, p.362.

(32) Letter, Bowen to Lutwyche, V.&P., 1861, p.364.

(33) Supreme Court Administration of Justice Amendment Bill, 1860.

subtle presentation of the various proposals contained in the rejected Report of the Judicial Establishment Committee.

Lutwyche was not alone in his condemnation of the legislation. He petitioned the Queen that the legislation was illegal, and also raised the question of the legality of the constitution of the Legislative Assembly (34). During the passage of the legislation, barrister Gore Jones was called before the Bar of the House, where in evidence he raised doubts as to the cancellation of Lutwyche's commission and the reduction of his salary. Macalister also asserted that the judge's salary should remain unaltered (35). However both Herbert and Pring gave their blessing to the Bill. Herbert knew that the Secretary of State for the Colonies considered that Lutwyche was entitled to his existing salary (36). However the issue of a new commission, and new salary thereunder was designed to circumvent this position. The Government made the concession that so long as Lutwyche was the only judge, he could receive his £2,000 and have precedence, just as though he were the Chief Justice (37).

The whole matter became filled with personal animosity. The government deplored Lutwyche's hostile and anti-State feeling. Lutwyche attacked the Government for its

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(34) V.&P., 1861, p.367.

(35) Moreton Bay Courier, 13 September, 1860.

(36) Letter, Herbert to Lutwyche, 20 September, 1860, V.&P., 1861, p.339 ff.

(37) Letter, Herbert to Lutwyche, 9 October, 1860, ibid.

personal vendetta against him, saying that it ignored his interests, and did not consult his views with regard to the constitution of the Supreme Court - he felt completely at the mercy of the Legislature (38). The misunderstanding was heightened by the filling of the office of Chief Justice. The government seemed unlikely to offer the post to Lutwyche - it was asserted that the Attorney-General had first entitlement to the office. Lutwyche denied this, saying he had precedents that the first judge should become Chief Justice. He intended petitioning the Queen if he was not made Chief Justice (39). Herbert subsequently asserted that the Attorney-General had no pretensions to the office (40).

As the matter dragged on, and Lutwyche felt the need of enlisting public support, so he resorted to his friend, Pugh at the 'Moreton Bay Courier' and on three occasions published all the correspondence carried on by him, and replies relating to his position as judge (41). The Government deemed his action as a breach of faith and good behaviour in disrespect of his position as a judge - Lutwyche defended his action, if it were indiscreet, as necessary for the public good.

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(38) Letter, Lutwyche to Herbert, 5 January, 1861, V.&P., 1861, p.339 ff.

(39) Ibid.

(40) Letter, Herbert to Lutwyche, 10 February, 1861, printed in 'Moreton Bay Courier', 23 February, 1861.

(41) Published 2 February, 1861, 23 February, 1861, 8 August, 1861.

The English authorities were somewhat concerned by the unseemly wranglings going on in the new colony. The Governor had reserved for Her Majesty's pleasure the Supreme Court Constitution Amendment Bill. The Secretary of State for the Colonies was unwilling to interfere too much in the domestic affairs of the new colony, although he considered it his duty to restrain it politely in its brash enthusiasm to interfere unduly with one of Her Majesty's judges. So he suggested that Parliament reconsider the matter, since he doubted that the Legislature had power to reduce Lutwyche's salary thus (42).

Public feeling was aroused by the issue and much of it was in favour of Lutwyche, largely through the efforts of the Press. Lutwyche, unlike his predecessor Milford, had settled in well in the Brisbane scene (43). One Reverend gentleman hailed Lutwyche for raising the moral standard of the community - in spite of the population growth, he believed that there was less crime since Lutwyche's arrival (44). Lutwyche incidentally was a good church attender. A public meeting to express sympathy with Mr. Justice Lutwyche was held on 9th May, 1861 (45). Organised by Mayor Petrie, it was well attended, in the audience being many lawyers including Macalister, Lilley and Garrick. The Report of the Judicial

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(42) Despatch, Secretary of State for Colonies to Governor Bowen, 26 February, 1861, Legislative Council Journals, 1861, II, paper 4.

(43) Refer to summary, Brisbane Courier, 24 October, 1931.

(44) Rev. Wilson, Moreton Bay Courier, 11 May, 1861.

(45) Moreton Bay Courier, 11 May, 1861.

Committee was condemned. Garrick attacked the Assembly as not representing the people of Queensland. He referred to the Supreme Court Administration of Justice Amendment Bill as the consummation of all the indignities offered to the judge. Governor Bowen came under attack, Garrick remarking that if the Governor had shown no vices, he certainly also had shown no political virtue. Criticism of the Governor continued in the press, with allegations that he had acted unconstitutionally for not doing something about Lutwyche's letters concerning the illegality of the structure of the Legislative Assembly (46). A petition was prepared at the public meeting that Lutwyche's services on the Bench be continued. The Legislative Council refused to receive the petition and Herbert described the meeting as a rabble (46a). Petitions for Lutwyche were prepared in Ipswich and Toowoomba, wherein 378 people pledged their faith in Lutwyche (47).

The Government in the 1861 session, accepted the decision of the Imperial authorities. New legislation, to regularize judgeships in Queensland, provided for the continuance of Lutwyche's salary at the existing level, although as a matter of equitable, rather than of legal right (48). Up to three judges were provided for at a salary of

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(46) Letter-to-Editor, 'Droit', The Courier, 8 August, 1861.

(46a) The Courier, 29 June, 1861.

(47) Article by L.E. Groom, Brisbane Courier, 24 October, 1931; V.&P., 2nd session, 1862, p.329.

(48) Supreme Court Act, 1861. The Courier, 29 June, 1861, 4 July, 1861, 10 July, 1861, 1 August, 1861.

£1,200 per annum. The Legislative Council introduced an amendment whereby Lutwyche's New South Wales commission was to lapse, upon acceptance of a Queensland commission. There was still considerable annoyance among politicians that Lutwyche was to receive his old salary, especially as judges in New Zealand, South Australia and Tasmania received less, although Lilley defended the salary, claiming that in practice Lutwyche was a good lawyer and would earn more than that salary in private practice. Herbert had to agree on that point, but led the attack against Lutwyche for his political partisanship and his disrespect of the Government. Others condemned him for the rudeness he displayed towards the Attorney-General. In the 'Queensland Guardian', Lutwyche was referred to as 'the Judicial Dictator, Cromwell come again' and it was alleged that the whole matter arose merely because Lutwyche became perverse when the Government in 1860 ignored the draft Bill prepared by himself for the better administration of justice in Queensland, wherein Lutwyche had secured for himself certain advantages. (49)

Lutwyche did not fully accept the new legislation, and kept the matter alive by publishing further correspondence in 'The Courier'. He was hesitant over surrendering his commission, but after further communication with Herbert

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(49) Article, signed 'M.P.', Queensland Guardian, 3 July, 1861.

agreed to the procedure (50). However he persisted with another petition to the Queen and a memorial to the Secretary of State for the Colonies, Newcastle, praying for a disallowance of the Supreme Court Act because his successor's salary was lower than £1,500 annually, and again he raised the point of the constitional validity of the Legislature (51). Again the Imperial authorities declined to interfere too much - Newcastle said that he was loath to interfere because he did not want to breach responsible government. It was hoped that such an unfortunate clash between the Legislature and the Supreme Court would soon heal itself.

An attack was made on Lutwyche by the Legislative Council. Six Resolutions proposed by Fitz were carried condemning and deprecating the judge's conduct, in particular that he displayed political partisanship, calculated seriously to impair confidence in the administration of justice in the colony (52). It was claimed that Lutwyche chose to impugn the legality of the Constitution Act only after the close of the first session in 1860 and because Parliament had ignored the judge's draft Bill wherein he had secured certain advantages to himself. In fact the claim was not correct,

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(50) Letters, Lutwyche to Colonial Secretary, 2 August, 1861, Colonial Secretary to Lutwyche, 2 August, 1861; Lutwyche to Colonial Secretary, 3 August, 1861, printed in the Courier, 8 August, 1861.

(51) Legislative Council Journals, 1862, IV, paper No. 5, including reply of Secretary of State for Colonies to Governor Bowen, 14 December, 1861.

(52) The Courier, 24 July, 1861.

because Lutwyche had written at least two letters to the Governor about the matter prior to the 1860 Act affecting Lutwyche's salary. Also it was fanciful of the Council to say that Lutwyche in his Bill had secured advantages for himself, merely by virtue of the fact that it made no reference to his salary, thereby indicating that it remained the same as it always had been.

The Press again came to Lutwyche's rescue. Editor, Theophilus Pugh, published a very spirited defence of the judge (53). It has been claimed that Lutwyche himself wrote the article for Pugh - Lutwyche did have literary pretensions, and, apart from his voluminous letterwriting, did occasionally contribute to the leading columns of 'The Courier' (54). This article denied that Lutwyche had been politically partisan - instead it charged that he stood between the Crown and the people. Furthermore, a judge did have political rights and could be partisan - instances were the Lord Chancellor, and Judges Therry and Stephen of New South Wales. The article made a deliberate attack on the Legislative Council, accusing it of brazen mendacity and mocking its acquired celebrity through its actions against Lutwyche, the Crown, and the people of Brisbane (in its refusal of their petition). Fitz' resolutions were marked as a foul blot. The paper claimed that the Council had completely lost the confidence of the people.

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(53) The Courier, 30 July, 1861.

(54) Queensland Writing, (published by the Queensland Authors & Artists Association, Brisbane: 1954), p.28.

The Attorney-General instituted legal proceedings against Pugh for this 'scandalous libel'. The case came up before Judge Lutwyche (55). This put him in an invidious position but he promised to do his duty as well as possible. Lutwyche having charged the jury that as a matter of law there could be no seditious libel against the Legislative Council, the jury returned a verdict of 'not guilty', amidst much jubilation (56). The Attorney-General subsequently sought the opinion of the Imperial Law Office. Sir W. Atherton, Attorney-General and Sir Roundell Palmer, Solicitor-General considered that a seditious libel could be published of the Legislative Council (57). The Government however took no further action on the matter.

Lutwyche had won against Parliament - his salary was retained, he had not been forced to surrender his Commission - and through the Press he had gathered a lot of support, being painted as the defender of liberties against an irresponsible and tyrannical Parliament. On the whole he had at least legal right on his side - and Parliament had acted rashly. However the principles of independent Judiciary and supreme Parliament had become very smothered in a plethora of personal ill-feelings and jealous ambitions.

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(55) R-v-Pugh, 1 S.C.R. 63.

(56) The Courier, 22 August, 1861; Legislative Council Journals, 1862, Paper No. 8.

(57) Letter, Sir W. Atherton and Sir R. Palmer to Secretary of State for Colonies, 10 January, 1862.

Yet Parliament still held some winning cards - the control of the judge's incidental expenses and of the appointment of new judges. The dispute over travelling expenses arose early in 1862. Lutwyche did all the circuit work by horse. In 1860, £500 had been voted for expenses involved therein. These were reduced to £300 for 1861. Lutwyche claimed this amount was insufficient - and furthermore all the expenses of 1860 had not been paid (58). Parliament disapproved of Lutwyche's high-handed attitude (59). His salary was greater than that of the chief officers of the colony, and was in excess of all other judicial salaries in the colonies except for gold-rich Victoria and New South Wales. It was stated that his travelling allowance was larger than that of New South Wales judges. At the same time it should be remembered that Lutwyche alone did all the Circuit work, out to Drayton and up to Maryborough. Lutwyche took this behaviour as another 'gratuitous and deliberate insult' by the Government (60).

In Lutwyche's behaviour towards the Government over expenses there was a note of irascibility and unreasonableness, an amusing instance of which arose during the financial crisis of 1866 (61). Lutwyche refused to go on from Ipswich to

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(58) Letter, Lutwyche to Colonial Treasurer, 23 January, 1862, V.&P., 2nd session, 1862, p.205.

(59) Copy Minute of Proceedings of Executive Council, 3 March, 1862, ibid, p.210.

(60) Letter, Lutwyche's Associate to Under-Treasurer, 18 March, 1862, ibid. Lutwyche declined personally to carry out correspondence with the Government, and so had his Associate do it for him.

(61) Bartley, N., Opals and Agates, (Brisbane: undated) pp.162-

deliver the Toowoomba gaol unless his hotel expenses were paid in advance. The Colonial Treasurer telegrammed the Colonial Secretary that he could keep Lutwyche occupied two days looking at an unheard of, imported Dorking cock - Lutwyche was a passionate poultry-breeder, as was Herbert (62). The Colonial Treasurer also wrote to the judge, pointing out the existence of some second-class but perfectly respectable inns, at which reasonable refreshment might be procured at moderate rates. Lutwyche replied that he was "fully aware of the fact that there are wayside inns, of a certain class, between Ipswich and Toowoomba; but alas! they contain living entomological specimens of a genus, which, however vigorous, pleasant, and even healthful a stimulus, their midnight attentions might convey to your own hardy, northern epidermis, yet, in the case of my own more effeminate, southern organisation, they would be productive of results inimical, alike, to the repose of body, and serenity of mind, so needful for a judge, when on circuit duty."

Apart from Parliament's limitation upon the amount it was prepared to grant for travelling expenses, Parliament in 1863 asserted its real power of control in passing over Lutwyche for Chief Justice and appointing a young English barrister, Cockle. The Attorney-General, Pring, asserted that if it came to a real issue, and there was no-one other than

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(62) Bartley, N., Australian Pioneers and Reminiscences, (Brisbane: Gordon & Gotch, 1896), p.399.

Lutwyche to fill the office, he would assert his right as Attorney-General to precedence rather than let Lutwyche get it (63). However the preference was for a judge from England, one free of political bias. The need for another judge was felt - because the colony was expanding, and shortly it was expected that Rockhampton and Warwick would be added to the circuit, perhaps also Surat. Also the system of appeals was still open to criticism - some claimed that many and great evils had arisen from having only one judge. The difficulty of cases, like R-v-Pugh, was alluded to - although, objectively, it was hard to show that Lutwyche had done a bad job.

There were opponents to the idea of appointing a second judge. There was not enough work to keep two judges going full-time; it would cost too much. Lilley said two judges could not constitute an effective Court of Appeal - three judges should be the minimum, but this was too great luxury (64) Gore Jones, barrister, agreed with Lilley and defended Lutwyche's ability as a common lawyer. He claimed that it was merely a party move against Lutwyche, led mainly by Herbert and Pring (and by 1862 also Macalister, who was in the government (65)). Another politician criticised the Government's attitude towards Lutwyche, saying the Government were opposed to him because he was a poor man's judge, whereas

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(63) The Courier, 26 June, 1862.
(64) Ibid., 2 July, 1862.
(65) Ibid., 4 July, 1862.

the Government wanted one of their own sort, a rich man's judge, who would abide by their position. However, regardless of the personal issues involved, the Government had its way, with the need to bring justice closer to the people and to provide a better system of appeal, and in two days the relevant legislation passed through both Houses (66). James Cockle, a bright young English barrister was appointed Chief Justice. Parliament had won that round.

Lutwyche, rankled and dismayed by Parliament's treatment of him, turned the matter into a personal, vindictive campaign. In the 1863 elections he published an Address to Electors, complaining of the Herbert government, criticising it for its behaviour over his salary and contending that he could not get justice except through the newspapers. This was flagrant interference by the judge in matters of politics - and Herbert in the Assembly, and Gore in the Council quickly took up the matter. Such political partisanship could possibly produce bias in the judge's discharge of duty. A motion was introduced to appoint a Select Committee to consider the conduct of Lutwyche since 2nd August, 1861, with the view of presenting a humble address to Her Majesty, praying for the removal of Lutwyche. This was Parliament's ultimate method of control over the tenure of office by a judge. Parliament had been frustrated in its other attempts to control Lutwyche - and there was no case for his removal by Her

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(66) Additional Judges Act, 1862 - in Legislative Assembly, 3 July, 1862; Legislative Council, 4 July, 1862.

Majesty on the grounds of judicial incompetence, but there was a possibility that the Imperial Government might consider that the only solution to the unseemly wrangling was to remove the judge for his indiscretion in political matters. The Imperial authorities were fortunately saved from making a decision, through the intercession of Chief Justice Cockle. He felt the dispute had gone too far, that there was unreasonable misunderstanding on both sides, and that the image of justice would begin to suffer if the dispute persisted. He mediated in the matter. He told Lutwyche that the public expression of his political opinions was imprudent - and furthermore such strong opinions could raise doubts as to his impartiality as a judge (67). Lutwyche's strong will and individualistic spirit were reflected in his reply - as Lord Palmerston had said, a judge had every right to make public expression of his political opinions (68). Just as Cockle did not want to lose Lutwyche's services, and his knowledge of Queensland, so Lutwyche did not want to lose his office as judge and he accepted Cockle's advice as a dispassionate judgement, given independently of the personal and political biasses that had been engendered over the previous three years of dispute. So for the cause of impartial justice, Lutwyche agreed to forego the exercise of his privilege of expression of political opinion so long as he remained a judge. Parliament

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(67) Letter, Cockle to Lutwyche, 10 August, 1863 - printed in The Courier, 18 August, 1863 at Lutwyche's request.

(68) Letter, Lutwyche to Cockle, 10 August, 1863, ibid.

accepted Lutwyche's written pledge in the matter, and the motions about the judge's removal were withdrawn (69). So the matter closed - Lutwyche thereafter remained generally on friendly terms with Parliament, at one stage being Acting Chief Justice for a year, until his death in 1880.

The whole issue showed that the young Parliament would bear no curbing - it tried to interfere with salaries and commissions. It kept tight control over expenses if need be - and it was quite prepared to seek the removal of the judge (for reasons mainly personal). For the whole matter, although it did involve considerations on the one hand of the functioning of a judge free from Parliamentary restraint and on the other of the supreme control by Parliament of all functions and officers of the State, did, especially in the closing stages, become characterised as a personality struggle - a determined, somewhat pig-headed and proud judge against some equally determined individuals in the Government, in particular Herbert and Pring. The latter, engaged on the Brisbane circuit in the 1850s while Lutwyche was judge in Brisbane, may have begun at that stage to build up some feeling of opposition to the judge. He was a man of very independent spirit and strong opinions, and throughout his life his forcible expression of opinions brought him into conflict with people (70). Herbert was characterised rather extravagantly

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(69) The Courier, 14 August, 1863.

(70) For a character sketch of Pring, see The Jubilee History of Queensland, (Brisbane: Muir & Morcom, c.1891), p.177.

by the 'Brisbane Courier', admittedly biassed in the matter, as a despot, both inside and outside of Parliament (71). Certainly, having taken up a stand against Lutwyche, he seemed determined to push it through to a conclusion. Lutwyche himself has been described as a "real 'John Bull' gentleman" (72). Even by calling in the help of "The Courier", sometimes referred to them as "the Judge's Organ", and enlisting considerable public feeling on his side, he was not able to shake the views of a Government determined to keep as close a control as constitutionally possible on a recalcitrant judge (73). In the long run, moderation and reasonableness won through, especially as displayed by the Imperial authorities and Chief Justice Cockle, both of whom by their placid impartiality were able to find a compromise for the rancorous parties.

Another serious struggle between Parliament and the Judiciary, involving yet again the principles of the supremacy of one and the independence of the other, occurred between 1884 and 1889 over Parliament's control of travelling expenses. This matter also became a personality struggle - Cooper the aggrieved judge, and Griffith, the assertive politician. Griffith began his criticism of Cooper's overspending in 1884

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(71) Queensland 1900, (Brisbane: W.H. Wendt & Co., 1900), p. 124.

(72) Queensland Writing, (published by the Queensland Authors & Artists' Association, Brisbane: 1954) p. 28.

(73) Re 'The Courier', refer Mack, C., History of Journalism in Australia, (typed lecture notes, 1945), Ch. X.

(74). However the matter became personal, Cooper censuring Griffith and vice versa (75). Cooper also resorted to the press to make his grievances known, and show up the 'unfair' Government attitude, and how Griffith had misread the relevant figures of expenses (76). This assault on Parliamentary supremacy was denounced by Griffith who asserted that a judge's function was not to criticse what the head of a Government department - the judge's official superior - did (77). So the full question of Parliament's control over the independent judge was raised again. Cooper took the 'disrespectful' attitude of Griffith, and so of the Parliament, as a challenge to his judicial function, and as a menace to public liberty. He again called upon the Press, to expose the danger to public safety (78). Griffith was accused of resorting to an unconstitutional attempt to unseat the judge - Cooper posed as the poor weak victim against the privileged aggressor, Parliament. Not only was the independence of the Judiciary being threatened, but also the very dignity of the judgeship was being undermined by Parliament - if there was to be any criticism of a judge it should be with studied courtesies, but Cooper regarded Griffith's overbearing manner as downright rude. That the

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(74) Letter, Griffith to Cooper, 28 November, 1884; all the correspondence has been printed in V.&P., 1887, I, this letter at p.523.

(75) Letters, Cooper to Griffith, 5 December, 1885, ibid, p.527; Griffith to Cooper, 24 December, 1885, ibid, p.528.

(76) Brisbane Courier, 13 November, 1885.

(77) Letter, Griffith to Cooper, V.&P., op. cit., p.528.

(78) Brisbane Courier, 23 March, 1886 and 8 December, 1886.

proud and haughty Cooper was greatly concerned for the dignity of the Bench was revealed in a subsequent episode when he publicly censured in court a police officer who had failed to provide an escort to meet him at the Gulf and accompany him to the Normanton court-house (79). The Government found no fault with the police action and denied that the police officer had shown disobedience, misconduct and insolence towards the judge. Cooper in high-handed fashion asserted that "with reference to the services required of orderlies, I may be forgiven for saying that I think officials who are invested with such high authority, and charged with such onerous and delicate duties as are the Supreme Court judges may safely be entrusted not to trespass unduly upon the time and attention of their temporary servants" (80).

The whole matter of travelling expenses became overdramatized, especially in the hands of Cooper. The real issue at stake was how much control did the State have over the judge's expenses - if the State was too tight in its financial control, was the independence of the judiciary threatened and also the dispensation of justice obstructed. With the appointment to the Northern Bench of Cooper, travelling costs on the Northern circuit began to take an amazing rise. Cooper, the man of polish and always exquisitely turned out, had

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(79) V.&P., 1888, I, p.851.
(80) Ibid., p.853.

expensive tastes on tour (81). In his peregrinations, he ordered copious quantities of ice - this was to keep him cool because he found the courthouses, especially those at Charters Towers, Cooktown and Mackay, to be hot-houses (82). There were charges that he had too many champagne and ice parties on circuit, and gave too many picnic parties to overcome the boredom of the long circuit (83).

The distance involved in the northern circuit was considerably longer than that of the southern circuit. Furthermore, in 1887, the three southern judges travelled for only a total of 70 days, whereas Cooper spent 104 days on the track (84). Furthermore, there was some evidence, although this was strongly denied by others, that northern judges had to meet inflated costs; this arose from the fact that some hotel-keepers, store owners and in general any business person tending services for the benefit of the community often sought to make a handsome profit out of the judge and his followers (85). Nevertheless it did seem excessive that in 1888, £800

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(81) For character description of Cooper, see C.A. Bernays, Notes on the Political History of Queensland, 1859-1917, (Brisbane: Govt. Printer, n.d.), p.97; S. Browne, A Journalist's Memories, (Brisbane: Read Press, 1927), p.31.

(82) Letter, Cooper to Griffith, 5 December, 1884, V.&P., 1887, I, p.523.

(83) Charges mainly by Sayers, (Charters Towers), QPD, LV, 1888, p.798; QPD, LVIII, 1889, p.1666.

(84) QPD, LV, 1888, p.798.

(85) The northerner Macrossan said hotels were dear, QPD, L, 1886, p.1420 - Griffith denied it, QPD, LVIII, 1889, p.1671, LIII, 1887, p.1312.

was required for the north (and Cooper doubted that it was adequate) and only £400 for the three judges doing the southern circuit. There were particular abuses by the judge which could be pointed to - he took his wife on the second circuit of 1884, for company (86); and the expense involved in hiring a special train for Cooper from Townsville to Charters Towers, although this was done for a good reason (87).

The Government in 1887 determined to curb Cooper's travelling expenses, by fixing a maximum limit at £400 per annum (88). Cooper regarded this as a direct attempt by the State to harass and hamper him in the execution of his duties, and he threatened to close the court and return to Bowen as soon as the allowance was spent (89). This was a threat to discharge the prisoners and to close the Townsville court. The people of Townsville were all out waiting for developments. There was much criticism in the South of his irresponsible behaviour, The 'Brisbane Courier' drew attention to the judge's undignified behaviour, as illustrated for example by his correspondence in the Press (90). It suggested that he was suffering from a mental ailment, brooding too long over supposed

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(86) Letter, Cooper to Griffith, 5 December, 1884, V.&P., 1887, I, p.523/4.

(87) Ibid, p.524/5.

(88) Letter, Attorney-General Rutledge to Cooper, 14 March, 1887, ibid, p.533.

(89) Letter, Cooper to Rutledge, 11 April, 1887, ibid, p.534; telegram, Cooper to Acting Chief Secretary, 27 April, 1887, ibid., p.535.

(90) Brisbane Courier, 29 April, 1887.

wrongs in a climate uncongenial to him. It prescribed a rest for him. His attempt to avenge a private grievance by neglect of duty was highly condemned.

In fact, Cooper did not discharge any prisoners - because, he said, the Government had signified its intention of reconsidering the matter, and also out of regard for public interest (91). Parliament condemned the judge's rash behaviour, which could be taken as a disregard of the sanctity and excellence of justice, and as a perverse use of the system of justice for his own ends. Cooper however remained indignant, saying that he was the 'victim of a deliberate attack' by Griffith and his government, along with the official press (92).

Some of the criticism of Cooper was unjustified. The Circuit was a long, tedious and lonely one - and Cooper did work conscientiously. There was always a time limit on circuit work - so his practice was to hear criminal cases first, then take as many civil cases as possible before it was time to move on, and return to complete the rest if there was spare time during the remainder of the circuit (93). The amount of travelling involved was immense - the rail trip from Townsville to Charters Towers; the steamer trip down to Mackay, up to Cooktown and later around to Normanton. Many northerners defended Cooper, and said he was highly respected by the

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(91) Telegram, Cooper to Acting Chief Secretary, 29 April, 1887, V.&P., 1887, I, p.535.

(92) Brisbane Courier, 29 April, 1887.

(93) Townsville Daily Bulletin, 2 May, 1887.

locals (94). The Government accepted that travelling expenses in the North were high but considered the grant adequate if moderation rather than extravagance was applied - and together with Cooper's attempt to close the court, Griffith determined that the whole matter should be reviewed. He called for a Select Committee (95).

Griffith asserted Parliament's right to control judge's travelling expenses - at a rate consistent with the dignity of their office, and so as not to cause discomfort. He considered Cooper knew no limits to spending, and expected the Government to meet all costs. So Griffith cloaked the argument in the gown of Parliamentary supremacy. However there was much criticism and allegations that the matter had become very personal - and if so, there was great danger in allowing Parliament too much control over judges. Griffith could be regarded as trying to make political gain out of a personal grudge - to appoint a Select Committee was merely political persecution, and a blow to justice since the matter could and should be settled directly by statute or regulation (96). The Press also agreed that Griffith was indulging in unwarranted interference with the independence of the Judiciary (97). If his objective was the removal of Cooper, there was

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(94) e.g. Black, MLA, QPD, L, 1886, p.1421/2; Philp, MLA, QPD, LV, 1888, p.798.

(95) QPD, LII, 1887, p.143.

(96) Morehead led the attack in Parliament upon Griffith's stand, and was strongly supported by Macrossan, Chubb, Norton.

(97) Brisbane Courier, 3 August, 1887.

an appropriate means of doing so, instead of resorting to the 'side-wind' of a Select Committee, where it appeared Griffith hoped to acquire evidence to discredit and censure Cooper. Griffith, although denying personal involvement in the matter, saw the strength of the opposition to his proposal, and, realizing the significance of the personal animosity charge against him, let the matter slip. In fact, when later asked why he had not gone ahead and called a Committee he replied that he had forgotten about it and the clerk of the House had not reminded him (98).

So this attempted interference by Parliament with the independence of the Judiciary, a subtle attempt to bring Parliamentary censure upon the behaviour of a judge by way of Parliament's control of the purse, was frustrated. Of course, no actual interference may have arisen out of the outcome of the calling of a Select Committee if Griffith had persisted with it - but there was the danger that it might allow Parliament to interfere too much in the functionings of a judge. The fact that Griffith had originally called for a Joint Select Committee (even though the matter was mainly a money one) could have indicated that he hoped the Joint Committee to proceed quickly to the next step of preparing a joint address requesting Her Majesty to remove the judge on the grounds of the findings of the Joint Committee. The plan

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(98) QPD, LIII, 1887, p.1309.

was frustrated by the strength of the Parliamentary opposition, with press support. Again, like the Lutwyche affair, the principles became merged into personal grudges and in Parliament and the press, capital issue was made of this to discredit Griffith's position. Again the plea of caution and moderation prevailed, and restraint upon Parliament's somewhat limitless powers was achieved.

Cooper's expenses still remained high, and complaints were made up to 1889 (99). Nevertheless the Government was becoming resigned to the matter - between 1886 and 1888, the expense vote increased from £400 to £800. Of course the court was growing all the time. At the same time, on the latter figure, the judge was being paid almost £8 per day for travelling expenses on circuit; yet a District Court judge was expected to get by on 30/- per day. By the time of the Morehead Government in 1889, a more sympathetic approach to the judge's position was taken, since Cooper was a friend of the Government. Then in the 1890s, with a new Northern judge, the matter of travelling expenses fell into oblivion. So Cooper, the man of exquisite taste, who quite possibly found the North distasteful and unenjoyable unless well-supplied with luxuries to make for gracious living, endured his period as Northern judge, and kept at bay an angry Griffith and his political supporters. Overall, in spite of the discredit he earned

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(99) e.g. QPD, LIII, 1887, p.1310; QPD, LV, 1888, p.798; QPD, LVIII, 1889, p.1666.

for his attempted Townsville court comp, Cooper was able to ~~weadle~~ wheedle out of Parliament, or else bludgeon it although unwillingly into paying his expenses, whatever they might be. So long as the matter looked like a battle of conflicting personalities, one political, one judicial, it was unwise for Parliament to push the matter too much.

The personality issue at one stage led to an attack by some politicians on Cooper's competence as a judge. He was criticised for failing to apply the Offenders Probation Act (100). Cooper's reply was that he did not understand the Act. Griffith conceded that it was a very contentious Act, but other judges were attempting to apply it. Some took this as a further display of Cooper's insolent attitude towards Parliament (101). Griffith also gave an instance of what he considered to be a miscarriage of justice when Cooper discharged one Ferdinand on a perjury trial (102). In both cases, the McIlwraith-Morehead administrations declined to act - but it did intercede to release a certain G.W. Wilson whom Cooper had committed for contempt of court (103). Wilson had written for publication a very malicious, biting letter against Cooper, his court and jury concerning a matrimonial case atill in progress at the time (104). The Government

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(100) QPD, LV, 1888, p.205.
(101) e.g. Gannon, ibid, p.800.
(102) QPD, LVII, 1889, p.65.
(103) V.&P., 1889, I, pp.1051-1055.
(104) In Port Denison Times, 1 December, 1888.

accepted that Cooper had been excessive in his punishment of the insult to his own person. Some discontent was expressed with Cooper's behaviour, on the basis that there was the danger of a judge having too much freedom to deprive people of their individual liberties, especially when it was a matter of a judge trying his own case (105). However, most of these complaints as to the judge's competence were sidelights of the personality struggle, although in themselves they were further evidence of the arrogant, haughty nature of Cooper. Such a nature was almost bound to clash with a person the calibre of Griffith, who was determined and purposeful in the exercise of his own political power.

Relations between Parliament and the Judiciary were not always disharmonious over money matters. In the case of Griffith's appointment to the Bench, Parliament seemed to know no limits to the amount it was prepared to offer to secure the appointment as Chief Justice of the man it considered the most suitable for the position. Judges like Real and Paul, although considered by some as possible candidates for the office, were summarily passed over. Griffith was a leading, perhaps the leading jurist in Australia - and Parliament had to make a large offer to entice him away from his parliamentary salary and a flourishing Bar practice. The Chief Justice's salary was increased by £1,000 to £3,500 per annum, at a time when

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(105) e.g. In QPD, LVIII, 1889, p.46.

members of Parliament themselves were sealing their salaries by one-half to £150 per annum, due to the recession (106). Some openly acknowledged that such a salary rise was made expressly to get the one man, and not as a matter of principle - it was urged that if Griffith did not accept the office, the rise should be cancelled.

Such a salary put the Queensland Chief Justice on the same level as New South Wales and Victoria. However there were some complaints about the expense of justice - the United States paid only £2,100 to their Chief Justice, New Zealand £1,700 and South Australia £2,000 per annum. Total justice costs in Queensland were running at over £80,000 - at a time when conditions were difficult (107). There were also complaints that Queensland was considerably overjudged in comparison with New South Wales and Victoria, Queensland having two judges for every one in Victoria, and consequently such high salaries in Queensland were not relevant for the work done (108). However there was overall approval that Parliament should offer so much to obtain Griffith's services - the 'Courier' approved - and Griffith accepted (109).

However Parliament was not willing to be generous in the case of puisne judges by raising their salaries proportionately with the Chief Justice's salary. In their case, the matter of personality did not arise - they had accepted the

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(106) Judges Salaries Bill, which became Chief Justice's Salary Act, 1892.

(107) QPD, LXVIII, 1892, p.1768.

(108) QPD, LXX, 1893, p.549.

(109) Brisbane Courier, 9 November, 1892

office at £2,000 per annum, together with pension and it should remain at that. That amount was considered a confortable income - there was some resentment by laymen that barristers were earning so much (110). Lawyers Rutledge, Foxton, Thynne and Byrnes considered that the dignity of the puisne judges was lowered by the failure to raise their salaries, although lawyers Powers and Tozer considered the existing salary was adequate, since the colony could scarcely afford any increased costs.

However, even though the salary rise of the Chief Justice was fairly readily accepted in 1892, there was an attempt made by some politicians to interfere with it in 1893 (111). The depression was still taking its toll - and some, in particular the newly returned Labour politicians tried to have the salary reduced to £2,500 per annum. Instances were given of the judges being spoon-fed while people starved, and of great discontent in Townsville (112). However, such exaggerations had little effect - and nothing came of the attempt to reduce Griffith's salary, or of the attempt to ensure that only Griffith, and not his successor received the increased salary. Had there been more support for the proposal to reduce the salary, the same problem would have arisen as in 1860/1 with Lutwyche.

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(110) QPD, LXVIII, 1892, pp.1762, 1769.
(111) Chief Justice's Salary Bill, 1893.
(112) QPD, LXX, 1893, p.553.

So Parliament could direct new appointments at its will, and by virtue of its control over finance was in a position to appoint whomever it liked, and presumably on whatever terms it liked. In the case of Griffith, the situation received harmonious approval on both the judicial and the legislative side.

The question of judicial salaries involved the problem of the quality and competence of the Bench. The 1892 Parliament was prepared to pay £3,500 per annum to secure Griffith's services. But Parliament was not always so generous and with a tight-fisted financial attitude by Parliament came the criticism that good and just judges could not be obtained on low salaries.

There was Parliament's early struggle with Lutwyche when it tried to reduce his salary from £2,000 to £1,200 per annum. Lutwyche asserted that any judge was entitled to £2,000 and he was very critical of the fact that Chief Justice Cockle received only £1,500 per annum (113). Even in the 1850s, as Attorney-General and with the right of private practice, Lutwyche made in excess of £2,000 annually (114). Evidence was given to the Select Committee on the Administration of Justice in the Supreme Court 1869 that good men could not be obtained on the existing salaries (Chief Justice - £1,500; puisne judge (other than Lutwyche) - £1,250) (115).

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(113) Giving evidence to Select Committee on Administration of Justice in Supreme Court, V.&P., 1869, I, p.584.

(114) V.&P., 1861, p.367. - As Attorney-General alone, he earned £1,500 p.a.

(115) V.&P., 1869, I, p.633 - evidence by Blake, barrister.

Moves were made in 1870 to increase the Chief Justice's salary to £2,000 per annum (116); but it was not until 1874 that his salary was raised - to £2,500, and that of a puisne judge to £2,000 per annum (117). The next major change was the private salary arranged for Griffith (above). Even so, in the 1890s, there was criticism that the salary of a puisne judge at £2,000 was insufficient - he could easily make more in private practice (118); so long as this situation existed, there was the danger of judges seeking financial gain otherwise.

Apart from the fact that, certainly at least in the early years Parliament did not handsomely reward its judges and so may not have been able to attract the best talent available, there was the charge that there was very little good talent available in any case, especially if chosen from the home ground. Cockle was chosen from England because no-one on the local scene looked suitable (119). Lilley wanted to keep the field open for the locals and in fact was the next judge selected. All judges subsequent to Lilley rose from the ranks of the Queensland Bar (and in the case of Mein from amongst the ranks of Queensland solicitors). Lutwyche asserted that he thought the Queensland Bar was on a par with the English Bar (120). Nevertheless during the seventies, there was much criticism, especially by non-lawyers, that there was no local

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(116) Additional Judge Bill, 1870.

(117) Supreme Court Act, 1874.

(118) This was claimed, e.g. by Real, J. - see T. O'Sullivan, Sketch of the Career of the Hon. Patrick Real, (mimeographed, n.d.), p.15; QPD, LXVIII, 1892, p.1775.

(119) Refer Dr. Challinor's speech, The Courier 4 July, 1862.

(120) V.&P., 1869, I, p.584.

barrister suitable to fill the position of a Supreme Court judge (121). Even Griffith to a certain extent added weight to this argument, saying that there were difficulties in obtaining a suitable person (to fill, at that time, the position of Acting Judge) - on the whole he thought a District Court Judge the best solution (122). Solicitors, such as Thompson, suggested a broader candidature - solicitors of seven years standing (123). However, this very suggestion indicated that there was some difficulty in finding suitable lawyers.

The position did ease in the ensuing years, as the profession grew - and thereafter there seemed to be general satisfaction with the standard of Queensland lawyers. It should be remembered that most of the Queenslanders elevated to the Bench had some training outside the colony, either in other Australian colonies or overseas.

The criticism made at various stages of the Queensland profession as a source of good and just judges does not seem fully justified - nor is there much evidence to suggest that the Queensland Bench was either incompetent or of an inferior quality. The first judge Lutwyche was credited as a good common lawyer and insolvency lawyer although he was not an equity lawyer (124). He also had a good knowledge of pleading, having printed a treatise of it in 1842 (125). Cockle like Lutwyche, had an English legal training, and established a good practice there. He had a good mathematical, philosophical

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(121) e.g. de Satge, QPD, XI, 1870, p.135.
(122) QPD, XV, 1873, p.188.
(123) Ibid, p.189.
(124) V.&P., 1867, I, pp.749, 752; V.&P., 1869, I, p.634.
(125) Article by Sir L.E. Groom, Brisbane Courier, 24 October, 1931.

mind (126). Lilley trained partly in England and partly in Australia, had built up a very good practice as solicitor and later as barrister. As a politician he participated in a number of Select Committees dealing with matters of law, and also introduced a number of law reforms. Sheppard showed no signs of outstanding distinction - he was England-trained. Harding was admitted to the English Bar where his training was in the equity, drafting and conveyancing fields, there he wrote a number of books - ecclesiastical and equity law, but knew little criminal law. (127) His ability as a jurist was hailed by the local politicians and journalists (128). Pring was British trained, and a good criminal law advocate (129). Both Cooper and Mein trained in Sydney - Cooper also trained in England. Griffith had a similar background to Cooper - he of course reached great eminence as a constitutional lawyer, a draftsman and a consolidator of laws. Chubb trained in England, Power in Ireland. Power was an excellent criminal lawyer and built up a very good practice (130). Real was solely Queensland trained and by 1890 he claimed that he had established the largest practice in Queensland (131).

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(126) A. England, article on Queensland's first Chief Justice, Idle Moments, (June, 1947), p.15.
(127) The Queenslander, 7 September, 1895; QPD, XXXIII, 1880, p.1523.
(128) Jack Cutting Book, No. 1, p.58.
(129) S. Browne, A Journalist's Memories, (Brisbane: Read Press, 1927), p.82.
(130) Queensland, 1900, (Brisbane: W.H. Wendt & Co., 1900), biography No. 21.
(131) T. O'Sullivan, Sketch of the Career of the Hon. Patrick Real, (mimeographed, n.d.), p.15.

So most members of the Queensland Judiciary had established themselves as sound lawyers prior to their appointment to the Bench - and most were specialists or leaders in some particular field. Furthermore the record of these judges during their occupancy of the Bench showed no diminution of their ability as lawyers. So although complaints about standards were made, there was not a lot of concrete support for the allegations - on the whole the complaints appeared to come from non-lawyers, who were not the best-informed people on the subject and who also often bore grudges towards the lawyer for what appeared to be the privileged position which he held in society. Furthermore, the quality of the judiciary was not low even though for the first fourteen years salaries appeared low. Cockle and Lutwyche, both good judges in their own fields, were the only two judges during that period - and when new judges were necessary by 1874, considerable increases in salary were made so that able lawyers could be obtained to fill the posts. Overall therefore the standard of the Bench was quite adequate for the duties imposed upon it. There were minor eccentricities, and a few mistakes, but this was to be expected.

Suspicions of injustice and unfairness arose in the 1890s over the relationship of Chief Justice Lilley with his barrister and solicitors sons. During the 90s Lilley's soundness as a judge became suspect - for example his decision in the Grimley case. It seemed that age and ill health were

catching up with him (132). Allegations were made, mainly by non-lawyers that Lilley was showing undue favouritism towards his family in court decisions, and that the sons were always keen to have their suits pressed before their Chief Justice father (133). Gannon in particular took up the position of ardent law reformer to correct this abuse (134). The Lilley family was lampooned - "the three Smiths", "Smith and Sons", "The Trinity (Father, Son and Holy Ghost)". Figures of Supreme Court appearances were produced, which, at least on a superficial reading substantiated the charge that Lilley barrister was more fortunate than any other barrister in being able to appear before the Chief Justice - whereas he did not present his case so very frequently before the other judges (135). However the accurate interpretation of such figures was difficult - a Queen's Counsel did not appear frequently since he was concerned with presenting only major cases whereas E.M. Lilley, as a sound junior barrister, might be expected to appear frequently.

However Gannon, to appease what he believed to be a growing public disquietude with justice, introduced legislation, based on a New York model, to counter the situation (136). Lawyers, led by Griffith, objected to the proposals, on the grounds that they would have the effect of preventing sons of judges becoming lawyers. More important, the proposals were

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(132) Doctor's certificates, 1892, V.&P., 1892, I, pp.595 ff.
(133) QPD, LXI, 1890, p.124.
(134) Evening Observer, 28 June, 1890.
(135) Report of Supreme Court Cases, V.&P., 1890, I, p.905.
(136) Justices Prevention Bill, 1890.

viewed as a personal attack upon the judge (and his family), and the lawyers came to the rescue of Lilley's impartiality. Evidence was given that in one case, a litigant had not proceeded because he felt family influence on the Bench and Bar was against him (137). However the barristers concerned denied that they had advised that the case be settled because the Lilley family was against them.

Although the legislation was stopped by prorogation, suspicion remained. In 1892 the whole matter came into the open again, subsequent to the Chief Justice's stand for his son in the Grimley case (138). Feelings ran very high, some feeling that the judge had not acted impartially - Gannon again led the attack (139). The press was with him. Griffith and Drake opposed the move on the legal ground that as an appeal on the case was proceeding, the time was not opportune to introduce legislation. However Griffith did arrange with E.M. Lilley that he should not accept briefs in chambers before his father. This helped placate ruffled feelings, although throughout the year wild criticisms of the judicial system continued. For example it was claimed that Supreme Court judges were living in luxury while District Court judges were doing all the work (140). In many respects the Grimley case had become a scandal, and so in 1893 and 1894 further attempts were made to secure legislation preventing sons and blood

(137) The case of Kingsford-v-Morgan et al.; Brisbane Courier, 3 July, 1890.
(138) Queensland Investment and Land Mortgage Co. Ltd.-v-Grimley, 4 QLJ 224.
(139) QPD, LXVII, 1892, p.66.
(140) Ibid, p.760.

relations appearing before blood relations on the Bench, but both were allowed to lapse (141).

The Grimley case, and the unfavourable public reaction thereto, seemed to be the signal for Lilley to bow out from the Judiciary. He said that he had not been well for two years, and in April, 1892 first expressed his desire to retire (142). Doctors recommended his retirement on the grounds that he was not physically fit to continue - he was suffering from anaemia, impaired nutrition, weak action of the heart and general exhaustion (143). So he retired - only to be engaged in a fierce political struggle for the 1893 elections. There were suggestions throughout 1892 that he was contemplating a return to politics, and he was condemned in the press for political partisanship (144). There were indications that he was flirting with the new Labour Party.

So Lilley's last three years on the Bench tarnished his record as a good judge, in that there was evidence of filial favouritism, a rash decision (in a very important case) and perhaps indiscreet political manoeuvres.

During the 1880s a number of clashes between Parliament and judiciary arose wherein the former claimed general supervisory control over the Judiciary. The latter denied their subservience to Parliament.

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(141) Judges' Disqualification Bill, 1893; Judges' Disqualification Bill, 1894.
(142) V.&P., 1892, I, p.595.
(143) Letter, Chief Justice to Chief Secretary, 24 October, 1892, ibid.
(144) Brisbane Courier, 15 April, 1892.

An instance arose in 1880 with a claim of the right to interfere by Parliament with the judge's rule of Court (145). Some politicians asserted that Parliament had a duty to check judges - and they felt some judges had become too powerful and self-assertive, in wilfully and unreasonably criticising Acts of Parliament. The judges were not lawmakers, yet had assumed a position whereby lawyers including the Attorney-General cowered before them. Solicitor Melbourne sought an amendment in relation to Bills of Exchange procedure, which would have amounted to an interference with a judge's rule of Court. The Government, however, chose not to interfere in that matter - but it did maintain the right to interfere with rules of Court if the matter was of sufficient importance.

In the matter of contempt of court, there was considerable resentment in Parliament of the virtually unlimited power held by the judges. Judge Cooper's contempt case against Wilson has already been referred to (146). Charles Powers, in his spate of reforming zeal in 1889, sought to check the situation and to curb the judges (147). He received support from a number of people - Perkins described judges as 'tyrants' who got office by 'begging, cringing, crawling, skulking' (148). The right of Parliament to control judges, their servants, was asserted. Griffith had the matter postponed.

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(145) QPD, XXXI, 1880, p.254/5.
(146) Above.
(147) Supreme Court Amendment Bill, 1889.
(148) QPD, LVIII, 1889, p.1723.

Another instance of disquietude over judges' powers, especially in matters of contempt, arose over the libellous imputations which Chief Justice Lilley made on the character of J.M. Macrossan in the course of his decision in the case of McSharry-v-O'Rourke (149). Macrossan, therefore in the House attacked Lilley for his licence, for making libellous misrepresentations behind the cover of privilege (150). The 'Brisbane Courier' agreed with Macrossan's approach, and pointed out that it was a blot on the social system that a newspaper could not lay before the public a grievance as to the administration of justice without contempt proceedings being instituted against it (151).

Again, when Judge Harding imposed a severe sentence on P. Brien for stealing, an inquiry was called for in Parliament (152). It was alleged that there had recently been a number of scandals and eccentricities associated with the Bench, but what was regrettable was that the Press was not prepared to comment on such matters, in fact it was in a state of terror over criticising courts. This was deplored in the individualistic, democratic society of colonial Queensland.

The matter of contempt remained open. Powers continued to press for a precise definition of the judge's powers and Griffith promised he would look into it. Powers

(149) Bryan, H., John Murtagh Macrossan - His Life and Career, (Brisbane: University of Queensland Press, 1958), pp.39-40.
(150) QPD, XLIX, 1886, p.76.
(151) Brisbane Courier, 16 July, 1886.
(152) QPD, XXXIV, 1881, pp.35/7.

suggested that the powers of a Supreme Court judge be the same as those of a District Court judge (153). In fact, Griffith did nothing about it, having received advice that he was foolish to try. So this wide power of the judges remained to protect them from criticism. Certainly it was a necessary power - but it also was wide, and so open to abuse and as such was a point which a peeved Parliament could pick upon if necessary.

Overall it could have been unwise for Parliament to interfere with the judge's power to punish for contempt - this was a power essential to preserve the independent status and dignity of a judge. However Parliament was more justified in interfering in the matter of control of court officers. In informal discussions in 1889 between the judges and Minister for Justice Thynne, it was disclosed that there was need for extra officers in the Supreme Court Registry at Brisbane. Some six weeks later, the Executive Council appointed a taxing officer to the Registry. When eventually the judges became aware of the appointment, they protested that they had not been consulted and furthermore that their certificate of appointment was required under the Supreme Court Act 1867 for any new appointment (154). Accordingly in a court action they held the actions of the taxing officer to be null and void (155).

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(153) QPD, LXVII, 1892, pp. 229, 230, 254, 255.
(154) QPD, LVIII, 1889, p.1788.
(155) Brisbane Courier, 11 September, 1889, case of Byrnes-v-James.

The Government was incensed by Lilley's attitude. Earlier the administration had clashed personally with Lilley over the Elections Tribunal (156). Then Lilley rejected the Speaker's advice, saying he would run the Tribunal as he liked. Lilley arrogantly referred to the Speaker as a mere 'conduit pipe'. Morehead considered it was his duty to clip the wings of the proud and violent Chief Justice, who was perverting his high office. Consequently, in the issue over the taxing officer, the Legislature intended to assert its position as the Supreme Tribunal. It regarded the appointment of officers, the regulation of staff as merely an administrative matter (157). Lilley however asserted that no branch of the Legislature had authority over the Supreme Court, and that the Executive had no authority over officers of the court. The Minister of Justice was ordered to keep his hands off court officers, and Lilley even threatened to take action against the Minister (158).

Thynne and Lilley had already clashed when Thynne requested the Registrar of the Supreme Court to prepare a Report of Costs in court actions (159). Lilley denied the Minister could directly order a court officer - Thynne asserted this was merely an administrative matter and so within the Executive's sphere. Griffith, along with Rutledge, opposed

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(156) QPD, LV, 1888, p.1013.
(157) Ibid, LVI, 1889, p.250.
(158) Ibid, LVIII, 1889, p.1697.
(159) QPD, LVI, 1889, p.243.

the Government's stand, saying that it was merely acting vindictively, and was deliberately buying an argument with the judge. Nevertheless, it was undeniable that the judge had spoken very disrespectfully and arrogantly. Legislation was introduced, one of its express purposes being to assert the rights of Parliament over judges, in particular giving the Governor-in-Council right to control appointments (160). In the Legislative Council, Thynne claimed that Parliament's control over all officers was necessary because it impinged upon matters of State revenue. The Council however followed the line of Macpherson and Macdonald-Patterson, both lawyers, who claimed that the judges were the best people to consult in the appointment of court officers. This was another example of government policy being frustrated, and the judge's powers remaining untouched, because personal elements, perhaps the desire for revenge, came into the legislative proposals - and this frustration occurred even though the judge himself had acted somewhat unreasonably and arrogantly.

Another conflict between Parliament and Judiciary arose in 1898. Griffith as Chief Justice was issued with a Dormant Commission to act as Administrator upon the death or prolonged absence (more than thirty days) of the Governor or Lieutenant-Governor (161). The Governor went to Melbourne for about ten days, and the Government arranged for Nelson to be Deputy-Governor. Griffith took this as a personal insult and

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(160) Supreme Court Bill, 1889.
(161) V.&P., 1898, I, p. 447, Dormant Commission sent by Chamberlain, Secretary of State for Colonies to Governor of Queensland, 15 August, 1898.

a censure upon him as judge, and in court ridiculed the Government (162). Premier Dickson explained that Griffith had not been appointed because at the time the very important Queensland National Bank case was proceeding, and it was not in the public interest, and for that matter it might be in jeopardy of the independence of the judiciary, for Griffith to hold position of Chief Justice and Deputy-Governor. The official reason was somewhat specious - the court case was not a State prosecution and it was difficult to see how the course of justice could have been interfered with. Furthermore the work of the Deputy-Governor was merely formal. At the same time, Griffith had no entitlement to the position. The whole matter was really an unfortunate occurrence - it need never have happened if the Government had acted more tactfully, and if Griffith had not been so touchy.

Relations between Parliament and Judiciary were strained on many occasions. Never was there any direct assault on the Judiciary as a whole. The problems that arose were between the Government of the day and one particular judge. The ultimate root of the matter was an insistent demand by Parliament to assert control in some manner or other over the judge - whether it be control of a commission, salary or travelling expenses, or the appointment of court officers, control over the judge's family or his use of the power of contempt. Undoubtedly the true principle was that

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(162) Brisbane Courier, 27 October, 1898; 28 October, 1898.

Parliament was supreme and controlled all State functions - and there was evidence that on many occasions judges seemed to regard themselves beyond the realms of Parliamentary control. Judges even went so far as to offer their disrespects to the all-supreme Parliament. From the judge's point of view this was justified if Parliament in its supremacy was transgressing on anyone, or in particular his own liberty. Judges, if they were to be allowed to function properly in a democratic society, needed to be assured of independence of Parliamentary control. So they in their own right could have an unbridled power, instanced in particular by their power to punish for contempt of court. It was not surprising that these two forthright principles clashed - especially since Queensland was a new colony, with its first taste of government.

Nor were the clashes surprising given the individuals involved - strong-willed, self-made individualists, products of a pioneering age. The judges in particular were noted for their independence which in many cases was bridled with arrogance and great pride. However the same charges could be made against the politicians involved in the struggles. The personality issue was very strong - and this was unfortunate since in a number of cases, the issue had petty, personal beginnings but, locked in the personality struggle, became foolishly magnified. Never were the basic principles involved in the issues really tested and argued - and no real solution was ever achieved. The matters were settled mainly by compromise, stalemate or expediency. Of course perhaps the

real problems never lent themselves to an actual solution - the lines of demarcation between the ideas of supremacy of Parliament and independence of judiciary have never been clearly laid and perhaps must always remain fuzzy.

So an eager Parliament kept probing the outer limits of its power and peppery judges opposed the probings. The judges on the whole were helped by the watchfulness of the equally strong willed individualistic members of the 'Opposition' (in its many forms) and by the press. The press frequently drew attention to the wrongs and misfeasances of Parliament. At the same time, it was not always on the side of the judges - it wished it could comment more freely on the wrongs of judges, as well as of Parliament, but was somewhat held at bay by the contempt procedure. So no serious restriction was placed upon the judges by Parliament, and no real significant result was achieved by the skirmishes.

Overall, regardless of the personal differences which occurred and often developed into bitter struggles, the judges performed their duties well. Parliament chose its judges soundly and they, in the absence of any real restriction by Parliament, were able to exercise their legal talents freely. The community therefore had little grounds for complaint with the Judiciary. The judges might have had political attachments, but on the whole this did not seem to affect their soundness as judges. The most that their political associations contributed was a basis for clashes

with Parliament. Perhaps one of the most outstanding aspects of the situation, and a possible basic reason for the numerous clashes, was the close connection between law and politics, judge and politician, in this colonial period.

CHAPTER III

THE COMMUNITY

The community has a vital interest in maintaining a system of law and justice, without which it quickly sinks into disharmony and chaos, and the law of nature situation described by Hobbes in 'Leviathan' arises. As the community develops, so grows the greater need for an organised force to control this development. It is at this stage that the State intervenes, with its provision of a system of law and order, and with its courts, its judges, its police officers and legal officers to help assure that control over the corporate mass is maintained. In England there developed an adequate system of State provision of the means to enforce law and obtain justice, and this system was inherited by the colony of Queensland in 1859.

However the community itself can, and does contribute directly to its own control. One manifestation of this in a democracy is the selection by the community of its representatives whose duty it is to lay down the rules and regulations to order and control the corporate body. Another manifestation is the situation wherein the community draws from among its members certain persons to act as interpreters of the rules and regulations laid down for society's benefit and to act as intermediaries between the State and itself - these persons may be called the lawyers. There is a third situation, in which case the community can actually perform a judicial task. Over the years, England developed the jury system taking

possible beginnings in Anglo-Saxon times but more probably related back to the procedure of Frankish Kings. Henry II by the assize of Clarendon in 1166 and with the revision at Northhampton in 1176 introduced the basic structure of trial by jury, and slowly the principle developed of the accused being tried by the country, the neighbourhood, his peers. A fundamental principle of the early system was the idea of the presentation of evidence by neighbours who were likely to know the facts. Over the centuries the system modified - and the jury became less a body of men accusing and acting as witnesses and instead adopted the role of persons deciding upon the true state of the facts as presented to them by the parties concerned and their lawyers. In this manner, the community was able to make a direct and positive contribution to the administration of justice, since it was elemental in the notion of trial by jury that twelve honest, ordinary laymen, unlearned in the law and free from State pressure were to be called upon to give a common-sense, practical interpretation of the question under dispute.

Queensland, as part of New South Wales, received the right of trial by jury during the 1820s and 1830s, first in civil and then in criminal cases.[1] This situation was preserved when Queensland was granted separation from the mother colony.

1. Act 4 Geo.IV c.96, s.6 (1823) provided that in civil cases a jury of twelve could try issues of fact if both the parties requested it.
Act 9 Geo. IV c.83, s.8 (1828) empowered the Legislative Council of New South Wales to make provision for trial by jury in civil cases. This was provided for in Act.10 Geo. IV No.2 and Act 2 Will. IV, No.3.
Order in Council 28 June, 1830 empowered the Legislative Council to extend trial by jury if necessary.

(1 continued)

Act 4 Will. IV, No.12 (1833) made provision for trial by jury in criminal cases before the Supreme Court if the accused desired it.
Further extensions and modifications to the provision of juries were made during the 1830s.
Act 3 Vict., No.11 (1839) abolished military juries in New South Wales.

It was not until the 1850s that the need of juries really arose in Brisbane. At that stage expansion was taking real shape, with the removal of the convict taint, the increasing arrival of free settlers and the provision of a Supreme Court. However, although the population was increasing significantly, for example by 1856 it was over 18,000, in civil cases at Brisbane, the jury was virtually standard in composition being comprised of four honest men who were virtually never challenged because the community regarded them as free from bias and corruption.[2]

The main problem that arose with the jury system was the quality of jurymen, manifest in two ways:-

1. what qualifications, including the need of education, should be imposed?
2. how could unbiassed and impartial verdicts be obtained when jurymen lived in such close proximity with the parties involved in the dispute?

There was a difference in the nature of the Queensland and the English jury, even though the qualifications for jury service arose from a similar source. The principle act which governed the composition of English juries during this period was an 1825 Act - it was modified in details in 1870. That Act laid down a property qualification of eligibility for jury

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2. N. Bartley, Opals and Agates, (Brisbane: undated), p.155.

service:- a £10 freeholder, or a £20 long leaseholder, or a householder assessed for rates at £20-£30 or the occupier of a house of not less than fifteen windows.[3] As a result of this property-householding qualification, only people of the middle class tended to be eligible. Even as late as the inter-war period, this same result pertained - a sample was taken of a ward in Cambridge and it was found that not many working-class people were eligible.[4] Conditions, however, in the colony of New South Wales in the first half of the nineteenth century when the jury system was slowly being introduced over and above the taint of the penal establishment, required that local variations be made to the English basis of qualifications for jury service. The beginnings were tentative - for example in 1833 provision was made for a trial by jury in criminal cases; however the legislation initially allowed these privileges for only a limited period. In 1841 the nexus between jury and the scene of the court action was established when it was provided that future juries were to be drawn from residents of the centre where the court was held, or within a thirty mile radius therefrom.[5] The main act which the colony of Queensland inherited as its birthright in 1859 from the mother colony was an act of 1847.[6] It still provided a property qualification,

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3. Imperial Act - 6 Geo. IV c.50.
4. R.M. Jackson, The Machinery of Justice in England, (Cambridge: The Cambridge University Press, 1960), p.250; see also Sir P. Devlin, Trial by Jury, (London: Stevens & Sons Limited, 1956), p.20.
5. Some significant local Acts in establishing trial by jury during the 1830s and 1840s were 2 Wm.IV, No.3; 4 Wm.IV, No.12; 3 Vic. No.25; 5 Vic. No.4.
6. 11 Vic. No.20, especially cl.2, 3.

but one more suitable for Australian conditions - that a person receive an income from real or personal estate to the extent of £30 per year, or possess real or personal property to the extent of £300. This removed many of the restrictions imposed by the householding qualifications of England, and the income basis was more suited to a growing colony whose economy was in a state of flux.

The amount of income stayed constant during the period and so, as the prosperity of the colony and its inhabitants increased, then the basis of eligibility broadened out to make qualified for jury service a larger proportion of the population. Using the income, rather than the property-householding basis of England, it was found in Queensland that more of the middle and upper working-class groups became eligible for jury service than was the case in England.

At the same time the basis for exemption from jury service was very similar, including judges, barristers, attornies, stipendiary magistrates, police officers, doctors, bank officials, certain Crown servants, schoolmasters, certain mayors and as well, persons above the age of sixty years or with infirmities could show reason why they should be exempted from service. Certain people were disqualified from eligibility - for example a person attainted of felony. Lists of eligible persons were compiled each year by clerks of petty sessions and justices of the district checked and corrected such list. The effect of the exemption clauses was to remove from the jury list most of the professionally trained and many

of the commercial sections of the middle classes. Consequently there were left on the jury list the 'ordinary, small' people - mainly middle class (lower middle) and upper lower class, industrious and striving for success, thrifty and generally respectable. At the same time, many were envious of the 'upper classes' such as they were or in particular of the squatting section of the community. In country centres, the envy and even dislike of the squatter, his privileges and his wealth, was reflected in the attitudes often adopted by juries of sympathy towards a cattle-duffer - here was another small ordinary man trying to make his way in the world; the wealthy squatter could well afford to lose a few head of cattle.

The 1847 Jury Act also made provision for special jurors, whose qualifications were those among the ordinary jurors who were described as an Esquire or person of a higher degree or as a Justice of the Peace or as a Merchant (such merchant not keeping a general retail shop) or as a Bank Director or as a member of the Council of the city of Sydney or the town of Melbourne. The normal procedure was for a special jury of four persons to try civil issues, although a jury of twelve could be ordered if either party wanted it - and likewise, in criminal cases, although the normal provision was trial by twelve jurors from the common list, a criminal special jury could be constituted.[7] It did mean that possibly a more intelligent and almost certainly a more conservative jury could

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7. re special jury, 11 Vic. No.20, cl^{s} 10, 17, 18, 20, 21.

be had, but generally only for civil matters - for example the settlement of a dispute as to a debt. The disadvantage of asking for a special jury was that more costs were involved. Still for criminal matters, the common jury list was the one usually used.

Unfortunately, official records on juries (and in particular jury lists) are very scarce for the period prior to 1900. There is little evidence on the composition of juries. With regard to common jurors, there is a record of the jurors called for the October, 1899 sittings of the Circuit Court at Mackay. Forty-four jurors were summoned, of which thirty-two came from the country, some as far as twenty-six miles from Mackay suggesting that many were selectors and rural labourers. The occupations of the jurors were not given.[8] Again, a jury list for the Dalby District Court noted the occupations of only five out of the twenty-four jurors summoned. Those occupations were carpenter, coach builder, farmer, blacksmith and fruiterer.[9] This evidence, although meagre, substantiated the claim that the jurors noted on the common jury list, (the one most generally used in criminal cases), were ordinary folk - the 'small' man of the lower middle class, generally working for himself, with some small amount of assets behind him.

The notorious 'Roma' jury of 1873 was composed largely of that class of people.[10] Full details of the qualifications

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8. Queensland State Archives, Acc. No. 53/28.
9. Queensland State Archives, Acc. No. 133/124. The list is not dated.
10. These details were calculated from a file unclassified in Queensland State Archives on the Roma Jury, the Electoral Rolls for Maranoa, Pugh's Country Directory 1874 and the Official Post Office Directory of Queensland 1874.

and occupations of the jurors are not available - there were one storekeeper, three carriers, one hotelkeeper, one bricklayer, one shoemaker. The occupations of the others are not known; however, from the Electoral Rolls, the remainder were classified as one freeholder, two householders and one in residence, all of Roma - one of the jurors was not listed. The latter two categories tend to lend support to the argument of the social status of jurors although not conclusively. From the occupations known and the inference from electoral qualifications it appears that the Roma jury was composed of the lower middle class. It should be borne in mind that details of occupations were obtained from Trade Directories - so it is not surprising that all the occupations known were of trading people. The question remains as to the social status of the remainder - they were not trading people (small individual enterprise owners), nor professional people since the Trade Directories also listed professional people. As they were resident in the township of Roma, the most likely inference is that they were employees or labourers - for example clerks. If this inference is correct, the overall picture is that jurors were comprised almost wholly of small enterprise tradesmen and town employees. It is likely that included on the jurors list were small farmers and landowners, although this conclusion doesn't appear from a study of the Roma jurors list for this one particular case. It is unfortunate that more jury lists are not as yet available, to provide further corroboration of the status and occupation of common jurors - but as indicated above, such slight evidence

as is available adds some confirmation to the presumption to be drawn from the qualification and exemption clauses of Jury Acts of the occupations of common jurors.

The picture with regard to special jurors is more complete. Records are available for the Bowen District Court, 1894-1900.[11] Special jurors were almost invariably professional or commercial men - merchants and accountants figured prominently, some were warehousemen, commission agents, an occasional architect, engineer or clerk, and the majority described themselves as esquires. That range of occupations was to be expected having regard to the qualifications required for eligibility. All were property holders of some kind - freeholders, leaseholders or occupiers.

With regard to the problem of education of jurors, although the basic concept of jury was trial by one's peers, there were certain problems involved in that situation. A considerable proportion of the population could either not read, or not write, or do neither - and so it was with jurors. However such standards of illiteracy could interfere with the carriage of justice - so solicitor and educationalist Lilley in 1862 sought to introduce an amendment to a Bill, consolidating the management of juries introduced by another lawyer Blakeney, wherein provision was made that jurors should be able to read and write.[12] However the matter was allowed to die in the

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11. Queensland State Archives, DCT 11B/12.
12. Jury Bill, 1862.

Legislative Council.[13] Another attempt at jury reform was made in 1863, with no success.[14]

In particular for the lawyers of the day, there was a need for consolidation in respect of the many rules and Acts which had come into existence with regard to the jury system. Apart from the question of education, there was the wider problem of who should be qualified for jury service. Some suggested that only British subjects be eligible - this was aimed against Chinese immigrants who had begun to arrive in various Australian colonies to make their fortunes in gold. There was strong pressure that all civil servants be exempt from inclusion in the jury list. Alterations were asked for in the method of challenging jurors, and it was requested that jury unamimity be required in civil as well as in criminal cases.[15] Bramston introduced legislation in 1865, and Lilley in 1866, designed to redress some of the complaints but it was not until the passage of the consolidated statutes of 1867 that a consolidation of the laws relating to the jury system was achieved.[16]

That legislation however did nothing really constructive to alter the matter of qualifications and exemptions of jurors. During the 1870s, when expansion in Queensland was closely related to the opening up of goldfields scattered throughout the colony and often remote from the established

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13. The Courier, 19 June, 1862 and 25 June, 1862.
14. A Bill was introduced by lawyer Pring, The Courier, 7 May, 1863.
15. For criticisms and suggestions of the jury system, refer QPD, 1865, II, pp.362-5 and QPD, 1866, III, p.493.
16. Jury Act, 1867.

centres of civilization (and justice), the qualifications of jurymen based upon the concept of established property rights in town and country England were inappropriate for the fluid communities which could grow up practically overnight on a goldfield. So in 1875 and 1877, Griffith introduced appropriate legislation allowing more general qualifications whereby honest, respectable persons on the field might be enrolled on the jury list although not possessing the property or leasehold and residence requirements previously insisted upon - eligibility on the basis of certain leases or licences of Crown lands was arranged.[17]

Further amendments to the qualifications of jurors were made in the 1880s. Again the question of educational standing of jurors was raised. It was felt by some, including lawyers Cooper, Chubb and Rutledge, that the number of exemptions provided were too wide. So moves were made to widen the list of eligibility to include persons like managers, bankers, chemists, public servants, aldermen and justices of the peace who in certain circumstances were exempt.[18] The 'Brisbane Courier' agreed that reform was needed, and that the number of exemptions should be reduced.[19] Reforms were proposed also in relation to the method of selection of special juries. An attempt was made to overcome the problem of jury districts, which at that stage comprised the area circumscribed

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17. Jury Act, 1877.
18. Cooper:- QPD, 1882, XXXVII, p.453; Chubb:- QPD, 1884, XLIII, p.237; Rutledge:- QPD, 1884, XLIII, p.886; - also see QPD, 1884, XLIII, p.988.
19. Brisbane Courier, 28 and 31 August, 1882.

by a radius of thirty miles from the court. Such distances could mean considerable inconvenience for a juror living in an outlying area. The proposed change provided for a ten mile radius, and in the Brisbane district the area circumscribed by a five mile radius.[20] However there was considerable opposition to a number of these proposed changes, especially those relating to lessening the exemption clause. Griffith could see no virtue in the argument that people of intelligence should be included in the jury lists, although much of his disapproval did seem merely a matter of policy as leader of the Opposition. The Municipal Council of Brisbane opposed the provisions extending eligibility to aldermen, and Griffith presented a petition on its behalf.[21] In fact, no real alteration was achieved with regard to the list of exemptions - the list was actually increased to include mining managers and later engine drivers were added - and so on the whole, jurors remained ordinary, honest folk instead of including clever business and professional men. So in one way a traditional concept of the jury - judgement by one's peers - was maintained, although having regard to the assorted residue of people eligible for inclusion on the jury list, one might have wondered whose peers they were.

Furthermore by the 1884 Act the size of jury districts was increased - to the area within fifty miles of the court-house and this increase added considerably to the inconvenience of jurors.

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20. For details of the legislation, refer Jurors Bill 1882, and Jury Act Amendment Bill 1884.
21. QPD, 1884, XLIII, p.928.

Other reforms however were necessary, regardless of whether the juror was a simple man or a sophisticated city-dweller. Few comforts of life were provided for him, and little consideration was given to his convenience. Although the process of peine forte et dure applied to the recaleitrant prisoner was abolished in England in 1772, one might almost consider that the idea was loosely and metaphorically transferred to the lot of the jurymen pressed into jury service. Jury expenses were low - compensation for travelling expenses was inadequate - fire, food, cards or comfortable beds were not provided for jurors engaged in lengthy cases. In 1874 some jurors, engaged in agricultural and pastoral pursuits some miles from Brisbane petitioned for relief pointing out the inconveniences they suffered and especially the poor travelling expenses they received - 18^{d} per mile once only during the sittings, which disregarded the fact that they would most likely have to make a number of trips to and from the court during the sittings.[22] Such poor conditions could lead to perversions of justice, for example jurors coming to a hasty decision so as to avoid being locked up for a night. Reforms were slowly introduced. In 1877 more adequate expenses were provided:- 6/6 to 7/6 per day for a labourer and 10/- per day for a goldworker.[23] Attempts at other improvements failed - Cooper in 1882, tried to provide for fire and refreshment for jurors.[24] This was allowed in 1884 at the judges' discretion.

22. V.&P., 1874, I, p.653.
23. Jurors Act 1877.
24. Jurors Bill 1882.

The whole system of locking up juries without food was condemned in the press as barbaric, and the poor juryman was portrayed as a martyr.[25] In 1900 a further attempt was made to secure legislation restricting the number of jury hours so that jurors would not be encouraged to give a forced judgement out of desperation late at night.[26] However such a change although desirable and although it would have encouraged sounder verdicts was not thought sufficiently pressing.

Similarly, with regard to providing more adequate expenses, nothing was done although complaints were made that, because of the poor renumeration offered to jurors and witnesses for their services rendered in the cause of justice, justice was not being done.[27] Premier Byrnes, himself a lawyer, attempted to provide more appropriate expenses to jurymen in 1898, and also to cut down on the inconveniences suffered by them, but the matter was neglected.[28]

All In some ways, this lack of interest in the reform of the jury system was understandable, because there was no gross miscarriage of justice by the system as it then functioned. At the same time, there were a number of instances which could be given of perversions of justice by jurymen. These perversions certainly could not be attributed wholly to the uncomfortable conditions surrounding jury service, but probably those conditions did contribute partly to the perverse attitudes sometimes adopted by jurors.

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25. Brisbane Courier, 14 April, 1892.
26. Supreme Court Bill, 1900.
27. QPD, 1884, XLIV, p.1891; QPD, 1885, XLVII, p.1489.
28. Jury Bill, 1898.

The most notorious case involving a perverse jury occurred in the Roma District Court in 1873.[29] Cattle stealing was a common past-time for some, and Henry Redford managed to spirit one thousand head of cattle from a station near Longreach to South Australia. The case was heard before Judge Blakeney at Roma, and the facts seemed obviously against Redford, but the jury said 'not guilty'. Judge Blakeney replied 'Thank God, gentlemen, that verdict is yours, not mine'. The judge complained to the Attorney-General about the perverse jury, and gave a number of other examples where juries gave wrong decisions because they were friendly with the accused.[30] The jury system was proving defective because the prisoner challenged all respectable jurymen and left for empanellment only men who were sympathetic to the prisoner. A magistrate and four jurors from Roma also agreed with Blakeney, saying that in Roma it was difficult to get an honest verdict, especially when cattle stealing cases were tried.[31] The press in Sydney and Melbourne condemned the Roma jury, and the 'Brisbane Courier' delighted in the following scurrilous attack:

> "They have a curious practice out in the far west of 'pulling' fellows for cattle stealing and taking them to Roma to be tried by a jury of their 'peers' at the District Court.
>
> The 'peers' seem to enjoy the fun amazingly and after going through the form of hearing the evidence, and making a few bovine jokes at the expense of the

29. For Judge Blakeney's part in the matter, refer sufra and for further discussion on public attitudes towards 'cattle stealing', refer infra.
30. Letter, Judge Blakeney to Attorney-General, 21 March, 1873, V.&P., 1873, p.303.
31. Letter, J.V. Graham to Colonial Secretary, 17 February, 1873, V.&P., ibid.

prosecutors and their witnesses, they bring in a verdict of 'Not Guilty'.

Amusements are scarce about Roma so an occasional diversion in the shape of a 'Judge and Jury' trial for cattle stealing is a delicious treat.

The last sittings of the Roma District Court were more than usually amusing as there were several cattle stealing cases tried and the jurors enjoyed it much. They chaffed the prosecutors unmercifully and got rare old sport out of them.

In one case a man was tried for stealing a cow out of a paddock, by taking a panel out of a fence, driving out the cow and putting up the fence again. There could be no reasonable doubt in the minds of either Judge or Jury or anyone else that the man was guilty if that sort of thing was considered a crime at Roma but the jury, as usual, brought in a verdict of 'Not Guilty'.

The jury got some fun out of the witnesses, though. One of them asked the Manager of the Station which had been robbed if he would swear that the fences had not been broken down by the sand flies, to which the witness replied that he had never heard of sand flies being guilty of such destruction of property, but that although they might have broken down the fence it would puzzle them to put up the rails again so neatly as he found them the morning he discovered the loss of his cattle.

Funny, isn't it?".[32]

People from the area protested against the use of Roma juries to hear offences against property.[33] The jurors defended themselves, blaming Blakeney's attitude towards jurors. It was claimed that juries in giving their verdicts had been reduced by the judge to a state of fear that their verdicts would displease the judge. For instance, he had criticised a very intelligent jury in the Humphries case. That fear was increased by the fact that the judge was only too ready to fine

32. Brisbane Courier, 28 February, 1873.
33. Letter to editor, signed 'Maranoa', Brisbane Courier, 22 March, 1873.

jurors and court officers who failed to turn up for the sittings.[34] The judge was accused of being too much for the prosecution, and too severe in punishment, so juries did not like to find 'guilty'. Instances were given where the jury had found against the prisoner where Blakeney felt that there was insufficient evidence - on one occasion, the judge, in spite of the verdict, discharged the prisoner.[35] There certainly was evidence that the judge himself might be partly at fault - he was very old - and there was no compulsion upon the jury to accept the judge's view of the evidence. Nevertheless, although some justification could be put up for the jurors, the balance of the evidence and of popular opinion was that Roma juries were unduly perverse; so the Government took action to deprive Roma of criminal jurisdiction. This action was somewhat inappropriate - a more suitable solution would have been to revise the jury list, but behind the Government's action was the feeling that, since a number of country juries were inclined to be sympathetic to the stealing of stock, such deprivation of all criminal remedies might prove as a deterrent to the perverse ways of juries. There was the suspicion that some of the jurymen themselves might have indulged in a bit of cattle stealing. In any case, in small country areas such as the Roma district which was still passing through an opening up stage, familiarity between juror and accused was bound to occur.

34. R.B. Taylor, Roma and District, 1846-1885, (Roma, roneo, 1959), par.296.
35. QPD, 1873, XV, pp.363-366.

Underlying the whole situation was the fact also that the Government was a squatter one, and so somewhat concerned that cattle should be protected and that juries be similarly concerned to protect property. The Government's action was criticised by lawyers such as Lilley, Macalister and Griffith who maintained that trial by jury must be maintained free of Governmental control.[36] There was a danger that such interference by the Government could easily lead to interference with the liberty of the subject. However the deprivation of jurisdiction was only temporary - and cattle stealing continued, as did sympathetic juries.

The 'perverse' attitude adopted by the Roma jury was not unique, and its perversity must be understood within the framework of the then existing public concept of morality. From the official point of view the jury was perverse, because officialdom represented the propertied estate of the colony - mainly landowners, business and professional men - who were anxious that a proper regard for the sanctity of the ownership of property be maintained. The 'perverse' jury on the other hand represented on the whole the attitude of the toilers of the colony, who lived on the product of their labour and for whom the sense of property was not of such importance. Trollope noticed that overall there was very little shame associated with the crime of cattle-stealing - most people seemed to regard the squatter as fair game.[37]

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36. Ibid, pp.371, 372, 374.
37. A. Trollope, New South Wales, Queensland, Victoria and Tasmania, (London: Ward, Lock and Co., n.d.), p.146.

Such miscarriages of justice by such 'perverse' juries were frequent in the outlying areas - those on the fringe of the developing settlements. In the 1880s and 1890s, the same kind of situation arose in the Gulf area. Burketown and Cooktown came in for unfavourable mention - the Government claimed it was watching the matter but nothing came of it.[38] In the frontier situation, the answer to the problem of survival by the small man - whether he was selector or labourer - was often closely bound up with the necessity to engage in cattle stealing - and to steal from the big, established squatter was thus not couched with feelings of guilt. The small man adopted his own conditions of morality in areas where the strong arm of the law was slow to reach. So a two-faced morality pertained in the outlying regions - but as the web of State and control, with its system of law and order, spread inland from the coastal fringe, so the frontier areas of the small-men's morality shrank.

Judge Cooper encountered a number of difficult juries on the Northern Circuit. Libel and slander cases were common in the 1890s and a very simple one came before Cooper and jury in 1894.[39] The jury retired at 12.30p.m., and at 2.40, the foreman reported that they could not agree. The judge directed them to decide only on the evidence presented. At 4.30, the foreman made the same report - whereupon the exasperated Cooper, denying that they were four reasonable men, announced that he was retiring, and would take the verdict if it was

38. QPD, 1885, XLVII, p.1048.
39. Justice Douglas, "Northern Supreme Court", The Brisbane Courier, 12 September, 1931.

agreed upon before 9p.m. With that, it did not take the jury long to agree upon damages at £650. Other such instances, involving the North and cattle stealing can be given.[40]

So there was valid criticism that juries sometimes were not sound, and in cases of cattle stealing were frequently opposed to the cattle owner. There was also evidence that, regardless of whether or not the qualification and exemption clauses were too wide in the choice of jurors, there was negligence and error in the compilation of jury lists.[41] This was the fault mainly of police officers. Furthermore, the Crown Prosecutor in his selection of jurors at circuit courts, was dependent on the local police officer for advice as to the honesty and respectability of the jurors put up for challenge and instances arose where a police officer might be bribed into recommending jurors bound to acquit the accused.[42]

The inadequacies of the jury system persisted during this period - the State could have done more for the convenience and comfort of jurors, to help provide better justice. The jurors could have been more honest. An underlying feeling that provided some explanation for the persistence of the inadequacies was the antagonism of 'the big' against 'the small'. The Governments were largely squatter or respectable bourgeois - the jurors were men, supposedly honest and true but essentially small-time and ordinary. Jury service was tiresome and a burden, especially for the business and

40. Infra; also re juries and cattle stealing.
41. Letter, Under-Secretary of Department of Justice to Clerk of Petty Sessions, Charters Towers, 22 November, 1891, Qld. State Archives, Acc. No. 42/2016.
42. C. Jameson, 'Justice and our Police', The Brisbane Courier, 16 July, 1932.

professional man, and the man of intellect. Such an attitude partly explained the opposition of people like Griffith, who was normally interested in the provision of better justice, to the extension of jury eligibility to intelligent people, as envisaged in the 1882 Bill. The disinclination of persons to act as jurors was rather widespread - at the criminal circuit Townsville in May, 1877, only ten jurors presented themselves.[43] So the Court invoked the procedure of 'tales' - closing the doors of the court so that no-one could leave, and if a jury could not be obtained from the men present, the sheriff was empowered to summons men from anywhere. So the State allowed the jury system to continue with very little reform - and the ordinary man similarly ignored it, often not really recognising the responsibility to justice cast upon him.

There is another connection, somewhat fundamental, between the community and the concept of justice - and that is found in the question how law-abiding or lawless is the community? Does the community readily accept the bounds and conventions, the rules and laws adopted for the smooth functioning and convenience of that very community? With a folk community, taboos and superstitions can bind so strongly that the individual within the community may not dare to disobey the rules - in a small community he may be too easily found out. But in a big city, such disobedience may more easily flourish undetected. Lawlessness can be associated with immigration and

43. Justice Douglas, "Northern Supreme Court", The Brisbane Courier, 12 September, 1931.

urban development.[44] At the same time, lawlessness can abound in the frontier society - the society of trapper, hardsman or gold seeker. There, the arms of the law are slow to penetrate - and again crime can flourish. Such conditions - the beginnings of urbanisation, an influx of immigrants, an expanding and outlying frontier - pertained in the Queensland during the second half of the nineteenth century, although the latter two elements were more significant than the former. Given this background, how law-abiding was the citizen of Queensland?

This matter has already been considered from one point of view - that of the number of criminal cases and the amount of litigation handled in the courts, and the increase in such cases, causing expansion in the courts.[45] Considering the matter at a statistical level, surveys of the amount of crime in the colony showed a gradual decline in the number of convictions for offences per head of population, so indicating an overall fall in the relative number of crimes. Of course it must be remembered that the collection of data for the statistics was open to a certain amount of error; furthermore during the forty-one year period, methods and the effectiveness of detection of criminals varied, as did the system of bringing the criminal to trial (associated with changes in court jurisdictions). However generally these variations were in the direction of improving the whole system of dealing with

44. A.M. Schlesinger, The Rise of the City, 1878-1898, (New York: The Macmillan Company, 1956), p.114.
45. See Chapter, The Courts.

criminals, so that one would have expected that, as a result of such improvements, more criminals were brought to trial rather than that a decline in the number arose.

With regard to serious offences (those brought before the criminal jurisdictions of the Supreme and District courts), between the census years 1861 and 1881, there was a fall in the number of convictions per 1,000 head of population from 0.80 to 0.43, but by the 1891 census there was an increase to 0.59. Statistically, there was a greater degree of criminality in New South Wales, Victoria and in particular Western Australia, than there was in Queensland which was somewhat on a level with Tasmania and New Zealand - South Australia seemed relatively free of criminals, except for the census year of 1881.[46] There was considerable variation in the crime statistics from one year to another.

In the case of minor offences (those investigated by the Courts of Petty Sessions) there was also an overall fall during the colonial period in the number of convictions per 1,000 head of population, although, having regard to the collection and expression of statistical data, the decline was significant only up to 1871 - in fact thereafter, statistics seemed to point to a slight overall increase in the number of convictions.[47]

The statistical approach, however, was only one way of looking at the matter of lawlessness - an official approach from figures compiled, sometimes inaccurately, from the records

46. T. Weedon, Queensland Past and Present, (Brisbane: E. Gregory, Government Printer, 1898), pp.170-174.
47. Ibid.

of the relevant Government Departments. Another approach, just as significant and in some ways more revealing, since it could comment upon undetected crime and the general attitude towards law and order, was through the eyes of the community - did the local born, and in particular did visitors, regard the population as law-abiding? The question also brought in moral considerations, for example about drinking.

A number of commentators took the former view. William Coote, writing on the early period up to separation and possessed of a rather extensive knowledge of local conditions, considered that the community was not litigious.[48] There were no more than seven solicitors and they conducted legal proceedings in good humour. There was an average amount of criminality, about one quarter of the accused having previous convictions. Although most could not read or write, a condition which might be supposed to induce criminality (although not necessarily or exclusively so), the community had little fear that the prospective colony was likely to embark on a criminal career.

Bundaberg opened up in the 1870s - a new £4000 court house was built there in 1882. Again, like early Brisbane and Moreton Bay, the community did not prove to be very litigation conscious. Walker, a local inhabitant writing of the centre in the 1890s, said that Bundaburgians were a law-abiding people.[49] Judge Lilley, on circuit in the late 1880s, finding

48. W. Coote, History of the Colony of Queensland, Vol. 1, (Brisbane: William Thorne, 1882), p.236.
49. J.Y. Walker, The History of Bundaberg, (Bundaberg: W.C. Aiken, 1890), pp.102, 176, 194.

that no criminal cases were set down before him at Bundaberg, commended the people highly on their virtuous and law-abiding nature.

A more significant impression was given by an outsider, a German visitor Kotze, who travelled extensively in the North - from Cooktown, through the Palmer goldfield to Herberton and spent some time at Charters Towers as a journalist, visited cattle and sheep areas, Cairns and Thursday Island. His impression was that the Queensland goldfields were dull and uninteresting, especially in comparison with America.[50] There was little use of the gun, and no lynching, not even of the horse thief who in America was regarded as the most despicable creature in God's creation. The normalcy of the goldfields he attributed to the level-headedness of the gold commissioners, and he believed that he discerned superior elements among the gold-diggers in comparison with the American types. On the whole, he found that the people were too tired and indifferent to indulge in crimes, except cattle and horse stealing.[51] He commended that 'great institution, the honorary, non-professional justice of the peace', whose main duty it was to try people guilty of alcoholic excesses, for which they were fined £1 or three days' detention. So the Queenslander calmly carried on, offending the laws little, but drinking a lot in the hot, tiring climate.

This viewpoint was backed up by Oscar de Satge, a leading Queenslander in the 60s, 70s and 80s. He engaged in politics for some time and was a noted pastoralist, being

50. S. Kotze, Australian Sketches, trans. L.L. Politzer, (Melbourne: Pan Publishers, 1945), p.84.
51. Ibid, p.120.

associated with the Darling Downs, Central Queensland, the Barcoo and Blackall regions, Cloncurry and the Gulf. He concluded that the Central West was singularly free from crime.[52] The 'Wild West' conditions of America did not arise. 'Soldiering' or stealing horses and occasionally cattle were the principal offences.

An Arts graduate from England who travelled widely in sheep and cattle areas, doing a bit of droving reached a like conclusion.[53] There was almost a total absence of ruffianism, especially having regard to the American situation where revolvers and lynchings were much more commonplace. The 'History' written to celebrate Queensland's jubilee in 1909 recorded that the comparative freedom from serious crime was remarkable, considering Queensland's big area and its slender police protection.[54]

However quite contrary views were also given - and there were many inhabitants who deplored the amount of crime and lawlessness which existed in the colony. That was manifested in many ways - crimes against the person, often involving violence and brutality; crimes against property (which was more prevalent in country areas); rowdyism and hooliganism, which often stemmed from the problem of drinking, 'a widespread evil' associated with both the frontier societies

52. O. de Satge, Pages from the Journal of a Queensland Squatter, (London: Hurst and Blackett Limited, 1901), p.319.
53. W.S.S. Tyrwhitt, M.A., The New Chum in the Queensland Bush, (Oxford: J. Vincent, n.d.), p.208.
54. E.J.T. Barton (ed.), Jubilee History of Queensland, (Brisbane: H.J. Diddams & Co., 1909), p.158.

(gold and pastoral) and the more urbanised centres; and also immorality involving prostitution and excessive drinking.

Many examples of crimes of violence against the person could be given - an early case was that of the tempestuous Irishman Hanley who in 1854 bashed a victim on the head with a heavy paling.[55] Judge Dickinson in his directions to the jury tried partly to mollify the crime, asking them to take into consideration the fact that Irishmen were accustomed to use sticks in their quarrels. It seems that a greater degree of violence was tolerated in those days than is now the case.

The increasing population, and in particular the constant stream of immigrants bringing with them problems of adjustment as well as poor background conditions in many cases, were a source allowing the spawning of crime - against person and property - and immorality. It was reported in Parliament in 1885 that the police of Brisbane knew where to find more than one hundred persons who were living by their wits and preying on the public - a large proportion of them were believed to be recent arrivals in the colony.[56] Again, the inhabitants of Toowoomba in 1870 were concerned about the amount of crime in the area, committed especially by women. This was because female prisoners were sent to Toowoomba to serve sentence, and upon release had no means to move on. So the local residents petitioned Parliament against these people, most of ill-fame, who were 'resorting to crimes of most flagitous and demoralizing character!'[57]

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55. W. Coote, History of the Colony of Queensland, Vol. 1, (Brisbane: William Thorne, 1882), p.164.
56. Jordan, MLA, QPD, 1885, XLVII, p.1108.
57. V.&P., 1870, p.259.

Prostitution, and associated with that venereal diseases were on the up in the 1860s - and many respectable citizens were concerned thereby, so that Parliament was induced to pass an 'Act for the Prevention of Contagious Diseases of 1868'. The Women (sic) of Queensland, or at least that band of women in Ipswich, considered that by the 1880s the dreadful disease had been sufficiently arrested, and petitioned Parliament to repeal the legislation, which they said by the very nature of its harsh and demoralizing terms was forcing the girl who had fallen once into a confirmed life of prostitution.[58] The legislation to help correct the situation was introduced but not proceeded with. Petitions continued about the amount of prostitution.[59]

In country areas, too, there was considerable evidence of crime. In 1869, before a Parliamentary Select Committee, it was claimed by the police magistrate at Roma that much crime went undetected, mainly because people would not inform on the criminals.[60] In his area, he claimed that the main crimes were horse and cattle stealing, forging and uttering, and also sly grog selling. An English visitor to the colony in about 1870 commented on the lawless conditions pertaining in the country.[61] Although he had University associations, in Queensland he took to the outback, working mainly as a shepherd. In his experiences, he noted a number of examples of injustice,

58. Ipswich Petition of the Women of Queensland, V.&P., 1884, III, p.1167.
59. eg. Petition by the Baptist Association of Queensland, V.&P., 1890, III, p.1111. It was urged that the age of consent by a female, be raised to 18 years.
60. Parliamentary Select Committee on Management and Working of Queensland Police Force, V.&P., 1869, I, pp.727-731.
61. A University Man, Colonial Adventures and Experiences, (London: Bell & Daldy, 1871), pp.76-9.

suffered mainly by the small man at the hands of the pastoralist and the employer. Much of the injustice arose because the magistrate was often the friend of the employer. Apart from that he was both hard to find and hard to convince. There was an instance on the Flinders River where a shepherd burned part of the storehouse because the owner refused to pay wages. The owner then shot the shepherd - but nothing was done to punish the owner. It seemed that shepherds often had trouble getting payment out of their employers, and although a shepherd could summons the employer, often he lost because of the magistrate's sense of duty to the employer.

The West and the North were the venue for most of the lawlessness that arose. In the hot, dry and desolate West, at places like Cloncurry and Duchess, drunkeness and gambling were often the cause of lawless and rowdy behaviour.[62] An English visitor who rode extensively in the 1880s through the North and North-West, from Townsville to Charters Towers and Hughenden, and through to Cassilis station on the Flinders River commented that the three past-times of people in those areas were drinking, gambling and billiards.[63] This then was the social setting, the common acceptable basis of behaviour for a large part of the population outside the more closely settled regions of coastal south-eastern Queensland. It was not surprising therefore that in the Gulf area, beyond the

62. H. Fysh, Taming the North, (Sydney: Angus & Robertson, 1950), pp.225, 248.
63. A.W. Stirling, The Never Never Land : a ride in North Queensland, (London: Sampson Low, Marston, Searle & Rivington, 1884), pp.188-191.

borders of civilization where it was difficult to enforce laws, crime abounded. There were many mysterious deaths, and people 'got off' murder charges.[64] Burketown was a haven for outlaws. In the gold mining areas in particular, crimes of violence and brutality were more widespread than in the more established urban centres. W.R.O. Hill who was for many years a police magistrate and gold-mining warden in North Queensland gave a number of illustrations of the indifference to law and order on the gold-fields - of people horsewhipping the gold warden, of a woman at the Palmer having her arm chopped off above the elbow, of a miner stabbed through the heart by his mate without provocation.[65]

The gold-fields were the scene of many disturbances. There was a beef riot at Charters Towers in November, 1872, when a local butcher raised meat prices.[66] Several hundred miners from nearby Millchester marched on Charters Towers to release three prisoners, and in a state of angry excitement dragged the butcher's shop into the street. A court inquiry was held at one of the hotels, and three thousand people crowded the hotel. The butcher, when he arrived, was nearly lynched by the incensed mob and he was struck by stones and bottles. So he fired point blank into the crowd, wounding two or three, whereupon a general brawl broke out. The police

64. E. Palmer, Early Days in North Queensland, (Sydney: Angus & Robertson, 1903), pp.178-181.
65. W.R.O. Hill, 45 Years' Experiences in North Queensland, 1861-1905, (Brisbane: Pole, 1907), pp.54, 73.
66. G.C. Bolton, A Thousand Miles Away, (Brisbane: Jacaranda Press, 1963), p.65; W.R.O. Hill, 45 Years' Experiences in North Queensland, 1861-1905, (Brisbane: Pole, 1907), pp.57-9.

whisked the butcher away - so the mob broke down the lock-up. The Government acted, swearing in special constables, and sending police up from Brisbane and elsewhere.

Such disturbances were the exception rather than the rule. A senior police official who was in the town at the time of the riot commented that the majority of the people had a love of order, but as in any community (and especially in a fast changing community like a gold centre) there were always some trouble-makers.[67] The real cause of lawless behaviour and crime was in many cases drink. Liquor was given as the main cause of disturbances like the Charters Towers riot.[68] The German commentator Kotze noted that there was much 'grog-drinking' and that there were many illicit stills (mainly because of high excise duties on spirits). He personally did not care much for the local 'gut-eating spirits'.[69] A number of publicans were believed to adulterate or poison the grog.[70] However, regardless of the quality of the beer, many people were drinking themselves to death, and much insanity was ascribed to drink.[71] The northern gold centres were well supplied with liquor - in 1876, about one-fifth of the thousand licensed premises in the colony were shared by Charters Towers, the Palmer, the Hodgkinson and Cooktown. And of course there was much sly grog selling. Although it was punished with

67. Superintendant Commissioner Jardine, V.&P., 1873, pp.1071-82, Ravenswood Miner, 9 November, 1872.
68. V.&P., 1874, I, p.655.
69. S. Kotze, Australian Sketches, trans L.L. Politzer, (Melbourne: Pan Publishers, 1945), p.20.
70. H. Finch-Hatton, Advance Australia! (London: W.H. Allen & Co., 1886), p.203.
71. V.&P., 1877, I, pp.1202-3.

heavy fines, the practice continued - for instance there were many sly grog cases heard at the Cairns court when the railway line was being pushed up the ranges from Cairns to Herberton.[72] In the 1860s, grog shanties were set up in the bush on the track between Brisbane and the alluring gold of Gympie.[73] These places very often built up a notorious reputation, becoming the dens of undesirables, criminals and outright drunkards.

Much of the problem of drunkeness could be attributed to the magistrates. Finch-Hatton, himself a magistrate wrote that local magistrates could do much to control the situation but they did not do so.[74] More supervision of the issue of licences was desirable, but 'rascally local magistrates' granted them freely. Furthermore, the magistrate himself often did not set a good example, appearing on the bench in a state of intoxication. There was an amusing incident of a magistrate, drunk, hearing a theft case (involving the sum of 1/4^{d}) at a court near Bowen. When the case was half completed, the magistrate interrupted grandly, saying "Take 'im away and 'ang 'im!" The startled police constable removed the prisoner from the court house - and later reappeared to inform the magistrate that he had carried out his order although in fact he had not. The magistrate groggily replied, "I'shmis shcase".

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72. J.W. Collinson, More about Cairns, (Brisbane: W.R. Smith & Paterson Pty Ltd, 1942), p.52.
73. E. Foreman, The History and Adventures of a Queensland Pioneer, (Brisbane: Exchange Printing Co., 1928), p.129.
74. H. Finch-Hatton, Advance Australia! (London: W.H. Allen & Co., 1886), pp.197-206.

Consumption figures of beer, wines and spirits varied considerably from year to year - but certain trends were observable. For example in the depression years 1892 to 1894 the number of drunkeness cases declined, presumably because of the scarcity of cash, but with the return to prosperity in 1895 and 1896 the offence of drunkeness regained considerable popularity. In 1896, the following consumption figures per capita were given:- beer, 9.18 gallons; wine, 0.33 gallons; spirits, 0.91 gallons.[75] On a comparative basis with the other colonies and New Zealand for that year, Queensland, South Australia and Western Australia were on a level in beer consumption and were exceeded by almost two gallons by Victorian drinkers; only Tasmanians drank less wine than Queenslanders, while Western Australians imbibed most; but Queensland's climate and conditions induced its inhabitants to seek solace in spirits (especially rum) to a greater extent than the inhabitants of other colonies, other than Western Australia, which latter colony easily surpassed Queensland's consumption rate. On an overall comparative study of the consumption per capita of proof spirit, the colonies of Western Australia and Victoria in that order consumed considerably more, and New Zealand and Tasmania considerably less - New South Wales, Queensland and South Australia were more or less on a par, with New South Wales slightly in the lead.[76]

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75. T. Weedon, Queensland Past and Present, (Brisbane: Printer, 1898), p.361.
76. Ibid, pp.172-175.

However even if Queensland did not lead in consumption figures, there was still a considerable amount of drunkeness among the population. Using the 1891 census population figures, for every 1,000 of the population there were over thirteen convictions for drunkeness; and during the 1890s the total number of cases of drunkeness investigated in the courts each year ranged from 5,000 to over 6,000, (and there was a very high conviction rate). Public concern with the problem of drunkeness aroused pressure to be brought to bear upon the Government to control the situation. Legislation was introduced, which Sir Charles Dilke described as the most strigent liquor laws in Australia, embodying the principle of local option.[77] This legislation helped to limit the issue of new licences, but in some senses was a failure. It did not have the effect of closing any hotels, so that there grew up in the community a group of people who pressed for total prohibition.

Drink was regarded by some as the cause of all evil and crime in the colony. But there were other factors which also contributed to lawless behaviour - one was the presence of coloured people, Chinese, kanakas and aborigines. In the case of the Chinese, trouble arose between the races on the gold fields, partly because in practically all respects the celestials were different from their white brethren, and partly because some whites resented the Chinese finding gold when they themselves could not. Bashings of Chinese were frequent, and

77. Sir C.W. Dilke, Problems of Greater Britian, (London: Macmillan and Co., 1890), pp.221, 613.

pranks were played on them, like cutting off their pigtails. There was trouble on the Palmer gold-field which Police Magistrate Hill had to handle.[78] He found that one of his main duties was to compel the Chinese to take out miners' rights. Overall, however, although there were outbreaks of violence against the Chinese, the situation never really got out of hand and a major reason for the lack of prolonged, serious trouble was the competent administration by the gold -fields wardens such as Sellheim and Hill.[79] These people generally used practical commonsense in their handling of troublesome situations although occasionally this did lead to injustice. There was an incident where five or six Chinese were accidently killed - the police arrested the first six men that they could find and short prison sentences were meted out.[80] However such instances of summary justice were not common.

There was more trouble between the whites and the Australian aborigine than between whites and Chinese. The aborigine, as settlement spread, was deprived of his home and hunting ground - and so retaliated with spears against the whiteman and his stock. One of the first serious cases of trouble with the blacks was that of Dundalli, who robbed, burned, murdered and committed outrages around early Brisbane. At the Circuit Court in November, 1854, he was found guilty,

78. W.R.O. Hill, 45 Years' Experiences in North Queensland, 1861-1905, (Brisbane: Pole, 1907), pp.73, 68.
79. G.C. Bolton, A Thousand Miles Away, (Brisbane: Jacaranda Press, 1963), p.57. S. Kotze, Australian Sketches, trans. L.L. Politzer, (Melbourne: Pan Publishers, 1945), p.84.
80. A University Man, Colonial Adventures and Experiences, (London: Bell & Daldy, 1871), p.183.

and hung on Windmill Hill. 'Davy' another aborigine was also hung.[81] In the early 60s, a number of shocking atrocities were committed by blacks in the Rockhampton region - there was the Fraser massacre of 1857 when thirteen were killed, the lustful murder by native police of Fanny Briggs, and the Wills' massacre of 1861 at Cullinla-ringo when 19 were killed.[82] The Caboolture area was also troubled much by blacks.[83] In the Palmer River and Mitchell River areas, the blacks were particularly vicious, resorting to cannibalism, although it was said by some that they preferred Chinese flesh to white flesh.[84] It was in country areas, rather than around the towns, that black depredations were more frequent. There was the savage murder of Meredith and his overseer at Tower Hill station in 1864 - much stock, cattle and horses, were also killed.[85] The position was similar in the West around Cloncurry.[86] Police Magistrate Parry-Okeden reported that there was a lot of trouble with the blacks in Cape York in 1895-1896.[87] The position was the same

81. C.C. Petrie, Tom Petrie's Reminiscences of Early Queensland, (Brisbane: Watson, Ferguson & Co., 1904), p.245; W. Coote, History of the Colony of Queensland, vol. 1, (Brisbane: William Thorne, 1882), p.165.
82. J.T.S. Bird, The Early History of Rockhampton, (Rockhampton: 1904), p.199 f.f.; J.M. Pattison, "Battler's" Tales of Early Rockhampton, (Melbourne: Fraser & Jenkinson Pty. Ltd., 1939), pp.67, 98.
83. E. Foreman, The History and Adventures of a Queensland Pioneer, (Brisbane Exchange Printing Co., 1928), p.21.
84. re Palmer River, see W.R.O. Hill, 45 Years' Experiences in North Queensland, 1861-1905, (Brisbane: Pole, 1907), p.73.
85. E. Palmer, Early Days in North Queensland, (Sydney: Angus & Robertson, 1903), p.181.
86. H. Fysh, Training the North, (Sydney: Angus & Robertson, 1950), p.186.
87. H.C. Perry, A Son of Australia - Memories of W.E. Parry-Okeden I.S.O., 1840-1926, (Brisbane: Watson, Ferguson & Co. Ltd., 1928), p.267.

in the Cardwell and Tully regions.[88] However, the blackman did not really understand the whiteman's system - so he took the logical step of killing man and beast if it interfered with his life.

It was in the courts, when the blackman was brought to whiteman's justice, that the native became really confused. Conditions strongly favoured the whiteman - especially in the matter of giving evidence. And the concept of trial by jury - tried by one's peers - was quite inappropriate when an aborigine was on trial.[89] The jury system also seemed to help the whiteman accused of killing blacks - a number of acquittals were given, the jury of course feeling that insufficient evidence was presented.[90] An instance of the white-bias of the jury arose at Normanton, about 1894.[91] A young aboriginal boy was charged with assault on a white woman, of bullocky proportions and temperament. The Crown case was slight and the woman's evidence unsatisfactory, Judge Cooper himself having cross-examined her because the aboriginal had no defence counsel. The Crown Prosecutor, acknowledging that the case was rather hollow, said he was not presenting any further evidence. The judge directed the jury that it was their duty to bring in a verdict of 'not guilty'. The jury asked for more evidence. The judge said that the Crown Prosecutor was not giving any more.

88. D. Jones, Cardwell Shire Story, (Brisbane: Jacaranda Press, 1961), pp.157, 198, 279.
89. M.M. Bennett, Christison of Lammermoor, (London: Alston Rivers Ltd., n.d.), pp.78-86.
90. eg. The Queenslander, 8 February, 1873, 6 and 13 November, 1875, 14 March, 1885, 13 December, 1890.
91. Justice Douglas, 'Northern Supreme Court', The Brisbane Courier, 12 September, 1931.

So the jury retired; there should have been little need for the jury to confer, having regard to the evidence presented, so that when 4.30 struck, the judge incensed by the jury's attitude adjourned the court. The jury hearing this announced that they had agreed on the verdict - but the judge, to punish them for their perversity in not finding immediately for the aborigine, said he would not take the verdict until 10 o'clock the next morning. So the jury spent an uncomfortable night because of their prejudice towards blacks. Judge Cooper was quite aware of the attitude of Normanton juries - ready to acquit whites but willing to make amends with blacks.

The following report, which appeared in 1885 in the Southern press, was illustrative of the problem of lawlessness in the North, due to the presence of 'coloureds' and drink: "At the Circuit Court recently held in Palmerston (Q), the largest criminal calendar ever known in the North was dealt with, and yet not a single white malefactor appeared upon the programme. Five darkies and one moon-faced heathen were sentenced to death for thinning the population with axes, spears, and waddies, and eight other "yellows and blacks" were boosted up to various terms of imprisonment for assault and unlawful wounding. Of course, the missionaries put this undesirable state of affairs down to too much snaik-juice but the traders just as confidently assert that it's due to too much Bible".[92]

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92. The Bulletin, 7 February, 1885.

Although the intention was not that there should be one law for the white and another for the coloured, it sometimes happened that this intention was frustrated. Trollope noticed the fact that the kanakas could not be punished otherwise than by appeal to a magisterial bench.[93] Nevertheless, the coloured often found himself discriminated against by an unsympathetic jury. There was in fact a general source of ill-feeling towards the coloured - and this manifested itself in growing lawlessness and riots in the North around the Herbert River in the early 1890s.[94] Melanesians, Malays, Javanese and Japanese were involved. Further ill-feeling was aroused against the Pacific Islanders because, although constituting only 1.72% of the population, they accounted for 5½% of the convictions for criminal offences.[95]

The position of the foreigner in courts of law designed to administer the British system of justice created a number of problems. If justice was to be obtained, it was necessary that translators be provided. The Government did attempt to handle this situation - although not always satisfactorily. German settlers in 1870 petitioned for a good interpreter in court without which there was some miscarriage of justice through noncomprehension.[96] The need for interpreters was greatest in the North - sometimes, a situation where one interpreter was needed for the prisoner and another for a

93. A. Trollope, New South Wales, Queensland, Victoria and Tasmania, (London: Lock and Co., n.d.), p.168.
94. G.C. Bolton, A Thousand Miles Away, (Brisbane: Jacaranda Press, 1963), p.244.
95. Ibid, p.249.
96. V.&P., 1870, p.263

witness. In the case of aborigines, as distinct from that of European, Asian and Pacific imports, the problem was magnified because of the hundreds of dialects spoken by the various tribes throughout the colony. There was one interpreter who had a reasonable command of some of the dialects of the Moreton Bay and Wide Bay tribes - but he was very old and feeble.[97] Judge Cooper first allowed the use of ~~pigeon~~ Pidgin English in the case of R-v-Ewar (alias Billey). A decision on the correctness of that procedure was given by the Full Court, which held that evidence was admissible when obtained through an interpreter who understood English, if ~~pigeon~~ Pidgin English was understood by the witness and the prisoner.[98] The State also looked after aborigines and Polynesians by providing some legal help in the way of legal defence, although this was not very generous-for example £150 was allowed fees in 1887.[99] In the case of Polynesian labourers who had been wrongly taken from their homes, the Crown employed barristers to help determine the matter of compensation and return. Almost £500 was paid to two barristers involved in these cases.[100] The Chinese also were allowed their interpreters - there was a very circumlocutions one at Cooktown, called Ah Sue, who by his protracted burblings, often frustrated the attempts of Judge Sheppard to get away to catch the south-bound steamer.[101]

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97. QPD, 1886, L, pp.1414-5.
98. Brisbane Courier, 2 August, 1892.
99. QPD, 1887, LIII, p.1302.
100. QPD, 1886, L, p.1412.
101. S. Browne, A Journalist's Memories, (Brisbane: The Read Press Ltd., 1929), p.32.

As well as problems of translation, there were difficulties in administering oaths. For the swearing in of Chinese witnesses, three systems were used:- 'cut um cock', 'crack um saucer', 'blow um match'.[102] In the first system, the usual oath was administered, and the bailiff decapitated the cock, saying 'this bird is now killed, and your soul may be killed in like manner, if you do not tell the truth'. The bailiff usually chose a young cock, because he could keep it for his own use. On occasions, the dignity of the court was disturbed by the cock escaping from his executioner and careering madly around the court room. The two other systems were variations of the first. In the case of aborigines the police drilled the witness as follows:- "Jacky, you tell um true?" "Yes, me tell um true". "You no tell um lie?" "No, me no tell um lie." "What happen you you tell um lie?" "Me go along a gaol." Such a procedure usually induced sufficient fear into the witness to tell the truth.

Variations on the jury system were adopted very occasionally to accommodate foreign elements into the British system of justice, thereby avoiding unnecessary discrimination against a particular section of the community, and allowing a more proper dispensation of justice. There was the instance of a mixed jury at Cooktown in 1877.[103] The idea of a mixed jury, one half constituted by aliens, was first provided in Acts of

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102. Jottings by a Judge's Associate, 'On Circuit' (Judge Douglas' scrapbook). For an instance of the procedure, refer to Qld State Archives, Acc. No. 36/2518, criminal cases at Rockhampton Circuit Court, 1898.
103. Justice Douglas, 'Northern Supreme Court', The Brisbane Courier, 12 September, 1931.

Edward III (1354) and Henry VI (1429). The Queensland Jury Act of 1867 preserved all English rules on trial by jury, where no other mode of procedure was specifically provided by that Act. So in the Cooktown case, when Wan Dee a Chinaman was brought up on a larceny and receiving charge and his defence counsel asked for a mixed jury, the judge ordered a jury containing six aliens. Wan Dee still got four months.

So the foreigners, the immigrants, were often a source of trouble, either being notable perpetrators of crimes themselves or sometimes arousing the home-grown Queenslander to unlawful actions against those different from himself. The problem of discrimination, which these various groups with non-English backgrounds created, was never seriously tackled by the State. It provided the system of English justice and tried to squeeze all sorts into the framework. Only occasionally did it make exceptions, as indicated above, and allow for different backgrounds. The governing principle was that the English system of justice should be applied indifferently to all, regardless of race, colour or creed. But that very principle of impartiality did mean that injustices could arise in the case of a person with a different background, a person who did not understand English laws and the system of administration allied thereto. Nevertheless, the principle of homogeneity in the administration of law was the only practical attitude for the State to adopt, since its intention was to weld the people, from wherever they might hale, into one Australian stock, with allegiance to Britain. Some cases

of injustice, to the aborigine, to the Chinese and others, were therefore inevitable.

In the Southern colonies, gold discoveries were supposed to spawn bushranging activities. In Queensland bushranging never reached very high proportions, was not particularly concerned with gold and never really received much sympathy from the public. Most of the bushranging activities took place in the 1860s. The most notorious case involving gold was not so much a bushranging incident as a murder-theft case. A police officer, Griffin, murdered members of the Clermont gold escort in 1867, having first tried to poison them with arsenic in their tea. However Queensland did have some interesting bushrangers. There was James Macpherson, 'the Wild Scotchman', who help up mail coaches in 1860s.[104] In one haul at Roma, he collected £1500. Rockhampton had its share of bushrangers - Edward Hartigan, 'the Snob', Hunter, Fagan and Wight - although in a number of cases the crime involved was forging and horse stealing.[105] One of the notorious southern bushrangers, Frank Gardiner, sought a peaceful retirement in Queensland, and became a respectable hotel-owner outside Rockhampton.[106] The gold escorts on many occasions entrusted their cargo to his safe-keeping without realizing his identity. The game was up for Frank when one of his acquaintances put him in, to collect a reward. Bushranging may have been kept low by

104. Perry, H.C., A Son of Australia - Memories of W.E. Parry - Okeden, I.S.O., 1840-1926, (Brisbane: Watson, Ferguson & Co. Ltd., 1928), p.120.
105. J.M. Pattison, "Battler's" Tales of Early Rockhampton, (Melbourne: Fraser & Jenkinson Pty. Ltd., 1939), p.107; J.T.S. Bird, The Early History of Rockhampton, (Rockhampton: 1904), p.256.
106. H. Fysh, Taming the North, (Sydney: Angus & Robertson, 1950), p.38.

the high penalties - death - for robbery under arms.

In the country areas, the real problem was cattle and horse stealing. The crime was by no means restricted to Queensland. Judge Therry of the New South Wales Supreme Court noted that, during his thirty years of legal and judicial experience in New South Wales between 1829 and 1859, cattle stealing had become reduced to a science. On one occasion, the judge, having just passed sentence on some cattle-duffers, had the misfortune to have his horse stolen by some vengeful friends of the convicted men - the horse was recovered some six months later on the goldfields.[107] Trollope described this activity as one of the greatest curses in Australia.[108] The squatter was regarded as fair game. If he did not look after the vagabonds, they would burn his grass and kill his stock; and those that stole from the squatter had the sympathy of his fellow-man. So it was hard to collect information about duffing, and even if a person was charged, he was likely to find the jury sympathetic.

The law although severe and designed by squatter governments to protect their own property, was virtually inoperative. 'Duffing' was almost an acknowledged and respectable living.[109] The instance of the Roma jury in 1873 has already been noticed. As a result of this, the Government passed a Brands Act to provide a better system for the

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107. Therry, R., Reminiscences of Thirty Years Residence in New South Wales and Victoria, (London: Sampson Low, Son, and Co., 1863), p.214.
108. A. Trollope, New South Wales, Queensland, Victoria and Tasmania, (London: Ward Lock and Co., n.d.), p.146; also refer within, for the discussion of jury attitudes and public attitudes towards cattle stealing.
109. J.M. Pattison, "Battler's" Tales of Early Rockhampton, (Melbourne: Fraser & Jenkinson Pty Ltd, 1939), p.113.

registering of stock. The District Courts had been originally planned partly to arrest the amount of cattle and horse stealing, by virtue of their presence in the interior.[110] However, in this regard, they were not an unqualified success, largely because the courts did not allow for the error of human attitudes. It was reported in Parliament in 1876 that cattle stealing was on the increase, even in close settlements like the Bremer region - similarly in the Roma district in 1879.[111] It was common in the mining camps on the Burdekin because there the stock could be easily disposed of.[112]

As State action appeared somewhat unsuccessful, squatters took their own measures to protect themselves. Squatters around Charters Towers, people like Christison of 'Lammermoor', adopted their own precautions, some offering rewards, and, with the help of the Court which in 1883 imposed a ten years sentence on a horse thief as a deterrent, it was possible to claim that the district was freer of cattle stealing than anywhere else.[113] Nevertheless, the problem still remained as a very serious one. To protect themselves against the wilful and careless burning of grasses, the squatters led by Corfield secured new legislation which allowed a maximum penality of fourteen years imprisonment.[114] The previous legislation was

110. eg. QPD, 1866, III, p.731.
111. QPD, 1876, XX, p.504; re Roma - R.B. Taylor, Roma and District, 1846-1885, (Roma: roneo, 1959), par. 798.
112. V.&P., 1877, II, p.1013.
113. G.C. Bolton, A Thousand Miles Away, (Brisbane: Jacaranda Press, 1963), p.99; Towers Herald, 18 January, 1882, 2 May, 1883, 15 September, 1883.
114. W.H. Corfield, Reminiscences of Queensland, 1862-1899, (Brisbane: A.H. Foster, 1921), p.117; The Injuries to Property Act of 1865 Amendment Act, 1888.

English based and referred only to artificial grasses, not natural grasses which it was the concern of the Western squatter to conserve; and the 'Careless Use of Fire Act' merely prescribed a frivolous three months imprisonment. Griffith arranged that the District Courts should handle the new jurisdiction, so that the squatters could easily and readily obtain their remedies.

Squatters suffered from a new form of lawless attack in the 1890s, with the advent of trade-union inspired shearers' strikes. Sheds were burned, and there was considerable lawlessness.[115] The property-conscious Parliament again intervened, passing legislation giving District Magistrates wide powers of arrest and examination. There was a prohibition on carrying firearms. Some arrests and convictions were made, and order restored.

So there were numerous instances of lawlessness in colonial Queensland. This was to be expected, having regard to the fact that it was a spreading settlement and was being peopled by immigrants of various backgrounds and associations. The provision of control by State agencies predictably lagged behind the growing settlement - so crime could go undetected. The discovery of gold brought with it lawless elements - and the presence of coloured peoples brought fresh troubles. However all crimes were not of violence and against the person.

115. R. Gray, Reminiscences of India and North Queensland, 1857-1912, (London: Constable and Company Ltd., 1913); H.C. Perry, A Son of Australia - Memories of W.E. Parry-Okeden, I.S.O., 1840-1926, (Brisbane, Watson, Ferguson & Co. Ltd., 1928), pp.247-250. The legislation passed was the Peace Preservation Act, 1894.

Outside the gold areas and into country areas, even the remotest, there was a grave problem in the preponderance of cattle stealing. And everywhere there was the problem of drunkenness.

Nevertheless, the amount and the degree of lawlessness and crime was not alarming. Certainly in comparison with parts of America, conditions in the colony were quiet and respectable. This was partly due to the greater homogeneity of the Queensland population, which, although it contained some European immigrants, as well as Chinese, kanakas and other coloureds, was still quite predominantly British, whereas in America there was a more significant proportion of assorted Europeans, many very poor and ill-educated, and some with distinct criminal backgrounds. Again in Australia the aborigine problem did not reach the magnitude, nor have the significant overtones that the Negro problem had in America. Furthermore it was more difficult to obtain firearms in Australia than in America.

The community's concern with justice was expressed in its attitude to crime and lawlessness - on the whole, most people led a quiet, respectable life, although a small minority indulged in crime and lawless activity. Another link between the community and justice was in the provision of adequate remedies, rights and reliefs for the use of the ordinary citizen in the conduct of his quiet, respectable life, whether it be at home or at work. This is not a complete coverage of substantive rights provided for the citizen by the State, but a few

important points such as changes in legal procedure, commercial and insolvency law, matrimonial law and criminal law are considered, to show how the State sought to offer the citizen of Queensland a more comfortable life and livelihood. Most of the changes that took place during this period were motivated by changes originated in England.

The reform of court procedure and the simplification of the law were matters, which, although of a somewhat technical nature, were of vital concern to the community since the law and its procedures in the 1860s was steeped in antiquity and often in mystery. Even the lawyer sometimes had difficulty in comprehending and administering it. Archaisms abounded, and furthermore the laws received in Queensland were almost wholly conceived for English conditions, with a few sporadic alterations made for the state of New South Wales. This State of affairs tended to make legal proceedings for the citizen both costly and protracted - so any reform or consolidation was welcomed because it made the remedies and rights of the law more readily available. In the 1860s, following a lead already taken by Victoria, a Commission was set up to consolidate a multitude of Acts and parts of Acts which had gradually evolved in the legislative processes of the Imperial, New South Wales and Queensland Parliaments. The Commissioners were Chief Justice Cockle, very able at that type of work, Lilley and the Attorney-General Pring. These three lawyers in 1867 presented to the Queensland Parliament thirty Acts which they had distilled from one hundred and fifty odd Statutes and Orders

in Council.[116] This consolidation concerned political matters - the Constitution, electoral arrangements - and legal business - courts, jury system, and substantive law such as succession, evidence, bills of exchange. No important alterations were made - it was rather a matter of welding a number of diverse sources of the law into a more comprehensive framework.

A further consolidation was made in 1874, mainly the work of Handy, a barrister - and again in 1881, by F.A. Cooper. There was quite an amount of criticism of the latter consolidation, on the grounds that it was scrappily done, and had many errors and omissions, for example with regard to the Merchant Shipping Acts. English statutes, applicable to Queensland were generally omitted.[117] It was suggested that political corruption was involved, that F.A. Cooper got the commission through the connivance of his relative Pope Cooper who was the Attorney-General at the time, and also so as to secure F.A. Cooper's support of the Government during the Parliamentary session.

These consolidations helped simplify the sources of the law - but more important was the reform of legal procedure, because it was through complicated and outmoded procedures that law suits had become very expensive. Legislation in 1862, following the English lead, set in motion the trend towards cheaper costs and simpler legal procedures.[118] The major problem which was causing much frustration in legal proceedings

116. Consolidated Statutes, 1867. QPD, 1867, V, p.543 ff.
117. QPD, 1881, XXXV, pp.685-6; QPD, 1882, XXXVIII, pp.1327-1335.
118. Common Law Procedure Act, 1862; The Courier, 28 May, 1862.

and sometimes a denial of justice was the existence of two systems of courts with their own forms of procedure and their own remedies and rights. The separate systems of Common Law and of Equity had slowly evolved in England over the centuries - but opinion in England by the 1870s was turning towards a desire to see the separate systems unified. A Code had been devised in New York which provided the example of a unified form of procedure, and an English committee worked on a report considering that approach. So Queensland followed suit, and in 1872 had a Commission appointed to inquire into reforms to unify the process, procedure and practice of the Common Law and Equity courts.[119] The Committee was charged to consider generally how to cheapen procedure and make justice quicker, including a system of uniformity in judgment, a code of evidence and a scale of fees.

Three lawyers, Bramston, Lilley and Main, immediately began to look into the matter, considering the civil codes of New York and India.[120] However, the question of reform sank into abeyance until 1876, partly waiting for the outcome of the English reform moves. In the meantime, other legislative changes were made, to simplify equity procedure and reduce costs.[121] Griffith who in his 1872 election speeches had promised legal reforms led these moves, pointing out that in Queensland, the lawyers and judges were not fully familiar with the system of equity; consequently a matter which could be

119. Civil Procedure in Courts Reform Act, 1872.
120. QPD, 1876, XXI, p.702.
121. Equity Procedure Act, 1873.

disposed of in England in a few minutes often took hours in Queensland and costs were £150 in Queensland as against £100 in England.[122] These practical reforms were hailed by lawyer and litigant alike.

The law reform Commissioners - Chief Justice Cockle, Judges Lutwyche and Lilley, Griffith, Harding, Browne, Thompson and Mein, all of whom were lawyers - made a report in 1876 that it was desirable to adopt the provisions of the Imperial Act of 1873-5 and establish one system of law. A Code of Civil Procedure on the English model was also prepared, with the intention of eliminating merely technical forms and proceedings, thereby allowing the speedy and certain ascertainment of truth and justice with a minimum of delay, expense and oppression to the parties concerned.[123] There was some feeling - by Lilley and Thompson - that more reforms could have been made to cheapen costs, to cut down on pleadings, even to allow solicitors to appear before a single judge.

The Judicature Act of 1876 embodied the suggestions of the Report and a uniform system of law in all the courts of Justice was established. A simplified and uniform mode of procedure was instituted, based on the English Act, although further simplicity was introduced by cutting down on the number of pleadings.[124] Reforms of substantive law, for example relating to the assignment of choses in action, were also introduced. The Rules under the Judicature Act provided a

122. QPD, 1872, XIV, p.916; QPD, 1873, XV, p.199.
123. First Report of the Commissioners appointed under 'The Civil Procedure Reform Act of 1872', V.&P., 1876, I, p.775 ff.
124. QPD, 1876, XX, p.705.

scale of solicitors' costs and fees, although there were complaints that the fees fixed were unnecessarily heavy.[125]

The lawyers, in particular Lilley and Griffith, were very active in this matter of law reform, with the intention of simplifying the law and cheapening costs. A similar situation arose in the early 1890s when solicitor Powers strove very energetically to reform the court structure so as to cheapen the cost of litigation for the public.[126] These moves for reform led by lawyers were somewhat surprising in that there was a rather general public feeling that lawyers, wrapped in their stuffy, conservative traditions, were opposed to legal change, especially if it meant that cheaper legal costs would result.[127] Furthermore, if the procedures were difficult and mysterious, the lawyers liked them better since that would better ensure the monopoly of the lawyers. However it happened that the lawyers were in the forefront of legal reform. They followed the progressive moves being made in England under the influence of Benthamite liberalism. Their motivation seemed mainly idealistic, for, if their hope was to create more legal business by providing cheaper justice, the figures of court business after 1876 showed no unexpected increase but followed mainly an increase consistent with the rise in population.[128] A peak in civil business in the courts was reached about 1879, but this was part of a general increase since 1872, so that although the 1876 Act may have had some stimulating effect, it

125. V.&P., 1877, I, p.93 ff.; QPD, 1878, XXV, p.196.
126. Infra.
127. QPD, 1876, XX, p.705.
128. Refer Statistical Registers, 1877-1880, Section Law, Crime, etc.

appeared not to be very great and more relevant factors were the general economic condition of the colony and the population rise. On the basis of these court figures, it could be concluded that there was little real need for reform - the simplified procedures, with consequent reduced costs because fewer steps were needed in conducting an action, proved no great allurement to the public to indulge in more litigation. At the same time, the scale of fees and costs fixed under the Act was designed to compensate the lawyer adequately for the work he did, and so in the long run there was probably little saving to be made by the public in spite of the reforms. Nevertheless, objectively, the streamlining and simplification of the technicalities of the law was a worthwhile project.

The public desire for cheaper legal costs was repeated in 1884. An auctioneering pressure group, whose spokesman was the politician Grimes, sought to break down the lawyer's monopoly in the preparation of transfer of land documents.[129] It was felt that legal costs in these matters were too high, and that, as the drawing up of such documents was not difficult, anyone should be allowed to do it, to the benefit of the purse of the public.[130] Nothing came of the matter because there was an even more widespread feeling that cheap law often meant bad law, and that to allow a wide freedom in the preparation of transfer documents would probably increase the amount of litigation in which lawyers would be called upon to sort out

129. QPD, 1883/4, XLI, pp.223-228, 370.
130. Supreme Court Consolidation Act of 1867 Amendment Bill, 1884.

the messes of transfers made by amateurs.

Another effort to limit costs, especially those involving small claims (under £30) in the Supreme Court, was made in 1890.[131] It was intended that the judge's discretion to award costs be reduced, and that for such small claims and for speedy judgements, costs be awarded in accord with District court rates. There were complaints that often plaintiffs brought bogus actions and to combat that it was suggested that plaintiffs be required to put up security for costs.[132] A disadvantage with that suggestion was that it discriminated against the poor man engaging in litigation. The whole matter was dropped in the Legislative Council. Nevertheless complaints about legal costs continued, to the extent that Byrnes, as Attorney-General in 1893, promised to have a commission to inquire into cheaper law proceedings.[133] In 1894 too there were queries whether a Royal Commission into law reform was to be appointed, but no moves were made in that regard.[134] Some of the politicians, especially those with associations with the working classes considered the situation unsatisfactory and asked that, just as £150 was provided for the defence of aborigines and Polynesians, a certain amount of money be set aside for the assistance of poor whites so that they might engage counsel in their defence.[135] Byrnes refused to provide for such a grant, saying that in truly deserving cases, a

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131. Supreme Court (Costs) Bill, 1890.
132. QPD, 1890, LXII, p.1336.
133. QPD, 1894, LXXII, p.841.
134. QPD, 1894, LXXI, p.44.
135. QPD, 1891, LXV, p.1550; QPD, 1894, LXXII, p.843.

barrister would always volunteer his services gratuitously. In the late 1890s, Labour members continued to ask for the appointment of a Public Defender but nothing was done.[136]

Of course, the problem of legal costs was a perennial one - someone always complained that costs were excessive, while the lawyer always considered that he should be adequately rewarded for the work he did. During the colonial period, both the lawyer and Parliament were mindful of the fact that costs had to be maintained at a reasonable level within the reach of the community if justice was to be done, and the various reform measures introduced indicated that the matter was under general review.

The body of law relating to evidence which the Australian colonies inherited from England was in many ways a mess of archaic rules, often inconvenient and rather complicated, making the handling of cases difficult. The major problem was the number of restrictions upon people who were either competent or compellable to give evidence in a court hearing - even the parties to an action were excluded. A significant advance was made in an Imperial Act of 1831 which enabled the Courts to order the examination of witnesses upon interrogatories and in other ways. This Act followed a procedure first prescribed for India in 1773.[137] Two other

136. QPD, 1900, LXXXVI, p.2814.
137. 1 Wm IV c.22, 1831. The Act relating to India was 13 Geo. III c.63.

significant legislative moves took place in 1844 and 1852 - these were Acts of the New South Wales legislature following English reforms - extending the competency of witnesses to give evidence. These acts enabled witnesses who had previously been excluded by reason of incapacity from crime or interest to give or be compelled to give evidence, except in the case of a person charged criminally or in the case of a husband giving evidence for or against his wife or vice versa.[138] This move began the trend towards rationalisation in the law of evidence but more improvements were needed to make the system of justice more readily usable by the public. The whole corpus of evidence law was very fragmentary and piecemeal, and a general consolidation and reform was needed.

Much amending legislation in the field of evidence was passed during the colonial period, and it is not intended here to give a complete coverage of reforms - a few important instances will be looked at.[139] In 1861 Lilley sought to regularize the law to allow a prisoner to give evidence on his own behalf. A like move was made in 1881, in the case of summary convictions. Attempts were also made to straighten out the husband-wife situation, for example in 1882.[140] There was quite an amount of opposition to these moves, in particular from

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138. 8 Vic. No. 1, 1844; 16 Vic. No. 14, 1852. Other significant Imperial and New South Wales Acts which provided part of the inheritance of the law of evidence for Queensland in 1859 included:- 6&7 Wm. IV c.III; 4 Vic. 27; 13 Vic. 7; 13 Vic. 16; 18 Vic. 13, 20 Vic. 31; 22 Vic. 7.

139. The most important acts were in 1867, 1872, 1874 and 1898. There was a number of acts relating to evidence law and foreign countries (eg. in 1856, 1859, 1867).

140. Evidence in Summary Convictions Bill, 1881; Evidence Act Further Amendment Bill 1882.

lawyers like Griffith, Rutledge and Macdonald-Patterson, mainly on the grounds that the proposed changes themselves were too piecemeal and had loopholes. It was more desirable to entirely rearrange the criminal law.[141] An important reform was made in the Justices Act of 1886, wherein the system of giving evidence was widened to allow the accused, and a husband or wife to give evidence on their own behalves in a magistrates court, if the magistrate could dispose of the case summarily. This was hailed in the press as a significant opening up of justice in Queensland.[142] In 1892, the competency of a prisoner and of one spouse giving evidence for the other was further widened.[143]

A significant development of a technical nature which acknowledged advances made by science was the legislation passed by Griffith in 1872 recognising the validity of the transmission of information, necessary in courts cases (for example to prove the current existence of a debt) by means of the telegraphic message.

The more serious task of reform of the criminal law was achieved in 1899, through the work of one man, Griffith. During the forty year colonial period, many legislative changes in the criminal law were made. There developed during that time a changed emphasis in the nature of criminality. This followed the English train of thought, which was slowly turning from interest in the protection of property to concern for offences against the person, for example the virtue of a female. The

141. QPD, 1881, XXXV, pp.463-4.
142. Brisbane Courier, 30 July, 1886.
143. Criminal Law Amendment Act, 1892.

changed emphasis was reflected in Queensland in such moves as the legislation of 1887 and 1891.[144] However the consolidation and codification of the criminal law in Queensland was the most significant move in that field during the colonial period. Griffith spent between 1896 and 1899 processing the criminal law, preparing 'A Digest of the Statutory Criminal Law in force in Queensland on the first day of January, 1896', and a Criminal Code and Rules.[145] He was the sole commissioner on the Criminal Code Royal Commission, 1897-9, and during that time drafted the Criminal Code, using as models the penal codes of Italy and New York, and a draft Code prepared by an English Commission appointed to investigate the matter of codification. Griffith's work put Queensland ahead of the other Australian colonies in the codification of the criminal law.

The written criminal law of Queensland was scattered throughout about two hundred and fifty statutes. As well there were Imperial Statutes of general applicability which in parts contained elements of criminal law - apart from that there was the vast bulk of unwritten Common Law. Griffith set about to consolidate these various sources of law, eliminating that which was obsolete or no longer of significance to the Queensland scene, simplifying and clarifying confused areas of the living law, and modifying parts which were in need of reform.[146] For

144. Criminal Law Amendment Bill, 1887 and Criminal Law Amendment Act 1891.
145. V.&P., 1897, I, p.657 ff.; V.&P., 1st session 1899, p.283 ff.
146. Letters. Griffith to Attorney-General, 1 June, 1896 and 29 October, 1897, enclosing Digest of Criminal Statutes and draft of the Criminal Code respectively.

definitions of offences, and general rules of criminal law he referred basically to the Report and draft Bill prepared by the English Commissioners, but did make changes where necessary. Overall Griffith's work was far more comprehensive and complete than that of the English Commissioners - for instance, Griffith enumerated as fully as possible the conditions which at Common Law could be justifications or excuses for criminal acts, whereas the English Report merely pointed to the existence of such Common Law rules without fully detailing them.

One of the most significant contributions made by Griffith in the Code was his definition of the principles of criminal responsibility, modifying the basis - mens rea - previously accepted. However he did make other changes as well for instance, expressing clearly the nature of provocation in assault cases although three of the Queensland judges did not agree with him, adding a section on fraudulent conversion of funds held by agents and modernising the law of trade offences in line with current law legalising trade unions. Griffith felt particularly satisfied with his drafting of the sections on criminal responsibility and larceny; the latter, he considered, was reduced by him to a state approximating the Roman Law on furtum-theft-and the corresponding crime in the modern Italian Code. The law of defamation was included, using the act of 1889 with a few alterations. A major problem in the drafting of the Code was classification and definition - matters such as the concept of 'murder', 'malice aforethought', 'malicious intent', the nature of 'felony', 'crime',

'misdemeanour'. There were problems too of what to include in the Code - how much of the law of evidence, or matters of procedure. Such problems were resolved by considering all the codified avenues available and coalescing them with changes for local conditions. The Queensland Code was certainly in advance of the one in New Zealand which followed the English Report with little criticism or modification and which was the only Code then existing in the Australasian region. Griffith's Code drew praise from many people - Sir William Macgregor, Judge Boucart, southern lawyers like Barton, Wise, Deakin.[147]

Griffith's was not the only work consolidating and clarifying the criminal law. ~~Barrister,~~ John Woolcock was also a draftsman of considerable ability - in 1885/6 he produced the Justices Act. Work on the consolidation of the powers and duties of justices, and procedures to be adopted by them was commenced by Chief Justice Cockle shortly before he resigned office, and he drew up a series of Bills, to consolidate and simplify the language and the content of the existing law. This was to be found in a number of statutes - in particular the three Jervis's Acts (Imperial) and three New South Wales Acts. Cockle's Bills dealt with separate branches of the law relating to Justices. Woolcock consolidated these into one and also made a number of changes. Some of the more significant aspects of the Act were the classification of offences, in particular the concepts of 'simple offence' and 'breach of duty', based

147. Griffith Papers, (Mitchell Library).

largely on French notions, and a more definite statement of the authority of police magistrates, both inside and outside their districts.

Such consolidations in the criminal law - both substantive and procedural - were desirable changes. The criminal law became more understandable, especially to lawyer and judge (including magistrate), and the changes allowed for a more certain administration of the criminal law. The public also benefited from the greater, certainly, although clarification of the law was no certain inducement to turn persons away from unlawful and criminal behaviour.

The business section of the community was also concerned in the development of the law, asking for more streamlined and business-like procedures in the handling of debtors and in the operation of commercial arrangements. In the early days of the colony, when the means of legal enforcement of process were often either rudimentary or perhaps even lacking, there were complaints from sections of the business community that many debtors were evading the payment of their debts and that often apparent property given as security to the creditor was in fact signed away to someone else.[148] Suggestions were made that the English system of allowing the courts to order the debtor to pay off the amount by instalments be adopted.

After the 1866 economic collapse, merchants and bankers became more vociferous in their demands for reform of

148. V.&P., 1866, p.717, petition by traders and residents in Brisbane.

the insolvency laws, requesting that more favours be given to the creditor and the honest debtor.[149] Many considered that the Official Assignee had too much power with regard to the disposal of assets, and this was to the disadvantage of creditors. A Parliamentary Committee was set up in 1868 to investigate reform in insolvency matters, but nothing constructive resulted until 1874, when Griffith enacted a rather comprehensive Insolvency Act.

One of the problems in insolvency matters was which court should have jurisdiction. In England, the County Courts handled such matters, but that would not work properly in Queensland because their counterparts, the District Courts, had no continuity or permanence. Consequently, jurisdiction was bestowed on the Supreme Court, although local District Court registries could be used to initiate proceedings.[150] Furthermore, District Court judges might be called upon to hear the proceedings. This brought protests from Judges Shepperd and Hirst that the extra duties would be too onerous, but Parliament would not hear their petition. It was also provided that insolvency proceedings could be removed to the District Court.

Some criticism was levelled against these changes, on the grounds that they were drafted for the benefit of only one or two Brisbane merchants, and also that it was mainly a lawyers' plot to increase work for themselves.[151] Indeed there

149. Petition of merchants and bankers, 20 November, 1867, V.&P., 1867, 2nd session, I, p.793.
150. QPD, 1874, XVI, p.40.
151. Ibid, p.568.

was an appreciable increase in the number of insolvencies handled by the court in 1876 and until 1878, after which date the number began to taper off.[152]

In 1876 the State interfered to correct an abuse of procedure which had grown up, namely the examination of insolvents before police magistrates instead of in the Supreme Court.

The number of insolvencies fluctuated considerably from year to year. 1886, 1889 and 1897 were peak years and by the 1890s, even allowing for the variation, the number of insolvency cases averaged well over three hundred per year. In view of this, it was suggested by the Chamber of Commerce that further changes be made in the administration of insolvency matters - either that a new judge be appointed to help handle the cases, or one of the existing judges be reserved for such work, or that a District Court Judge do it exclusively.[153] Nevertheless, although in 1897 the number of insolvency cases reached 500, the State did not act on any of these suggestions.

The Northern Registry for insolvency matters was established in 1876 and started very slowly at first. However, by 1890, it accounted for almost one-third of the number of insolvencies, and thereafter began to overhaul the southern lead so that in 1897 and 1900, the number of insolvency matters taken to the Supreme Court in Townsville exceeded those in Brisbane.

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152. Statistical Registers, 1860-1901, Section Law, Crime, etc. Between 1875 and 1876, the total number of insolvencies jumped from 58 to 159.
153. Brisbane Courier, 7 July, 1892.

Business interests also wanted reforms in the law relating to bills of sale. In 1874 there were complaints about secret Bills of Sale.[154] This matter was rectified by legislation in 1891 which laid down a system of registration for Bills of Sale,[155] - this was made more workable by amendments in 1898.

Another change in the substantive law which benefited the business community and the public interest was the codification of the law relating to bills of exchange in 1884.[156] Judge Cooper drafted the legislation, using the English and Victorian acts as his guide. The public was to draw much benefit from such aspects of the legislation as the regularisation of the crossing of cheques. The press praised the codification for its many advantages, including the provision of more safeguards against fraud.[157]

The business world also benefited from legislation such as the Sale of Goods Act 1898 (passed three years after the English Act), the provision of liens on crops and wool, and stock mortgages (following a New South Wales innovation) and revision of the law on carriers (following in part the English legislation).

In the sphere of companies, businessmen also sought changes in the law, especially with regard to the winding-up procedure out of which it was claimed that lawyers were making

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154. QPD, 1874, XVII, pp.568-573.
155. Bills of Sale Act 1891.
156. QPD, 1882, XXXVII, p.493; QPD, 1883/4, XLI, pp.19, 234; QPD, 1884, XLII, p.1884; QPD, 1884, XLIII, pp.220, 267.
157. Brisbane Courier, 11 October, 1884.

a lot of money.[158] The complaints came in particular from shareholders in companies at Charters Towers. They stated that in proceedings of compulsory liquidation, huge fees were paid to solicitors and liquidators, that often solicitors rushed a company into winding up to collect these fees. The huge calls upon shareholders to meet these costs resulted in insolvency for some. The wardens' courts, which often handled these matters by virtue of the 1874 Gold Fields Act was supposed to operate on a regulated scale of costs - but these apparently were exceeded, and it was possible, since the wardens were untrained in insolvency matters, for unscrupulous people to take advantage of them. Griffith attended to this matter in 1892 with legislation cheapening costs (mainly of court and of liquidator), especially in the case of the winding up of gold mines.[159] The proceedings were brought more into accord with the rules concerning insolvent estates.

This is only a sample of reforms in the law whereby further rights and remedies were offered to the business section of the community so that it could more successfully and profitably indulge in its normal pattern of commercial enterprise. The codification and streamlining of the law was made necessary by virtue of the increasing sophistication of commerce, and of urban life generally. However the changes were by no means unique, and generally reflected improvements in the law adopted elsewhere, in particular England.

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158. QPD, 1890, LXII, pp.1126-7.
159. Companies (Winding Up) Act 1892.

Laws affecting personal status were also altered to introduce more liberal arrangements for the advantage of the community. English legislation, providing a ready divorce procedure, was enacted in 1857 and Lilley took up the crusade for a similar reform in Queensland. His attempt in 1862, and two other attempts in 1863 failed, but the relevant legislation was passed in 1864.[160] There was considerable opposition to the reform, especially on religious grounds. Lawyer Browne argued that remarriage was not countenanced by the Bible and that the divorce provisions were repulsive to Roman Catholics. He also deplored the fact that Parliament should be a place of theological discussion. Bramston, another lawyer and a good Anglican had a number of reservations on the matter, feeling that the divorce provisions were too wide.[161] Lilley in liberal spirit, claimed that the best intellects in England had drawn up the provisions, and denied that it was offensive on religious grounds except perhaps to Roman Catholics. Other opposition was based on the fact that it could be viewed as another attempt by lawyers to make money. The Irish Catholic O'Sullivan saw the Bill as filled with immoral content, and he believed he espied a 'great Freemasonry amongst the lawyers'.[162] The legislation was sufficiently contentious to be reserved for the royal assent.

Details of procedure in matrimonial cases were modified in 1875 when it was found that, with the increase in divorce petitions, even though only gradual, proceedings before

160. Matrimonial Causes Act 1864.
161. The Courier, 14 May, 1863; QPD, 1864, I, pp.240-1, 295.
162. The Courier, 28 May, 1862.

the Full Court were too cumbersome, as well as being unnecessary, and so it was provided that a single judge might hear the case.[163] In another field of personal status, that of insanity, procedures were brought up to date in 1887, as regards the declaration of insanity and the administration of estates.[164]

This survey, of the improvements made in the manner of enforcement and preservation of rights and remedies granted by law has been neither detailed nor comprehensive. The intention has been to show contact between the community and justice, law and order, and, by illustration from a number of fields, indicate how the system of justice was improved for the benefit of the community. So a more comfortable society was established in the community by reforms in the law of practice and procedure, in the matter of costs, the law of evidence and the criminal law. The community was better able to flourish by improvements in the commercial law, for example with new insolvency laws. Changing social conditions called for new remedies to be provided in the matrimonial field - so divorce proceedings were made available to all. Attention has not been given to changes in the law creating new legal relationships and rights, such as the host of Land Acts creating new forms of land ownership and possessory rights. Such a field is quite different from the one here, of illustrating how the citizen could enforce his rights and obtain remedies in a court of law.

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163. Matrimonial Causes Act 1875.
164. V.&P., 1887, I, p.557.

In the case of land legislation, there was no significant change in the colonial period in the matter of enforcement, although one might note in passing matters such as the work of the Royal Commission into the working of the Real Property Acts 1861-1877 with its concern to avoid fraud in registration or such technical details as the provision of appeals from a decision of the Land Board. However such matters were not of so great importance, nor so illustrative of the contact between the citizen and the system of justice in the exercise of his legal rights and remedies.

The significant relationships therefore between the community and the law were three:-

1. The citizen took a distinct part in the administration of justice by virtue of his role as a juror. Overall he performed this function with a certain amount of indifference. The State was not greatly concerned to rectify the position and consequently certain cases of injustice did arise.

2. The inclination of the citizen to be law abiding or lawless. Again the overall inclination might be described as one of indifference. John Citizen was sufficiently law abiding, but there were exceptions. This meant that unwarranted and unreasonable injuries to person and property did arise, and the State did take certain measures to hold in check the lawless elements and offer more protection to person and property, for example legislation to check bush-ranging, or the burning of natural grasses.

3. The ability of the citizen to obtain and enforce his legal rights and remedies in a court of law. In that field the State proved much more active because many of those matters had remained virtually unchanged for many years. The archaic English background had to be reformed and appropriate modern innovations introduced. In that reform movement, the colony basically followed the reforming spirit of England.

CHAPTER IV

THE LEGAL PROFESSION

During Queensland's colonial period, at least one hundred and seventy barristers were admitted to practise their profession in the colony.[1] A handful of these sought admission with no real intention of practice in Queensland - at least five barristers, very eminent in the legal scene in Sydney and Melbourne were admitted to the Queensland Bar mainly for reasons of prestige and partly so that their services could be called upon by Queensland litigants if ever the learned talent of Southern barristers such as James Liddle Purves was needed to sort out a Northern dispute. However, most of the one hundred and seventy stayed at least a while in Queensland and tried their luck in the law. Some of course found the field unsuitable - and moved on in the hope of finding greater opportunities elsewhere. William Dalzell Turnbull, for instance, well-educated with a Master of Arts degree, hung up his plate at Rockhampton - but eventually moved off to South

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1. The figures following, and details as to the training of lawyers have been compiled from four sources:-
   1. the papers of admission held by Queensland State Archives (Acc. No. 98/1 and 2). Those papers are not complete.
   2. The Rolls of Admission signed by barristers, in the Supreme Court of Queensland. Some of the signatures and names are illegible, especially of early admissions.
   3. Details of the Legal Profession published in Pugh's Almanacs, 1860-1901. They were neither accurate nor kept current.
   4. Law Lists, published at various times during the period.

Africa in the hope of fortune; or Keppel Arthur Turnour, an Englishman, found the law difficult to break into in England. So he decided to try Queensland, but within a few years moved off to Western Australia, where the pitch of gold-search activities was increasing. However, most of those that came, stayed and succeeded.

The extent of a non-Queensland background to the development of the legal profession in Queensland was considerable. Of the total number of barristers admitted to Queensland, over one-third trained at one of the Inns of Court at London and most of these practised for a time in England - a few merely studied there and upon admission came directly to Queensland, but they were generally sons of Queensland who had gone to England, specifically for a training in the law. The figures available on admissions are not complete - details are available on 154 of the total of 170 admittees, as follows:-

1. fifty-seven were admitted to the Bar in England;
2. thirteen were admitted to the Bar in Ireland. A few instances arose of Dublin-qualified barristers going to England for admission, and then proceeding to Queensland. Such people have been included in the Irish and not the English figures. On the Australian scene,
3. nineteen were admitted to the Victorian Bar, and of these eight did not at any time practice in Victoria prior to their admission to the Queensland Bar, (most were Queensland-born lads who went south for legal experience).
4. thirteen were admitted to the New South Wales Bar, three of whom did not ever practice in New South Wales but proceeded directly to Queensland for admission and practice.
5. two were admitted in other Australian colonies
6. two were admitted in New Zealand.

7. forty-eight were admitted to Queensland, as their first admission. Queensland-trained barristers then were less than one-third of the total number of qualified barristers; and of the barristers for whom the legal training is known, almost one-half were trained in the Inns of Court in London or Dublin. It was during the nineties when the number of Queensland-trained barristers overtook the number of English-trained barristers. Before that time, the number of English-trained or non-Queensland trained barristers who arrived as immigrants in the growing colony ensured that the number of wholly home-grown barristers remained in a minority. Also, many Queensland families, suspicious of the standards of training ordained by the local Barristers Association, considered that if their sons were to make a success of the law, they should be trained by the tried institutions of England or Ireland, or perhaps even the Law Boards of the more established southern colonies. Still, by the last decade of the century, most of the barristers being admitted received a legal training only in Queensland - confidence was being placed in the training requirements of the local Barristers Board.

Apart from the matter of actual legal training, the barristers of Queensland had a fair degree of general academic training. Of the 170 barristers, at least sixty-six were University-educated, and that ratio is higher than pertains for Queensland barristers today. Most that attended University took an Arts degree, a small but significant number took out a Masters' degree, and a few did an actual Law degree. It must be remembered that at that stage, the philosophy of University training was not so much to fit the student for a professional pursuit, for example in the Law, as to provide a general cultured and learned understanding of life. One-half of the degreed barristers attended English or Scottish Universities. Oxford and Cambridge were equally preferred; some attended London University, three to Edinburgh University and one to

Glasgow. Seven attended Dublin University, although one of them did not complete his degree. Of the Australian Universities, Melbourne was preferred to Sydney, 10 to 6; and there were ten unnamed Universities, although they were probably Australian. One barrister, Charles Borromeo Fitzgerald, son of Tom Fitzgerald, a prominent spokesman for North Queensland in early politics, was sent back to the beloved homeland Ireland for an education and then proceeded to take a degree - baccaulareat ès lettres - at the Sorbonne.

It should be borne in mind that the fact that many of the barristers held overseas degrees did not necessarily mean that they were first rate barristers. There is no evidence on this, but it is a reasonable assumption that many of the Englishmen with a University education came to Queensland only because they had failed to make the grade of a successful practice in England. At the same time, most of those Queensland-born youths who went to England or Ireland for a University education were of a very high calibre - the same applied to those who went to Sydney and Melbourne Universities. There was a certain amount of inconvenience, together with expense, in undertaking such study. Furthermore, most who went to the Southern universities were the recipients of scholarships and prizes, an indication of their ability. Griffith and Byrnes could be cited as examples of that. On the other hand, those Queenslanders who went to English Universities were generally the sons of wealthy and influential families - for example, Joshua Thomas Bell, son of Sir Joshua Peter Bell KCMG,

or James Cadell Garrick, son of Sir James Francis Garrick, Q.C., KCMG - and so they did not necessarily need ability to attend. But, regardless of rank and wealth, on the whole they proved to be very capable.

In the case of most of the new-comers to Queensland, the guiding motive for their arrival was the prospect of easy opportunities in a fast-growing colony. Records clearly show that at least thirteen barristers were merely shopping around for the best opening anywhere, making a number of moves - from England, to a southern colony or New Zealand and on to Queensland. Some even tried their luck in India. Poor peripatetic Singleton Rockfort began as a barrister in 1851 in New South Wales. Business was slow - he got only one brief - so he moved to Van Dieman's Land, then to Melbourne but found rents too high for his small means so he returned to Van Dieman's Land. He ventured to New Zealand in 1853, but returned to Melbourne, and then on to Bombay. He later returned to New Zealand, then back to Melbourne and finally sought admission to the Queensland Bar in 1888 where he sank into oblivion. However his failure in the search for success and wealth was not typical - and most could find a niche for themselves in Queensland, and settled down.

The educational background of solicitors admitted to practice in Queensland was not so impressive as that of the barristers. A total of four hundred and fifty-five solicitors were admitted to practice in Queensland from the days of the

first settlement until 1900.[2] Included in the figure were ten solicitors who at some stage practised in the Queensland area prior to separation, the most notable being Little, Macalister, Chubb and Roberts - however, at least, one of them did not stay long.

Only sixteen of the total number of solicitors appeared to have some University training, and the records available do not make it clear that all of them took a degree - some appeared to have failed the course. Presumably they had first intended to take a degree and apply for admission as a barrister, but, upon failing the course, altered their plans, taking the slightly easier course of becoming a solicitor. Five of the University-trained solicitors attended English universities, two Scottish, two Irish, three each to Melbourne and Sydney and one to an unnamed Australian university. So, in comparison with their barrister confreres, the degree of higher education held by solicitors was very slight - and from that fact alone could arise gibes that the solicitors were the inferior branch of the profession. At the same time the solicitors could correctly reply that for their kind of work, a University education was not necessary, and perhaps not even desirable on the basis that the solicitor's concern was largely a matter of practice, which could be best learned by experience

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2. The number of solicitors and their educational background have been compiled from similar corresponding sources as used for barristers, viz. papers of admission, Solicitors' Rolls of Admission, Pugh's Almanacs and Law Lists.

in the lawyers' office, and not very much a matter of theory as was likely to be taught at the University.

Most solicitors therefore trained only by the system of articles - a reciprocal contract of service and tuition between the aspirant solicitor and a master solicitor. About two thirds of the total number of solicitors - three hundred and one - served their period of articles in Queensland, although seven of them did commence their articles elsewhere and completed the time with Queensland solicitors. The remaining third were admitted as solicitors first in some court outside Queensland, and proceeded at a later date to admission by the Queensland Supreme Court. There was a certain amount of reciprocity of admission between the three eastern Australian colonies, and similarly between Queensland and Great Britain and Ireland.[3] Of the 'outside' group, most were trained in England. At least eighty signed the Solicitors' Rolls in Great Britain - this included three Scottish Law Agents. Some of these British-trained solicitors merely served their articles and sought admission there, but did not engage in practice until they reached Queensland. A further nineteen solicitors were admitted to practice in Ireland before they proceeded to Queensland shores. On the Australian scene, New South Wales was the most common training ground for solicitors later admitted to Queensland. There were thirty-six in all, although six of these did not practice in New South Wales after

3. Details given within.

their admission. The New South Wales figure included those who were trained in New South Wales and who practised in the Queensland-area prior to separation. Four solicitors first qualified in Victoria, three in Tasmania, three in New Zealand - there was also one from India. The training background of eight solicitors is obscure, although it is certain that they were taught the law outside Queensland. The Queensland-trained figures may be a little high, especially with regard to those solicitors admitted in the early 1860s, since the records available do not give very complete details on training.

From the records it appears that most of the English- and New South Wales-trained solicitors belong to the first half of Queensland's colonial era. After the mid-eighties, the number of 'outside' trained solicitors diminished to a very insignificant trickle. From 1860, there were solicitors trained solely within Queensland, and each year the proportion of locally trained men increased, so that by the last decade of the colonial period the local articles system held a virtual monopoly. There was a confident faith in the efficacy of Queensland's own system of practical legal training - neither a tertiary education, nor the traditional background of established legal practitioners in England or elsewhere was felt to be necessary for professional competence. That attitude could be justified at least in part insofar as the system of training adopted was largely based on southern and English examples.

Only twenty-four conveyancers were admitted during the colonial period. All of them were Queensland trained, and only one practised before 1880.

Queensland's system of admission to practice as a solicitor or a barrister was a close model of the New South Wales system. Consequently, since the legal training of a wholly Queensland trained lawyer corresponded overall with the legal training of a New South Wales lawyer, there was little reason to ignore or avoid the local training system to gain admission. Certainly, by the 1890s, there was a general acceptance of the standard of law training provided by the Queensland Boards for the examination of Solicitors and Barristers, as reflected by the numbers of people seeking admission with only a Queensland training.

The Queensland admission system was inherited from New South Wales at separation, and during the period of its own colonial control, the Queensland government did not proceed to introduce innovations and devise its own system, but preferred to make changes only in harmony with the southern system of admission. A New South Wales Act of 1848 provided for the admission of barristers of the Supreme Court of New South Wales, creating a Board of Admission consisting of judges, the Attorney-General and two barristers.[4] The Board was to provide

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4. 11 Vic. No. 57.

examinations in the ancient classics (Greek and Latin), mathematics and law and, as well as considering the prospective lawyer's intellectual ability, was enjoined to evaluate the candidate's moral worth. That system was merely a reproduction of the English system - but necessarily, changes had to be made to cater for local peculiarities. For instance it was found that the English rules of rights of audience before certain courts were not wholly appropriate for the New South Wales of 1849. Factors such as time and inconvenience often made it difficult for barristers to appear in Courts of Quarter Sessions, in particular in country areas; and so it was provided that attornies could act as counsel in such courts.[5] Such a rule was important for Brisbane in the 1850s.

In view of the establishment of the Supreme Court of Queensland, it became necessary to provide lawyers responsible to and competent within that court. Judge Milford promulgated rules in 1857 whereby barristers, solicitors, attornies and proctors of the Supreme Court of New South Wales became barristers, solicitors, attornies and proctors of the Supreme Court of Queensland.[6] So began Queensland's own legal profession. However it was not until 1861 that a definite statement as to the training of the profession and control over admission was made.[7] That empowered judges to make rules with regard to regulating admissions. The training of conveyancers

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5. 13 Vic. No. 7.
6. V.&P., (NSW), 1857, I, p.435.
7. Supreme Court Act of 1861, s.s. 40, 42, 54, 55, 63.

was also regulated. Perhaps the most important provision from the practitioner's point of view was the section allowing mobility between the two branches of the profession - an attorney of at least three years' standing might move the court to admit him as a barrister. To the solicitor such as Charles Lilley who found success as a solicitor came easily and who wanted to distinguish himself at the Bar, traditionally regarded as the 'higher' branch of the profession, it was important that the ability to move with facility from one branch of the profession to the other be provided. So he arranged the provision, at the same time maintaining standards by requiring that, apart from three years practical experience in the law, the solicitor, desiring to elevate his professional status, should show sufficient educational attainment by passing learned examinations in classics, mathematics, certain law subjects or hold a certificate from any university or college in the British dominions of his qualifications in those subjects. Lilley himself had no trouble in producing a certificate of honour from the University of London. That method of change from the solicitor's to the barrister's branch was slightly altered in 1867 - the practice period remained the same, but he was required to show educational proficiency in only Latin and French or Greek.[8]

The first comprehensive set of rules relating to the admission of barristers, solicitors and such, issued pursuant to the powers granted by Parliament in 1861, appeared in 1866 -

8. Supreme Court Act, 1867, s.40.

modifications and new rules were made in subsequent years but they referred back to the basic principles contained in the 1866 Rules.[9] A Board of Examiners for Barristers was created, consisting of the Attorney- or Solicitor-General and three practising barristers to be chosen by election. Provision was made for the admission to Queensland of barristers already admitted in Great Britain, Ireland, New South Wales or Victoria. If a person was not admitted elsewhere, provision was made for local admission - the candidate must have passed his twenty-first birthday and have resided for three years in Queensland and not have engaged in any trade or calling. Examinations in learned and legal fields were administered - ancient Greek and Latin classics, mathematics or logic, history (ancient, English and universal) and law. However a person, having a B.A. degree from the Universities of Oxford, Cambridge, Dublin, London, Sydney or Melbourne was granted exemption from examinations in all except the law subjects. The latter comprised:- real property and conveyancing, common law pleading and practice, equity, admiralty, matrimonial law and insolvency, criminal law, evidence and contract law. The law of torts at that stage apparently was not sufficiently developed to constitute itself as a separate learning.

The position with regard to the admission of solicitors was similar to that of barristers. An examining board was constituted - of the Registrar of the Supreme Court, one practising barrister and two practising attorneys by way of

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9. Regulae Generales, 4 June, 1866, V.&P., 1866, p.693.

nomination. Again, provision was made for those already admitted in Great Britain, Ireland, New South Wales and Victoria, and for those serving five years articles with a practising solicitor of Britain or any colony. Local examinations required that any person, before entering into articles with a Queensland solicitor, had to establish that he had a liberal education, including a knowledge of Greek or Latin. Before admission, the candidate had to prove his knowledge in the following subjects - real property and conveyancing; common and statute law; equity, divorce, matrimonial and ecclesiastical law; bankruptcy or insolvency, and admiralty; criminal law; practice of the Supreme Court and of the inferior courts; constitutional law and history (a subject which aspiring barristers did not need to know). Again, a certificate from any of the above select six Universities of one's learning in any of the above subjects granted one an exemption from that part of the local examinations.

If a person wanted to become a conveyancer, the requirements were simple - all he had to do was satisfy the Master in Equity of his knowledge and proficiency in real property matters, and pay fifty guineas admission fee.

Thus the system of training and admission was designed to work in harmony with the practice of England and the southern colonies, and also with the learning offered by English and Australian colonies. The barrister in particular was required

to have a rounded background, steeped in the traditions of the Humanities and Arts - but also the 'humble' solicitor was not allowed to flourish in ignorance of the classics.

Various modifications to the system were made, one of the most important being in 1874 when the restriction on trading or receiving a salary by the prospective barrister was removed.[10] That requirement had proved harsh on students at law and had the tendency to shut the Bar to a very exclusive few.[11] Such a move, promoting educational opportunities for local youths, corresponded with other legislation, extending education horizons in Queensland, arranging for instance the means whereby students could read for honours at the University of London, or matriculate to Melbourne University by local examinations. In 1877, the provisions with regard to barristers were further relaxed, by requiring only twelve months residence in Queensland before taking the admission examinations.[12] That change also was designed to open up the profession to a wider group of the public and so reduce criticism that the Bar was too selective.

The requirements of the Solicitors' Board were changed in 1880.[13] Previously, regard for 'outside' qualifications was given only where they were obtained in Great Britain, Ireland or Australasian colonies; in 1880, that was

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10. Supreme Court Act, 1874.
11. Brisbane Courier, 5 May, 1874.
12. Regulae Generales, 14 December, 1877, V.&P., 1878, I, p.421.
13. Regulae Generales, 1880, V.&P., 1880, I, p.487.

brought up to date with the concept of a growing Empire - and qualifications in any British colony were recognised, and special recognition was made of Scottish qualifications. Practice was also brought up to date with university expansion, and training obtained at Durham, Queen's University in Ireland and at any Scottish university was officially taken into consideration for examination requirements. The course administered in Queensland was reorganised. The preliminary examination was broadened - further language alternatives, like French, German, Spanish and Italian were provided. An intermediate examination was introduced, wherein the student's knowledge of "Stephens' Commentaries on the Laws of England" was tested. The final examination remained largely the same in scope although greater emphasis was placed on matters of practice, without at the same time neglecting the principles of the law. Courses were reorganised, and legal history introduced.

A similar rearrangement was made in respect of the admission of barristers - a B.A. degree from any university of the United Kingdom or any Australian colony was recognised as grounds for exemption from the preliminary examination for admission.[14] Barristers already admitted in the United Kingdon, Ireland or any Australian colony where the division of the profession into barristers and solicitors was maintained were eligible for admission in Queensland, if like rights of admission in those other countries were granted to Queensland barristers.

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14. Regulae Generales, 7 September, 1880, Q.G.G., 1880, II, p.678.

The Queensland-trained barrister was required to enrol as a student-at-law and be resident for one year in Queensland, during which time he was obliged to attend the monthly sittings of the Full Court, a fact which the Registrar of the court was enjoined to record. The student-at-law had to sit for a preliminary examination, of two sections. One was on literature, science and art, and the examiners were requested to set a standard equal to the examinations on which the degree of B.A. was conferred by universities. The students had to be familiar with Demosthenes "de Corona", Cicero "de Amicitia", Terence "Phormio", five books of Euclid, elementary Algebra, Statics, Hydrostatics and Heat, English Essay and Shakespeare's "Merchant of Venice". The second examination was on the laws of England, as revealed in Stephens' "Commentaries". The final examination was in the following subjects:- Jurisprudence, including International Law, both public and private and Roman Civil Law; Constitutional Law and Legal History; principles of Equity; Common Law, including Criminal Law; Pleading, and Practice of Trials; Real Property and Conveyencing; Law of Personal Property and Contract; Admiralty, Ecclesiastical and Matrimonial Law, and Insolvency. The holder of an LL.B. degree from a university of the British Dominions was not granted exemption from all the examinations.

New rules of admission were issued in the 1890s - 1896 for barristers, and 1898 for solicitors.[15] However they introduced very few significant changes and their effect was

15. Barristers - V.&P., 1897, I, p.561; Solicitors - V.&P., 1898, I, p.603.

mainly a reorganisation of the existing system. In the case of solicitors holding a B.A. or LL.B. degree from any university of the Dominions, the period of articles was reduced from five to three years.

The system of qualification for admission was of a relatively high standard for the period - it was on a level with that of New South Wales and possibly of England, as evidenced by the reciprocity arrangements. As an example, students to secure permission to enrol for law training had to satisfy examiners that they could translate books the standard of Livy's 'History' (Book XXII), or Euripides' "Hecuba" or Molieres 'Le Bourgeois Gentilhomme'. That was a level certainly sufficient to qualify them for matriculation at a University.

Reciprocity - the readiness of other countries to recognise the proficiency of a Queensland-trained lawyer - was perhaps the best indication of the standard of the Queensland admission system. When Queensland established its own Examination Boards, there was naturally cause for other colonies to be wary of the standard of its trainees. However New South Wales came to recognise Queensland qualifications. The fact that Victoria was dilatory in that respect aroused the ire of the Queensland Law Society in 1875 and it suggested that the Queensland Supreme Court not admit Victorian attornies.[16] However amicable relations between the two colonies so far as concerned the standard of barristers was established after that threat - in 1877 it was formally stated that barristers of New South Wales and Victoria were entitled to be admitted to

16. Letter, Queensland Law Society to Associate to Chief Justice, 16 November, 1875.

practice in the Supreme Court of Queensland.[17]

Acceptance of the standard of training of barristers in Queensland was questioned in 1884 in the Victorian Parliament. Their doubts as to Queensland standards arose as a result of the enactment of the Legal Practitioners Act in 1881.[18] There was the fear that such an Act might amalgamate the two branches and lower standards of admission. Chief Justice Lilley gave an assurance that the Act kept the two professions as such distinct - it merely related to practice and did not alter training and qualifications.[19] Full reciprocity between the Inns of Court of Queensland, New South Wales and Victoria was acknowledged in 1884 by the statement that so long as the two branches of the profession were separate, a barrister, provided he had three years standing, might become a member of any of the Inns without further examinations.[20] This was a full statement of acceptance of Queensland's standards.

In 1893, Queensland was able to turn the tables on Victoria which in 1891 adopted the Legal Profession Practice Act whereby the Victorian practitioner qualified as both a barrister and a solicitor. That was deemed in Queensland to be a lowering of standards, and so it was held that a barrister and solicitor of Victoria would not be automatically admitted as a

17. Regula Generalis, 7 August, 1877, V.&P., 1877, I, p.943.
18. To be discussed within.
19. Letter, President of Legislative Council, Victoria to Lilley, C.J., 11 September, 1884 and Lilley's reply, 7 October, 1884, Queensland State Archives, Acc. No.25/37.
20. V.&P., 1884, I, p.523.

barrister of the Supreme Court of Queensland, unless he received his early education in Queensland and went to complete his education in Victoria and was admitted there as a student-at-law before a certain date in 1891.[21]

It was much more difficult to establish reciprocity with the United Kingdom which jealously guarded its standards of legal training. In 1857, the British Parliament passed the Colonial Attornies Relief Act, a measure designed to give to colonial attornies some amount of access to British practice.[22] It provided that solicitors and attornies, admitted to a superior court of the colony after having served articles for a period of five years, might be admitted to practice in England - after doing an examination, establishing residence there and having ceased for one year to act as a colonial solicitor. Those provisions reflected English suspicion of the standard of training in the colonies. However in time, England began to mellow. Another Relief Act was passed in 1874.[23] That dispensed with the examination and the requirement of no practice for one year in those cases where the colonial attorney and solicitor had beeh in actual practice for seven years and had passed an examination prior to admission. The scope of these provisions was further extended in 1884, although not significantly.[24] By 1900, England was prepared to acknowledge

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21. re Morse, Queensland Law Journal, V, p.69; Regula Generalis, 1 August, 1893, Q.G.G., 1893, March-August, p.860.
22. 20 & 21 Vict. c.39.
23. 37 & 38 Vict. c.41.
24. 47 & 48 Vict. c.24.

that many of its colonies had adopted a standard of legal training almost comparable with its own, and provided that solicitors who had been engaged in practice for three years in the colonies might be admitted in the United Kingdom, and normally without having to undergo any further examinations or period of articles.[25] That right was extended only to those colonies which granted reciprocal admission to the United Kingdom.

So by 1900, England had slowly come to accept that a solicitor trained in a colony like Queensland had sufficient training and legal knowledge not to require a further examination in England. Still, in a conservative spirit, England required the colonial solicitor to have had three years of practical experience. On the other hand, Queensland, as evidenced by its Rules of Admission of 1880, 1896 and 1898, was quite willing to accept solicitors and barristers duly admitted in England, Ireland or any Australian colony where the two branches of the profession were kept separate, regardless of any period of practical experience.

Apart from the English situation, where in any case there was some degree of reciprocity although not as liberal as Queensland's arrangements, the real basis adopted by Queensland was that where the barristers and solicitors formed separate branches of the legal profession, admission to practice was granted to the practitioner of another colony or Dominion of Britain if like rights of admission were granted to a Queensland-qualified practitioner. So there was reciprocity

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25. Colonial Solicitors Act 1900.

with New South Wales, New Zealand and other colonies, but not with Victoria after it amalgamated the branches of the profession. These reciprocal relations did not necessarily mean automatic admission - for example, between New Zealand and Queensland, examinations in local laws were administered to the transferee.[26] Such a qualification, requiring some knowledge of local laws, was not unusual.

Most of the arrangements as to reciprocity concerned solicitors or Victorian barristers. Between Queensland and Britain, the position as to barristers was obscure - certainly there was a one-way action from Britain to Queensland. With regard to Queensland trained barristers proceeding to Britain, admission qualifications seemed to be a matter of negotiation with one of the English Inns. Judge Lutwyche gave as his considered opinion before a Select Committee in 1869 that the Queensland Bar was on a par with the English Bar.[27] However, the English Inns did not seem to accept this judgment whole-heartedly. When there was an attempt in 1871 to amalgamate the two branches in Queensland, Lilley protested against the move because it would affect attempts being made by him and Chief Justice Cockle to establish immediate eligibility for admission in England of a Queensland barrister who had been in practice for three years.[28] In practice, England recognised the Queensland trained barrister if he could show practical experience, since standards of training were comparable, and the two arms of the profession were kept separate.

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26. In the matter of James Lorimer Bannatyne, Queensland Law Journal, IV, p.98.
27. V.&P., 1869, I, p.584.
28. QPD, 1871, XII, p.56.

The standard of training of the profession, and in particular, of the barrister, and the maintenance of the separate branches of the profession, was a question of vital importance amongst members of the legal fraternity in Queensland's first two decades. During that time a determined assault was made to modify the nature of the more 'distinguished' branch - the barristers - and they in turn defended their position very strenuously.

The first attempt at amalgamation of the two branches of the profession was made in 1861.[29] Merchant Cribb claimed that the purpose of his proposed legislation was to lessen legal costs. However Pring, the Attorney-General, described the proposals as absurd. They infringed ancient privileges and in any case the division of labour was traditional. Furthermore if the real intention was to lessen costs, there was a more appropriate manner of going about it - by fixing costs by legislation. Pring said that this matter was being attended to - although a Costs Act was not passed until 1867. Those arguments put up by Pring were typical of the opposition to be encountered by reformers in the ensuing twenty years.

The most ardent leader of the attack upon the privileged position of the barristers was a solicitor, John Malbon Thompson. He was admitted to practice in 1853, in New South Wales, and in 1857 removed to Ipswich where he became a very active citizen and a prominent solicitor.[30] As his practice grew, so he felt the disadvantages of a divided profession. Those disadvantages were always magnified in a

29. Moreton Bay Courier, 22 May, 1861.
30. Admission details, Queensland State Archives, Acc.98/2.

circuit town, as Ipswich was, since it was often inconvenient, and also expensive, to call upon the services of counsel in court matters of minor importance. In 1869 Thompson introduced a Bill to amalgamate both branches of the profession, but the prorogation of Parliament beat him. He made a more determined attempt in 1871.[31] One of the prime aims was to cheapen the cost of court actions for the public. An attorney, supporting Thompson's move, wrote to the "Brisbane Courier" accusing the barristers of making the law expensive - "one can scarcely look at any 'learned gentleman' without paying at the very least £1/3/6, the guinea being the fee for counsel, and the 2/6 for a mythical clerk".[32] In his charges against the division of the profession, Thompson could draw support from that ardent reformer, Jeremy Bentham, who regarded the division of the profession as an iniquitous perversion of justice. Bentham considered that the division allowed lawyers to shelve their responsibility to the public, that it made more effective a system of licensed, unpunishable falsehood. Even in those days, Bentham perceived that the division called into operation the principle now referred to as Parkinson's Law - 'the greater the number of these mercenaries, the greater the number of assistants who, in one and the same suit, must be paid, and furthermore, in a higher proportion, to reward adequately the various divisions in rank and learning'.

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31. Legal Practitioners Bill, 1871.
32. Brisbane Courier, 22 April, 1871.

Thompson met a barrage of opposition to his proposals, mainly from barristers. Most asserted that it had not been satisfactorily proved that an amalgamated profession would afford cheaper legal costs. Even solicitors, such as W.H. Wilson, denied that cheaper costs would result.[33] A counter-attack was made, that it was the attorney's costs which created most of the expense. The argument used by Thompson that in the District Courts there was no division and that this idea should be applied to the Supreme Court was somewhat shaky, since in many cases in the District Courts attorneys briefed counsel. The most crucial argument was produced by Lilley - and he was supported by fellow barrister McDevitt - that the two branches were quite separate and to amalgamate the two would lower the overall efficiency of the legal fraternity. As well it would destroy the standards of training established by the Bar - "the gentlemanly independence and honor of the higher branch".[34] From a professional point of view, that was very significant, but it was a point not fully appreciated by the public. The 'Brisbane Courier' approved of the concept of the Bill, noting that principal opposition came from the barristers - Lilley, Bramston, McDevitt, Handy.[35] Such camraderie, in a matter so obviously one of self-interest, did not endear the profession to the public.

The 1871 Bill failed, but Thompson undaunted presented further Bills in 1872, and 1874.[36] Significantly, barrister

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33. Letter to editor, Brisbane Courier, 25 April, 1871.
34. QPD, 1871, XII, p.55.
35. Brisbane Courier, 21 April, 1871.
36. Legal Practitioners Bills of 1872, and of 1874.

Lilley, who in 1871 led the opposition to Thompson, in 1872 spoke very eloquently for Thompson's cause. That was because an important amendment was made, preserving the standards of the Bar which Lilley deeply cherished. It was provided that only an attorney of five years standing could become a barrister, unless he passed examinations in Classics and mathematics or else held a University degree. Lilley, who had a genuine concern in the provision of cheap justice and a 'fair-go' for the ordinary man was quite prepared to lend his support to the amended legislation so long as it protected the excellence of the higher profession. He considered that there was an urgent need to reform and simplify the law, and cheapen its costs.[37] His interest in reform was borne out by his activity in the Royal Commission of Law Reform appointed in 1872. In 1884, he stated to interested parties in Victoria that he stood for one legal profession without the arbitrary and unnecessary division which had grown up, provided that a sufficient standard of education was required of all.[38]

Evidence was produced that amalgamation was working well in the United States and New Zealand. Barrister Handy also swung to support of Lilley but stiff opposition was raised by Bramston, McDevitt amd Griffith, who came to replace Lilley in the defence of the higher profession. Again, the main argument which they produced was that amalgamation would lower standards, allowing inferior lawyers to become barristers.[39]

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37. QPD, 1872, XIV, p.99.
38. Letter, Lilley, C.J. to President of Legislative Council, Victoria, 7 October, 1884, Queensland State Archives. Acc. 25/37.
39. QPD, 1872, XIV, p.508.

There was an ideal held by barristers that a very sacred public duty was entrusted to them - they were conservators of freedom - and for that reason had to impose strigent conditions for admission.

From the point of view of the community, its main concern was to obtain cheap justice as efficiently as possible. Yet overall, Thompson was not able to indicate that amalgamation would produce cheaper law. Furthermore there was sense in Griffith's argument that cheap costs would more likely be produced by reform of procedure and legal principles - that codification of the law was to be preferred to amalgamation.[40] As there was a Law Reform Committee working on that matter at the time, attention was channelled to its work rather than to Thompson's attempt at reform.

Griffith resorted to arguments of idealism - that the advance of civilization was marked by a division of labour. Such a claim brought taunts that Griffith could not distinguish the mechanics of manufacture from the purity of justice. Furthermore, the attorneys' branch was no less a conservator of freedom than the barristers. The feeling of laymen, such as the prominent businessman Buzacott, was that the whole of the profession was far too protected - free trade in the law should be established.[41] There was a definite suspicion of the entrenched position of the lawyers, and any of their attempts at their own reform was subject to doubt as to the integrity of their motives. To the lay observer, it might appear that

40. QPD, 1874, XVI, pp.82-85.
41. Ibid, p.93.

a novelist interested in social reform like Charles Dickens had done more to remedy the evils of the law than any lawyer.

However, regardless of Lilley's eloquence, lay feeling and press support, Thompson's reform measure was again frustrated. Apart from a strong core of barristers, he met opposition from his attorney friends. In 1871, thirteen Brisbane attorneys signed a petition that a majority of the profession, and in general, the public, were opposed to amalgamation, because it would lower the profession both in Queensland and in the eyes of the English profession.[42] At that stage, there were only fifteen attorneys practising in Brisbane. They did not declare how they had assessed majority public opinion. The petitioners were joined by fourteen articled clerks who declared their opposition to the proposed changes. Again, in 1873 and 1874, petitions were presented to Parliament - by attorneys of the Queensland Law Society, declaring the undesirability of amalgamation.[43]

However Thompson's 1874 Bill floundered not so much because of the array of legal opposition as because of the procedural changes under consideration and also because of changes made with respect to attorneys' right of audience in the Supreme Court.[44] It was provided that attorneys had right of audience before a single judge, except in Brisbane. The change was of assistance to solicitors practising in circuit towns and was necessitated by the creation of the Northern

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42. V.&P., 1871, p.1011.
43. V.&P., 1873, p.307; V.&P., 1874, I, p.667.
44. Supreme Court Act 1874, clause 22.

Supreme Court. The 'audience' clause as adopted was an amendment to a suggestion originally proposed embodying Thompson's amalgamation idea.

Thompson's interest in amalgamation waned after 1874. In his comments on the Judicature Act of 1876 he said that he was still a supporter of the cause to abolish the division, but he was overall satisfied with the provisions of 1874 extending right of audience.[45] The charge could be made against Thompson that he was not really concerned with amalgamation to produce cheaper costs for the community, that really he was only concerned with extending his own practice and this was achieved by the 1874 Act without amalgamation. In 1880 Thompson was admitted to the Queensland Bar and then moved to Sydney.

However the cause for amalgamation was not dead. Walsh, a non-lawyer, took up the matter in 1877, explaining that Thompson had grown weary because of the continual frustration in trying to pass the appropriate legislation.[46] One of the problems with the provision of justice in Queensland was that there were so few barristers available to look after the judicial needs of the population, approaching 200,000 people. There were eighteen practising barristers in Queensland, but it was claimed that at least thirteen of these were somehow tied to the Crown. Blake, Hirst, Paul were District Court Judges; Cockle, Lutwyche, Lilley and Sheppard were Supreme

45. QPD, 1876, XX, p.631.
46. Legal Practitioners Bill, 1877.

Court judges; others, like Griffith, McDevitt, Real, Power, Hely and Shaw were associated with the State - in the Government, as Crown Prosecutors or other governmental officers. That left only a handful of barristers to protect the interests of the public. Walsh made aspersions about some of these - Pring was too expensive, Garrick and Beor had black marks against their names because of their connections with the public service, and furthermore most of them were tempted with government briefs.[47] So by such specious reasoning, Walsh held that there was available only one barrister, untainted by the State, who could protect all Queensland's inhabitants from the Crown. That was sheer exaggeration. Barristers, like Griffith, although Attorney-General, and Real, Master of Titles, could and did offer their services to the public. Yet there was validity in the case for amalgamation; with such a small population and a correspondingly small number of barristers, Queensland could hardly show that the division was necessary - and it was inevitable that the Crown would call upon their services to administer official judicial offices, and such an association between barristers and the Crown could mean the freedom and liberty of the individual would be jeopardised if an issue between the Crown and the individual arose.

Garrick, a barrister, who was familiar with the operation of the system of amalgamation in New Zealand, considered that it worked well there. He argued that, through a scheme where barristers could do solicitor's work, the quality of junior barristers would be improved since they would

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47. QPD, 1877, XXII, p.194.

have a greater insight into the background of court actions. Another barrister, Beor, saw certain advantages in the Bill, but there was still great strength in the opposition to the Bill, from lawyer and non-lawyer alike. The ostensible reason for the Bill was that the public would benefit, through cheaper law - but just as many arguments were produced to show that the scheme would in no way benefit the people. Emphasis was placed on the fact that the Judicature Act had introduced real reform which should cheapen costs, so that, even if in the past the cry could be made that justice was only for the rich man, the situation was changed by the Judicature Act. Furthermore, the Supreme Court Act of 1874 should have satisfied the greedy desires and ambitions of solicitors, covetous of barristers' fees. Griffith claimed that in any case very few attorneys had taken advantage of the 1874 Act, and so he concluded that there was very little real desire among members of the profession to wipe the division.[48] Lawyers Browne and Mein agreed with Griffith - so did many non-lawyers, businessmen like Hart, Heussler and Premier Douglas. Some, like Thorn, opposed not only amalgamation but also the very existence of the profession as such - the only real way to get cheap law was to establish free trade in law. So the attempt at amalgamation failed.

Success came in 1881.[49] The legislation was based on an abortive Bill which Walsh had introduced in 1878. It created a species known as the 'legal practitioner', for the Act gave barristers the right to practice as solicitors and

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48. Ibid, p.336.
49. Legal Practitioners Act 1881.

solicitors the right to practise as barristers. It did not amount to an amalgamation of the two branches as such, although doubtless the original intention was that this should occur. The legislation was successful largely because there was a new government - under McIlwraith - in power, and lawyer influence was not so prominent. At the same time, voting was not wholly along 'party lines'. Lawyers Rutledge, Garrick and F.A. Cooper, supported the change, on the basis that amalgamation had been successful in New Zealand and South Australia. It could also prove helpful in employing profitably the young barrister; the legislation would allow the young barrister to practice in the country for a while, instead of herding in Brisbane, hoping to get a brief. There was obviously a self-interest motive on the part of some lawyers, Rutledge at one stage asserting that there was so little law business in Brisbane that three or four leading barristers could manage all the cases.[50] At the parliamentary level, most considered amalgamation would prove successful, and would help in particular in country districts. Such concern for country interests was more to be expected in a Cabinet headed by McIlwraith. There was impetus to make the change because, apart from New Zealand and South Australia where amalgamation had already taken place, Victoria was considering the matter - it did not in fact finally decide for another decade.

Voting at the second reading of the Bill in the lower house was convincingly in favour - thirty three 'yes', eight 'no' (including the Attorney General Pope Cooper, Griffith,

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50. QPD, 1881, XXXV, p.319.

Swanwick and Macdonald-Paterson, all lawyers). The Attorney-General and Griffith sought to frustrate and delay the passing of the Bill, suggesting numerous amendments increasing the educational qualifications of solicitors, for instance that solicitors take a literary exam, and barristers a qualifying examination before becoming a practitioner in the other branch. To the layman, the fact that the barrister had to train for only one year and the solicitor for five years, yet the barrister claimed to belong to the higher branch, seemed slightly paradoxical and he wondered whether or not the barrister was fully competent to practice as a solicitor. Still the suggested amendments by Griffith with regard to training were seen as another wily attempt to destroy the legislation and the amendments were rejected, regardless of their soundness. The opposition in the Legislative Council was more determined, coming from lawyers like Mein and Macpherson and conservative stalwarts with legal connections like Hart and Murray-Prior. Their attempts to maintain the divided profession and the 'high' legal and educational standards of the barristers branch were narrowly defeated.

So the gates were opened for a new era of legal development - there was the prospect of cheaper law, a better administration of law in country areas. On the other hand, there were some who feared that there would occur an inrush of rogues into the law, or that with barristers acting as solicitors the flood-gates of litigation would be opened. The 'Brisbane Courier' hailed the new era although it foresaw that

difficulties would arise which the judges would have to settle, reconciling the mutual interests of the public and of the profession.[51]

Yet the glorious new era never arrived. In 1884 Victorian lawyers, anxious lest Queensland's legislation might have lowered standards and so affect reciprocal relationships between the two colonies, inquired as to the operation of the 1881 Act.[52] Chief Justice Lilley replied that the Act merely related to practice and was tentative. Only two barristers had attempted to practice as legal practitioners, and at that time one was off the roll and the other had left. Except with regard to circuit matters, no solicitors had attempted to practise as barristers or advocates, and none had become legal practitioners.

By 1890 the failure of the Act was becoming apparent. The judges showed their opposition to the operation of it. In particular, Judge Harding, a crusty, pompous old fellow steeped in gentlemanly traditions, objected to the innovations of the Act. In court he made facetious remarks about the legal practitioner being 'a composite animal, the mushroom creation of the Legislature'. His book on practice and pleading encouraged the idea that the legal practitioner was a person created only by virtue of the 1881 Act and in that way a tone of reproach came to surround that person.[53] One barrister

51. Brisbane Courier, 13 October, 1881.
52. Letter, President of Legislative Council, Victoria to Lilley, C.J., 11 September, 1884, and reply 7 October, 1884, Queensland State Archives, Acc. 25/37.
53. G.R. Harding, in his book, The Acts and Orders relating to the Jurisdiction, Practice and Pleading of the Supreme Court of Queensland, (Brisbane: Government Printer, 1885).

complained of the abuse and insults he suffered when he acted as a legal practitioner, until he was starved out for taking advantage of the Act - he left the colony and became a judge in New South Wales.[54]

Both branches of the profession seemed to oppose the system of amalgamation. Solicitor Foxton condemned the legislation as the work of laymen, helped by some junior barristers who wanted to take work out of solicitors' hands.[55] Solicitor Rees Jones referred to the legal practitioner as a 'nondescript animal', 'some sort of a hybrid' - he was proud that he was 'a pure solicitor'.[56]

The Law Association regarded the creation with much suspicion. The two branches should be separate, the barrister being in the nature of an expert. New South Wales lawyers in 1890 were considering adopting the scheme and asked the Queensland Law Association for its opinion on the matter. The secretary, Osborne, a solicitor, replied that only four barristers had used the Act, and of these one had been disbarred for malpractice and another was called before the Full Court for a similar offence where he was censured and ordered to pay costs.[57] He also alleged that barristers who used the Act charged both as solicitor and as barrister, so that the public did not benefit at all. These statements brought vehement protests from Drake, admitted as a barrister in 1882 but since the mid-eighties practising as a legal practitioner in Brisbane. He claimed that nine barristers had used the Act. Osborne's

54. Letter to Queensland Law Journal, 1 March, 1882, see QPD, 1889, LVIII, p.1581.
55. QPD, 1888, LV, p.1104.
56. QPD, 1889, LVIII, pp.1581/2.
57. QPD, 1890, LXI, p.751.

figures cannot be accurately checked. Records available indicate that there were barristers practising in country towns by 1887.[58] J.G. Drake was the first person to advertise his profession as 'general practitioner' - in 1888, and he continued to describe himself thus until about 1895. In 1891, three other barristers had the temerity to call themselves 'legal practitioners' - Ringrose of Herberton, Costello at Charters Towers and Mitchell at Gladstone. During the 1890s, Parske of Brisbane called himself a 'barrister and solicitor'.

However these records indicated only those lawyers who were willing to describe themselves as 'legal practitioner' or such-like. During the 1890s, quite a few barristers were established in country towns - for example, Gympie, Longreach, Bundaberg, Toowoomba, Charters Towers, Ingham, Cairns - where it was highly unlikely that they could make a living merely as a barrister, but would need to transact any kind of legal work. So it seems likely that Osborne's figures were conservative - yet Drake's counter-figures cannot be proved. No solicitor found it necessary to describe himself as a 'legal practitioner'.

Osborne's assertion of the legal practitioner charging fees in both capacities was probably true in a number of circumstances. However the public did have the right to dispute such costs, and Judge Harding did affirm that a barrister acting in a double capacity was not entitled to charge the same as a solicitor who retained a barrister.

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58. The records used are Pugh's Queensland Almanacs, 1881-1900), where lists of barristers and solicitors are printed. These lists are not noted for their accuracy, and so I have used them with reservation. No other records, as to the actual practice of lawyers appear to be available.

During the 1890s, the lot of the legal practitioner reached its peak and then declined. Judge Cooper crossed swords with Alexander Costello, who described himself as a solicitor and barrister of Charters Towers. Costello's admission as a student-at-law had been subject to examination by the Full Court. There were strong allegations of his moral unfitness, concerning associations with a young girl but he was duly admitted as a barrister.[59] Practising in Charters Towers, he found it necessary to take advantage of the 1881 Act. He was opposed to using the term 'legal practitioner' because it had a tone of reproach, so he called himself 'solicitor and barrister', the actual words used in the 1881 Act. Judge Cooper, however, disapproved of the combination and said he should call himself a 'legal practitioner'.[60] In the face of such opposition, from judges and the profession as a whole, there was little wonder that few lawyers took advantage of the 1881 Act. By 1900, only one person, Robert Colin Ringrose, described himself as a legal practitioner.[61] He graduated M.A. at the University of Edinburgh, taking out a 100 guineas scholarship in Real and Personal Property to the Middle Temple, where he was admitted in 1881. He proceeded to Queensland and on to Herberton. There, regardless of his educational background, he had of necessity to practice as a legal practitioner to make a living.

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59. In re Costello, Queensland Law Journal, III, p.129.
60. The Brisbane Courier, 12 September, 1931.
61. Pugh's Queensland Almanac, 1901, p.216.

So, in spite of a twenty years struggle to achieve amalgamation of the two branches of the profession, no worthwhile result was achieved. Most of the impetus for the change came from a few solicitors and a few laymen. The former in all probability had an eye to greater profits, although both groups claimed that their real concern was for cheaper justice for the community at large. Although there was the appearance of success in 1881, in fact the gains made were rather illusory. True amalgamation was not achieved - merely the right for one branch to practice as the other was granted. And, in the face of overwhelming opposition from the profession, the successful operation of the Act was doomed. Perhaps the only advance that was made was the right of a solicitor to appear before the Full Court - but that was of dubious advantage, since a Full Court matter was likely to be very important and would normally require a barrister of some ability. The solicitor in 1874 had already achieved the right of audience before a single judge in circuit and assize matters - and that was where the right was of greatest benefit. What about the community's desire for cheaper justice, the ostensible reason for amalgamation? Things just carried on as before.

The argument that the desire for amalgamation as espoused by solicitors like Thompson was based largely on personal ambitions - a desire for either more money or more power and status and to remove the somewhat ignominious taunt that the solicitor was a lower and inferior being in comparison with the barrister - was fortified to some extent by the claim

by Thompson that a solicitor should be eligible to become a judge.[62] This possibility was mooted in 1873 and again in 1877. On the latter occasion, the suggestion was that an attorney of five years' standing should be capable of becoming a judge. Mein, himself a solicitor, opposed the move, on the grounds that it would allow the appointment of political judges. Also, the attorney's knowledge was not sufficiently detailed - he understood the broad concepts but was not so learned as to be able for example to produce books on important legal questions or to contribute to law reform.[63] However in 1881 legislation was enacted allowing a solicitor of five years' standing to become a judge.[64]

Mein, in spite of his opposition to the idea in 1877, obliged Griffith in 1885 by accepting the office of Supreme Court judge, to become the one and only solicitor holding judicial rank during Queensland's colonial period. The fears that an attorney might not be sufficiently learned in the law to be a successful judge were not borne out in Mein's case. Although there was considerable personal resentment amongst barristers when Mein received the appointment, in time he won them over by his sound decisions and tact.[65] 'The Courier' in 1888 praised highly his ability as a judge - that was at a time when the Government was worried that Mein's acts as a judge might not have been valid and so for certainty enacted

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62. QPD, 1873, XV, p.188.
63. QPD, 1877, XXII, p.149.
64. Legal Practitioners Act 1881, s.2.
65. A.A. Morrison, Some Queensland Postmasters-General, (pamphlet, read to the Post Office Historical Society, 9 July, 1953).

validating legislation.[66] Such an occasion was a good opportunity for criticisms to be made of Mein's ability as a judge, but there was no suggestion that he was incompetent.

Mein's case illustrated that there were solicitors of considerable ability, as capable as barristers - and it could be used to support the argument that the division between the two branches was pedantic. Still the overall opinion was that Mein's case was the exception - there was a real difference in function between the two branches, and so the division should be maintained, even if it meant one branch was regarded, perhaps wrongly, as inferior. The whole problem reverted back to training standards and reciprocity - and in particular, since England was the model, then the profession must stand divided.

Although, members of both branches of the profession were interested in establishing a certain educational standard to qualify for admission, they made very little attempt to exercise disciplinary control over their own members once in practice. Suspension and disbarment or removal from the Rolls was a matter within the jurisdiction of the Supreme Court, and a number of cases did arise where positive action was taken against practitioners guilty of misconduct, misappropriation and the like. Yet discipline was a matter which the profession itself could control, so that only the most favourable image was presented to the public.

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66. Brisbane Courier, 27 September, 1888. The legislation was the Judges' Validating Act of 1888.

A half-hearted attempt was made in 1870 to introduce legislation to incorporate the Bar, but nothing came of it.[67] Apart from that, there seemed to be no attempt made to weld the individual barristers into a cohesive group, and no organisation was created to look after their combined interests. Perhaps that was felt unnecessary since they were so few and in quite close contact with one another.

With regard to the solicitors' branch, an organisation to manage their corporate concerns was formed in 1873. The possibility of that was discussed in 1869, but the conclusion was reached by solicitors like Robert Little that the attorneys of Queensland were neither strong nor united enough to form a Law Society.[68] However Thompson, who was very concerned to advance the solicitors' branch, pressed for its incorporation into a society which would control the conduct and ethics of its members.[69] The profession he said should have power to regulate and govern itself. On 7th August, 1873, some attorneys met in the Supreme Court at Brisbane and elected Hart, Little and Macpherson as a Committee to prepare Rules to govern the Queensland Law Society. Neither the Rules showing the aims of the Society, nor Records and Minutes as to membership and business exist - so little is known about this organisation, other than that it comprised at least most of the solicitors of Brisbane. Griffith in 1877 stated that all except one solicitor belonged to it.[70] One of their main concerns was the reporting

67. Bar Incorporation Bill, 1870.
68. Progress Report from Select Committee on Administration of Justice in Supreme Court, V.&P., 1869, I, p.604.
69. QPD, 1872, XIV, p.101.
70. QPD, 1877, XXIV, p.842.

of judgments given in the Supreme Court. £100 annually was voted to it from Government Revenue during the late seventies to start the Society and have court cases reported.[71] Before then, reports were published in the 'Courier', and 'the Telegraph' after 1872. The Society produced the 'Queensland Law Reports' for the years 1876, 1877 and 1878.

The Society passed out of existence for some unknown reason in 1880 but was resurrected in the form of the Queensland Law Association in March, 1883. This body continued to function for the rest of the colonial period. Again, its activities are obscure - no records are available for the nineteenth century. However it does appear not to have been very active in the control of its members. Complaints were made that the Law Association did nothing to solicitors who misappropriated money.[72] It failed to keep solicitors, especially in the North and in the country, in check - if a complaint was made to it about a solicitor, it wrote a letter to him and might even strike him off the Rolls, only to readmit him shortly afterwards. It was claimed that in country towns, solicitors were acting as bare-faced robbers, charging at least five guineas for a letter. A purge of the profession was urged.

So, the solicitors of Queensland did organize themselves into a club - but they appeared to achieve little by way of control over their members. However it is difficult to fully evaluate that organisation and its representation as

71. Ibid; QPD, 1880, XXXII, p.736.
72. QPD, 1889, LVII, p.323.

the corporate entity of the solicitors of Queensland, since little evidence is available. It should be remembered that in England, solicitors' organisations were not very active. The Incorporated Law Society was formed in 1831, and reorganised in 1888; however it had no real disciplinary committee. So it was not surprising that the Queensland body was not very concerned with that aspect. It was not until 1894 that a barrister's organisation - General Council of the Bar - was formed in England. In the United States, it was found that Bar Associations were not formed when settlement was sparse, there was much circuit work, and judge and barrister travelled together on circuit. Bar organisations came later - in the great cities, to help corporate feeling and to raise or to maintain standards.[73]

The Queensland lawyer was concerned to maintain a good image. With that in mind he adopted a system of training to draw the praise of England and of the respectable southern colonies. The Queensland solicitors formed an organisation, to present some kind of united front to the community. But how did the community regard the profession?

There was quite an amount of criticism. Most of it related to the monopolistic or closed borough aspect of the profession. Adams, an English observer of the Queensland scene in the early 1890s, particularly noted that feature. He witnessed mainly lawyer politicians during the strike disputes

73. J.W. Hurst, The Growth of American Law, (Boston: Little, Brown & Company, 1950), p.286.

when they were urging the claims of 'free labour' by appeals to the British sense of liberty and natural right. That struck him as somewhat incongouous since the lawyers had the most absolute of monopolies - 'and none is more intrinsically more unjust and injurious to the public'. 'They barter justice, which should be free and equal to all, encompassing the pursuit of it with a heavy mulct for themselves'.[74]

Their privileges and monopoly over all legal work brought much lay criticism. Their control over the drawing up of transfer of land documents brought criticism in 1884.[75] It was asserted that anyone could and should be able to do that work - and it was true that the preparation of transfer documents was often very simple. But the problem was that the layman could not distinguish the simple transfer from the complicated one, and if he became involved in the latter, the amount of litigation and consequent high legal costs would be very considerable. So the lawyers claimed they should keep control, for the protection and benefit of the public.

So to many, the profession appeared as a close system and a close monopoly - some considered that the interests of the profession were quite opposed to the interests of the public.[76] Macrossan, the champion and hero of many an ordinary working man denounced the profession, its judges and its schemings.[77]

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74. F. Adams, The Australians - A Social Sketch, (London: T. Fisher Unwin, 1893), p.225.
75. QPD, 1883/4, XLI, p.223.
76. QPD, 1890, LXI, pp.268/9.
77. QPD, 1878, XXV, p.61; Ibid, 1880, XXX, p.1006; Ibid, 1881, XXXV, p.868.

Quite an amount of the criticism of lawyers arose from the activity of some of their members in Parliament. The lawyer with his specialized technical knowledge, was accused of cluttering up laws and causes with rules and technicalities.[78] The public was warned to beware of too many lawyers in Parliament because they arranged that all statutes should help the lawyer's pocket. Then there was the charge that the lawyer in Parliament could profit from his Parliamentary connection, for example in obtaining appointments within the Department of Justice and as law officers for the Crown.[79] They could also profit by the hand out of Crown briefs and drafting. That confirmed the impression that lawyers were concerned only with profit, whether they made it from the public or from Parliament. The strength of lawyer representation at the end of the 1879 Parliamentary session was thirteen, nine in a lower House of fifty-five and four in the Upper House of thirty-one. During Griffith's government's also, lawyers were very prominent.

The need to break the lawyer's monopoly was not felt more strongly by anyone than by George Thorn. He championed the cause of the ordinary man - in 1872, he urged free trade in law, that the profession be opened to all.[80] However it took him until 1893 to make a constructive move, when he introduced legislation enabling all legal business to be done by laymen as well as lawyers.[81] He was motivated by the legal reform movement set in motion by Powers in 1888. Since that

78. QPD, 1871, XII, p.70.
79. QPD, 1880, XXXII, p.721; Ibid, 1885, XLVI, p.1037.
80. QPD, 1872, XIV, p.915.
81. Law and Judicature Bill, 1893.

date, a constant attack had been made on the high cost of justice. The decision of the Robb Arbitration case which was handed down just prior to Thorn's measure scandalised public opinion because of the excessive costs involved.[82] Total costs of the proceedings were over £23,600/-/-, made up of £12,700 odd for law costs and almost £11,000/-/- for fees to experts, expenses of witnesses, reporting and the like. Fees paid to counsel totalled over £9,300 - Byrnes profited by £2,968/13/- and Griffith by £2,778/3/6. Thorn accused the Law Society of 'Star Chamber' tatics in excluding outsiders from competing with solicitors.[83] He was supported by the ardent Labour spokesman Hoolan who referred to the open robberies of lawyers. Otherwise he met with little support - the legislation was singularly badly drawn, and was almost meaningless. 'The Courier' remarked that the Bill reduced the dignified assembly almost into convulsions.[84]

Although the profession did maintain a monopoly over legal work, the accusations that it was too closed were not wholly true. In fact, admission was open to all, and as indicated earlier, by the 1890s the majority of admissions were of Queenslanders who had been educated only in Queensland schools. The brilliant success of Thomas Joseph Byrnes, born in most humble circumstances, was the stock reply to any charge that the profession was a small and exclusive corporation.

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82. Pugh's Queensland Almanac 1894, p.79. QPD, 1893, LXX, p.244.
83. QPD, 1893, LXX, p.480.
84. Brisbane Courier, 19 September, 1893.

From the evidence available, and it is not extensive, it seems that there was criticism and disapproval of the profession rather than praise and commendation. It must be remembered that only a small number made any comment on their opinion of the public standing of the lawyer, and one must be cautious of placing too much emphasis upon the words of the few who were vocal. They normally had an axe to grind, or a particular cause to advance. Much of the criticism was personal, and based on feelings of envy at the lawyer's power and wealth. Still, the casual and impartial observances of a person like Adams offered some factual support for such envy and resentment.

What was the economic position of the lawyer? Figures are difficult to obtain, and only approximations can be made. The type of evidence available is what lawyers said about the income of other lawyers, and evaluation of the salaries of State law officers.

The fixing of a judge's salary is a good indication of the income of the above average, or the up-and-coming intelligent barrister before he reaches the top bracket. Generally the barrister at the top of the profession finds the salary of a judge insufficient recompense. In 1860 there was a suggestion that the salary of future judges should be fixed at £1,200 per year.[85] However Judge Lutwyche protested that such an amount was quite inadequate. Presumably, the progressive Brisbane barrister was earning more than that

85. Letter, Lutwyche to Bowen, 23 January, 1860, V.&P., 1860, p.465.

amount. Of course, a salary too low would not attract a barrister of sufficient competency, and in 1880 when the salary of District Court judges at £1,000 annually was being discussed, it was pointed out that although that was enough to maintain one's position and bring up a family, that figure was not much inducement to many barristers eligible to be District Court judges since they made more than £1,000 in practice.[86] It should be remembered also that, on the whole, the standard of barristers who became District Court judges was not as high as of those who became Supreme Court judges. This same position arose in 1891. Powers, ardent in the cause of cheap and efficient justice, considered that it was virtually impossible to get anyone to accept the position of a District Court judge at £1,000. He did consider that amount sufficient for a doctor.[87]

At the same time (the 1890s), lawyers were saying that £2,000 was too little a salary for a Supreme Court judge.[88] The most qualified people would have to relinquish too much in accepting such a position, even though it did have social eminence. Lawyers wanted the salary raised to £2,500; obviously they had self-interest motives in the matter, and possibly were inflating their worth. In any case they did not get their rise. Resentment was expressed at this arrogant privileged group seeking to dominate the country. "They seem really to think that they are a privileged class, and that £2,000 per annum is nothing to them. They want more....".

86. QPD, 1880, XXXIII, p.1055.
87. QPD, 1891, LXV, p.1503.
88. QPD, 1892, LXVIII, pp.1763/4.

"The honourable member is a worthy member of a class which, although they do their duty well, undoubtedly do endeavour, ... to sacrifice the general interests of the colony for their own particular purposes. They do well always..."[89] That statement, although a bitter attack on the lawyer's exalted position, was a clear indication that £2,000 per annum was an income not difficult for the good barrister to earn.

Similar conclusions can be reached from a consideration of other legal offices and from these salaries, estimates can be made of the incomes of the average-type practitioner. The Attorney-General was meant to be a high member of the Bar, making more than £1,000 per year. So in 1885 there was criticism of the appointment of Rutledge, some people claiming, without any real proof, that he was so incompetent as not to be able to make £1,000, except as Attorney-General's salary.[90] Rutledge asserted that he had little trouble earning £1,000 as a barrister.

The Crown Prosecutor received a salary of £500 per year in the 1870s - the job was not full time. Garrick, who was a barrister of above average capabilities, said that this would not amount to more than one third of his income, and it would not be difficult for any barrister to make at least twice as much from the normal avocations of his profession.[91] Also in the 1870s, the renumeration of the Crown Prosecutor for the

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89. Black, MLA, for Mackay, with sugar and pastoral interests, Ibid, p.1764.
90. QPD, 1885, XLVII, p.1033.
91. QPD, 1878, XXV, p.499.

North was under review. Especially having regard to the situation and the salary, it was likely that the position would be filled by a barrister of below average ability - the position would not really appeal to a barrister showing promise. Still, it was claimed that a barrister, even if of indifferent ability, would doubtlessly make more in private practice than the £500 offered as salary.[92]

As for the young barrister, just emerging into the legal world, it was estimated by two lawyers in 1879 that he would have no trouble in making £300 per annum and some would earn up to £500 almost immediately.[93]

These estimates of salary were public statements coming mainly from lawyers themselves. They could be subject to exaggeration, to increase their own importance; they could just as likely be scaled down, to minimise feelings of resentment and distrust by members of the public. So they must be regarded strictly as estimates. During the colonial period, as could be expected, there was a wide variation in income, from the top to the bottom barrister, and from the first decade to the last decade. A first-rate barrister in the 1860s might expect £1,500, and by 1900 over £2,500. The average barrister in the 1880s seemed to be earning between £1,000-£1,500 per year; and the fledgling barrister, £300-£500.

There are fewer reports on solicitor's incomes, but he appeared to be not so flourishing as the barrister. The salary of Robert Little, a very capable solicitor, who had been

92. QPD, 1877, XXIV, p.840.
93. Rutledge and Swanwick, QPD, 1879, XXX, p.1032.

Crown Solicitor for over twenty years, came under review in 1880. There was some criticism of the fact that for the preceding three years he had been drawing an average of £1,200 per year from the Crown. However, even lay opinion defended these pickings, and it was urged that a person of Little's capability was entitled to £1,500 per annum.[94] A Toowoomba businessman asserted that Little had the best business in town, and if able to devote all his time to private practice would have grossed £2,000-£3,000.[95]

Arrangements concerning the duties and office of Crown Solicitor were altered when Little retired, and the salary fixed at £1,000. James Howard Gill, a solicitor of only four years standing, was appointed to the position. There was some criticism of the appointment of such a recently qualified practitioner, but it was pointed out that it was virtually impossible to get an established lawyer to accept the position at such a low salary.[96] Gill was a capable solicitor; he had quickly built up a successful practice in his hometown Ipswich, and claimed that when he accepted the government appointment he was making £1,300 in private practice.[97] Ipswich businessmen supported his claim.[98]

In the mid-eighties, the salary of William Bell, a solicitor and the Registrar of the Supreme Court at Brisbane was discussed, with proposals for an increase from £500 to £700 per annum. Bell was an average, competent solicitor, and

94. QPD, 1880, XXXIII, p.1516.
95. Groom, QPD, 1898, LXXX, p.1021.
96. QPD, 1885, XLVII, p.1039.
97. Letter, Crown Solicitor to Under Secretary, Department of Justice, 10 May, 1897, V.&P., 2nd session 1899, IV, p.107.
98. Cribb, QPD, 1898, LXXX, pp.1022/3.

lawyers, like Foxton, Rutledge and Griffith, agreed that in practice he would make double.[99]

However, not all estimates of the solicitor's income were so glowing. One lawyer in 1879 claimed that a solicitor with a good practice could expect to make £500-£1,000.[100] Horace Tozer, a solicitor in practice for twenty-three years in 1890, stated that outside of Brisbane it was the exception for lawyers to make more than a bare living by their profession. He himself wished he had gone into trade-auctioneering.[101]

The opinion of Tozer might have been one of the utmost cautious conservatism and pessimism. But there was support of his statement from a number of sources. Anthony Trollope, in his Queensland peregrinations, observed that 'the would-be...lawyer... has no more probable opening to him in an Australian town than he has in London or in Liverpool. Such a one may possibly prosper in Brisbane or elsewhere...' but it was very difficult - in the first place, he had to be able to adapt himself to labour.[102] Tyrwhitt, another English commentator, had similar mixed feelings about the success of English lawyers thinking of coming to Queensland to try their luck: lawyers and doctors seemed to thrive better than anyone, but it was unwise for such men to emigrate, because in the large towns there were too many already.[103] It was just as

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99. QPD, 1883/4, XLI, pp.559-560.
100. Swanwick, QPD, 1879, XXX, p.1032.
101. QPD, 1890, LXII, pp.1319, 1320.
102. A. Trollope, New South Wales, Queensland, Victoria and Tasmania, (London: Ward, Lock and Co., n.d.), p.187.
103. W.S.S. Tyrwhitt, The New Chum in the Queensland Bush, (Oxford: J. Vincent, n.d.), pp.211-213.

wise for the upper and upper middle classes to stay in England - they had tolerable prospects there. However, the 'sharp' ones should do well in Queensland.

On the local scene, Lilley, who was normally fair and impartial in matters affecting the efficiency of the law and the profession, denied that lawyers were overpaid.[104] Macdonald-Paterson, a solicitor with a flourishing Brisbane practice, asserted that litigation did not pay the solicitor but he had to handle it as a duty and service for his client.[105] Legislation was introduced in 1891, partly with an eye to rectifying that position - it contemplated establishing freedom of contract between the profession and clients and regularising the practice of retaining legal services.[106]

Nevertheless, such complaints of the difficulties of making a living in the law are invariably made by some practitioners. Overall the solicitor, like the barrister, seemed to enjoy a confortable living - there were certainly some who did not flourish, but generally those of ability who worked hard enjoyed a pleasant life, living in gracious homes and being social leaders. If such material, tangible aspects of life were any indication of success and prosperity, the lawyer had more than his ample share, to the extent that he was able to put himself up as the leader of society.

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104. QPD, 1872, XIV, p.893.
105. QPD, 1890, LX, p.180.
106. Solicitors' Act 1891.

CHAPTER V

THE LAWYER IN SOCIETY

The lawyer's role in society has been prominent - and so for that very reason he has been open to criticism. Some have viewed the lawyer as the creator of iniquities, favouring the rich and privileged. Others have found no taint of usefulness to the lawyers' trade. "The lawyer is exclusively occupied with the details of predatory fraud, either in achieving or checkmating chicane, and success in the profession is therefore accepted as marking a large endowment of that barbarian astuteness which has always commanded man's respect and fear".[1] So there has grown up an element of dislike, almost fear, of the lawyer, sometimes associated with the expensiveness of legal proceedings, sometimes with frustration at the archaic and inefficient procedures that he adopts, linked with concomitant delays, and sometimes associated with a distrust and suspicion of his ability to distort and twist the legal basis of government.[2]

So the lawyer has come to take a special place in society. The public has tended to set him apart, although at the same time the lawyer was in fact very much a part of ordinary society. The lawyer was or appeared to be in a privileged position yet in reality he was a very integral part

1. T. Veblen, The Theory of the Leisure Class, (New York: The New American Library, 1962), p.156.
2. O.L. Phillips and P. McCoy, Conduct of Judges and Lawyers, (Los Angeles: Parker and Company, 1952), pp.191/5.

of everyday society. Tocqueville observed that duality - 'lawyers belong to the people by birth and interest, and to the aristocracy by habit and taste; they may be looked upon as the connecting link between the two great classes of society'. The revolutionary times, about which de Tocqueville was writing, with the conflicts of the aristocracy and democracy (the people) must be borne in mind - 'the profession of the law is the only aristocratic element that can be amalgamated without violence with the natural elements of democracy and be advantageously and permanently combined with them'.[3]

The privileged position of the lawyer arises partly from the operation of the law as a means of social control. The lawyer is regarded, perhaps not wholly accurately so, as the custodian of the law, and so there has been attributed to him the means of social control - that necessarily put him in a very special position. Laws are created to order social relations, to protect the individual and the community[4] - and from that has grown the notion of lawyers as preservers of the constitutional rights of the people. The lawyer thus is at the service of the public - he might be called a steward of the rights and obligations of citizens.[5] As a controller of the fabric of the society, regulating the treads of relationship between the individuals and groups making up the community, he could be described as a 'social engineer'.[6]

3. A. de Tocqueville, Democracy in America, translated by Bradley, (New York: Alfred A. Knoff, 1945), pp.272-280.
4. J.W. Hurst, The Growth of American Law, (Boston: Little Brown & Company, 1950), p.440.
5. A.P. Blaustein & C.O. Porter, The American Lawyer, (Chicago: University of Chicago, 1954), p.vi.
6. W.C. Robinson, Law and the Lawyers, (New York: The Macmillan Company, 1935), pp.1-6.

All these concepts are valid - but also somewhat idealistic. Lawyers at their noblest, or perhaps some lawyers under a condition of great political and social stress, have adopted the cause of individual freedom and rights. But, for the majority, the world just passed by, and that was particularly true of Queensland lawyers, between 1859-1901. They had no great struggle to engage in, whereby they could pose as and prove themselves to be the conservators of freedom. The State made no unwarranted assault upon individual liberties for the Queensland lawyer to trouble to defend his title as the saviour of the individual.

Still, apart from that aspect, involving elements of great constitutional significance where he could prove his worth, the Queensland lawyer did happen to be an important unit in the matter of social change. That arose most significantly through his connection with politics. Tocqueville observed that members of the legal profession had taken part in all movements of political society in Europe since the fourteenth century.[7] He saw the lawyer in certain cases as the object of political revolution, at other times as the preserver of the political status quo. 'In a State of society in which the members of the legal profession cannot hold that rank in the political world which they enjoy in private life, we may rest assured that they will be the foremost agents of revolution'. On the other hand, 'the government of democracy is favourable

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7. A. de Tocqueville, op. cit.

to the political power of lawyers, for when the wealthy, the noble, and the prince are excluded from the government, the lawyers take possession of it, in their own right, as it were, since they are the only men of information and sagacity, beyond the sphere of the people, who can be the object of the popular choice".[8]

So the lawyer's role in politics has been long recognised. His quest has been for political control, and with his expert knowledge of administration and constitutional development, together with an educational background higher than that of the population at large, he has been in a natural position to assume political leadership. That aspect was very noticeable in colonial Queensland. Even though people may have expressed dislike of the lawyer and criticised his position, yet he was voted political control on many occasions and in many spheres. They were in fact leaders, and reached that object by virtue of their training, experience and position.[9]

The role of the Queensland lawyer in public affairs was conducted through two main channels - through the legislative, and through the municipal assemblies, (the latter including a host of civic and charitable institutions). In the political sphere, the Queensland lawyer was able to make actual significant contributions (or obstructions) to the course of colonial development, and so the political avenue might seem the more important - that is not to belittle the significance of the achievements in the other field.

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8. Ibid.
9. J. Stone, Legal Education and Public Responsibility, (Boulder: Association of American Law Schools, 1959), p.361 looks at the public responsibilities of the lawyer.

The prominence of lawyers in the field of politics was evidenced by the fact that between 1859 and 1901 there were twenty one ministries, nine of which were led by lawyers. One lawyer - Macalister - led three different ministries, and two - Herbert and Griffith - led two different ministries. Herbert had the distinction of being Queensland's first Colonial Secretary or Premier, and sat in office for the colonial record period of over six years. His second ministry, in 1866, was for only a matter of days, and undertaken partly as an act of charity to help the colony through a difficult financial period. Two of Macalister's governments were rather short-lived. Griffith's first Ministry continued for more than 4½ years and the second was cut short in the middle of its third year by his acceptance of the Supreme Court judgeship. Byrne's ministry showed all signs of long life when it was cut short by his own untimely death, within six months of his taking office. In all, lawyers sat in premier position for almost nineteen years during Queensland's colonial period - that included the period when solicitor Tozer was acting premier.

One of the greatest Parliamentary periods for Queensland was during Griffith's government 1883-1888. It saw measures of liberal, progressive reform, planned by Griffith with his vision of a prosperous, great white land - where social equality abounded, and whites worked happily in tropic plantations, living in a harmonious confederation with fellow Britishers in the other Australian colonies. He finalised the importation of coloured labour; reorganised land settlement;

introduced social welfare ideas, in relation to trade unions, employers' liability, offenders probation. He introduced electoral reform, and was the first to provide payment of member's expenses. Defence measures were reorganised; Griffith took a leading part in the Federal Council of Australasia movement; and he endorsed plans for an Imperial naval defence scheme (which however did not proceed immediately in Queensland). With grand development schemes, mainly in the way of railway expansion, he, to the detriment of his record and of Queensland, borrowed a mammoth £10,000,000, thereby complicating Queensland's financial embarrassment of the 1890s. Still, his schemes for Queensland development, and his type of liberalism characterised Queensland political thinking into the twentieth century.[10] He was concerned for aspects of democracy - for example triennial parliaments, the payment of members, electoral redistribution. Certainly, during the 1883-1888 government, he showed a concern for the worker - even in legislation like the Land Act of his Secretary for Public Lands, Dutton, which showed evidence of Griffith's concepts of land law as influenced by socialist thinkers like Henry George.

Yet, in some ways, that very fertile Ministry, although fecund with ideas of reform and development, was a failure. Griffith's Polynesian policy was later reversed; the Federal Council amounted to nothing; and someone else obtained triennial parliaments. In the world of politics, Griffith might appear more as the man of ideas, than the man of practical

10. T.A. Coghlan, Labour and Industry in Australia, (London: Oxford University Press, 1918), p.1893.

action. That was especially so with some of his plans to help the worker. During his first ministry, he displayed a dislike for the squatter, and an interest in the position of the working class - he had ideas of the labourer sharing in the profits of his labour[11]; he tried village settlement schemes for workers. In 1890, even 'the Worker' newspaper hailed Griffith as a champion of the workers.[12] Still it seemed apparent that his ideas were unworkable. Although his elementary property ideas involving a redistribution of property and its profits caused a stir when he promulgated them in 1890, no serious attempt was even made to put them into any concrete or operative form.

So as a practical politician, Griffith seemed in many ways to fail - nevertheless his 1883-1888 Ministry did fashion the policies and reforms of succeeding governments until Labour success in the twentieth century. Griffith's importance lay in the fact that he contributed many of the ideas which were to affect Queensland development for the ensuing twenty odd years. The 'Daily Mail' in an obituary described Griffith as a Liberal when it was unfashionable to be a liberal - and it was true that his political concepts and ideas were well in advance of those of his political confreres.[13] This is not to say that the ideas were first conceived by him - he was influenced by many, for example

11. eg. Griffith's article 'Wealth and Want', 1888.
12. The Worker, 1 March, 1890.
13. Daily Mail, 10 August, 1920.

Bentham, Henry George, Gladstone. Also one cannot claim that all the activity and all the reforms during the 1883-1888 administration were attributable to him - his Ministers and advisers were often directly responsible. Yet some credit was due to Griffith, by reason of his very presence as leader. As leader of the Ministry, he was able to galvanize his followers into action - and, as well as that, he did make direct suggestions and contribute ideas for development to his colleagues, for example to Dutton with respect to 1884 Land Act.

Governor Musgrave observed that Griffith was more actuated by principle than most of his contemporaries in politics.[14] That matter might well be disputed - an impelling motive of Griffith seemed to be a quest for power to satisfy the ego, and that this allowed for the rule of principles was highly unlikely. Evidence could be produced of his somewhat dubious dealings in Townsville land. It is not my concern to assert or deny that he was a man of principles. Probably the Governor was confusing the word 'principle' with a concern for liberal reform, a concern for a more generally spread happiness and welfare, a cause for which Griffith at the time said he was working and a cause which before that time had not been proclaimed or formulated so clearly or demonstrably.

Griffith's Ministry of 1883-1888 was dubbed the 'lawyers' government' because of the extent to which lawyers permeated all aspects of government. Griffith himself at various stages hald the position of Chief Secretary and Premier,

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14. Confidential Despatch, Governor Musgrave to Secretary of State for Colonies, 11 March, 1886.

Colonial Secretary, Secretary for Public Instruction, Colonial Treasurer and Postmaster-General. C.S. Mein, his solicitor-friend and an old acquaintance and scholarly rival since Sydney University days was first of all Postmaster-General for Griffith, and later his Secretary for Public Instruction. J.F. Garrick, a barrister served Griffith as Colonial Treasurer (for six weeks), as Postmaster-General and later as a Minister without portfolio - Griffith sent him to London as Agent-General. Two solicitors, T. Macdonald-Paterson and W.H. Wilson helped Griffith as Postmasters-General and Arthur Rutledge, a barrister filled the position of Attorney-General. No other ministry in colonial Queensland was so fully served by lawyers - and it was the example of this administration in particular which aroused the criticism of so many people that lawyers wanted to make a plaything of Parliament and wanted to rule the country in their own interests. Although such criticisms were not backed up with concrete evidence that the interests of the country and of the community as a whole were suffering by such legal representation, the outward appearances of government were sufficient to allow the ready complaints to be made that lawyers used Parliament to help themselves and their friends. Griffith had been able to help himself and give legal friends 'plum' positions.

Griffith, during his second term as head of government, between 1890 and 1893, achieved notoriety on two counts - his handling of the shearer's strike and of the kanaka question. In the former, he found it necessary to call

upon the Defence and Volunteer Forces, as well as the police, to solve industrial unrest. No blood was shed, but what was significant was that Griffith, whose earlier sympathies seemed to be with the advancement of the position of the labouring classes, had to side in the dispute with the interests of capital and property, the employers and the pastoralists. That was necessary for a number of reasons - he was leading a coalition party with McIlwraith and big propertied interests. But more important was the reason that the shearer's dispute appeared to him as disobedience to and an attempt to disrupt the system of law and order provided by the State - and, as a lawyer, Griffith felt constrained to utter his strong disapproval of the strike and the methods used, and so he felt obliged to call upon the militia to help restore the well-ordered system of justice. His approach to the problem was a legalistic one.

At Maryborough in 1892, Griffith reversed his former decision on the cessation of the employment of kanaka labour. Various reasons have been given for that volte-face. Griffith said that he could not allow the sugar industry to be destroyed - conditions had changed since the 1880s. The interests of certain coalition members were also involved - A.G. Stephens, in very critical commentaries on the situation, said that Griffith was being influenced by southern banks and businessmen, who were worried for their northern securities.[15] He regarded the coalition as a very unsatisfactory compromise, where

15. V. Palmer, ed., A.G. Stephens - his life and work, (Melbourne: Robertson & Mullens Ltd., 1941), p.10.

Griffith had been obliged to sacrifice his principles and, as a result, a conservative reaction was resurgent. Certainly, in those two very significant events which occurred during Griffith's second ministry, the pattern seemed to be that Griffith's early liberal flare was fading, that he was becoming more cautious and reactionary, much more 'respectable', as specific Labour doctrines and a party expressing same came to life.

Nevertheless some of his earlier ambitions and intentions in the field of social reform were evident. He enunciated the first principles relating to 'the Natural Law relating to the acquiation and Ownership of Private Property'.[16] He affirmed his belief in the equal right of all persons to life and freedom of opportunity, and the right of all to take advantage of natural forces. The Bill he introduced encompassing these ideas made no progress in Parliament. He had prepared a companion bill, on the division of profits, which he did not bother to introduce. However, apart from such idealistic, humanitarian notions, Griffith was responsible for a concrete attempt to enact workmen's liens legislation in 1891 - the Legislative Council frustrated his attempt.

Otherwise, his second ministry was characterised by the passage of efficient legislation proposed by capable administrators. Hodgkinson prepared important measures with regard to mining - a number of important land measures were passed, Griffith himself being responsible for one involving

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16. Parliamentary Bill of same name by Griffith, 1890.

the protection of the pastoral industry from the rabbit menance. He retained his interest in electoral reform, enacting legislation to purify the rolls in 1892.

At that stage, Griffith was vitally concerned with the federation movement, in which he was playing the leading role.[17] He also saw to the greater defence of the colony, through the Australian Naval Force Act of 1891.

Griffith's second ministry was thus more mellowed - the liberal, adventurous tone of 1883-1888 had become restrained. There was a cautious, conservative tinge imposed by the coalition with McIlwraith and his supporters. Development was still within the framework of ideas enunciated by Griffith in the 1880s - but the full extent and the limitations on the ideas were being tested. Their full significance was beginning to be realised, and sometimes it was felt desirable to use caution rather than enthusiasm in the adoption of some notions of social reform. The financial problems of the day and the increasing industrial strife also imposed a definite restraint upon programmes of change.

If Griffith's 1883-1888 Ministry achieved note, Herbert's first administration, 1860-1866, was scarcely less noteworthy. His was the original ministry, establishing responsible government in Queensland. Apart from being Queensland's first government, it was also Queensland's longest.

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17. Federation aspects are referred to within.

Herbert came at a time when there were few people of political expertise in the land, although there were any number who were willing to try - the native-born felt it would not be long before he would displace the foreign import like Herbert.

Robert George Wyndham Herbert was a grand-son of the first Earl of Carnarvon and had a good education at Eton and Balliol College Oxford where he graduated with high honours.[18] He was admitted to the Bar of the Inner Temple, and for three years served as private secretary to William Ewart Gladstone, then Chancellor of the Exchequer. It was in that capacity that Herbert acquired a political and administrative proficiency which was deemed sufficient to make him first choice as Queensland's first Colonial Secretary. There was also the fact that Governor Bowen brought him to Queensland as his private secretary. It was desirable to have a happy working relationship between the Parliamentary leader and the Governor, especially in the first few tentative years of development. However, regardless of background, he was sufficiently well-known and showed sufficient ability to be requisitioned by three electorates for the 1860 elections. He was returned unopposed for Leichhardt.

The problems that faced Herbert in 1860 are well-known. He had to get the colony going - but there was only $7\frac{1}{2}^{d}$ in the Treasury. He had to settle boundary and debt disputes with the mother colony; he had to arrange and

18. For details of background, refer to Sir B. Burke, History of the Colonial Gentry, (London: Harrison & Sons, 1891); Pugh's Queensland Almanac 1890, B120; Queensland 1900, (Brisbane: W.H. Wendt & Co., 1900), p.124; Modern Society, 25 October, 1899.

complete constitutional details. His policy speech, given on 7 April, 1860, foreshadowed the problems of development that he expected to encounter. It was perhaps colourless, but nevertheless recognised that many of the immediate problems were administrative, rather than anything else. A public service had to be organised, a capital picked, financial viability established. His land policy favoured the big squatters, on the basis that through them the colony could be more firmly based - he proposed long leases to encourage the pastoralist to make permanent improvements, he wanted to encourage long-term settlement and not speculation; but he still wanted ultimate government control, to be exercised for example through periodical valuations to assess the correct rental on leases. He claimed to be liberal in matters of education - a sound and liberal education should be offered to all classes, and through the instrumentality of a free Grammar school - in 1860 he introduced a Grammar School Act. He was also interested in the establishment of a national system of education and for a while was a member of the Board of General Education. At an early stage a check was put upon the concept of a strong religious tie between the Church of England and the State - an Act was passed abolishing State aid to religion, with certain reservations for then-existing arrangements.

The first two years of Herbert's government saw many strictly administrative arrangements being made - but it was not long until developmental projects became of vital

importance. Herbert was always greatly concerned in the use of land. At his home 'Herston' he dabbled enthusiastically in gardening - he wrote to his mother how he could grow peas, asparagus and roses to perfection but he lamented the changeable weather conditions, from searing drought to turbulent flood. He ran a few cows and bulls.[19] He was also a prize poultry breeder, and engaged in friendly competition with Judge Lutwyche to see who could raise the finest black Spaniards and gray Dorkings.[20] However apart from the hobby of gardening and farming, he took a more serious interest in Queensland's pastoral potential - the development of sugar; he was very interested in the cotton growing attempt at Redlands; he had an interest with Scott in pastoral enterprise in the Valley of Lagoons in 1863.[21] Furthermore, there was his interest in land legislation, favouring the big pastoralists who Herbert believed could open up Queensland and help it establish a favourable economy. In 1861, the Torren*s' system of registration of freehold title was introduced, also with the view of helping development.

Herbert's land plans were that the interior should be opened up as quickly as possible - by pastoralists, occupying large tracts of land, grazing sheep and cattle. The coastal areas were more fertile - and so should be left free

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19. Letter, Herbert to mamma, 17 April, 1863; Herbert to Lewis (?), 18 September, 1865, Copies of letters of R.G.W. Herbert 1863-5.
20. N. Bartley, Australian Pioneers and Reminiscences, (Brisbane: Gordon & Gotch, 1896), p.399.
21. Letters, Herbert to mamma, 15 September, 1863 and 18 January, 1864, op. cit.

for agricultural settlement where possible, including the tending of tropical products if they could be made adaptable to the environment. For all his development schemes, Herbert realised the importance of immigration and encouraged schemes to increase Queensland's population. He was to some extent disturbed that Jordan's land-order system was not contributing as reputable and reliable immigrants as those whom the Land and Emigration Commissioners could produce but Jordan was able to convince Parliament of the efficacy of the land-order scheme.[22] Herbert saw Queensland's development as becoming a race for existence and wealth - and consequently the people who were needed as immigrants were experienced labourers and capitalists. He had noticed that many well educated gentlemanly types had floundered in the colonial rush, and fallen to become beggars and drunkards.[23] He did not deplore the arrival of coloured natives - they were very useful in the development of Queensland's sugar industry. He observed that the South Seas islander liked Queensland, provided that he was taken home again after a year or two. 'They almost always enlist to return again'.[24]

His administration saw important developmental projects in the field of transport - the construction of railway lines in Queensland from Ipswich west to the Ranges and the Darling Downs, and westward from Rockhampton. Brisbane

22. T.A. Coghlan, Labour and Industry in Australia, (London: Oxford University Press, 1918), p.895.
23. Letter, Herbert to mamma, 18 October, 1865, Copies of letters of R.G.W. Herbert.
24. Letter, ibid, 19 October, 1865.

was linked to Rockhampton by telephone in 1865, and other important telephone links were made. As well, there was a considerable amount of construction of public works and buildings. Legislation was passed to allow municipal development and expansion - especially in Brisbane and Ipswich. Then there was legislation to provide for the smooth functioning of commercial transactions and businesses, including the incorporation of a number of banking companies.

Queensland's first government thus embarked vigorously and enthusiastically upon the awesome task of setting a new colony on its feet and providing for its means of expansion. It cannot be claimed that all the credit is due to Herbert - many people, politician and private pastoralist and businessman, were involved in the task. But again, credit should go to Herbert as the first leader, who helped provide the legislative and administrative means for development to take place, and his interest in development was a source of guidance and direction to others.

An observer of the time complimented Herbert that although he was a newcomer, he nevertheless knew Queensland. He worked hard at knowing it - his only fault was that he agreed with the favoured classes and tended not to care for the people.[25] That was somewhat to be expected from one of a long line of aristocratic descent, and the only son of 'the exquisitely refined Algernon Herbert' - from one who was a devotee of Bond Street, wearing the fashionable peg-top pants

25. By a correspondent 'Stylus' to unknown newspaper, about 1861, Hurd Cutting Book, No.2, p.29.

and a well-cut and fitting blue surtout, buttoned across the top. For, although Herbert took an interest in Queensland development, he could never forget his English background and its traditions. He felt too polished and too civilized for the rough and tough of colonial politics and life. He wrote to his mamma that colonial politics was not pleasant - the distinction, the prestige, the respect of a colonial Premier was not great.[26] He spoke not very highly of some of the local figures he met - Lilley was an upstart, pushing too hard (although Herbert found it necessary to take him into his ministry in 1865); O'Sullivan and Gore Jones were most disreputable; and after the opposition he encountered from Roman Catholics at Ipswich in the 1863 elections, he spoke very unkindly of that section of the community - he retired to the association of conservative and respectable people.[27]

Herbert's criticism of local politicians and citizens - especially those claiming 'liberal' and 'radical' dispositions - became more vociferous as the years passed. The 'Brisbane Courier' did not quieten its condemnation of that attitude of Herbert, especially when people like Pugh and Coote contributed editorials. Herbert in turn denounced their virulent, unscrupulous comments. He told the Secretary of State in disparaging tones that such petty cliques got up 'Indignation Meetings', which were attended by only a very small and uninfluential section of tradesmen and labouring

26. Letter, Herbert to Mamma, 15 September, 1863, Copies of letters of R.G.W. Herbert.
27. Letters, ibid, 18 June, 1863, and 17 September, 1865.

classes in Brisbane.[28] It was his opinion - or perhaps pious hope - that such a clique had long been the laughing stock of the entire colony and especially of the educated and intelligent portion of the inhabitants of Brisbane. By 1865 he was beginning to feel sick and tired of colonial Parliaments - the politicians 'talk a lot and very badly'.[29] He was beginning to feel overworked - he confessed that he would not have been able to have done as much as he had but that he was a bachelor and kept early hours.[30]

So he returned to England, where for a long while he was concerned with colonial affairs. But just before his departure in 1866, he was called upon to help straighten out the chronic economic mess that the colony found itself in during Macalister's first Ministry. Herbert gave his attention to the matter for three weeks, and then went to England. He made it clear that he would stand in only as a temporary expedient - and he made no constructive move to effect recovery, apart from ensuring that there was a government in existence. Recovery came largely as a matter of time, rather than as the result of the actions of any particular person. Herbert did acknowledge that the financial mess was partly due to his actions in the first ministry - 'we have all brought about this mess'.[31] The result was probably inevitable at a time when

28. Despatch No. 12, Herbert to Secretary of State for Colonies, 5 March, 1864, p.27.
29. Letter, Herbert to Lewis (?), 18 September, 1865, Copies of letters of R.G.W. Herbert.
30. Letter, Herbert to Mamma, 16 November, 1865, ibid.
31. T.A. Coghlan, Labour and Industry in Australia, (London: Oxford University Press, 1918), p.1178.

little was known about economic theory, when a new colony needed to expand and to borrow heavily to do so, and when a drought hit and banks were collapsing.

His departure from Queensland was welcomed by many. During the tense months of 1866 when unemployment was high, crowds wanted to throw him into the river - and there were chants of 'Bread or Blood'. The Courier welcomed his departure - 'up to within a few days of his departure he did all in his power to initiate mischief and to create a misunderstanding between the members of the present Government. He has now left this colony, and whilst we wish him a safe return to England, we may add a hope that he will remain there'.[32] The Courier had crossed his path before - in attacks upon the Government over the Judge Lutwyche affair and also the Parliamentary Privileges Bill 1862. The newspaper saw Herbert as a despot, trying to infringe the rights of citizens. So Herbert's image was not good - he was too aloof, too reserved, perhaps too learned and too cultured. Because of his unpopularity, and his conservatism, Herbert's period of government might appear unsuccessful. But on the credit side was the fact that there was stable government for six vital years and that he did encourage development. That this policy favoured the interests of the more wealthy and conservative sections of the community was unfortunate for the neglected sections, but nevertheless possibly the wiser policy at a time when the colony was struggling to get on its feet.

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32. Courier, 20 August, 1866.

Herbert himself felt that he had a mission which he could perform in Queensland - 'I can do some little good in my generation and more than I could in England'.[33] J.D. Lang described Herbert as a first class man - he was confident and knew what he was doing, but Lang perhaps impugned his reliability as a witness by also describing Herbert as a person with no pretensions.[34] Overall, Herbert's record seems creditable, and, bearing in mind the fact that his career after the Queensland episode was very successful and distinguished, it seems most likely that the unpopularity that he aroused in Queensland, and associated with that the impression that his years of government were neither successful nor felicitous, was an essentially personal matter related to the jealousy of native-born Queenslanders who resented the fact that they were led by a foreigner, and at that, one who was so cultured and very aloof. So Herbert's own haughty and morose disposition encouraged the growth of the impression that he was not a good leader and administrator.

Herbert, like Griffith, also relied upon a number of lawyers to help him minister to the needs of the country. He and his very faithful friend, John Bramston, with whom he shared the mysoginistic bliss of 'Herston', was a Minister without portfolio for two and one half years - for eleven of those days he was Attorney-General. The conservative Ratcliffe Pring served as his Attorney-General for five and one half years,

33. Letter, Herbert to Lewis (?), 18 September, 1865, Copies of letters of R.G.W. Herbert.
34. J.D. Lang, Queensland, Australia, (London: Edward Stanford, 1861), p.288, in a letter to Editor, 'Sydney Empire'.

until he disgraced himself by his drunkenness - Lilley ended up as Attorney-General. 'Slippery Mac' Macalister, sometimes friend, sometimes foe, was his Secretary for Lands and Works for more than four years.

Lilley's occupancy of the Government benches, 1868-1870 did not produce as many results as might be expected of such a person as Charles Lilley. He has been acclaimed as a great reformer, a liberal, a democrat ahead of his time. Yet his government of 18 months produced ordinary results. That was largely because he was working a coalition of a number of interests, including conservative - squatting interests. So, although many, including 'The Courier', looked to his leadership as providing a series of new liberal reforms, within six months of his taking over control, criticism was being levelled against him for helping the squatters and Ipswich too much.[35] His party and his policy were condemned as not being truly liberal. Lilley in fact was feeling his way cautiously, looking for support. By 1870, he was more confident - but he miscalculated. His moves establishing free education, and engaging the State in private enterprise, (namely, in the form of obtaining steamers to carry on the mail trade and such like), backfired. He found overwhelming opposition to his schemes, and he and his government were severely castigated, as conspirators, fools, tarnishing and degrading Parliament. Underlying that condemnation were the fears and the doubts of

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35. Compare The Courier, 26 November, 1868, 26 March, 1869, 12 June, 1869, 9 August, 1869, 4 September, 1869.

many 'respectable' people of the possible consequences of Lilley's liberal ideas in the field of free education or State enterprises.

Lilley's political ability, and his great political forethought were evidenced by his suggestions for local government in 1869. Lilley made 66 detailed proposals, completely reorganising the existing situation and introducing a network of local governments covering the colony, with important powers in respect of local affairs and based on a ratepaying franchise. Those proposals were rejected by the House, again because of an underlying fear of what the unknown might contain. The proposals were very far-reaching and advanced for the times.

Otherwise, his ministry was successful although relatively undistinguished. Help was given to outlying squatters, industry was encouraged, the immigration system improved. So Lilley's record was not unfavourable - it was disappointing in that a person with such idealistic sentiments as to free education, payment of members, direct land taxes, electoral reforms achieved so little as a leader.[36] This failure, if it be one, was due to his advanced thinking - his proposals were unacceptable to the majority of influential thinkers. That was also true of his attempt at a political comeback in 1893. So as a parliamentary leader in the late 60s, he was virtually alone in his ideas for the development of Queensland. So there was suspicion of his ideas, as well as personal jealousy - Lilley felt that there was a cabal who

36. Consideration of Lilley as a politician, as Attorney-General, and his activity in fields such as education will be given within.

wanted to replace him with Macalister, and so he allowed the bitter condemnation made of him and his policies to go unanswered and undefended.[37] As a private member and in the Opposition he was able to achieve more.

Lilley did not escape the charge that he worked the reins of government with too many lawyers. He did for a short while have Macalister in his Cabinet, but soon dropped him, saying that Macalister could not be trusted and was disloyal. Macalister claimed that he had voluntarily resigned. Regardless of which was the true explanation, Macalister was regazetted. However, although that fiddling with portfolios did arouse some criticism, the main ground for objection arose when Pring, formerly of the Opposition, was gazetted to take over from Lilley the position of Attorney-General - one member looked upon Lilley and Pring as being like Cox and Box, or perhaps were like Mrs. Bouncer getting the whole pay for two occupants.[38] On an objective basis, that particular criticism against Lilley of favouring legal friends was not substantiated.

The ministry of T.J. Byrnes lasted only 6 months. But Byrnes was the hero of the people, and even during that short period he had firmly established himself in the hearts of the people. He did not worry about his physical condition, contracted a chill and died of pneumonia. His funeral was one of the largest in Queensland, as people from all walks of life came to pay their respects to that most popular of native-born

37. Refer to obituary, The Brisbane Courier, 21 August, 1897.
38. QPD, 1870, X, p.11.

Queenslanders. His rise to success had been fast, and was enhanced by the fact that he was both very capable and a 'local lad' who had made good.

His short ministry achieved little, other than to establish his popularity. He went on a tour of North Queensland, talking of federation proposals and Queensland development, and there it was said he dissolved any opposition that he encountered by his frank, open, genial disposition.[39] He had a true concern for the development of Queensland, and a real pride in its achievements and faith in its future. So he was hesitant of embracing federalism, because he was not sure that it was in the best interests of Queensland. He was convinced, as he told a public meeting at Mount Morgan, that Queenslanders were less in need of federation than any other colony.[40] Queensland conditions were different, especially in respect of its climate and resources, and for that reason, a different line of development could be expected.

Apart from his genuine concern for Queensland development, he never forgot his humble background, and throughout his life evinced an interest in improving conditions for the working class. In that matter, his ideas were shaped by the notions of Griffith's liberalism which he had acquired in his days of training. He did try to pass workmen's lien legislation as premier but was unsuccessful. His background gave him the ability to meet people of all stations, and that natural approach assured his popularity. So his death was lamented as a great blow to the progress of Queensland.

39. A. St. Ledger, et al., Sketches and Impressions - Thomas Joseph Byrnes (1860-1898), (Brisbane: Alex. Muir & Co., 1902), p.61.
40. Ibid, p.92.

Before Byrne's reign, Horace Tozer had stood in for one year as acting premier in the absence of Sir H.M. Nelson. Tozer has been described as a talkative but tactless leader.[41] In 1889, he allowed his loquacity to continue for 8 hours, as part of stonewalling tactics, and it was little wonder that he earned the nickname 'Jawbone' Tozer. His period as acting premier was relatively undistinguished, although he himself was responsible for an Elections Act, concerned mainly with administrative details seeking to remove cumbersome and difficult electoral procedures.

Byrnes had only two lawyers - Foxton and W.H. Wilson, helping his administration. Tozer, as acting Premier, made no significant changes to the Ministry appointed by Nelson.

The only other lawyer to head the government benches was the Ipswich solicitor, Arthur Macalister. 'The Courier' politely referred to him as a politician of not very decided convictions, for in fifteen years he led both Conservative and Liberal governments and their respective oppositions.[42] He led three different ministries, but none were particularly successful. Still he himself was a clever politician and a good speaker - but he lacked force, and was too lazy to be successful.[43] As a speaker, he could be very vigorous and aggressive - but seldom consistent. So as a leader, he failed - and that was due to his personal attitude towards himself and the task of government. The latter was subordinate to the

41. The Worker, 24 April, 1897.
42. The Courier, 14 July, 1876; G. Harrison, ed., Jubilee History of Ipswich, (Brisbane: H.J. Diddams & Co., 1910), p.21.
43. Queensland Government, Our First Half-Century, (Brisbane 1909), p.20.

former. He was a vain-glorious man - he was also a man of expediency, a man who knew few principles. He worked from the local, immediate circumstances and conditions as they arose. So he could without qualms of conscience lead the opposition as a liberal against Herbert in 1860 and later join Herbert's Ministry as Secretary for Lands and Works. In the 1866 financial crisis, Herbert and Macalister were at loggerheads - yet Macalister continued to work with Herbert supporters. In 1870, he led the Opposition but then became Speaker at the request of the Government. Again in his 1874 Ministry, he collected together remmants of a number of interests and worked out a manageable compromise to form a government. The early colonial period of Queensland of course was the time when party ties were virtually non-existent, and a leader had to weld a member of divergent interests into a workable whole. At this, Macalister seemed a master. Still, although there was no concept of 'party' and 'party policy' in the modern sense, one expected the individual politician, in his freedom to form his own political ties, to show a certain amount of consistency in the principles which he claimed to espouse - but in that regard, Macalister was not overparticular.

He was guided by a desire for power, for control and prominence. He achieved that easily with women.[44] In Ipswich local affairs he was a leader - and so he wanted higher success, in the Legislature; but there he failed. His three ministries achieved little - two were very short lived; and the

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44. G. Harrison, op. cit., p.179.

third, although he did a good job bringing it into existence from very diverse sources, combining for instance the talents of Griffith, McIlwraith, Dickson, Stephens, Hammant, was visibly disintegrating after one year.

His first Ministry in 1866 was constructed out of Herbert's. It lasted only six months, being wrapped up in the struggle for financial survival. No great understanding of economic principles was possessed by Macalister and his Ministers, and the proposal to issue inconvertible Government notes was viewed by Governor Bowen as the surest means of leading the colony into the direct financial ruin. The clash of opinions led to Macalister's resignation, and the recall, only temporary, of Herbert in whom the Governor had always had faith, somewhat to Macalister's chagrin.

Macalister returned, but the second administration was quite undistinguished. The passage of time allowed a gradual recovery of the financial condition of the colony. He had always posed as the antagonist of the squatters, and in 1866 did propose legislation to check their avarice. But he could scarcely proceed with these matters, since his ministry was partly dependent on their support. However, Macalister's concern about the squatter and Darling Downs' power was merely a political trick - he admitted that he always found it good tactics to raise the anti-squatter alarm on occasions.[45]

Of his three ministries, the 1874-1876 one had the most elements of success. That was mainly because Macalister

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45. QPD, 1868/9, VIII, p.93.

had managed to combine a number of keen and active politicians into his cabinet. Griffith was responsible for the very important Education Act 1875 and the Matrimonial Causes Act. Macalister himself attended to an Elections Act, which was mainly concerned with administrative details about electoral rolls. Yet overall the achievements were not great. Macalister had promised much, but had done little to carry out the promises. Fifty bills had been introduced in the 1874 session, twenty five were passed but few were very important.[46] Furthermore. within a year, the contrived group was decomposing - and just as in 1867 his friends were deserting him in his second Ministry, so again in 1875/6 he could not keep the team together under his leadership.

Lilley served Macalister for two terms - but stated that he found him treacherous, and refused to serve in his 1874 Ministry. Griffith commented that Macalister was given to 'petulant and childish haste', that he was guilty of 'puerile vacillation'. He lacked earnestness and purpose, and although capable, intelligent and fit to serve the citizens of Queensland, he was indolent and pusillanimous.[47]

So as a leader of the country, Macalister was largely a failure. His personal ambitions and inadequacies militated against him in his attempts to direct Governments and Queensland development.

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46. Note the comments of Brisbane Courier, 28 April, 1875.
47. Articles by Charley Chalk, Queensland Guardian, February, 1862 (following). Both J.C. Vockler and D.A. Graham in their studies of Griffith (q.v.) consider that Griffith was the author of these articles.

Perhaps he was suspicious of lawyers and their political capacities because Macalister did not call upon their services much. When he took over from Herbert, he retained Lilley as his Attorney-General but no other lawyer was in his cabinet. The same applied to his second ministry. In 1874, he appointed MacDevitt, a barrister as Attorney-General, and when he resigned eight months later, Griffith took over. So Macalister did not seek the services of lawyers in his cabinet except to fill the position of Attorney-General - perhaps he himself would have filled that position if he had been admitted as a barrister.

So the record of lawyers as political leaders of the colony was mixed. The six lawyers (including Tozer as acting Premier) held various plans for governing Queensland. Two of them, at least, made very positive contributions to Queensland's development. Griffith's first Ministry has been viewed as perhaps the most important of all governments to rule during the colonial period. Only McIlwraith could be put up as a challenger. Griffith's administration, apart from the concrete results achieved during the years 1883-1888, acquired further significance from the fact that the liberal ethos, the general concern for social, democratic and humanitarian advance, set the tone of the ensuing governments. Its concepts were embraced, in some form although not in Griffith's original formulation, by the succeeding coalition governments; Byrnes, and to a certain extent Tozer, followed in those footsteps.

Herbert also contributed materially to Queensland's progress. Even though his policies were clouded with his conservative background, they were orientated towards the opening up of Queensland. Of course, in the long run, it is difficult to evaluate whether development has been due to a government's policy or whether it would have happened in any case. What can be said is that Herbert's policies did not actively hinder development, and they probably were the best to follow. At the initial stage of opening up a colony, it was preferable to encourage people with capital and ideas of expansion, growth and wealth rather than provide a neat and tidy existence for people of small means.

The administrations of both Lilley and Byrnes gave the hope of liberal and democratic advances - both were cut short. Tozer's function was merely to act as a deputy and so not much could be expected of his administration. Only Macalister proved a real failure - he claimed to be liberal but was nothing. His personal ambitions consumed his capacity to govern and direct the progress of Queensland.

The majority of the lawyer-leaders were liberal, of a sort. Only Herbert was labelled conservative. These terms of course were not mutually exclusive, and especially in the first decade there was often little to distinguish the two. Added to this was Macalister's own personal brand of liberalism for convenience, and so the picture was further blurred. In the early period, the terms 'conservative' and 'liberal' referred more conveniently to the vested interests being

supported thereby, (although even here the divisions were by no means clearcut). The squatters were conveniently identified as conservative, and Herbert found in them, and wealthy towns-people, the most reliable support. However by the seventies, the pattern was changing, and the liberals came more to represent support of ideas of social and economic amelioration for underprivileged groups. During the seventies and eighties, Lilley and Griffith were in the forefront as spokesmen for these ideas. By the nineties, the liberal concept was still dominant, but there was a merger with conservative interests (still largely representing squatters, plantation owners, and big business) so that the concept of social and economic progress was tempered by the limitation that such progress must be orderly and controlled. Griffith, Byrnes and Tozer were prominent exponents of that concept in that period.

It was noteworthy that lawyers leading the House generally chose lawyers to help them with the task of administration, although they were by no means exclusively chosen. It is perhaps coincidental that the least successful of all the lawyer-leaders tended to avoid calling upon his legal brothers to help him.

The lawyer's initiative in politics was not confined wholly to leading the colony. Many lawyers served as Ministers of the Crown, where, again, they showed a dominant concern with the development of the colony. They were a natural choice for

the position of Attorney-General.[48] However lawyers often also filled the office of Secretary for Public Lands, Postmaster-General, and Secretary for Public Instruction. As well as serving the Government, lawyers were prominent as back benchers, as the independent member, in Opposition. Overall, the role of the legal fraternity in Queensland's political history was very prominent.

Griffith, when he was not leader of the House, still played a leading role in political life.[49] He first entered Parliament in 1872 and stayed there over twenty years. Almost immediately he began to make a name for himself; in 1872 he introduced legislation authorising the use of telegraph to transmit legal process; in 1873 he set about more legal reform, simplifying equity procedure; in 1874 he introduced an Insolvency Act. Such activity as a private member soon brought him to the notice of Macalister who offered him the office of Attorney-General.

As a lawyer, his interest in legal reform was understandable. The Judicature Act was piloted by Griffith - and he attended to other improvements in the law eg. amendments to Oaths Act, criminal practice and Juror's Act. But his interests were not only legal - like Lilley, he was greatly interested in the education of the nation, and he had enacted the 1875 Education Act. He became the first Secretary for Public Instruction - in 1876, and saw to the implementation

48. Present day Governments do not seem to find it necessary to have the office of Attorney-General filled by a lawyer.
49. Details of Griffith's political life are to be found in many sources, eg. Pugh's Queensland Almanacs of various years; Queensland 1900, (Brisbane: W.H. Wendt & Co., 1900), biographies section; anon., Australian Representative Men, (Melbourne: Wells and Leavitt, c. 1888).

of the Act creating a free compulsory and secular system of education in Queensland. Griffith also was greatly concerned in local government affairs, and pioneered a comprehensive Act in 1878 controlling the creation and functioning of municipal bodies.[50] For a while, Thorn headed the government, mainly by reason of his seniority. He was not a very forceful leader, and in many ways Griffith was the real power behind him.

When McIlwraith came to power in 1879, Griffith took over control of the Opposition. He was very effective in that role, harrassing the Government on a number of occasions and in particular over the Steel Rails business. The matter was finally referred to a Royal Commission in London, and, although the charges against the government were not upheld, Griffith returned to Brisbane a popular hero - a large crowd dragged his barouche back to New Farm. Griffith also attacked McIlwraith over his transcontinental land-grant railway scheme and the importation of coolie labour from India for the benefit of plantation owners. Such an active and hard-hitting Opposition ensured that the Government acted properly and governed soundly. de Satge a politician of the sixties and seventies, although not in sympathy with Griffith, praised him for his political activity in watching that the statesmanship of McIlwraith was not too broad.[51]

Griffith led the Opposition again in 1888-1890. He secured the enactment of a very important legal measure, the Defamation Act of 1889 wherein the law of libel was codified.

50. Consideration of the lawyer and education and the lawyer and local government will be given within.
51. O. de Satge, Pages from the Journal of a Queensland Squatter, (London: Hurst & Blackett, Limited, 1901), p.247.

That move was in advance of legislation in other British dominions, and was later followed by Tasmania.

Griffith's performance in politics was outstanding. He was active as leader, as Minister, in the Opposition and as a private member. As a tactician he was expert - although in McIlwraith he had a very worthy rival. He could easily outwit most of his opponents in the House - he had great faith in his own ability, that he could do anything better than anyone else.[52] His quick grasp of facts, his logical thinking and his incisive approach to a problem allowed him to take command in a debate and direct the argument to his own ends. So he was easily able to dominate the House, against any except another superior politician like McIlwraith. As a Parliamentary draftsman, he had no peer.

Lilley was also a very successful politician. Lilley entered Parliament in 1860, beating the influential squatter-choice Daniel Foley Roberts by three votes for the seat of Fortitude Valley. He resigned in 1874. Early he made a name for himself, sniping at Herbert's conservative policies. He strongly attacked Herbert over the Parliamentary Privileges Bill.[53] He criticised its electoral policy. He also introduced measures of his own - to facilitate the introduction of non-asiatic aliens, an important amendment to the Supreme Court Act, a Militia Bill which so incensed a mob at the Valley that Lilley had to make a strategic retreat from a public address he was giving.[54] He stood out for liberal reforms, having become

52. Obituary, The Daily Mail, 10 August, 1920.
53. Telegraph, 26 June, 1879.
54. Brisbane Courier, 3 June, 1862, 19 June, 1862, 25 October, 1892.

president of the Queensland Liberal Association.[55] He opposed state aid to religion, he wanted a national system of education, he was opposed to squatter privileges and wanted them to bear the brunt of taxation. In his policy speech of 1860, he advocated a direct land tax to check monopoly and so that customs duties could be abolished and free trade established. Such ideas on taxation he more clearly formulated in 1870 when he led the Opposition.[56] So Lilley established a reputation as a noisy unruly man in the first Parliament - and it was little wonder that Herbert was somewhat distressed at his rise to popularity and importance. Governor Bowen could well regret that Fortitude Valley had elected that 'small attorney' in preference to his highly respectable friend Roberts.[57]

Because of his growing prominence, Lilley was offered the position of Attorney-General in 1865. Pring's drunken behaviour led to his removal, and the House was not in favour of Herbert's friend Bramston. Lilley said that he was reluctant to join Herbert's Ministry because it would mean a change of principle. Macalister however assured Lilley that Herbert was retiring at the end of the session, of which there were only five days to run. Macalister was then going to take over.[58] As Attorney-General, for Macalister, Lilley devoted himself industriously to improving the state of the law. He helped Cockle work on the consolidation of the Statutes, and had enacted the relevant legislation.

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55. Brisbane Courier, 24 May, 1860.
56. Also see QPD, 1867/8, V, pp.425. ff.
57. Our Paper, 5 September, 1868, p.5.
58. The Courier, 17 November, 1871, reporting case of Lilley-v-Parkinson, Sloman and Kidner.

In 1870 Lilley led the Opposition against Palmer but during the Parliamentary session the Opposition was somewhat in disarray. Lilley did not have a good control over its members. That arose partly through Lilley's apparently inconsistent stand on the question of voting redistribution. But by 1871 Lilley had made the opposition really effective - and apart from a policy of manhood suffrage, he was pressing for great democratic advances including the payment of members and franchise for women.[59] The activity of the Opposition created two deadlocks on electoral matters. Public feeling went out to Lilley as he embraced the cause of the workers and the distressed - he was wildly cheered at a public meeting in 1871 when he proposed pushing ahead plans of development - public works, railways, immigration schemes.

But in July, 1872 he resigned as leader of the Opposition, saying that he felt the Government had done what he wanted and so there was no need for him to lead the Opposition.[60] As a private member, he remained very active - he pushed ahead with his schemes for an education system. Since 1870 he had been fostering a plan for scholarship endowments to Gammar Schools; and in 1873 he did the bulk of the drafting of an Education Bill, which was introduced by Palmer, to establish a University and a comprehensive compulsory school network. Those measures met with no success - until after his retirement from politics.[61] As well as educational reform, Lilley was a

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59. QPD, 1871, XII, p.108.
60. The Courier, 19 July, 1872, 6 August, 1872.
61. Lilley's role in education is discussed within.

keen advocate of legal reform - and secured the enactment of legislation simplifying civil procedure. He was also very concerned in the Reform Commission which resulted in the preparation of the Judicature Act.

Lilley's role as a liberal reformer was interrupted by his accession to the Bench, but on his retirement in 1893 he picked up the political threads. Even as a judge, he continued to show an interest in reforming conditions for workers - at the laying of the foundation stone of the Trades Hall in 1891, he spoke in favour of shorter working hours.[62] He was quite opposed to cheap and to coloured labour, and he believed that a conscientious attempt should be made by all to improve the social and intellectual level of the worker. His hope was to 'see a brave, wise, and resolute band of white native Australians moving on towards nationhood'.[63] The Labour Electoral League of N.S.W. praised Lilley in 1892 for his work to advance democracy; Lilley's response was that he was concerned for the public good, that he hoped for conciliation and the cooperation of capital. At the same time, he did not want to adopt actively any party ties - he was still a judge.[64] Nevertheless at the 1893 elections, Lilley appeared to be associated with the fast-rising Labour Party. He did deny that he had any particular attachments - he put up his own platform.[65]

62. The Brisbane Courier, 6 April, 1891.
63. Hand Bill for Bulimba Elections, 13 April, 1892, 'What Sir Charles Lilley Says'. Also, Courier, 24 August, 1883.
64. Letter, Central Executive Committee of Labour Electoral League in NSW to Lilley, 16 May, 1892, and Lilley's reply, 31 May, 1892.
65. The Telegraph, 14 April, 1893.

Yet he did stand for election with Glassey, a prominent Labour candidate - and was defeated. Fierce antagonisms were aroused in the campaign - placards were displayed: 'Return Lilley and Glassey and the banks will smash'.[66] Perhaps his spirit was crushed by the defeat, because it was said that although he was offered a number of safe seats, including Charters Towers, he declined to follow up the matter.

So Lilley of the Valley retired at last from politics. His name was always associated with liberal, democratic reform. But often his ideas were rejected - they were too much in advance of current thinking. That could be said also of his defeat in 1893. Twenty years had elapsed since his previous essay in Parliament - but even with the passage of time, his policies were too forward looking. At the same time, his stand near the Labour camp was a source of concern and dismay for the great majority of respectable bourgeois people. And he was starting out completely on his own, partly with the idea of the 1870s that politics was mainly a matter of individual convictions and beliefs without party ties, at a time when party concepts were solidifying and when the overall popular conscience felt that the Government party should present itself as a united front against the unknown forces of Labour.

Macalister's years as a politician, rather than as leader, were no more successful, although they were long. He graduated into politics before Queensland's separation, and fought for that cause. He served for over four years as

66. Dalby Herald, 25 August, 1897.

Secretary for Lands and Works in Herbert's first ministry. In land matters, he was none too successful, at least from the point of view of his own supposed principle that squatter power should be curbed. His measures did not in fact help the small farmer, or the newly arrived immigrant as he had hoped - the squatter was able to use them to his own advantage and benefit.[67] Perhaps that was how matters should be in a conservative Herbert government.

Macalister also legislated in local government matters. One Act, to provide for provincial councils, proved to be very unsuccessful - no use was made of this 'crude and ill-thought out Act'.[68] However Macalister did make a name for himself as 'father of the Queensland Railways' by introducing the first railway legislation in 1864. Still, he showed a very personal and petty streak in his opposition to the construction of the railway from Ipswich to Brisbane. His scheme was to make Ipswich the focal centre - so he formulated the principle that the railways should not compete with a waterway, namely the Bremer and Brisbane Rivers between Ipswich and Brisbane.

In 1876, Macalister left Queensland to become its Agent-General in London. Even here he was not very successful. He was implicated in the Steel Rails affairs, suggestions being made that if the Agent-General had done his job properly, the situation allowing the scandal to be created would not have arisen. Griffith, having cross-examined Macalister, commented

67. Our Paper, No. 3, 15 August, 1868, p.13; T.A. Coghlan, Labour and Industry in Australia, (London: Oxford University Press, 1918), pp.984-5.
68. C.A. Bernays, Queensland Politics during Sixty Years, 1859-1919, (Brisbane: Government Printer, c. 1919), p.386.

that 'his answers were so absurd that it is most charitable to suppose that he is imbecilic'.[69] The Report tended to be critical of Macalister's weakness in the whole series of transactions.

His passing from the political scene was somewhat inglorious. Old and feeble in his retirement in 1881, Macalister was the subject of a pension bill in the Queensland Parliament where such charitable statements were made to the effect that, being old and poor, he was no longer a rogue, and so entitled to a pension.[70]

So Macalister's service although long was not very meritorious. It would be rash to assert that all lawyers contributed great and worthwhile efforts to Queensland's development. Some failures were inevitable - but successes outweighed these. During the nineties, a bevy of lawyers strode the political platform. Byrnes served as a Minister for eight years. His fast rise at the Bar and his strong personality brought him to the notice of Griffith, who in 1890 found for him a seat in the Legislative Council and the post of Solicitor-General, Griffith himself being Attorney-General. Later, Byrnes had himself elected to the lower House and served as Attorney-General for McIlwraith, Nelson and in his own Ministry. As Attorney-General, his most important task was the administration of the Peace Preservation Act of 1894, overcoming the industrial strife in the West. The act was described

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69. Letter, Griffith to Julia, 27 April, 1881.
70. QPD, 1881, XXXIV, p.177.

by some as being as harsh and oppressive as the Irish Coercion Act, and its provisions certainly aroused the ire of Labour people. Nevertheless, Byrnes' administration, although firm and resolute, was both fair and successful. His attitude as a lawyer was evident throughout - that it was the Government's duty and responsibility to protect property and the State against the vicious and irresponsible actions of a violent minority of scoundrels.[71] He deplored the fact that intimidation was being used by unionists for example to keep people from serving on juries. So, although he was a person with sympathy for the claims of the worker, his legal training was not prepared to condone means of violence to achieve an improvement in working conditions - the law of the State must be upheld, and he was prepared to use direct action to do so.

His concern for the working man was reflected, rather unusually, in his efforts to suppress gambling in 1895. He was distressed by the growth of that vice - it was one of the worst habits, and in recent years there had been an alarming outbreak of sweeps, lotteries, missing word competitions, counting pills in bottles.[72] So he provided remedies to suppress gambling, excepting legalised art unions, bazaars, raffles and such like for churches, charitable institutions and any eleemosynary. His defeat in the 1896 elections for the seat of North Brisbane was attributed partly to the opposition aroused by the Act.[73] So his intentions of helping the moral standards

71. QPD, 1894, LXXI, pp.480-482.
72. QPD, 1895, LXXIII, pp.160-162.
73. A. St. Ledger, et al., Sketches and Impressions - Thomas Joseph Byrnes, 1860-1898, (Brisbane: Alex Muir & Co., 1902), p.44.

of the community backfired. He did have enacted in 1894 a friendly societies measure consolidating the law and bringing Queensland up to date in that regard.

Tozer's political efforts might be described as modest. As an early leading citizen of Gympie, he first went to Parliament in 1872. However his real period of activity was from 1888 and in the ensuing decade he served faithfully the interests of his electors of Wide Bay. He took a special interest in mining matters, which naturally received the commendation of Gympie residents. His allegiance was primarily to Griffith, although his personal stand was more conservative than Griffith's. Griffith made him his Colonial Secretary and Minister for Works in 1890 - and he continued as Colonial Secretary for McIlwraith and Nelson. In 1898 he took himself off to London as Agent-General. 'The Courier' considered that as an administrator he was quite capable;[74] and in 1896 he did put on the statute books a Public Service Act improving the organisation of the government offices. As Colonial Secretary, he was associated with legislation regulating social and working conditions - his Factories and Shops Act of 1896 was a beginning, although limited, of the trend towards making concessions to Labour demands for a change in the condition of the labouring class. In 1895, Tozer had attempted to enact legislation to regularize working hours, especially late hours, but the Legislative Council would not consider the matter.[75]

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74. The Courier, 27 March, 1893.
75. Shops Early Closing Bill 1895.

Walter Horatio Wilson was another lawyer who served his country's interests under Griffith's banner. Griffith was impressed by his ability and urged him to stand for the Enoggera seat in the 1883 elections.[76] Wilson declined for medical reasons - so Griffith found him a seat in the Legislative Council, and immediately appointed him to the vacant position of Postmaster-General. He was to serve as Postmaster-General on a number of succeeding occasions - for McIlwraith in 1893, Byrnes and Dickson. For various periods during the 1890s he was a Minister without portfolio - medical and business reasons caused him to refuse actual ministerial responsibilities on those occasions. Still he acted as Attorney-General while Byrnes was overseas for almost one year in 1897, and he again held that office during Dickson's Ministry. He also held the position of Secretary of Public Instruction for McIlwraith in 1893. As Postmaster-General, he was very busy, at a time when the extension of the cable system was under discussion. In addition to those ministerial responsibilities, Wilson was on a number of occasions leader of the Legislative Council, a job which he performed very satisfactorily, securing the passage of a number of important controversial Bills.[77] He was very firm, but also just, and courteous.

Colonel Foxton also contributed much to the development of Queensland when he served as a Minister of the Crown. He began as a country solicitor in the tin centre of Stanthorpe, entering Parliament as the local member in 1883.

76. Queensland 1900, (Brisbane: W.H. Wandt & Co., 1900), biography No. 15.
77. S. Browne, A Journalist's Memories, (Brisbane: Read Press, 1927), p.100.

His appearance was impressive - he was very handsome, dressed nattily, had a disarming cynical chuckle but a genial manner. However, his ability as an administrator went unnoticed until 1896 when Nelson called upon him to accept a ministerial position. He succeeded Barlow as Secretary for Public Lands, and held that office also under Byrnes. He was responsible for the very important Crown Lands Act of 1897. That was a consolidation of a great variety of Acts, concerning the occupation, leasing and alienation of Crown Lands. Some significant changes were made to the tenure of agricultural leases, scrub selections were created and a Land Court constituted. The Act indicated Foxton's familiarity with land matters and details of administration. As Land's Secretary he also made an attack on the rabbit problem with the use of rabbit-proofing fences.

In 1898, Dickson appointed him as Home Secretary, and in that office he displayed a very humanitarian, broadminded spirit such as Griffith had envisaged in the 1880s. Foxton has been described as the father of factory legislation.[78] In 1896, he concerned himself with regulating the conditions of labour of children, and again in 1900 passed legislation regulating closing hours and the employment of females and children.[79]

Foxton thus set rolling a long line of legislation to improve social and industrial conditions. Certainly the ideas were not his originally - they had been voiced often

78. C.A. Bernays, Notes on the Political History of Queensland, 1859-1917, (Brisbane: Government Printer, n.d.), p.48.
79. Factories and Shops Acts of 1896 and 1900.

before. Foxton himself was not a brilliant mind - 'The Courier' considered that he was above average - but his hardworking and methodical manner enabled him to achieve success in the promotion of social welfare and land reforms.[80]

Arthur Rutledge was an early friend of Griffith in the political scene. His political interests slightly antedated his admission to the Bar, when he unsuccessfully contested the North Brisbane seat against Pring. However he was shortly afterwards returned for the seat of Enoggera. He attached himself to Griffith's line, and in 1883 was rewarded with the post of Attorney-General. Much criticism of Rutledge's performance in that capacity was made - it was alleged that he was incompetent as a lawyer and as an administrator.[81] It was certainly true that Rutledge seemed to be caught very much in the shadow of his superior, Griffith. There was no post for Rutledge to hold in the Griffith-McIlwraith coalition, and for six years from 1893, Rutledge retired from the scene. However in 1899 he returned, beating the very strong Labour incumbent, King, for the seat of Maranoa. He again served as Attorney-General, but again with little distinction, apart from the fact that he pushed through Parliament Griffith's Criminal Code. Although he was able to establish himself as a popular election figure - for example at the 1883 and 1888 elections at Charters Towers - his political acumen scarcely warranted such a show of support.[82] His ability lay mainly in his eloquence.

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80. The Courier, 12 October, 1898.
81. eg. QPD, 1883/4, XLI, pp.458, 462; QPD, 1885, XLVII, pp.1032/3.
82. The Brisbane Courier, 9 February, 1917.

Not all the lawyer-politicians of the eighties and nineties supported Griffith or his ideas. Andrew Joseph Thynne was a politician well in the public eye, and a supporter of McIlwraith. He was found a seat in the Legislative Council in 1882, and in McIlwraith and Morehead's ministries commencing 1888 he held the office of Minister of Justice. In subsequent years, he held various positions under McIlwraith and Nelson - Postmaster-General, Secretary for Works and Mines, Secretary for Agriculture and a Minister without portfolio. As Postmaster-General, Thynne figured at a number of conferences arranging for the laying of the Pacific cable. But his worth was most evident in the field of agriculture. He was interested in the aspect of Technical education in agriculture and through his efforts the Gatton Agricultural College was brought into being. He initiated State experimental farms, encouraged the use of specialists in the Department of Agriculture and fostered the publication of a departmental journal on agriculture. Because of such activity, Archbishop Duhig referred to him as the father of Queensland's agricultural and dairying industries, not in the sense of Thynne being the first agriculturalist but as a single individual to contribute most to it.[83] Thynne was also one of Queensland's representatives to the Federation Convention of 1891.[84] Although not a supporter of Griffith, he

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83. J. Duhig, Occasional Addresses, (Australia: Angus & Robertson Limited, 1934), p.118.
84. For Thynne's role then - and a not unimportant one - refer W.R. Johnston, The Role of the Legal Profession in Queensland in the Federation Movement, 1890-1900, (unpublished Master's Qualifying thesis, Department of History, University of Queensland, 1963).

was vitally concerned in reform and the progress of Queensland. That he felt could be better achieved through the forceful means of McIlwraith and his supporters.

The iconoclastic Charles Powers stirred up the parliamentary scene during the early 90s, displaying great independence of spirit and a very ardent reforming zeal. His interests were democratic - he desired electoral reform, and opposed the capitalistic aspects of the land grant railway scheme.[85] Powers probably received most notoriety for his attempts to reform the legal profession, and the jurisdictions of the various courts. The legal profession was blasted as a protected band of robbers, and Powers received much public praise for putting the interests of the community above those of his profession.[86]

Powers was elected to Parliament in 1888 by the people of the Maryborough district, with which he had had associations since 1861. Morehead made him a Minister without portfolio, and later on Postmaster-General and Secretary for Public Instruction. However, he achieved more fame as leader of the Opposition between 1893 and 1896 against Griffith's coalition.[87] He wanted to galvanize the Opposition into effectiveness and sought the cooperation of the Labour Party. In a policy speech at Maryborough in 1895, he put up a programme of betterment and compromise which he hoped would

85. G.E. Loyau, The History of Maryborough and Wide Bay and Burnett Districts, 1850-1895, (Brisbane: Pole, Outridge & Co., 1897), p.245.
86. The Queensland Figaro, 28 September, 1889.
87. T.A. Coghlan, Labour and Industry in Australia, (London: Oxford University Press, 1918), pp.2250-2.

be an effective working basis with Labour.[88] However Labour was not willing to compromise, and Glassey the Labour leader was not prepared to yield to Powers. When Labour proved to be intractable over electoral arrangements in 1896, Powers gave up his political ambitions, and let others fight the battle for progress and democratic reform.

James George Drake was another lawyer who was very interested in reform and progress but not really attached to Griffith and his ideas. Drake was too independent for that. However his ideas were decidedly liberal and democratic. He first approached politics on the Griffith line of land tax and protection in an 1887 by-election, and was unsuccessful. In 1888, he was elected to the seat of Enoggera which he then represented until 1899. In 1893 he took up cudgels against the Coalition Griffith-McIlwraith government, and continued to be active in the Opposition until 1899. Though the Progressive League, the extra-Parliamentary organisation of the Opposition, Drake attempted to form a joint Opposition party with the Labour party, following on Powers' lead.[89] Again no agreement could be reached. So the Independent Opposition led by Drake and Labour went their separate ways, and the effectiveness of the parliamentary Opposition was accordingly reduced. In 1899, there were some suggestions that Drake might go into the Labour cabinet, but they were most likely unfounded. He was finding the job of leading a small enfeebled and divided Opposition a frustrating and unrewarding job, and transferred

88. Brisbane Courier, 30 May, 1895.
89. T.A. Coghlan, Labour and Industry in Australia, (London: Oxford University Press, 1918), pp.2257, 2264.

to the Upper House and the post of Minister for Public Instruction and Postmaster-General for the Philp Government. In the latter office, he carried on very capably with the work of the Pacific Cable scheme and securing the cooperation of the Australian colonies in the venture. However, even before moving in as a Minister, Drake had made his name in political circles. His concern with democratic advancement was evidenced by his '1 man - 1 vote' Elections Bill of 1895 - it was unsuccessful.[90]

Other friends of Griffith accepted Ministerial postings. James Francis Garrick first accepted such a position under Douglas - as Secretary for Public Lands, later as Attorney-General. In 1883, Griffith made him Colonial Treasurer and Postmaster-General, and for some years a Minister without portfolio. In 1884, he became Queensland's Agent-General in London, because of his courtly and diplomatic disposition.[91] Charles Stuart Mein was a University rival of Griffith, and joined him in politics in 1876. He had a seat in the Legislative Council, and under Thorn and Douglas held the office of Postmaster-General. Later, in the Griffith Ministry of 1883, he held the posts of Postmaster-General and Secretary for Public Instruction for short periods before becoming judge. His political sympathies were liberal although with limitations.[92]

Thomas Macdonald-Patterson also stood with Griffith for a while although in the long run his spirit was independent and he chose to follow his own principles and initiative. His

90. Queensland 1900, (Brisbane: W.H. Wendt & Co., 1900), p.159.
91. S. Browne, A Journalist's Memories, (Brisbane: Read Press), (1927), p.78.
92. A.A. Morrison, Some Queensland Postmaster-Generals, (printed pamphlet, Brisbane, 1953).

early activities in Rockhampton were rewarded by his selection as the member for that centre in 1878. However he distinguished himself as a man of principles, and he refused to pander to local interests. He stood for extending main railway lines and not constructing minor branch lines all over the country - 'leech lines' he called them.[93] So Rockhampton rejected him in 1883. Some Mitchell citizens requisitioned him - but he was defeated. Instead Moreton returned him. In 1885 he moved to the Upper House, leading the Government team there as Postmaster-General. He resigned over a difference of principle with Griffith as to land tax.[94] He was chosen as one of Queensland's representatives to the Federation Convention of 1891, partly because of his legal knowledge. In 1896, he was returned as the member for North Brisbane, beating Byrnes. Overall, his positive achievements in politics were not many, but his whole approach was characterised by a practical, realistic, hardheaded attitude which he acquired during his younger years as a businessman.

The only other lawyer to hold a number of ministerial positions was the solicitor John Malbon Thompson. He sided with the squatter camps of Palmer and McIlwraith, being Secretary for Public Lands for the former, and, for a short while, Minister for Justice for the latter. In the first position, he was active, with a number of measures for the alienation of land. His reforming spirit, as displayed in his

93. Queensland 1900, (Brisbane: W.H. Wendt & Co., 1900), p.170.
94. Telegraph, 22 March, 1906.

attempts to amalgamate the two branches of the legal profession, continued in the matter of electoral reform. The Elections Act of 1872 modernised the law, providing a reorganisation of the system of registeration and checking abuses.

Seven lawyers served in ministries only as Attorneys-General. The most prominent of those was Ratcliffe Pring, Queensland's first and perhaps most stormy Attorney-General. He had an independent spirit and a very forceful personality - so he frequently clashed with cabinet colleagues and foes, such as Herbert, Lilley and Griffith. He also exerted a strong popular sway and commanded much attention. As Attorney-General, he saw service under Herbert, Mackenzie, Lilley and McIlwraith. As a cabinet member he was more consultative than he was active.[95] He was a very industrious and capable Attorney-General.[96] He worked as hard as Lilley, his arch-rival, and produced Queensland's first consolidated Statutes. However his impetuous, hot-headed nature and a fiery tongue, often sharpened by excessive liquor, assured him many disputes which did not enhance his standing. His first conflict was with Judge Lutwyche, himself a fiery man. Pring's role there was played in the course of duty - for the Government - and it culminated in the heavy handed prosecution of Pugh, editor of the 'Courier'. His drunken behaviour in 1865 led to a dispute with Herbert, and Pring's resignation. Pring had previously been proving difficult to work with in cabinet, for a time refusing to attend because of the dissension there.[97]

95. Our Paper, No. 2, 8 August, 1868, p.7.
96. The Courier, 27 March, 1885; Figaro, 19 September, 1885.
97. Our Paper, op. cit.

In 1871 an attempt was made to force him to resign his seat on the ground that he was holding an office of profit disqualifying him from sitting as a member of Parliament. A Committee found that Pring did not have to resign.[98] However, within one year, Pring had created a real scene in Parliament - being drunk, insulting members (referring to some as 'sugee (sic) squatters', or 'dirty wretches'), and attempting to assault one member. The scene culminated in his arrest for contempt of Parliament.[99] He was strongly denounced for his behaviour by Lilley, disqualifying him from belonging to the Liberal party. Pring denied that Lilley could do that - Lilley said that he would resign as leader of the Opposition if Pring was elected in the coming elections. As it happened, Pring was defeated, the public disapproving of his unparliamentary conduct.

His clash with Griffith arose over the fact that Pring claimed Griffith had offered him the position of Solicitor-General when it was created. Griffith denied that, and Pring retaliated with evidence impugning Griffith's probity.[100] There the matter rested - Pring never received any post from Griffith, but McIlwraith did find him a judgeship.

Pring did have an opportunity of becoming premier in 1866. After Herbert's retirement, Pring led the Opposition against Macalister, and on Macalister's fall, Pring could have taken over. However, in resubmitting himself to the electorate, he was defeated. He continued to lead the Opposition against

98. QPD, 1871, XII, pp.29, 76, 82, 86; Brisbane Courier, 14 April, 1871; Report of Committee of Elections and Qualifications, V.&P., 1871, p.225.
99. The Courier, 10 January, 1872, 20 January, 1872, 27 January, 1872, 1 February, 1872.
100. QPD, 1879, XXIX, pp.62/3, QPD, 1881, XXXV, p.691.

Macalister in 1867 - but did not again have the opportunity of leading the country. His fiery nature stood against his chances of being a leader, and, although he was good in the technical field of being Attorney-General, he was not easy to work with. His efforts as Attorney-General were commendable, but his overall efforts as a politician were not.

John Bramston, Herbert's close friend, was nominated to the Legislative Council in 1863, and Herbert appointed him as a Minister without portfolio. For a few days, he was Attorney-General in 1865, but the House was not happy about the arrangement. Herbert considered that Bramston was unpopular because he was a gentleman.[101] Herbert in fact was full of praise for Bramston's political ability in his Ministry - he 'had managed their Lordships with tact and ability'.[102]

Bramston again made ministerial rank between 1870 and 1874 - as Attorney-General for Palmer. His unpopularity again made his task difficult - it was some months before a seat could be found willing to accept him. There were some charges - although rather one-sided - that he was not a very competent Attorney-General.[103]

The remainder of the Attorneys-General during the colonial period were undistinguished. They filled the office mainly because a lawyer (preferably a barrister) was needed and they were available at the time. The Irish-catholic Edward

101. Letter, Herbert to mamma, 18 July, 1863, Copy letters of R.G.W. Herbert.
102. Ibid, 15 September, 1863.
103. QPD, 1870, XI, pp.276-9.

O'Donnell McDevitt was a member of Parliament for eight years, and for some eight months in 1874 served as Attorney-General for Macalister. He worked for the cause of Northern separation.

McIlwraith's first Ministry engaged five different Attorneys-General during its existence, including Henry Rogers Beor for six months in 1880, and Pope Alexander Cooper for two years. Cooper did not enjoy his political interlude - he became bored with its feverish activities and idle talk, and happily removed himself to a seat on the Bench.[104] Charles Edward Chubb also offered his services to McIlwraith - for ten months in 1883. He enjoyed the political climate - he was a good debater, had a whimsical sense of humour and a pleasant disposition.[105] He was able to get his way by short, reasonable persuasion. Those McIlwraith supporters were fortunate that their leader could easily find a seat for them.

One lawyer clearly identified himself with Labour policies - Charles Borromeo Fitzgerald, son of the prominent northern sugar-planter and politician, Tom Fitzgerald. A journal of the day labelled his principles as Labour and broadly democratic.[106] He first stood for Mitchell in 1893, but was not successful until the 1896 elections. He had the honour to be the first Labour Attorney-General, for seven days in 1899, but he did not have time to show his capabilities.

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104. Queensland Trustees Quarterly Review, March, 1949, p.21.
105. S. Browne, A Journalist's Memories, (Brisbane: Read Press, 1927), p.83.
106. Progress, 22 April, 1899.

Apart from the above twenty-three lawyers who served the colony some using their general ability to lead the government or administer various services for the community, others calling solely upon their legal background to administer the Attorney-General's Department, there were many lawyers active in political life, although as backbenchers and otherwise.

Beginning with the first Parliament, Daniel Foley Roberts played a prominent role as Chairman of Committees, which he continued to do very competently until his death. His attachments were conservative - he was a great friend of Governor Bowen and Mr. Herbert. When Lilley beat him for the seat of Fortitude Valley in 1860, he was nominated into the Legislative Council. Charles William Blakeney was also a member of the first Parliament, for the Brisbane seat. His political philosophy was described as 'radical' - he wanted liberal land laws, the repeal of tea and sugar duties, a moderate stamp duty on Bills of Exchange, mortgages and other such instruments so that the unmarried class would bear a fair share of taxation - a somewhat unusual aspect of radicalism.[107] And he pressed strenuously for triennial parliaments in the early sixties.

Eyles Irwin Caulfield Browne spent a long period as a Legislative Councillor. He was not very active, and did not readily follow party ties although his progressive, conservative philosophy somewhat coincided with McIlwraith's views for whom he had much respect.[108] Peter Macpherson was another supporter

107. Queensland 1900, (Brisbane: W.H. Wendt & Co., 1900), p.122.
108. S. Browne, A Journalist's Memories, (Brisbane: Read Press, 1927), p.98.

of McIlwraith, who nominated him to the Legislative Council in 1881. His services were called upon to draft legislation, and he took much interest in changes in the law of trustees and infants. As a sound, solid lawyer, he was taken into the confidence of many Ministers.[109] Rees Rutland Jones also flew the McIlwraith banner. Since 1864 he had taken a prominent part in Rockhampton affairs, pressing for the development of that city and Central Queensland. In 1888, he was elected to the seat of Rockhampton North and continued to act in that interest. Frederick Augustus Cooper was another McIlwraith supporter. He entered Parliament in 1879 as one of the members for Cook, and stood again in 1883 in a four-cornered contest. He was unseated when certain irregularities in voting were established, although it was not indicated that Cooper was in any way responsible.

A protégé of Griffith, Joshua Thomas Bell, strode the political platform in 1893. He represented the electorate of Dalby, taking over from his well-known father Sir Joshua Peter Bell. As a speaker he was very polished and eloquent. However, up until 1901, his role in politics was not very active. His pastoral ties perhaps predetermined his interest in land law, and he was a member of the Royal Commission on Land Settlement in 1897, where he did give worthwhile assistance in preparing the 1897 Land Act.[110]

One lawyer achieved notoriety as a politician, although not for his political achievements. John Killeen

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109. Ibid, p.96.
110. The Courier, 1 April, 1907.

Handy beat Bramston for the seat of Mitchell in 1870 - Bramston sought to have him removed, because he had been a Roman Catholic priest ten years previously.[111] A Select Committee of Parliament dismissed Bramston's petition. However, a heated situation was developing. There was a certain amount of ill-feeling developing among Roman Catholics towards Handy, who had become an Anglican. In 1873, charges were made against his character - that he was a political turncoat, an opportunist, the religious charges were revived, MacDevitt alleging that Handy had been a disgraced priest in California; he was also accused of professional misconduct as a barrister. Another Select Committee investigated the charges, and again issued a Report which on the whole cleared Handy, although not wholly so.[112] It deplored the fact that some members had thought so poorly about Handy for so long without doing anything about it.

If Handy's political career was tinged with an element of discredit, there were some lawyers who made no visible mark on the work of Parliament, even though they were members - Gore Jones, for Mitchell in 1865; Murphy, for Cook in 1876; Swanwick, for Bulimba in 1879; Amhurst, for Mackay in 1879; and Fowles, for Clermont in 1879. Charles Sydney Dick - Melbourne played an inconspicuous part in the Legislative Council during the 1870s. Edward Henry Macartney was elected to seat of Toowong in 1900, but did not flower until after 1901,

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111. V.&P., 1870, p.243.
112. Select Committee on charges against the Character of J.K. Handy, V.&P., 1873, pp.159 ff.

when his liberal and progressive, although decidedly anti-socialist, policies were strongly voiced.[113]

In 1893, John James Kingsbury was elected to the Assembly, as an ardent Griffith supporter. At that stage, he had not been admitted to the Bar - he was still training for it, having previously been a successful businessman after starting from scratch selling sewing machines.[114] Great hopes were pinned on Kingsbury as becoming a new political light - but they were not fulfilled. Henry Edward King saw thirteen years of active political service - although that was before his admission to the Bar.

There were also a number of lawyers with frustrated political ambitions, who had appealed to the community and been rejected. William Pritchard Morgan tried for Cooktown, but lost to F.A. Cooper who was backed by the powerful northern figure Macrossan. In the 1890s, Appel tried as an Independent Democrat for Nundah. Thomas O'Sullivan presented himself with Labour ties to the voters of Stanley and lost. Alexander Costello tried to coax the electors of Charters Towers to vote Labour. Edward John Sydes also tried to woo the fickle public. St. Ledger associated himself with Lilley and Labour in the 1893 elections.

Apart from those who failed to gain parliamentary office, there were some who refused to serve in the political field. Graham Lloyd Hart was offered a seat in the Legislative Council, but declined.[115]

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113. Courier, 22 March, 1907.
114. E. Foreman, The History and Adventures of a Queensland Pioneer, (Brisbane: Exchange Printing Co., 1928), p.113.
115. Courier, 25 October, 1897.

A total of thirty-nine lawyers participated directly in the Queensland Parliament between 1859 and 1901, and twenty-three of those held at least one Ministerial position. Apart from the position of Attorney-General which was reserved for a barrister, the honours were equally divided between barristers and solicitors. Solicitors on occasions did head the Crown Law Department, but as Minister for Justice, not as Attorney-General.

Since, so many of the lawyers did occupy a ministerial rank, it was not surprising that they made such an important contribution to the development of Queensland. They were able to occupy front-rank positions in planning and carrying out schemes to advance Queensland. The interest of the lawyers in Queensland's progress was associated with a number of factors. That they could often make a profit out of their parliamentary contacts had already been alluded to. At the same time, it was also true that some barristers, especially leading barristers, such as Byrnes, suffered a definite fall of income in entering politics.[116] So monetary gain, or the possibility of same, was not the only consideration. It was perhaps more convenient for a Brisbane lawyer, than for any other professional or working man, to combine political duties with business, calling in on Parliament in the late afternoon and at night. But there was more to it. The relationship between law and politics has been long standing - and so Queensland lawyers felt the same need to

116. A. St. Ledger, et al., Sketches and Impressions - Thomas Joseph Byrnes (1860-1898), (Brisbane: Alex Muir & Co., 1902), pp.45/6.

help arrange the affairs of State. Their legal training made them probably more competent than any other occupational group to prepare the rules and regulations directing the life of the community. But their role in Queensland was something more than maintaining the status quo.

Practically all of them were very enthusiastic with plans to develop Queensland's potential - and a majority of these were influenced by some degree of liberalism. Their political philosophies of course were not unified - and no two lawyers agreed wholeheartedly on the scheme to adopt for the advance of the colony and its citizens. Still, a considerable number of them followed at least in part the liberal line of development, beginning with Lilley in the 1860s, more definitely elaborated by Griffith in the 1880s and defended by Byrnes in the late nineties. Lilley formed a Queensland Liberal Association in 1859.[117] But it expired because the spirit of independence rather than the spirit of party loyalty predominated at that stage. Similar attempts to organize a Liberal party and a Queensland Reform Association were made in July and August, 1870. Griffith did most of the drafting of the constitution.[118] Nevertheless, the party spirit still was not strong - Macalister, nominally a Liberal, professed that he did not want a formal organisation but merely a body to collect funds. Those attempts to organize an actual

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117. Brisbane Courier, 24 May, 1860.
118. Queensland Express, 30 July, 1870; A.A. Morrison, Colonial Society 1860-1890 - Queensland, (roneoed typescript), n.p.

Liberal party embracing liberal ideas failed but they did indicate that from the beginning Lilley and Griffith were ardent leaders in the cause of liberal reform.

The liberal policies of Griffith were fully matched by the more conservative, although progressive policies of McIlwraith. Sir Charles Dilke, the noted British statesman, saw Queensland politics in the 1880s as a great struggle between these two.[119] Griffith's policies had many critics. Supporters of McIlwraith were critical of Griffith's land laws, his local government laws, financial policies, and his handling of the strike situation in the 1890s.[120] Finch-Hatton considered that Griffith was retarding progress, and lowering parliamentary standards, although he did not show how.[121] A cabman was recorded as saying: "It's Parlimint that's ruining us, sir; if we could give Sir Sam'l ten year's hard, things would get evener again. You see, he's always got some fad, and cracks things up, and we puts our bloomin' quids into it; and there you are! --- I ain't sayin' that it's all Sir Sam'l's fault. But it's his fault in the main ---".[122] However Griffith's policies of the 1880s continued to set the political tone of the 1890s, and for that reason his contribution, although the subject of much criticism, was of greater and more permanent significance than was McIlwraith's. In the long run, the difference between those two great leaders was not great -

119. Sir C.W. Dilke, Problems of Greater Britain, (London: Macmillan and Co., 1890), pp.200-210.
120. M.M. Bennett, Christison of Lammermoor, (London: Alston Rivers Ltd., n.d.), pp.138, 139, 172, 193, 212.
121. H. Finch-Hatton, Advance Australia! (London: W.H. Allen & Co., 1886), p.267.
122. G. Parker, Round the Compass in Australia, (London: Hutchinson & Co., 1892), p.221.

it was mainly a matter of degree. Griffith was a progressive liberal - but still within the capitalist framework. He certainly was not prepared to accede to the full democratic and liberal demands of Labour, but he did respect Labour wishes and made certain concessions to ameliorate conditions of life for the inhabitants of the colony. Davitt, an Irishman of Labour leanings, took a look at Queensland in the late nineties - he observed that 'the Macalisters and Herberts, the McIlwraiths and Griffiths of their time were opponents for office, but not on very conflicting fundamental questions'.[123] They were really pro-capitalist - the only real differences in political principles had arisen with the opposition of Labour.

So the liberalism of Griffith and his followers was limited in scope - as indicated earlier Lilley did go further in the direction of Labour principles although his policies did maintain an independence from absorption within the body of Labour doctrine. In spite of its limitations, the liberal political spirit did make significant contributions to the life of the Queensland community. To the lawyers of Queensland went the credit that some of them concerned themselves in plans to develop Queensland - and to some of those lawyers in politics went the further credit that they helped foster and encourage liberal ideas of development. Their association with a liberal philosophy was partly associated with the fact of their being lawyers, since lawyers were amongst the best educated section of the community, and so most had come into contact with the ideas of liberalism then circulating in England and Europe.

123. M. Davitt, Life and Progress in Australasia, (London: Methuen & Co., 1898), p.254.

Quite a number had also travelled abroad, and extended their visions on the future of Queensland. Furthermore, having made a success of their profession, they were endowed with an ability to plan and undertake administrative tasks.

Some lawyers played a very significant part in certain of the political and social developments of Queensland between 1859-1901 - in the fields of federation, education, social welfare, municipal development, land settlement.

Of all occupational groups, the lawyers were probably the most active in the movement to bring about the federation of the six colonies of Australia. I do not intend repeating or summarising the work I have already done on that topic, but refer you to my unpublished thesis.[124] Suffice it to say that Griffith was the central figure, beginning with the Federal Council of Australasia negotiations in 1880. His work at the 1891 Convention was outstanding. At the same time many other lawyers were involved in the movement, and especially in the referendum campaign of 1899. The number of lawyers who opposed the scheme of federation, either actively or indirectly, was very few.

Associated with the federation plan was the demand for separation of parts of Queensland, mainly the North and Central Queensland. Again, lawyers like Miskin, d'Arcy, Jones and Macdonald-Paterson urged the demands of local interests that

124. W.R. Johnston, The Role of the Legal Profession in Queensland in the Federation Movement, 1890-1900, (unpublished Master's Qualifying thesis, Department of History and Political Science, University of Queensland, 1963).

separation be granted. Griffith put up a federal compromise scheme to appease the conflicting interests - but the whole issue subsided as the federation of Australia movement moved towards success.

That lawyers did take a special interest in the matters of federation and separation was not unusual, since the issues involved certain technical points of constitutional law, which gave the lawyer a natural advantage over any other group.

In the field of education reform, lawyers took a leading part shaping educational development in the liberal democratic direction earlier mentioned. Again the names of Lilley and Griffith stood foremost.

The influence of lawyers in educational advance fell into three main departments - the founding of an education system in the 1860s, the establishment of State control and direction in the 1870s, and the demand for a University and higher education.

In the 1860s, the opinions of lawyers on educational needs were not harmonious, but the most influential section favoured a denominational system. The strength of the religious conscience of some of the leading lawyers determined that trend. Herbert, Bramston and Blakeney were stalwart Anglicans, and supported Bishop Tufnell's plans of State aid for religious schools. Herbert, and with him Pring, had to

promote 'the national system of education',[125] but, so far as Herbert was concerned the needs of that system were fulfilled so long as the State had ultimate control. Macalister also agreed with that approach, and played an active part in the Board of General Education.

The opposition to that system was early formulated by Lilley, who disclaimed any sectarian ties - he told a Presbyterian minister that he found the lines within church bodies too narrow.[126] He opposed the denominational system, considering that the State should be solely responsible for education and should not aid religious schools.[127] In the early years of the colony, however, his policies were not much heeded - for example when he called for a Commission to investigate problems of education in 1863. So the influence of the churches in education was felt during the first decade with the blessing of some of Queensland's leading lawyers.

Lilley's turn came in the 1870s, and he was ably supported by Griffith and Mein. An Education Bill, largely the work of Lilley, was introduced by Palmer in 1873 but defeated. Yet popular feeling was growing strongly in favour of the State system proposed by Lilley - he addressed a Brisbane meeting of about one thousand people on the topic. As Lilley was moving out of the political scene, Griffith took over his stand. He agreed to go into Macalister's Ministry

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125. Guardian, 14 April, 1860.
126. Guardian, 28 April, 1860; Telegraph, 23 August, 1897.
127. V.&P., 1862, pp.111-2; V.&P., 1863, p.142; Brisbane Courier, 22 September, 1862.

only if he were given a free hand in education.[128] Some of the leading opposition to the proposed changes came from Macalister and the Roman Catholic MacDevitt (when Attorney-General) who wanted to perpetuate the scheme of State aid. Macalister claimed that the religious schools were helping to provide the most economical mode of conveying instruction to the young of Queensland.[129]

Griffith's Education Bill of 1874 was rejected by the Legislative Council, but as a concession a Royal Commission was appointed. Lilley was its chairman, and Griffith and Mein were members. Griffith was responsible for most of the arrangements concerning the holding of the Commission. As it happened, seven of the nine members were known to be against State aid, so it was not surprising that its findings were for secular education.[130] 'The Courier' assessed that popular feeling was for Griffith and his Commission's findings.[131]

Griffith followed up the success of the Commission with the Education Act of 1875 which established Queensland's system of free, compulsory and secular education. That move was hailed by many sections of the community as a great liberal and democratic step forward.[132] It also represented a triumph for erastianism and nonconformism. Macalister reversed his opinion on the issue. Popular feeling had mounted during

128. Queensland 1900, (Brisbane: W.H. Wendt & Co., 1900), p.147. Note Griffith's comments, The Brisbane Courier, 4 August, 1874.
129. QPD, 1874, XVI, p.501.
130. Report of Royal Commission on Educational Institutions of Colony, V.&P., 1875, II, pp.88-432.
131. The Brisbane Courier, 1 August, 1874, 4 August, 1874.
132. The Brisbane Courier, 9 September, 1875.

the whole course of the debate. People outside the political arena also participated - like solicitor William Bell, with evangelist sympathies, who contributed articles to the press on free, compulsory and secular education.[133]

Griffith was rewarded for his work in the issue by becoming the first Secretary for Public Instruction. To fulfil that duty he studied the systems of Victoria and of New South Wales before finalising administrative arrangements for Queensland. The solution, although in favour of the State, was not a complete answer in the eyes of some people, and on occasions fresh demands arose to press for religious interests in the field of education. Included among those was Tozer, the Anglican lawyer of Gympie - he pressed for the inclusion of religious instruction in the school course.[134] Roman Catholic Byrnes, at St. Mary's Cathedral, Sydney in 1895, spoke in favour of religious claims for State aid to Roman Catholic Schools - their cause was founded on justice and righteousness which in the end must win.[135] He also sought a more liberal approach with regard to the holding of scholarships at any school.[136] When he became Premier, Byrnes dropped the advocacy of the catholic cause, adopting the politic approach that the duty he owed was to serve the best interests of the country as a whole.[137] So the liberal-nonconformist approach as espoused by Lilley and Griffith,

133. Pugh's Queensland Almanac, 1894, Section: Men of the Time.
134. QPD, 1889, LVII, pp.923-4.
135. Courier, 8 January, 1895.
136. QPD, 1896, LXXVI, p.1597.
137. Courier, 21 April, 1898.

that the State was primarily responsible for the provision of a system of education which should be free of sectarian involvement, maintained its stand even though assailed by religious interests which were sometimes supported by leading lawyers in the political world. The spirit of State power was too firmly entrenched.

The interest of lawyers in the establishment of a University in Queensland dated back to the 1870s. That arose partly because it was hoped that a University could provide better facilities for the study of law. Lilley's name again figured in the forefront. In 1870 he arranged, through Herbert then in London, for the recognition by the University of London of examinations conducted in Queensland at matriculation standard.[138] At the same time, he contemplated the establishment of a University - the problem was expense. Macalister's Election Act 1870-1 looked to the days of a University, providing for its own special representation. At the Education Royal Commission, Lilley pressed for the immediate establishment of a University. Griffith opposed him, saying that the idea was too premature, although he himself in 1877 began a legislative move in the same direction.[139]

The matter was resumed in the late 80s - in 1887 and 1889, Mein, Lilley and Griffith were associated with various public meetings and petitions asking for tertiary education in Queensland. Lilley for instance suggested the site of

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138. The University Act 1870; QPD, 1870, vol. II, p.172.
139. QPD, 1875, XVIII, p.530.

Government House for the institution.[140] Griffith pleaded very eloquently for the appointment of a Royal Commission, and one was duly appointed. Lilley was made Chairman - and six other lawyers were members: Griffith, Byrnes, Thynne, Real, Powers, Woolcock. The Report was favourable for a University. Lilley went so far as to propose that it be free, but Griffith opposed him on that point. Griffith, even in the 1874 Commission, considered that the principle of democracy through free education did not extend beyond the primary school level. The Report of the Commission, however, did not achieve any immediate practical results - there was a depression to contend with, and most of the thinking of McIlwraith's camp did not endorse the liberal views of the Commissioners, and especially of Lilley.

As the 1890s progressed, the University issue spread beyond the walls of Parliament House. A University Extension Scheme, with a system of public lectures, caught the minds of some groups in the community. And a number of lawyers helped to encourage the spread of the idea. Griffith gave lectures. G.W. Power, who himself had been a brilliant scholar at the University of Melbourne in the 1880s, was one of the founders, and very enthusiastic of the scheme.[141] Littleton Ernest Groom, another brilliant student at the University of Melbourne, was also instrumental in helping to found the scheme, and

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140. The Queenslander, 29 June, 1889. Note also, re Griffith, QPD, 1888, LV, p.646; QPD, 1889, LVII, p.825; QPD, 1889, LVIII, p.1062.
141. Courier, 17 May, 1907.

assisted by giving lectures in constitutional law.[142] Another cultured scholar, John Laskey Woolcock, sought to arouse public interest in the issue, for example, convening a public meeting on the matter in 1893.[143]

The question did arouse greater public interest during the 1890s. A deputation called upon Premier Byrnes in 1898. He was convinced of the desirability of having a University, or perhaps a University College in Brisbane with southern ties, and took steps to put such ideas into effect.[144] His early death cut short the move. Still by 1900, important moves had been made along the road to establishing a University, and in those moves, a number of lawyers took a leading interest.

Apart from tertiary education, an important advance was made in the field of technical education. Lawyer Thynne was mainly responsible for the establishment of the State Agricultural College at Gatton in 1897.

The influence of lawyers upon education, as indicated above, was mainly at a political level. But lawyers also concerned themselves more individually with the furtherance of education, for example in the direction and control of secondary schools (or more particularly the private grammar schools). The ubiquitous Lilley again figured. He was very instrumental in

142. Darling Downs Centenary Souvenir, 1840-1940, (Toowoomba: 1940), p.51.
143. H. Bryan, "The Establishment of the University of Queensland", The History Society of Queensland (Inc.) Ltd. Journal, IV, No. 5 (December, 1952), pp.637-661.
144. E.R. Wyeth, Education of Queensland, (Melbourne: Australian Council for Educational Research, n.d.), p.153.

the establishment of Brisbane Grammar School and for a long while was a trustee of the school. He encouraged proficiency and excellence on the part of students through the award of Lilley medals. Chief Justice Cockle, a mathematician of note, awarded a prize for mathematics students. He too was a trustee of Brisbane Grammar School, as was Griffith for over thirty years. Woolcock and Mein also took an interest in that school. Mein in fact was nominally in charge of the school for some time in the 1870s as locum tenens until a new headmaster could be appointed. It was reported that he visited the school only occasionally and conditions unfortunately became rather riotous.[145]

Ipswich Grammar School received the patronage of Macalister and Pollett Loftus Cardew. Macalister's interest in education extended back at least as early as 1853 when moves were under way for the establishment of a National School there.[146] Edwin Norris, an early lawyer of Townsville, was one of the first trustees of the Townsville Grammar School.[147] Rees Jones took an interest in the development of Rockhampton Grammar School.

Another avenue of education in the nineteenth century was the establishment and functioning of Schools of Arts. They were created mainly for the benefit and the edification of adults, many of whom had not received a very adequate education as children but were concerned with self improvement. Again

145. A. Francis, Then and Now: the Story of a Queenslander, (London: Chapman & Hall Ltd., 1935), p.34.
146. E.R. Wyeth, op. cit., p.75.
147. W.F. Morrison, The Aldine History of Queensland, Vol. 2, (Sydney: the Aldine Publishing Company, 1888), biography 19.

lawyers helped in that effort to raise the intellectual level of the mass of the people. Mein was active in the Brisbane School of Arts - similarly Griffith. Lutwyche and Lilley at various times served as President. They helped out in its work with lectures - Lilley gave a public reading of the 'Ancient Mariner' with great effect, Pope Cooper lectured on Robert Browning.[148]

In the 1860s Lilley had urged the Government to form a free public library. Various moves were made - and in 1895 a definite beginning was made with the appointment of a committee consisting of lawyers Lilley, Griffith, Woolcock and others. They recommended that Judge Harding's three thousand book library be purchased to start the library - and the government complied.

In Ipswich, J.M. Thompson was for a period President of the School of Arts. Charles Frederick Chubb, a man of great culture and refinement, who helped to have Ipswich named as 'the modern Athens of Queensland', was active on the School of Arts, and also arranged elocution classes for the locals. Edwin Norris of Townsville, Horace Tozer of Gympie, and Henry Boyle of Rockhampton were other lawyers who encouraged activity by Schools of Arts.

Other lawyers encouraged intellectual and educational activity on a more personal basis. Judge Cockle was greatly interested in philosophy, astronomy and mathematics.[149] He

148. Moreton Bay Courier, 19 November, 1860, 20 April, 1861.
149. The Queenslander, 23 October, 1930, p.59. Idle Moments, June, 1947, p.15.

fostered the creation of the Queensland Philosophical Society, of which he became president. As a mathematician he wrote over eighty papers, dealing in particular with differential equations. The Norrises, father and son, of Townsville, encouraged scientific endeavour. Edwin, as a student of astronomy, purchased a large telescope to observe the heavens from an observatory he built on the Strand. Charles was interested in meteorology, visiting stations in Australia and Mauritius and publishing regular reports.[150] John William Potts found time in 1885 to leave his conveyancing practice and organize and lead an expedition to New Guinea in the schooner 'Elsea'. 'The Courier' considered that it was the most successful expedition since Dr. Alberti's.[151] In such a manner did the lawyer contribute to scientific research in early Queensland.

For Lilley, the ultimate goal was education for all. Only the well-educated person could function fully as a responsible political being - so his desire of free education for all. But the schools could not reach all - and by the 1890s, Schools of Arts were becoming the domains of trivia for a few respectable middle class. Lilley envisaged the Trades Hall as a great educational institution - a Parliament for workers.[152] Barrister St. Ledger agreed with him. If democracy was to function properly, the working man had to be elevated intellectually. But Lilley's ideas on education were

150. W.F. Morrison, op. cit.
151. Ibid, biography 239.
152. The Brisbane Courier, 6 April, 1891.

probably the most extreme and idealistic then current. For most, a lesser measure of education was both necessary and sufficient; and as indicated above, lawyers were most prominent in the demand for education advance.

For some lawyers, their interest in education stemmed from the fact that they had for a period acted as teachers. Swanwick was a teacher in the 1870s, and his experiences led him to criticise secondary education in Queensland, especially as provided for girls.[153] St. Ledger for a while taught at a State school, so did Costello, and Chambers at Brisbane Grammar School for three years. He was a brilliant Latinist.[154] Lilley first displayed his interest in education in his early twenties. He gave lectures on temperance and industrial questions to working class audiences at Preston - for that, he was discharged from the first Royal Dragoons. He then helped set up the Preston Free Library to further the learning of the local inhabitants.[155]

What was the essential factor which shaped the lawyer's interest in education? It referred back to the fact that lawyers were well-educated, and they lived at a time when it was being emphasized that progress, and development were directly connected with the education of the community. As their greater success, and with that an increased financial reward, was bound up with development, so it seemed desirable

153. F.F. Swanwick, Our Girls and Their Secondary Education, (Brisbane: Slater, 1875).
154. Anon., The Jubilee History of Queensland, (Brisbane: Muir & Morcom, c.1891), p.487.
155. The Brisbane Courier, 21 August, 1897.

that the educational standard of the community be increased. For some, too, the matter was not quite so mercenary - education seemed to offer its own reward, and in line with the beliefs of European liberal thinking, they felt that the education of the people was a responsibility which must be met by those in authority. And in Queensland it was often the lawyer who was in authority, so he took upon himself the burden of devising education schemes for the colony. The lawyer could be expected to favour a system which gave real control and responsibility to the State, as the source of law and order. However the individual consciences of some lawyers wanted to temper that situation and allow a definite religious influence to operate in the system with the blessing and help of the State. It was not until the seventies that the liberal train of thinking opposing divided control or diminution of State authority in education gained sufficient strength to carry the tide of public opinion. And in that movement, lawyers Lilley and Griffith figured prominently. Lawyer opinion on the relationship of State and Church in education was not uniform, but majority opinion favoured the State and had the satisfaction of seeing their beliefs put into operation. The interest which lawyers displayed in the need for a University and technical education was a further reflection of the fact that for the lawyer, the community was a better one to live and work in if it was learned and thus progressive. Their philosphy of liberalism and development was essentially one revolving around factors of success and material advance in one's work and one's life.

Similar considerations applied to lawyers in the field of social reform. In terms of positive achievements, lawyers more than any other group were responsible for legislative measures to improve the lot of the working class and of underprivileged groups. As regards ideals for the betterment of society, some lawyers made significant contributions, formulating in some fashion ideas of socialism and opening up the way for the development of Labour in politics.

At the least, those lawyers who participated in the moves of social reform, could be described as liberal. Griffith was foremost among the men who secured concrete results for the workers, mainly in the field of industrial law. In the 1880s and 1890s he was responsible for the following legislation - Employers' Liability Act 1886, Trade Unions Act 1886, Employers' Liability (Seamen) Act 1888, Eight-hour Bills of 1889 and 1890 (which failed), a Workmen's Lien Bill of 1891 which also failed in the Legislative Council. His Trade Unions Act was of great advantage to labour interests in Queensland. His Eight-Hours Bill was hailed by the Trades and Labour Council of Queensland, and working groups such as the wharf labourers.[156] There was also his Elementary Property Law of 1890, and a Bill concerning the division of profits which he did not introduce to Parliament.

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156. Letter, Trades and Labour Council of Queensland, Townsville Branch to Griffith, 26 July, 1879; letter, Federated Wharf Labourers, Townsville Branch to Griffith, 26 July, 1879 - Dixson collection of Griffith Papers.

Some of Griffith's protégés carried on his work in the 1890s. Byrnes tried with another Workmen's Lien Bill, although it was compared unfavourably with Griffith's earlier piece of draftsmanship on the matter.[157] Tozer attempted in 1895 to regulate working hours, but was more successful in 1896 with the Factories and Shops Act. J.T. Bell was concerned for the welfare of children, both as to their employment and more generally as to their overall treatment, and after two unsuccessful attempts in 1894 and 1895, was rewarded with the enactment of the Children's Protection Act of 1896. There was also the Factories and Shops legislation of Foxton providing a considerable amount of State control over conditions of employment. Other lawyers like Macpherson and Wilson sought to protect the weak - children and girls. Through the efforts of those lawyers, concrete advances were made in the welfare and condition of the community as a whole. Their interest in the matter was a further indication that the liberal philosophy of progress had been adopted by them. Such progress could best be obtained through the regulation of matters of common interest by the State.

However some lawyers carried the principles of social welfare further, adopting quite lofty ideas on the means of regulating the condition of the community. Not only should favourable conditions of social opportunity be offered to all, but conditions of equal economic opportunity should be considered. Such notions smacked of socialism - yet at least

157. Brisbane Courier, 22 November, 1895.

two lawyers, Griffith and St. Ledger - dabbled in such notions. During the 1880s, Griffith's pronouncements in such matters were so much in advance of most of the contemporary social thinking in Queensland that he was seen by some as a great new leader for the working masses, thitherto virtually unrepresented on the political scene. Glassey, who became a prominent Labour leader, said of Griffith in 1888 - 'I have never doubted your genuine desire to permanently lift the masses so far as you could by legislation but you will pardon me if I say where you have failed and where you must ever fail is by you seeking the aid of sham Liberals instead of true ones'.[158] There was at that stage an attempt at reconciliation between Griffith and his Liberals and the more radical groups directly representing working interests and led by people like William Lane. Griffith and Lane for a time established a friendly relationship - but Lane considered that Griffith was letting slip an opportunity seldom offered to any man, that of the absolute leadership of Australian radicalism. He was failing, through the retention of Whigs, which Lane regarded as conservatives, in the Liberal ranks - and so the party was standing still.[159]

That flirtation with the Radicals, the Labour group, arose through the expression by Griffith of his ideas on economic equality, expressed for example in his manifesto to

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158. Letter, T. Glassey to Griffith, 17 December, 1888, Mitchell collection of Griffith Papers.

159. Letter, W. Lane to Griffith, undated, Dixson collection of Griffith Papers. The letter has the letterhead 'Boomerang Office, Brisbane', and by arrangement in the volume is probably dated 1889.

the electors of North Brisbane in 1888.[160] 'The great problem of this age is not how to accumulate wealth, but how to secure its more equitable distribution'. A basic principle of life was that a share of the profits of productive labour belonged of right to the labourer. Such ideas were repeated in his article 'Wealth and Want', printed in Lane's 'Boomerang' 1888.[161] He claimed that it was part of the State's duty, in its protection of the weak, to divide profits between the capitalist and the labourer, and to readjust relationships between the two. Griffith contributed a similar article on the distribution of wealth to the "Centennial Magazine", a Sydney publication. Such articles drew much criticism from respectable middle-class groups and many people in authority. Griffith's friend, Sir Alfred Stephen, a former Chief Justice of New South Wales, said that it smacked of Communism.[162] However Griffith did still recognize the capitalist's right to property - he was enunciating natural laws on the ownership of property as modified by the labour of the individual - so, his 1890 Bill on the acquisition and ownership of private property. Those ideas, however, fell upon unsympathetic ears in the coalition government and no advance was made.

Griffith's interest in social reform continued during the 1890s. At the New South Wales Royal Commission on Strikes

160. The content of the Manifesto is reprinted in F. Adams, The Australians - a Social Sketch, (London: T. Fisher Unwin, 1893), pp.282 f.f.
161. S.W. Griffith, 'Wealth and Want', Boomerang, Christmas 1888, pp.196 f.f.
162. Letter, A. Stephen to Griffith, 12 October, 1889, Dixson collection of Griffith Papers.

in 1891, he was very critical of the existing approach to employer-employee relationships - the remedy was cooperation and employee participation in profits.[163] When, however, Queensland's strike trouble developed, Griffith resorted to measures of direct State force to solve the problem, as indicated above. The importance to him of State direction was indicated further in an article he wrote in 1895 where he looked to the strength of the State in matters of economics.[164]

During the nineties, Griffith's importance in social matters waned - the Labour Party had found its own independent existence. So Griffith, who had been hailed earlier as a possible Labour leader, as 'a Radical of Radicals', became known in Labour circles, as 'the Lost Leader', who had thrown himself into the arms of Queensland Mammonites - he was a fraud.[165] That was an exaggeration of the real situation - in the eighties at least, he seemed to believe in his formulations of social reform. The fault with them was their idealism. His associations with the real situation were too limited - his ideas of social reform were the creature of the intellect not of the heart. McCawley, a Chief Justice in Queensland in the twentieth century with a considerable background of industrial law, considered that Griffith did not

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163. New South Wales Royal Commission on Strikes 1891 - Minutes of Evidence, pp.272-280.
164. S.W. Griffith, A Plea for the Study of the Unconscious Vital Processes in the Life of Communities, (paper presented to the Australasian Association for the Advancement of Science, 1895).
165. Note various comments in newspaper cuttings, Mitchell collection of Griffith papers, including the Daily Standard 10 August, 1920 - a number are unnamed or undated.

really understand the psychology of the masses - he was the academic socialist, who hoped to lead them from a position of lofty aloofness.[166] As an instance, in the 1888 elections, it seemed that the workers went to McIlwraith and ignored Griffith's Manifesto. And, when he came to put his ideas into practical form, he found the problems insuperable. A contemporary review of Griffith's ideas appeared in the British 'Law Journal' - they were described as 'a hopeless confusion of contradictory theories' coming rather from a dreamer dwelling far from the madding crowd, than from a trained lawyer conversant with the affairs of men as they are in this work-a-day world'.[167] Those ideas of Griffith were too visionary, yet their enunciation did have the one result that the fuel of Labour in the early period of its development was kindled by that flirtation on the part of one of the great leaders of Queensland.

Griffith was not the only lawyer to make overtures to the nascent Labour party. The activity of Lilley, Powers and Drake, especially at the political level, has been noticed already. None of them, however, seemed willing to subsume their Liberal and radical philosophies wholly within the Labour body. Even Lilley, the most advanced thinker of all in that regard, wanted to maintain a personal independence in matters politic. 'The Courier' was close to the mark when

166. C.J. McCawley article, designed as part of biography on Griffith, in Mitchell collection of Griffith Papers, section: Newspaper Cuttings.
167. W.O. Lilley, Reminiscences of Life in Brisbane, and Reflections and Sayings, (Brisbane: W.R. Smith & Paterson, 1913), p.111.

it said that Lilley wanted to create a new Democratic party, with the support of the new unionist groups but at the same time he wanted to be a Parliamentary dictator having recourse to a Napoleonic-type plebiscite.[168]

Anthony St. Ledger, 'the Saint' also had an academic interest in socialism, taking note of the writings of overseas socialists.[169] Another theoretician was the Prussian born Heinrich Ludwig Edward Ruthring. He campaigned vigorously for the cooperative movement - he wrote pamphlets, gave lectures and the press printed reports by him on cooperatives.[170] Agricultural communes were suggested as a solution to land problems. Because of his activity, a slight start was made with the founding of a Guild of Co-operators.

These academic incursions by lawyers into the field of social thinking achieved few practical results, but they did show that some of the lawyers took a genuine interest in the advancement of the interests of the community as a whole and an interest not dependent upon considerations of their own reward. Their interest, however, was linked more to a true liberal spirit than a dedicated socialist inspiration. And in the field of practicality, the lawyers again provided a good example of the liberal spirit - they introduced important reforms, recognising that liberal changes in the structure

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168. The Courier, 10 April, 1893.
169. Note St. Ledger's book, Australian Socialism, (London: Macmillan and Co., Limited, 1909).
170. T.A. Coghlan, Labour and Industry in Australia, (London: Oxford University Press, 1918), p.1887. Note also Ruthning's pamphlet, Cooperation and the Produce Trade. A Word to the Farmers, (Brisbane: Muir & Morcom, 1888).

of the community were necessary if Queensland development was to proceed apace with development in other civilised areas of the world.

There were many other fields where lawyers set a leading example in initiating Queensland progress. Their efforts at political reform have already been noticed in the consideration of them as politicians. In the field of land reform, they played a not very important part. Their interests seldom ran to acquiring a knowledge of pastoral techniques, and so in the matter of drafting land laws, the expert knowledge of pastoralists was usually called upon. However there were some exceptions. Herbert encouraged pastoral development. Griffith also took some interest in land matters - some of his ideas took effect in Dutton's Land Act of 1884. Griffith's basic philosophy in land tenure was that Crown land should be maintained as a source of revenue. So he favoured leasing to freeholding, and encouraged closer settlement. Those ideas were not fully or faithfully carried out.[171] The socialist Henry George had a direct influence on Griffith's thinking in land matters.

Another field where the efforts of individual lawyers stood out was immigration. Griffith's attitude against coloured labour and his fostering of the concept of 'White Australia' shaped immigration moves for a considerable period.

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171. The Daily Mail, 10 August, 1920.

Then, also, the work of Agents-General, such as Macalister and Garrick, in attracting immigrants to Queensland was important in helping the course of development which had been planned by the various governments. Macalister's efforts received some criticism - for example his Maryborough 'model' emigrants were unsatisfactory.[172] But he did help to revive German immigration.[173] In the 1880s, Griffith sought to build up the immigration links between Europe and Queensland, as a means of overcoming the cessation of the kanaka source of labour - in that he failed.[174]

These are examples of the work done by lawyers in the fields of land settlement and immigration. It is not comprehensive, and indicates that lawyers did make a contribution to these fields of development. Their role, nevertheless, was not in any particular way outstanding. They were not leaders in all fields of development.

One great contribution by lawyers to the pattern of development in colonial Queensland was in the local social sphere. That included aspects of municipal and civic responsibilities, and general social and cultural pursuits - their behaviour in the social colonial setting.

Local government, as now known in Queensland, arose in part from the work of Griffith. His local Governments

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172. Week, 26 April, 1879.
173. Letter, Macalister to Kirchner, 15 February, 1876, Queensland State Archives, Acc. No. 48/346.
174. Letter, Griffith to Agent-General, 11 March, 1885, V.&P., 1886, II, p.907.

Act of 1878 was a very comprehensive measure so far as municipal affairs were concerned and it reorganised the nature and functioning of such local government institutions. Before that measure, Macalister had made an early attempt to organise municipal and provincial affairs. Bramston had played a small part, and Lilley in 1869 made very forward-looking suggestions for the organisation of local government bodies.

Griffith's interest in local government and his knowledge and ability to arrange its organisation was evident by the fact that during his 1883-1888 ministry, he saw enacted nine Acts in that field. Then in 1890 and 1891 he passed three more measures, including the very important Valuation and Rating Act of 1890 wherein he introduced to Australia the concept of assessing rates on the unimproved value of land.

Away from the legislative aspects of local government, lawyers also featured prominently as members of local municipal bodies and divisional boards. In Brisbane, J.N. Robinson was mayor in 1900; for Coorparoo, Hellicar and King were active councillors; W.H. Wilson for Toowong and Redcliffe; Macartney and Hawthorn for Ithacca; Miskin for Toowong; Mooney for Windsor; Appel for Hamilton.

In country municipalities, many lawyers could be cited for their involvement in local government affairs. At Ipswich, Macalister, Chubb, Heiner, Thompson, Hargreaves held municipal office; at Maryborough - Stafford, Powers; at Gympie - Tozer and F.I. Powers; at Rockhampton - R.R. Jones. The list is by no means complete, but does illustrate that

lawyers participated in local government as well as government at the national level. The latter was more important, and more rewarding from a prestige point of view, and possibly from a monetary angle. But the lawyer still had a natural interest in administrative and governing details, even if not on the grand national scale and so he helped in local government affairs.

The betterment of the community was a matter to be achieved not only by administrative control by a national and a local government, but also by more intangible means - through the cultivation of the mind and the spirit. Queensland was expected to take its place as a mature member in the British Empire, and to do that quickly in view of its late start. To achieve such maturity, leaders in the community and its cultural and social life were needed. Fortunately they were to be found - and amongst their number were lawyers. At Ipswich, for instance, Charles Frederick Chubb spent a lifetime contributing to the civic life of the community.[175] He was born in England, where he achieved some fame as a lawyer. He opposed Salomons for voting in the House of Commons without taking a Christian oath, and that action led to the Jewish Emancipation legislation. In 1848, he opposed Chartist demonstrations and appeared as a State witnesses. He came to

175. Biographical details of C.F. Chubb are to be found in:- anon, Australian Representative Men, (Melbourne: Wells and Leavitt, c.1888); G. Harrison, ed., Jubilee History of Ipswich, (Brisbane: H.J. Diddams & Co., 1910), pp.23, 51 77, 89, 103; anon, The Jubilee History of Queensland, (Brisbane: Muir & Morcom, c.1891), p.508; Pugh's Queensland Almanac, 1889, C107; K. Neale, 'Notes on poems of C.F. Chubb', (roneoed, 1958).

Australia in search of opportunities and settled in Ipswich in 1859. From the beginning he participated very actively in local life. He was on the committee that secured the incorporation of Ipswich, and during the 1860s and 1870s served for periods as an alderman and mayor. Governor Bowen asked him to help start a volunteer defence movement, which he did, becoming a captain. In England, he had been with the Honorary Artillery Company (London). He was active in the School of Arts and was a litterateur of some note, being the writer of the first separate publication of verse in Queensland. He was a special contributor to the 'Ipswich Mercury', writing most of its leaders and humorous weekly contributions under the name of 'Bill Tompkins'. The Ipswich Elocution Class was conducted by him - Horace Tozer attended some of these; he produced plays, poems and musicals; he wrote plays and verse. The Church of England at Ipswich received the benefit of his services, as did the Ipswich Cricket Reserve. Then, somewhat unusually the agricultural world was also patronised by Chubb - he had a model one hundred acre farm outside Ipswich, where he grew vines which pressed a good claret; he sent his cotton home to England; his silk won a medal at Philadelphia; he also grew pepper and coffee and collected medals from Paris, Vienna and Sydney. Time was still found for him to attend committee meetings of the Ipswich Agricultural and Horticultural Society. And the business world - he was involved in the operations of Queensland Woollen Manufacturing Company, the Royal Bank and the Cooneana Coal and Iron Co. For his holidays, he went to bathe at

Southport - he was one of the first to draw attention to Southport as a watering place. Ipswich civic and cultural life was enriched immeasurably by the actions of that one man - and in the long run, the progress of Queensland as a whole was enhanced.

Chubb was probably exceptional as a leader in community in life. But other examples can be found of lawyers helping to a lesser extent to establish the pattern of life and development in Queensland. Apart from those lawyers already mentioned who shaped political and consequently community developments and those who participated in the movement to establish School of Arts, the more individual cases are helpful as an indication of the behaviour of lawyers in leading the community. Ipswich was fortunate - apart from Chubb, there was Macalister who came to Queensland in 1850. He helped actively to establish Ipswich, always wishing it to be the leading centre of Queensland. Ipswich spiritual life was somewhat haphazardly handled from Brisbane in the early 1850s - so Macalister helped arrange for a clergyman to be obtained from Scotland for the good of Ipswich inhabitants.[176] Medical services were improved by the establishment of a General Hospital - Macalister helped arrange that matter. He also helped to set up the 'Ipswich Herald' in 1859. Pollett Loftus

176. re Macalister's early civic efforts, see: G. Harrison, ed., op. cit., pp.56, 89, 105; Fassifern District Centenary, 1844-1944, (no publisher, c.1944); C. Roderick, In Mortal Bondage - the strange life of Rosa Praed, (Sydney: Angus and Robertson, 1948), p.31.

Cardew was another lawyer who took an active part in Ipswich life at the turn of the century - in matters of sport, religion, social welfare, defence and business developments.[177] In Gympie, Horace Tozer and Francis Isidore Power were forceful people shaping the town's future. The former was very important so far as concerned the development of goldfields there - admittedly he had an economic interest in many of the mines.[178] He was also an alderman of the first Divisional Board there, and active in the School of Arts. Power also took a great interest in Gympie's mines - through his activities, mines were saved from flooding which was a boon to both the mining companies and to the employment situation.[179] Municipal matters - for Gympie, Glastonbury and Widgee boards - received his attention. Mining and commercial ventures attracted his professional interests - at various times, he was president of the Mining Managers' Association and was active in the Mine Owners' Association. Sporting bodies benefitted by his presence - cricket, rugby, the turf (both the Gympie and the Queensland Turf Clubs). The local hospital and the Gympie Agricultural Society received his patronage.

The catalogue of such civic-minded lawyers is long, and to list such civic activities exhaustively would achieve little other than boredom. However it is worthwhile to draw attention to some of their more noteworthy achievements in some

177. M.J. Fox, The History of Queensland - its People and Industries, (Brisbane: The States Publishing Company, 1919) vol. I, p.467.
178. Pugh's Queensland Almanac, 1900, p.439; The Queenslander, 16 August, 1890, p.310.
179. Queensland 1900, (Brisbane: W.H. Wendt & Co., 1900), biography 22; Pugh's Queensland Almanac, 1907, pp.370/1.

of the fields which made for a more civilized community, consonant with the notion of Queensland's development. There was a considerable tie between lawyers and the press. E.I.C. Browne was one of the early founders of the 'Brisbane Courier'.[180] Little, the Crown Solicitor, held a share in the paper about 1860. Lilley was a joint owner of the paper in the 1850s, and for a while editor. A very talented lawyer and journalist took over editorship of the Brisbane Courier in 1888. He was William Kinnaird Rose, a tall, red-bearded Scotsman, who had done much press work in Scotland.[181] He had been a special commissioner for the London 'Daily Telegraph' inquiring into conditions of agricultural labourers in Scotland, and did special assignments for newspapers on events in Europe, such as the Hungarian floods of 1876, the Russo-Turkish war, the lot of Christians in Eastern European and the Bulgarian atrocities. He wrote a number of books. In Queensland, apart from his work on the 'Courier', he acted as a Royal Commissioner inquiring into the situation of Polynesian labourers, and of gaols. He used his legal knowledge to write articles on constitutional evolution in Australia, displaying quite democratic sentiments in relation to the position of Upper Houses and the Governor.

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180. Details about lawyers and 'the Courier' come from a number of sources:- J. Bonwick, Early Struggles of the Australian Press, (London: Gordon & Gotch, 1890), p.85; Courier, 25 October, 1892; S. Browne, A Journalist's Memories, (Brisbane: the Read Press Ltd., 1927), p.344.
181. Pugh's Queensland Almanac 1890, B 130; Brisbane Courier, 4 October, 1892.

J.G. Drake had numerous contacts with the newspaper world before he became a lawyer:- he was a reporter on Brisbane, country Queensland and Melbourne papers, and also 'Hansard'. When a lawyer, he associated with William Lane and Lukin, producing 'Boomerang', a radical journal of criticism. Later, in 1899, he produced 'Progress', a journal of democratic sentiments, 'devoted to the advancement and prosperity of Queensland as a colony and as a State of the Australian Commonwealth'. The paper was originally conceived as a mouthpiece for the principle of federation, but later turned to concerns of a general democratic nature.

In the country, lawyers also sought to exert an influence in the control of the press. Macalister helped found the 'Ipswich Herald'. The 'Standard' of Townsville had for a period Henry Knapp, solicitor, as its editor.[182] For a while during the 1860s, Charles Sydney Dick had a behind-the-scenes control over Argus Newspapers, Rockhampton, and in the 1880s, Robert Lyons owned it.[183] T.P.V. Tabert, an outdoors and sporting enthusiast who moved to a practice in Croydon in 1893, contributed articles on outdoor and sporting subjects to the 'Bulletin'. J.T. Robertson contributed articles to the Sydney press on religious topics, he being a very pious Roman Catholic.[184] As well, there were frequent articles contributed by the politicians, such as Griffith, to both the daily newspapers and regular periodicals. The lawyer realized that

182. S. Browne, op. cit., p.6.
183. Queensland State Archives, Acc. No. 98/6; J.T.S. Bird, The Early History of Rockhampton, (Rockhampton, 1904), p.26.
184. Queensland State Archives, Acc. No. 98/7.

through the press his ideas could be more easily expressed and widely disseminated. So it was important for people of public importance, like Lilley, Griffith, Macalister, Drake to have good newspaper contacts, and, especially in the early days around the 1860s, it was not difficult for the individual to have an important personal influence with a newspaper. An example of the significant use which a lawyer made of the press was in the early sixties when Lutwyche was fighting Parliament. In his young years in England, Lutwyche had for a long while been a journalist with and a colleague of Charles Dickens, and upon his arrival in Australia he put his literary talents to work, writing a 'Narrative of the Wreck of the Meridian' describing his voyage to the colony. In Queensland, he occasionally contributed leading articles for the 'Courier' and wrote many letters to it.[185] There was a strong bond between the judge and that paper which defended him against the Herbert government - the bond was so strong that the opposition paper called the 'Brisbane Courier', 'the Judge's Organ'.

In the leisurely days of last century, people were able to give themselves more freely to literary pursuits. At least that seemed to be so in the case of lawyers who turned out quite a considerable amount of literature, both fictional and serious. C.F. Chubb was one of Queensland's earlier and best known poets. He published a book "Fugitive Pieces, Prologues, etc.", now of little other than historical value.[186] Many of

185. refer: anon., Queensland Writing, (published by the Queensland Authors and Artists' Association, Brisbane, 1954), pp.27/28; C. Lack, History of Journalism in Australia, (typescript, 1945).

186. C.F. Chubb, Fugitive Pieces, Prologues, etc., (Brisbane: Warwick & Sapsford, 1881).

his poems commemorated events of the day - the arrival of Governor Bowen, opening the railway, appeals for charity, Bramston's racehorses. These poems of local comment were marked by a philosophy of hope and progress in a new colony, filled with boundless opportunities. They were of some historical interest since, apart from the fact that they looked at Queensland life, their emphasis was on town life.[187]

Griffith also turned to verse, liking to translate Dante. Although by 1900, he had not fully plunged into the Italianate phase, he did have published two stories of Dante from the 'Divine Comedy'.[188] His translating efforts received much criticism - 'Sir Samuel has succeeded in rendering the poetry of Dante into the language of a Parliamentary enactment'.[189] J.T. Robertson had published posthumously his 'Lyra Sacra', a book of religious poems.[190] 'Ned' Sydes was another lawyer to dabble in such literary pursuits.[191]

Lawyers, however, seemed to prefer to write in a serious mood, and they turned out a number of books and articles of a learned nature. Cockle contributed articles to journals of philosophy and of mathematics; W.J. Byram gave a paper to the Royal Society of Queensland on the amoeba; Ruthning wrote on banking practices (in German) as well as about his beloved cooperatives. W.H. Wilson wrote a pamphlet on travel to

187. H.A. Kellow, Queensland Poets, (London: George G. Harrap & Company Ltd., 1930), pp.18-26.
188. Sir S.W. Griffith, Two Stories from Dante, (Brisbane: E. Powell, 1898).
189. A.B. Piddington, Worshipped Masters, (Australia: Angus & Robertson Limited, 1929), pp.239-240.
190. J.T. Robertson, Lyra Sacra, (Sydney: J.G. O'Connor, 1868).
191. S. Browne, op. cit., p.217.

America and living there.[192] Singleton Rockfort helped prepare historical details for a 'History of Queensland' and contributed a chapter on law, the courts and cases, and MacDevitt wrote a handbook on Western Australia.[193] When Charters Towers and its goldmines were making the news even in England, solicitor Luke Wagstaff Marsland set about writing a book on the town, its mines and share prospects.[194] St. Ledger prepared biographical material on T.J. Byrnes.

There were also the lawyers who wrote only in the legal field, adding to the learning of the profession and contributing valuable reference and guide books for the use of practitioners. Harding wrote on ecclesiastical law and two books on practice. In conjunction with Macpherson he wrote a statement of the law of insolvency, which was of great benefit to the profession. Power, Groom and Graham wrote on real property case decisions. Most of the legal writings were either the compilation and consolidation of statutes - by Pring, Handy, Cooper, Woolcock and Pain - or collections and digests of decisions of the Supreme Court - by Beor, Scott, Groom, A.D. Graham, Murray-Prior, Byrne, Osborne, McGregor, M.J. O'Sullivan. There were also handbooks like J.K. Handy's

192. The various papers alluded to here are held in the Oxley Memorial Library.
193. Rockfort's contributions were to W.F. Morrison, The Aldine History of Queensland, (Sydney: the Aldine Publishing Company, 1888). MacDevitt had probably moved to Western Australia by the time he wrote his book.
194. L.W. Marsland, The Charters Towers Gold Mines, (London: Watterlow Bros. & Layton, Limited, 1892).

'The Queensland Magistrate's Guide'. It should be remembered that Brisbane's Public Library was started from Judge Harding's collection of books - and that Judge's interest in the Supreme Court Library helped the growth of that institution.

Lawyers added to the literary life of Queensland - but their efforts to increase the cultural life of the colony were more extensive than that. They took part in the musical life of the community. A leader was W.H. Wilson - he was a director of the Brisbane Musical Union, and did much to build it up as an important organisation in Brisbane's entertainment world. He was a violinist, gave lectures on music, arranged concerts, wrote music reviews. He was a President of the Harmonic Choir, found the Liedertafel Society, and was the organ and choirmaster at St. Thomas' Church, Toowong.[195] His musical training was furthered by his London trip in 1880 when he studied music at Trinity College. He learned harmony and composition and wrote church music. Also associated with the Brisbane Musical Union was the bass Chambers. Other singers were Appel, a fine baritone, St. Ledger who sang tenor soloist at St. Stephens and young Jimmy Blair of the Ipswich and Cambrian Choir.[196] Conveyancer Tom Dougherty led the Musical Union Orchestra and was a music critic for the press.[197]

In the Art world, J.T. Bell, Pope Cooper, E.M. Lilley and P.A. Blundell took quite an interest, the former securing

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195. Telegraph, 25 May, 1903; Queensland 1900, (Brisbane: W.H. Wendt & Co., 1900), biography 15; S. Browne, op. cit., p.100.
196. S. Browne, ibid., p.216; The Brisbane Courier, 3 April, 1907.
197. W.F. Morrison, op. cit., vol. II, B189.

government money for the Queensland Art Society. Chubb's activities in the drama world have already been mentioned. Street was another producer, and actor and for some time led the Cooktown Amateur Dramatic Society.[198]

As well there was a multitude of clubs and societies in which lawyers took an active part - for example Murphy and Mein in the National Agricultural and Industrial Association of Queensland, the latter becoming President. It is sufficient to point to their interest in these cultural pursuits, to indicate that some lawyers were willing to take a leading part in the cultural development of the colony. They realised that they were in a very good position to stimulate thinking and living in general in the community. They of course followed the pattern of life with which they were most familiar and which seemed to offer to them the greatest likelihood of a settled, successful and respectable background - the way of life of the more respectable sections of British society. It was not unusual that the lawyer should look to the British way of life as the most desirable model - the system of law, whence on his reckoning flowed the life of the community, was British.

Spiritually, some lawyers were again models in the Victorian manner of offering their services for God and the church. Particularly, in the early years of Queensland, lawyers played a prominent part in establishing facilities for religious worship. Macalister and the need of a Presbyterian minister at Ipswich in 1853 has already been noticed. In

198. S. Browne, op. cit., p.18.

Brisbane, a number of lawyers helped establish the Anglican church - Robert Little was a warden of St. John's before separation.[199] Even Lilley, with ideas of State above church, did not wholly forsake the Church of England - he subscribed to the establishment of Trinity Church, Fortitude Valley.[200] Judge Lutwyche was a staunch supporter of the same church, although not a very generous giver. However he did donate two acres of his land at Kedron to the Church, where St. Andrews was built. There he was like the English squire - haughty in his reserved pew, sometimes assisting with the services and playing the organ.[201] The judge's legal competence was called upon in the 1860s to draft the constitution of the Church of England in Queensland.

Blakeney was another early supporter of the Church of England. When he was judge on the Western district circuit, he took services in the court house at Roma - so religion came to the West.[202] Chancellors of the Church of England were drawn from the lawyer ranks - Bramston, Roberts, C.E. Chubb, G.L. & P.L. Hart. At Toowong, W.H. Wilson was a devoted supporter of the church. In Ipswich, C.F. Chubb was active in the early affairs of St. Paul's - and later P.L. Cardew. Chubb

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199. N. Bartley, Australian Pioneers and Reminiscences, (Brisbane: Gordon & Gotch, 1896), p.214.
200. E.J.T. Barton, ed., The Jubilee History of Queensland, (Brisbane: H.J. Diddams & Co., 1909), p.136.
201. Queensland Writing, (Brisbane: the Queensland Authors & Artists Association, 1954), p.28; C. Fetherstonhaugh, After Many Days, (Melbourne: E.W. Cole, 1917), p.224; copy letter, Jo. Lutwyche to Mrs. Young, 29 December, 1954, (Oxley Memorial Library).
202. R.B. Taylor, Roma and District, 1846-1885, (Rotary Club, Roma: roneoed, 1959), par. 296.

also sought to offer spiritual guidance to Anglican youth, through his participation in the affairs of the Young Men's Society and the Boys' Brigade.[203]

The Roman Catholic church had staunch supporters in people like Judge Real - 'a model catholic layman', and E.O. MacDevitt. The barrister 'Ned' Sydes left the law for the priestly salvation of the Catholic church. A leader in the Methodist world was Arthur Rutledge who had early trained to be a Wesleyan minister. There were suggestions that Rutledge would not have made the bench (in 1906), but for the backing of influential Methodists.[204] T.C. Poole led the Baptist congregations of South Brisbane. Then, as important office-bearers in associated religious institutions were William Bell of the Brisbane Sunday School Union, and R.W. Kingsford of a number of Protestant and masonic societies.

Many lawyers who were not fighting for God were fighting for their homeland - not on an actual field of battle, but by participating in Queensland's defence schemes. In practical terms, that meant the Volunteer Forces. In the 1880s the Volunteer Forces were saved by solicitor Andrew Thynne who defeated Colonel French's scheme of regulars or paid soldiers. Thynne was dedicated to the Queensland Volunteer Force which he helped to found, and of which he became a Lieutenant-Colonel.[205] As well, he was keen on rifle shooting founding

203. K. Neale, Notes on poems of C.F. Chubb, (typescript, 1958).
204. J.H.L. Zillmann, Career of a Cornstalk, (Sydney: Duncan & Macindoe Limited, 1914), p.27.
205. S. Browne, op. cit., p.142.

the Rifle Association and being a leader of the Irish Rifles. His shot was straight - he twice won the Queen's Prize. Another barrister, Bannatyne was a rifleman, being an officer of the Queensland Scottish Rifles. Solicitor Foxton was another military enthusiast, being an expert in military surveying and topography. He became a Lieutenant-Colonel commanding Field Artillery. In the Land Defence Force, Mein was commissioned as Lieutenant-Colonel - part cause of the doubt as to the validity of his actions as judge arose because, as such officer, he received a small reimbursement.[206] In the earlier years of Queensland's development, Lutwyche and Blakeney helped form the Volunteer Rifle Corps - and Lilley, Pring and Milford held the rank of Major in the Volunteers.[207] Drake and Rose became Captains in the Land Defence Force, Cardew in the Mounted Infantry.[208] Hellicar and Darvall were Majors, Fitzgerald, a Lieutenant. Some took to the sea - W.F. Cameron was a Lieutenant in the Queensland Naval Brigade, and Alexander Leeper, who had been a Lieutenant in the Royal Navy, joined Queensland's Marine Defence Force. In Ipswich, the foundation of the Volunteer movement was largely arranged through C.F. Chubb. Governor Bowen wrote to him about the idea, and Chubb, helped by J.M. Thompson and others organised the movement.[209] He became a Captain in the Light Horse. Before coming to

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206. QPD, 1888, LV, pp.415-428.
207. Moreton Bay Courier, 4 September, 1860.
208. S. Browne, op. cit., makes references throughout the book to lawyers with military interests. With regard to Leeper, refer Queensland State Archives, Acc. No. 98/2.
209. E.J.T. Barton, ed., Jubilee History of Queensland, (Brisbane: H.J. Diddams & Co., 1909), p.508.

Australia, he had shown an interest in military matters, belonging to the Honorary Artillery Company of London. E. Mansfield, V.R.E. Drury and H. Scott were other lawyers to hold military commissions.

Having tended to the defence of their land, lawyers could still find time for recreation. Community life was not only a matter of government or culture, religion or war. The healthy, physical development of the body was an important contribution that each member of the community could make to the drive for progress and achievement that was afoot in the burgeoning colony. Lawyers found the recreation a welcome break. Legal passion for the turf was evident from the beginning, and lawyers were amongst those who encouraged the breeding and racing of horses. Ratcliffe Pring prided himself on his 'North Australian' which won the big event on the occasion of the Duke of Edinburgh's visit in 1868. He was a president of the Queensland Turf Club and the Valley Race Club.[210] Robert Little was among the founders of the Queensland Turf Club, and as a horse breeder he received some note, winning the Breeder's Cup in 1866.[211] Even the dour John Bramston took an interest in horses - he owned 'Lancer' and 'Doubtful' and rode his own horses. Herbert followed suit, and raced 'Grasshoppers'. The race meetings were lively, social affairs - for instance in 1865 Bramston donated the 'Corinthien Cup' for a race, and during the balmy July afternoon one could

210. E.J.T. Barton, ibid., p.502; N. Bartley, Opals and Agates, (Brisbane: undated), p.255; S. Browne, op. cit., p.82.
211. The Queenslander, 11 September, 1930.

behold the spectacle of Bramston on 'Doubtful' being edged out of first place by Herbert's grey 'Grasshoppers', ably mounted by his relative Algernon Lempriere.[212] Daniel Foley Roberts was a good rider - J.G. Jones ran a fine horse 'Old Gentleman'. Judge Lutwyche encouraged the growth of racing, although he did not become an active participant in the sport until the 1870s when he began to take an interest in breeding. His horse 'Dandy' won the first Brisbane Cup in 1870.[213]

Especially during the first decade were lawyers prominent in the racing world - it was of course a very social pasttime and added grace to Queensland's embryo society. Queensland's own poet, Mr. C.F. Chubb of Ipswich wrote a prologue about it -

> "Our emerald course has witnessed many tourneys
> Twixt racing men and sporting Crown attorneys -
> Each striving first to catch the Judge's eye,
> Whilst whip and spur the steaming flanks do fly.
> Reviewing, then, the fast events that bring
> Together men like Bramston, Little, Pring;
> Well-pleased we are to see that such a sample
> Aids the good cause, which profits by example,
> Presenting Queensland's turf with such a man
> As good Judge Lutwyche in the sporting van -
> A man whose energies are ever spent
> In every cause that has a good portent.
> The race, the show, the plough, or rifle match
> His Honour's sympathies are sure to catch;
> -------".

During the nineties, Virgil Power and J.C. Garrick were prominent turfsmen, and active in the Queensland Turf Club. Power and Peter Macpherson also helped establish the sport of

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212. Courier, 7 January, 1862; Letter, Herbert to Mamma, 17 July, 1865, Copies of Letters of R.G.W. Herbert, 1863-5.
213. E.J.T. Barton, op. cit., p.501; Courier Mail, 14 November, 1959.

horse polo in Queensland.[214] Adolph Feez could wield the stick well in polo being a representative for Queensland, but his most notable achievement was the establishment of the Brisbane Hunt Club, of which he was the Master of the Hounds.[215] Ernest Winter was a hunt enthusiast - when he was not sculling, rowing or boxing.

Feez played a prominent role in many of the sporting fields of Brisbane - athletics, football, tennis as well as horse sports. He was a foundation member of the Queensland Lawn Tennis Association, represented Queensland in rugby union, and started rugby playing in Rockhampton and Charters Towers.[216] Other lawyers to take a general and patronising interest in a number of fields of sport were Little, Hardgrave, Hawthorn and P.J. O'Shea.

Rowing and sailing were sports to attract the attention of lawyers, almost to the same extent as horses did. J.T. Bell was the first chairman of the Queensland Rowing Association - he coached teams for the intercolonial championships in 1890-1.[217] In the country too - W.K. d'Arcy was active in Rockhampton rowing, James Street in Cooktown.[218] Edwin Norris was the winner of Queensland's first yacht race and designed and built his own yacht 'Little Nell'. His son Charles Norris became Commodore of the Cleveland Bay Sailing Club.[219]

214. Queensland 1900, (Brisbane: W.H. Wendt & Co., 1900), biography 21; S. Browne, op. cit., p.96.
215. Courier, 31 March, 1893.
216. Queensland 1900, op. cit., biography 160; Courier Mail 17 October, 1944.
217. Courier, 1 April, 1907.
218. J.T.S. Bird, The Early History of Rockhampton, (Rockhampton (1904), p.113; S. Browne, op. cit., p.18.
219. W.F. Morrison, op. cit., vol. II, B19.

The cricket fields of the 1880s resounded to the willow sound of Charles Powers. He captained the Queensland team against an English XI and captained the Wide Bay team against Ivo Bligh's English team of 1883.[220] Other cricketing lawyers of some note were D.F.P. Roberts, Charles Mein and Tom Bouchard.

Evidence can be found of lawyers participating actively in any of the sporting activities of colonial Queensland - Charles Fox in inter-colonial football competitions 1885/6; Edwin Mansfield playing golf; athletics; boxing; rifle shooting. Their participation was in no way outstanding or distinctive - except perhaps to the extent that horse-sports and sailing were their favoured sports. The lawyer as a leader in the community could be expected to display the more extravagant tastes and to enjoy the social aspects attached to those two sports. That was an indication of the grand life and society which they as foremost citizens were seeking to establish in the new colony.

And at home, a gracious life was being established. Lawyers were able to build themselves grand, spacious homes on broad acres and to entertain in a gentlemanly manner, seeking yet again to show that colonial Queensland was not far behind the civilized behaviour of the mother-land.

Lawyers of the early years of Queensland took a social lead. Cockle built himself a very comfortable home, 'Oakwal', at Windsor. It was a grey stone building, with wide verandahs, and a slate roof. Each room had a fireplace. Lawns

220. Brisbane Grammar School Magazine, June, 1939.

swept around the hill.[221] Lutwyche lived in a two-storey stone mansion, 'Kedron Lodge' - fittings were in cedar. The house had the appearance of an English country lodge. Then there was 'Herston', although the inmates were not noted for their conviviality. Little, when he arrived in Brisbane, lived in a little cottage at the corner of George and Adelaide streets. But he soon set himself up in a grander manner, building 'Whytecliffe'.[222] It had commanding views over the river from its position at Albion Heights. Set in large grounds and gardens it was virtually a sedate country house. Daniel Roberts built the first large house in the New Farm area - 'Ravenswood' - with many acres running down to the river. 'Kirkston' at Lutwyche was the seat of John Flower - from there he could look over to Mount Gravatt and White's Hill. The house was noted for its fine woodwork and carved fittings.[223] Colonel Foxton chose the seclusion of Indooroopilly. He hid 'The Priory' in gum trees and bamboos, but from its hill-height, had a charming aspect of the Brisbane River. He later moved to Bulimba House. Griffith's mansion, 'Merthyr' is well-known - in rambling, bungalow style, with ornate cedar fittings and fireplaces, somewhat in the Italian manner which Griffith loved. There were marble mantlepieces, chandeliers, gilding, embossments, a Turner landscape on the wall, carved tables - grounds rolling down to the river, and a profusion of trees and

221. The Queenslander, 23 October, 1930, p.59.
222. Ibid., 11 September, 1930.
223. Ibid, 6 August, 1931.

greenery.[224] Judge Harding lived in the grand style in acres of forest-land at St. John's Wood. One of Brisbane's most exotic homes was George Paul's Japanese home at New Farm - the colours, furnishings, brocades, materials used were all Japanese, even to the extent of ornamental headed nails.[225] Lilley had himself built 'Jesmond', a two storied stone building in Wickham Terrace - he also lived in Bardon House. High on a hill at Hamilton overlooking Bulimba Reach; Charles Mein sought shelter - in 'Eldernell', a church-like stone home, with lattice fence, a vaulted-roofed hall, with cedar fittings.[226] Many more homes, indicative of gracious living and grand society could be cited - Thynne at 'Thoonbah', Macdonald-Paterson at 'Pyrmont', Browne at 'Kingsholme', Rutledge at 'Garfield', Wilson of 'Wilcelyn', and Macpherson along Montague Road.

It is not the intention to try to assert that lawyers were the owners of the grandest homes in the colony. There were people, more wealthy than the lawyers, who could afford more extravagant homes, and some of the finest homes in Brisbane were owned by businessmen.[227] Lawyers nevertheless joined the businessmen in the matter of fine living. As leaders of the community, they were expected to own, and doubtless enjoyed it, a spacious house and to indulge in sumptuous entertainment.

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224. Ibid., 7 April, 1930, p.50.
225. The Boomerang, 24 December, 1887.
226. re Lilley: The Queenslander, 29 May, 1930; re Mein, ibid., 27 March, 1930.
227. The Queenslander did a series on Historic Houses during 1930/1.

In the light of the above evidence, it is undoubted that lawyers were leaders in the community. They of course were not the only leaders - there were businessmen, journalists, pastoralists, and later unionists interests. So far, little work has been done to investigate those forces shaping Queensland's development. From the day of separation, there was in the colony a sense that development, that progress must be in the forefront of the mind of the government and the community. Development was to be achieved at all levels - not only political and national, but also local, intellectual, spiritual. Such a notion was to be a dominant factor in the thinking and general behaviour of the leaders of the community.

Amongst the lawyers, such a sense of leadership was found early - in pre-separation days, and that interest in community development they retained throughout the colonial period. They were foremost in the political movement of the time - and it was probably the close tie between the work of the lawyer and the work of the politician that gave the lawyers as a group the opportunity of appearing as the most important occupational group in Queensland's political life. And if they were political leaders, it was almost inevitable that they should take an interest in other aspects of development - local, cultural, spiritual, sporting or social. The political leader could scarcely retain his position if he restricted his interests to the one field. The community was one where the individual could dominate - but to do so, he had to have an all-round interest in the community. The spirit of

individualism was strong - yet that very spirit was like a natural instinct to the lawyer. So the age was one that suited his resources - quite an amount of leisure, individualism, and the main qualification that he had to have to occupy a position of leadership was an overall interest and activity in the community and its life. Towards the end of the period, however, that pattern was changing - there was a movement towards specialisation, both in the work of the profession, and in the general functioning of the community, and that movement came to alter the role of the lawyer in the community. Also, with the rise of the Labour party, the attitudes and interests of the community, and the sense of development began to change and take new meaning. By 1900, however, the change had only been initiated and its significance and consequences were not either apparent or known. So during the colonial period, the lawyer could adopt the role of a leader of the community - and overall, he did a good job. Necessarily he followed his own sense of development, which was one largely built upon a British framework and British developments - but in a community which was so predominantly British, such a trend was quite acceptable. It is significant to remember that the trend of development and the values adopted by the lawyers as leaders were urban-centred, so that from the very beginning of the colony, townsmen were trying to shape the colony's progress. Queensland's pastoral wealth and potential, although great, did not have unbridled power in the political or social field. Town values, somewhat directed towards for example educational

and social welfare reforms, although such concerns were by no means the sole preserve to 'town' thinkers, and not only pastoral values, more concerned with economic expansion through development projects, received due attention because of the concerns of people like the liberal lawyers.

So the lawyer appeared as a leader of the community, and a leader of the State. That he, probably more than any other occupational group, was able to do that was connected closely with the fact that he was an educated man. His training put him high above the average educational level. As there was no nobility, and no literary or cultural greats, and as traditions were not established, so it was easier for him to fit into first place.

They were sufficiently powerful to do much to set the tone of the colony, although certainly their control was not sole, or even amongst themselves undivided. However, regarding their overall influence in a panoramic sweep, one can recognise three distinct patterns. The initial stage - shaped by Herbert, somewhat conservative since the colony had to be put on its own two feet, but already emphasising development plans. The second stage of lawyer-control was already taking breath, and was ready by the late sixties. That was the more liberal phase, where ideas of reform were borrowed from England, and it continued until the last decade when lawyer-interests dictated that the good of the colony could best be achieved by a consolidation of ideas, and a steady and even somewhat conservative course of reforms. Their world was being

challenged and they were being thrown onto the defensive by new forces. The rise of Labour and new values, the emphasis on the person and not so much on property, caused the lawyer to take stock, and reconsider whether the scheme of social reform needed some checking and restraint.

At the same time, the general position of the lawyer in society - his image as an all-rounded citizen and a practical individual - was beginning to undergo some change. Just as there was increasing State intervention and as the community became more law-controlled and regulated, so the work of the lawyer became more specialised - and with that went some of his appearance as the compleat citizen. The lawyer's heyday seemed to be in the seventies and eighties, and when his liberal philosophies were given their most vocal expression. The insecurities of the period of establishment had been overcome - the time was ripe for them, most as new people in a new land, to prove themselves, to advance themselves and their land and that could be done only by their own efforts. They had come for opportunities - and with a determination to succeed. By the nineties the optimism was fading, the realities of a situation over which they had very little control were coming to light, and so they began withdrawing to a more conservative stand.

CONCLUSION

As a group lawyers have come in for much criticism and often been the objects of derision at the hands of the community. At the time of the Peasant's Revolt of 1381, the lawyers received special treatment - more judges and lawyers were killed than any other single class of persons. The Kentish men first burned down the home of the Lord Chancellor, then the Temple, and freed the prisoners in Newgate. Some despaired that so many lawyers escaped the flames: 'It was marvellous to see how even the most aged and infirm of them scrambled off with the agility of rats or evil spirits'.[1] Similar sentiments were expressed at the time of Jack Cade's Peasant's Revolt. Shakespeare's record, perhaps not the most accurate historically, captured the spirit of popular feeling: "the first thing that we do, let's kill all the lawyers".[2] It has been a common feature of Utopias that an attempt is made to do without lawyers - for instance in the French and Russian revolutions, for a while in the United States.[3]

The lawyer has been the object of much distrust, and regarded as the source of trickery and chicanery. Coleridge noted such sentiments:

> "He saw a Lawyer killing a viper
> On a dughill hard by his own stable
> And the Devil smiled, for it put him in mind
> Of Cain and his brother, Abel".[4]

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1. R. du Cann, The Art of the Advocate, (London: Penguin Books, 1964), p.14.
2. W. Shakespeare, King Henry VI, Pt. II, Act IV, Sc.2.
3. H. Pound, The Lawyer from Antiquity to Modern Times, (St. Paul: West Publishing Co., 1953), p.136.
4. S.T. Coleridge, The Devil's Thoughts.

And also his money-grabbing visage brought condemnation, as did his glibness of tongue.

> "I know you lawyers can, with ease
> Twist your words and meanings as you please;
> That language, by your skill made pliant,
> Will bend to favour every client;
> That 'tis the fee directs the sense,
> To make out either side's pretence."[5]

However that may be, either in the avenues of history or the tomes of literature, by the time of Queensland's development in the nineteenth century, the lawyer had certainly come of age. There was still a certain amount of ill-feeling shown towards the lawyer - he did not escape criticisms of self-interest. Yet he was able to assert a dominant influence in the colony. Conditions had arisen whereby the lawyer, with an educated background combined with the experience of hard knocks, was able to move into a top position in State and community life, as well as in his own legal field.

This study is somewhat one-sided, in that it draws attention to just one particular occupation group. The lawyers on the whole have been characterised by a liberal-progressive sympathy. They were indoctrinated with the sense that development and progress must be made, and could be achieved through reforms in social conditions. But such sentiments were not the sole preserve of lawyers - they were prominent in the matter, but were not alone. More research is needed on the activities and attitudes of other groups, in particular town groups, so that eventually there may be compiled the full

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5. J. Gay, Fables.

significance of urban life and of middle class values in developing young Queensland.

If this study gives the impression of concentrating upon Queensland lawyers rather than giving an equally balanced treatment of State, Law and community, such an imbalance is natural, having regard to the relevant circumstances of the case. For the lawyer was the important connecting link between the power of the State and the freedom of the community. The State was very much in a position of general control, especially over the Law. It provided the system of law, courts, judges, remedies. But because the lawyer was so important a figure in the State, as well as in the Law and the community, he could mediate between the various interests, and if a clash did arise, seek to effect a compromise solution. He ensured that conditions prevailed which allowed a free and comfortable life for the individual and also allowed the development of the community and the colony as a whole.

The spirit of individualism was predominant and that factor gave the lawyer an advantage in the State and community situation. It especially favoured the barrister who might be regarded as the individualist par excellence. There was, at the same time, a ready acceptance that one had to use the State and its powers, so as to secure one's ends. The lawyers therefore sought to create their own world in their own legalistic image. In one sense, that meant assuring the continuation of the means for their livelihood, and even increasing the means. But the liberal spirit, the sense of development required a broader outlook than that - and one of

the important concerns for the lawyer was to check that the frontier values, which could apply most appositely to the Queensland scene - values of fully unrestrained freedom - were not carried to violent excesses. So they used the State to carry a civilized order and the British way of life to the far ends of the colony. They pressed for the establishment of courts, the appointment of judges, the reform of procedures, the revision and modernisation of the substance of the law. They used the State as much as they possibly could to establish a system of law and order and thereby provide the basis for harmonious community development. With such a scheme there occurred of course the further result that the lawyer himself benefited - in pocket and prestige.

Generally relationships between the Law, the State and the community were harmonious. The trend of the period was development, at the State and the community level - and with that went the development of the legal system. The legal profession grew in harmony with that trend. The only real clash was between the judges and the State, a clash as to control. The matter was not wholly resolved, but the indications were apparent that the most sensible course to follow was one to effect an harmonious relationship between both bodies.

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